

MARCUS ROSENBERG & DIAMOND LLP

488 MADISON AVENUE  
NEW YORK, NEW YORK 10022

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Telephone: (212) 755-7500

Telefax: (212) 755-8713

December 5, 2016

By email to: mperlmutter@bsa.nyc.gov

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

Re: BSA Cal. No.: 74-07-BZ  
August 26, 2008 Resolution  
June 16, 2016 Application ("Application") by  
Trustees of Congregation Shearith Israel ("CSI")  
8-10 West 70<sup>th</sup> 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.

A. BSA Should Reject CSI's  
Untimely Submission and  
Dismiss CSI's Application

Without waiving Opponents' prior objections, including objection to the SOC calendaring of the Application, by-passing a normal DOB review, this is to request that: CSI's November 16, 2016 submission be rejected; and CSI's Application be dismissed.

At BSA's October 14, 2016 hearing, you requested that CSI's attorney provide "clarification" of CSI's plans, repeating "clarification" several times.

In scheduling further submissions, you stated:

"Well, the thing is you have significant opposition. Which means the schedule is affected by opposition's right to respond to your submission...[a]nd your right to respond to theirs."

You, Executive Director Ryan Singer and (then) General Counsel David J. Schnakenberg directed that: CSI's "clarification" be submitted by November 16; opposition be submitted by December 7; and CSI's reply be submitted by December 28.

When Opponents were asked whether they would be able to comply with the proposed schedule, Opponents responded that the schedule had to be conditioned on their receipt of CSI's "clarifications" simultaneously with submission to BSA. This condition was emphasized because, as hereafter demonstrated, CSI's practice had been to hand-deliver documents to BSA and, later that day, or the following day, send them by mail or FedEx to Opponents.

Mr. Schnakenberg stated: "I want to reiterate that, because it's very important. It will not be considered submitted if it is not shared with all of the parties involved."

Mr. Schnakenberg also stated that there would be "no extensions."

In violation of BSA's express directions, CSI's attorneys hand-delivered massive new materials to BSA on November 16, 2016, but sent copies to Opponents by FedEx, which arrived on November 17, 2016, the day after delivery to BSA.

Throughout this matter, CSI has followed similar practices:

September 8, 2016 – CSI hand-delivered responses to BSA’s August 12, 2016 Notice of Comments, but waited until the following day, Friday\*, September 9, 2016, to send copies by FedEx to our office, which arrived on Monday, September 12, 2016, four days after CSI filed its submission at BSA.

September 16, 2016 – On Friday\*, September 16, 2016, CSI hand-delivered to BSA further architectural drawings and Landmark Preservation Commission (“LPC”) documents, but mailed copies to Opponents, assuring that delivery would not occur until Monday, September 19, 2016.

September 30, 2016 – On Friday\*, September 30, 2016, CSI hand-delivered to BSA “updated” documents, but mailed copies to Opponents. Since our office was closed on Monday, October 3, 2016, for the Rosh Hashanah holiday, the copies were not received until Tuesday, October 4, 2016, four days after they had been hand-delivered to BSA. Alan Sugarman, who represents other Opponents, and who filed opposition and testified at the October 14, 2016 BSA hearing, has advised me that he received no copy of CSI’s September 30, 2016 submission.

October 4, 2016 – CSI hand-delivered to BSA further “updated” documents. Inexplicably, and without any legitimate basis, CSI waited until the following day to mail copies to Opponents. As CSI certainly knew, Monday,

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\* Given this consistent pattern, it cannot be merely coincidental that CSI posted copies to Opponents on Fridays, assuring that they not be received until at least three days after hand-delivery of the originals to BSA.

October 10, 2016, was the Columbus Day New York State holiday. Thus, the documents were not received at our office until the late afternoon of Tuesday, October 11, 2106. At that time, I already had left for the Yom Kippur holiday, so as to share an early dinner and be at our synagogue in advance of sundown. Since our office was closed on Wednesday, October 12, 2016, for the first day of the Yom Kippur observance, I was unable to review CSI's submission until Thursday, October 13, 2016, more than a week after it had been hand-delivered to BSA and the day before BSA's scheduled October 14, 2016 hearing. Mr. Sugarman has advised me no copy of CSI's October 4, 2016 submission was provided to him.

CSI's course of conduct, clearly calculated to assure belated receipt of filings by Opponents, continues to violate BSA's rules and fundamental Due Process.

Most significantly, CSI's latest submission violated BSA's express directions issued on October 14, 2016.

B. BSA Should Reject CSI's  
Submission Of Massive New,  
Materially Different Plans  
And Other Documents, Not  
Mere Clarification

On October 14, 2016, BSA directed CSI to provide "clarification" of its original Application plans.

Solely based on the direction that CSI submit only "clarifications", Opponents agreed to respond by December 7.

Neither at the October 14, 2016 BSA hearing, nor thereafter, did CSI state—or even simply—that it would present massive new documents, exceeding the size of its original Application. Nor did CSI request, much less obtain, permission to do so.

At the October 14, 2016 BSA hearing, CSI displayed a number of exhibits mounted on display boards (“Boards”). Opponents were unable to examine the Boards which were not directed toward anyone other than BSA’s Commissioners. Accordingly, Opponents requested copies, which CSI promised to provide. CSI has not as stated that copies of the Boards were included in CSI’s November 16, 2016 submission. CSI has not explained why copies of the Boards were not provided to Opponents prior to, or at, the October 14, 2016 hearing. CSI has not even stated whether its November 16, 2016 submission to BSA contains changes from the Boards.

CSI’s November 16, 2016 submission includes a new Statement of Facts, a new Technical Memorandum, and a new Acoustical Report.

CSI’s submission of these materially different documents unfortunately is consistent with its prior actions, as demonstrated by the following:

On June 16, 2016, when CSI hand-delivered its Application to BSA, it provided copies to:

None of those who appeared in opposition to to CSI’s prior BSA applications;

None of those who had challenged the 2008 variances; and

None of those who had litigated with CSI.

Significantly, CSI has refused to consent to Opponents' access to DOB filings labeled by CSI as confidential for claimed security reasons, thereby impeding the Opponents' ability to respond to CSI's applications and claims.

When Opponents finally obtained CSI's Application, they advised CSI's new counsel, Fried Frank, that they should receive simultaneous copies of all submissions.

Nor did CSI rest on its June 16, 2016 Application. Rather, CSI has made multiple additional submissions, including:

August 10 2016 – AKRF's seven page "Technical Memorandum"; additional PBDW Architectural Plans; Longman Lindsey acoustic "review" of proposed mechanical equipment; and other exhibits and attachments.

September 8, 2016 – "Revised Existing Conditions Plans" dated September 8, 2016; "Revised Proposed Conditions Plans" dated September 8, 2016; revised Technical Memorandum; Revised Architectural Drawings.

September 13, 2016 – New drawings approved by LPC on September 13, 2016, 3 months after CSI filed its BSA Application; and new September 13, 2013 amendments to LPC's prior approval.

September 30, 2016 – "Updated" documents, including an "Updated Statements of Facts".

October 4, 2016 – "Updated sheets for the Proposed Conditions Plans".

While some—not all—of the revised plans and drawings indicate changes by “clouds”, the “clouds” encompass large areas and provide no description of how the “clouded” elements have been modified, violating fundamental design professional standards for indicating design modifications. CSI’s consistent failure to “redline” or otherwise specify changes in the multiple versions of the documents it has submitted has forced Opponents to expend an enormous amount of time and effort in a tedious attempt to identify the changes. The most logical inference to be drawn is that CSI has made an intentional effort to prejudice Opponents’ ability to timely and fully respond. Even were CSI’s continued conduct to have been unintentional, the time which CSI has forced Opponents to expend in attempting to identify the changes, by itself, warrants additional time for Opponents’ response.

CSI’s multiple continuing submissions to BSA, containing new, materially different, information, has forced Opponents to: “chase a moving target”; and waste time and limited resources in attempting to review, analyze and address material which CSI then changes.

Nor can there be comfort that CSI will not submit further lengthy changes and additions in its Reply, as may be anticipated by CSI’s rolling reconstruction and spinning of facts and non-facts.

CSI’s repeated conduct proves, beyond any doubt, that its materially new and different material—submitted on the last day authorized by BSA, but delivered to Opponents on the following day—deliberately violated BSA’s express directions, both as to limit of its further submissions and the requirement for simultaneous delivery to Opponents.


Conclusion

BSA should not countenance CSI's sharp practices, violating BSA's rules and express directions, and prejudicing Opponents' rights.

For all of these reasons, BSA must reject CSI's submission and dismiss CSI's Application based on CSI's: (a) violation of BSA's express directions for the timing and simultaneous delivery of the submission; and (b) violation of BSA's express direction for "clarifications", not material new changes.

Should BSA determine to accept CSI's submission, Opponents' time to respond should be extended to January 18, 2017, due to the intervening holidays.

Respectfully submitted,



David Rosenberg

DR/cac

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