

Alan D. Sugarman
Attorney At Law

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17 W. 70 Street
Suite 4
New York, NY 10023
212-873-1371
mobile 917-208-1516
fax 212-202-3524
sugarman@sugarlaw.com
www.sugarlaw.com

July 25, 2016

Mr. Richard Asche
Co-Chair Land Use Committee
Community Board 7 / Manhattan
250 West 87th Street
New York, NY 10024

Re: CB-7 Committee Hearing of July 20, 2016
Congregation Shearith Israel

Dear Mr. Asche:

I am writing to clarify some of the material misunderstandings on display at last Wednesday night's Land Use Committee hearing concerning Congregation Shearith Israel.

Conversion of Classrooms to Offices Were not a Mistake

The attorney for the Congregation, when pressed as to why the uses on the third and fourth floors were converted from classrooms to office, stated that the use conversions were an inadvertent "mistake", or words to that effect. That is false. The conversion was first shown in CSI's submission to the Landmark Preservation Commission in 2013 when CSI sought approval for exterior changes required by BSA in 2008. The same plans, with small variations, were submitted to DOB in 2015 and again in 2016. These plans all showed offices rather than school space on the third and fourth floors. Further, CSI submitted to DOB proposed certificate of occupancy which described offices on the third and fourth floor. In June, 2015, our Zoning Challenges and Appeals highlighted the bait-and-switch. Then, in February 2016, CSI once again made this so-called "mistake" when it applied to the BSA for approval of the plans with offices rather than classrooms on these floors. So, this assertion in July 2016 by the CSI attorney was unquestionably false and disingenuous at best.

The CSI's Characterization of the Changes As "Minor" Is Self-Serving

¹ During the one minute allocated to me for a statement, I submitted to the board a binder of documents together with a CD of the documents. You will find the 2013-plans at Ex. 20 and 23, the Certificate of Occupancy documents at Ex. 21. A comparison of the three versions of the plans for the third and fourth floor are attached.

Mr. Richard Asche
July 25, 2016
Page of 2 of 8

At the beginning of the hearing, you repeatedly referred to the changes as “minor,” adopting the characterization of CSI – which is wholly misleading. Neither the BSA nor DOB ever characterized the changes as minor. Indeed, DOB revoked the permit when it learned of the nature of the changes, and BSA refused to issue a certificate of substantial compliance in February 2016. So, a misimpression was created at the commencement of the hearing, which colored the entire hearing.

DOB Revoked the Permits to CSI In Part Because of Changes in Programmatic Use

It is important to understand the background to the revocation of the permits by DOB. DOB had granted a permit for construction in May, 2015. Subsequently, my client Nizam Kettaneh and Landmark West filed, with DOB, Zoning Challenges and Appeals as to the changes from classrooms to office. The appeals made no mention as to the number of classrooms or offices but focused on the bait-and-switch engaged in by CSI. In response to that argument, the DOB issues a notice to revoke.

DOB in its September 22, 2015 decision stated²:

The Department is unable to make a determination on the specific question of the validity of the BSA variance on the grounds that the underpinning for the “programmatic need” argument has changed. However the fact that interior layouts have very substantially changed throughout all floors of the proposed building warrant that the applicant return to the Board of Standards and Appeals for a modification of the previous approval, or other measure as deemed appropriate by the Board.

Certainly DOB anticipated that BSA would review of the programmatic need “underpinnings” of the variances as part of the review of the changes in the plans.³ CSI returned to BSA in February 2016 for a certificate of substantial compliance but was turned down by BSA.⁴ The Committee chair’s ruling that the programmatic needs issue would not be addressed by the Committee, and the shutting-down of any discussion of the issue, was in conflict with this decision.

The cat was then out of the bag – for nearly four years starting in 2013, CSI had publicly represented that the classrooms on floor third and four were not essential to their programmatic needs, the clear basis of their variances. Indeed, at the July 20 hearing, the attorney for CSI admitted that CSI had claimed that large floors and a rear variance were

² Exhibit 1, DOB Decision.

³ Exhibit 7.

⁴ Exhibit 11

Mr. Richard Asche
July 25, 2016
Page of 3 of 8

required to accommodate the floor plate needs for a school.⁵ Yet, CSI still believes it is entitled to the large floor plates after the admission that the school classrooms were not critical programmatic needs.

Reversion of these floor plans to those in 2008 does not alter the uncontested fact – the school floors were not essential programmatic needs. The Congregation cannot now change the conclusion drawn from its acts that continued for over three years before three different regulatory bodies: LPC, DOB, and BSA.

The CB7 Committee Was Confused as To Other Findings in the 2008 BSA Decision

The handout provided by the Committee at its hearing included the 2007 resolution of CB7 disapproving the variances, but not the BSA 2008 decision. As just noted, it was a mistake to not focus on the 2008 variance decision. Attached are some excerpts from that decision illustrating among other things that CSI based the school programmatic needs upon its own requirements and not upon those of Beit Rabban and that New York law does not recognize income generation as a programmatic need.

In 2008, BSA Made Detailed (b) Findings

In response to my statement that the projected sales income for the condominium(s) had increased from \$30 million in 2008 to \$60 million in 2012-3 affecting the rate of return, you stated incorrectly that BSA had made no (b) finding, referring to, as authority, the CB7 resolution in 2007.⁶ In 2007, CSI had persuaded you and others at CB7 that BSA would make no (b) findings so as to avoid CB7 probing the financial analysis. In fact BSA made (b) findings as to the condominiums after submission of multiple financial analyses by CSI.⁷ These new 2012 documents I referred to describe a 5 floor condominium mansion with a swimming pool, something never described to BSA. Again you used your misunderstanding of the facts to rule that the Committee would not address the doubling of income from the condominiums because you were confused as to the 2008 BSA decision.

CSI Failed to Provide Externality Information to Allow Informed Consideration of Impact of New Changes on Adjoining Properties

As to the externalities, please note that CSI failed to provide any depiction of externalities as to the added mechanical on the second floor terrace and the rooftop – to be more precise,

⁵ DOB also cited the change of location of the caretaker's apartment.

⁶ Documents relating to the \$60 million valuation are at Exhibit 26; the 2008 valuation is at Exhibit 27.

⁷ The extensive discussion of the (b) finding by the BSA at paragraphs 125 et. seq. may be found at Exhibit 16.

Mr. Richard Asche
July 25, 2016
Page of 4 of 8

elevations and section axonometric views were not provided, which views would show the adjacency of 91 CPW and 18 West 70th, obviously required for a (d) finding.⁸ You seemed to give CSI another pass, assuming this was another innocent “oversight.” I suggest that this was an intentional act by CSI, and should be remedied immediately before any additional hearings are scheduled. My own measurement of the plans shows that the ventilation units on the first floor roof are only 10 feet from the property line to 91 CPW. I suggest that CSI failed to provide this information in bad faith – their architects are far too sophisticated to have omitted this, without instruction by CSI.

The Ventilation Units on the Second Floor Terrace Were Not Shown in Plans Submitted to DOB

CSI at the hearing attempted to give the impression that these ventilation units were in the plans previously submitted by CSI to DOB and that DOB had already reviewed the impact. This is not so.⁹ The addition of these vent units were made after February 2016 and never described to DOB.

CSI Provided Incomplete and Inaccurate Information Concerning the Variance Extension Period and Did Not Explain Its Delay In Requesting an Extension

There were a number of inaccurate statements made as to the extension of the variance period. By operation of the zoning code, the time for CSI to substantially complete its project was already automatically extended by operation of ZR § 72-23. Extensions beyond that allowed by the ZR § 72-23 are not automatic. The truth is that CSI has already obtained a three-and-a-half-year extension.

The 2008 BSA variance required: “That substantial construction be completed in accordance with ZR § 72-23,” which states:

72-23 Lapse of Variances A variance granted under the provisions of this Resolution shall automatically lapse if substantial construction, in accordance with the plans for which such variance was granted, has not been completed within four years from the date of granting such variance by the Board of Standards and Appeals or, if judicial proceedings have been instituted to review the Board's decision to grant any variance, the four-year lapse period shall commence upon the date of entry of the final order in such proceedings, including appeals. A variance granted under the provisions of this Resolution shall automatically lapse if substantial construction, in accordance with the plans for which such variance was granted, has not been completed within four years from the date of granting

⁸ See Exhibit 32 for these types of views as filed with DOB.

⁹ See Page 6 of Exhibit 32.

Mr. Richard Asche
July 25, 2016
Page of 5 of 8

such variance by the Board of Standards and Appeals or, if judicial proceedings have been instituted to review the Board's decision to grant any variance, the four-year lapse period shall commence upon the date of entry of the final order in such proceedings, including appeals.

The Court of Appeals order denying leave to appeal was entered on February 21, 2012, which means that CSI has known for over four years that substantial completion (construction) had to occur by February 20, 2016. Under the rules of the BSA:

§ 1-07.3 Filing Period

(c) Extensions of Time to Complete Construction: All applications for an extension of time to complete construction filed pursuant to § 1-07.1(a)(3) may be filed on the SOC calendar as follows:

(1) Within one (1) year before or within thirty (30) days after the expiration of the time to complete construction: All applications filed within one (1) year before or within thirty (30) days after the expiration of the time to complete construction may be filed on the SOC calendar.

(2) More than one (1) year before or less than two (2) years after the expiration of the time to complete construction: All applications for an extension of time to complete construction which are filed more than one (1) year before or less than two (2) years after the expiration of time may be filed on the SOC calendar provided that the applicant requests a waiver under this paragraph in the application.

CSI had known for over a year prior February 20, 2016 that it would be unable to substantially complete the project by that date, and, given the sophistication of its advisors, allowing the variance period to lapse was deliberate. CSI then allowed the 30-day period after expiration to lapse. The waiver requested by CSI was intended to allow CSI to file on BSA's SOC calendar, so as to avoid increased scrutiny.

It also seems that after the February 21, 2012 Court of Appeals order, CSI did very little to advance the process. Indeed, only in July 2013, 18 months later, did CSI finally submit new plans to LPC to amend the Certificate of Appropriateness concerning exterior changes required by BSA; an LPC hearing was held only on August 6, 2013. The plans filed with LPC replaced the classrooms on the third and fourth floors with offices. The final Certificate was issued in December, 2014.

Mr. Richard Asche
July 25, 2016
Page of 6 of 8

Approval of Vault Space

At the hearing, counsel for CSI was unable to adequately explain the situation as to approvals for the vault space which require approval by at least DOT and LPC. Very close inspection of the plans filed by CSI with LPC in 2013 reveal the existence of a vault. However, it appears that LPC was not aware of the new vaults, and, in any event, the December, 2014 LPC Certificate of Appropriateness made no mention of the added vaults. CSI needs to explain why it has not obtained the approvals of vault space by both DOT and LPC since 2013 to date.

Conduct of the Hearing

You allowed the CSI to monopolize most of the time and considered officers, trustees, and members of the Congregation, including the President of CSI who signed many of the development documents, Barbara Schwartz, to filibuster time as if they were members of the public, when indeed they were the Applicant. This ploy, accepted by you as Chair, prevented the opposition from providing any meaningful comments and from providing informed correction of misstatements. Thus, 80% of the presentation comment time was allocated to CSI. Really, are the CSI president, rabbi and trustees members of the public? The conduct of the 2007 hearings by CB7 and BSA provided substantial opportunity to the opposition for presentations and comments. You allowed one minute for me to make a statement.

CSI Did Not Provide the Committee with the 2013-15 Plans Filed with LPC and DOB

You shielded the Committee from any knowledge of the plans filed by CSI with LPC in early 2013 which were then, with slight changes, submitted to DOB in 2014 and 2015. When I presented at the CB7 hearing a binder of documents and placed it on the Committee table in the one minute allocated to me you did not even glance at the binder, which included these important plans.

Copies of the Presentation by CSI Were Not on the CB7 Website and Were not Provided to the Opposition and Other Members of the Public During or After the Meeting.

At the hearing, CSI showed a new PowerPoint presentation that had never been made available to the public. Contrary to what was said by the staff of CB7, it had not been posted on the CB7 website. Indeed, CSI's application still has not been posted on the CB7 website. Indeed, of the general public had never been provided the entire June 16, 2016 filing with BSA since BSA had not posted the materials and indeed, BSA has made no mention of the application on its web site.

A Personal Opinion

Mr. Richard Asche
July 25, 2016
Page of 7 of 8

Many of CSI's problems result from its own unreasonable expectations such as its drive to build a very large luxury banquet hall 27-feet below grade, rather than use the existing 10,000 square feet of space under the sanctuary, after moving a few offices and kitchens to a new building. The banquet hall construction is very expensive and creates heavy ventilation and safety needs for a space to occupy over 350 persons. It is a major safety hazard with limited ability to egress in the event of fire or explosion. The gold-plated 4500 square foot open-space banquet hall requires extra structural beams and complex ventilation needs and requires extra excavation. And, of course the banquet hall is only creating future fuel for conflict with its neighbors. Placing condominiums above the community space so that there will be views of Central Park reduces the floor plates because of the stairs and elevator areas devoted to the condominiums and creates a need for separate independent mechanical systems. This is highly inefficient. CSI could easily build a more modest as-of-right structure which would serve all of its needs, using its existing space, including the Parsonage on Central Park West. CSI is entitled to pursue its aims, but not at the expense of contextual zoning and its neighbors.

Having heard the self-pitying stories of the congregants at the hearing, I must provide another view of Synagogue funding. I am Jewish. My father grew up in Georgia; he lived until 95, with his last years in a Sephardic-based facility in Seattle. My mother's family was from Hungarian Jewish immigrants who lived in Atlanta. Over the years, my family contributed to the building funds of synagogue facilities in many cities, first in Atlanta, Georgia. We then moved to East Tennessee and there my father contributed to the building fund for a new community center. We then moved to New Jersey, and once again he pledged to a synagogue building fund. Next, the family moved to Needham, Massachusetts, where once again he contributed to the building fund to enlarge the Synagogue. My three brothers and I were all Bar Mitzvahed in these facilities funded in part by my father. Then, after retirement he moved to Seattle, and once again contributed to a building fund.

The 1897 Shearith Israel Synagogue was funded from the funds of its congregants at the time.

Finally, I personally resent the implication from Synagogue members that opponents to the project are in some way anti-Jewish. Many of the opposition leaders are Jewish, and, at present, as reported in the New York Times, CSI is engaged in a highly contentious battle with a synagogue in Newport, Rhode Island and another contentious battle with its former program director who is Jewish.¹⁰

Conclusion

¹⁰ Exhibit 42.

Mr. Richard Asche
July 25, 2016
Page of 8 of 8

This is not a comment letter as to the merits or to propose the proper action that should be taken by the Committee and CB7 as a whole, but merely brings relevant information to the attention of those, so that decisions may be made in an informed manner.

I hope that the full CB7 Board and committee members will be aware of these facts when the full Board considers further any recommendation from your Committee . I hope you will bring these facts to the attention of the full Board prior to its consideration of this matter.

In the meantime, it seems inefficient for the Committee to rely solely upon considering the many misunderstandings of fact and the misplaced reliance by the Committee for the source of facts based upon misrepresentations by CSI and Capalino+Co., especially when other attendees at the hearing had more accurate and complete information. It seems to me that there has to be a better approach to running these hearings if the intent is to review facts and to make findings based upon accurate and complete information.

Sincerely,



Alan D. Sugarman

cc: Page Cowley – Co-Chair CB7 Land Use Committee
CB7 Land Use Committee Members
Elizabeth R. Caputo, Chair, CB7
Penny Ryan, District Manager CB7 @ office@cb7.org
David Rosenberg, Esq.
Kate Wood, Landmark West

Selected Findings – 2008 BSA Decision

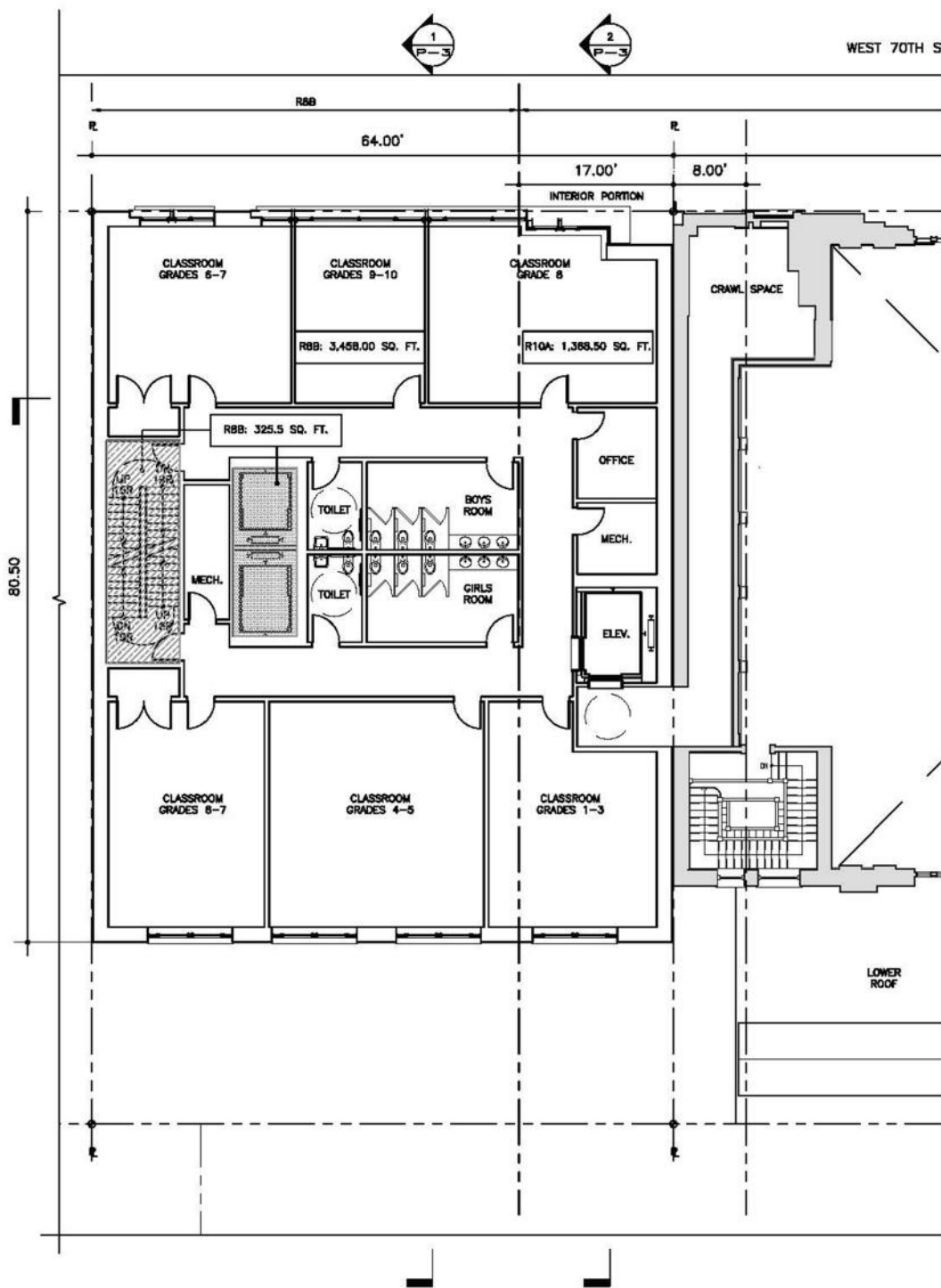
¶ 147 WHEREAS, further, the Board notes that it requested that costs, value and revenue attributable to the community facility be eliminated from the financial feasibility analysis to allow a clearer depiction of the feasibility of the proposed residential development and of lesser variance and as-of-right alternatives

¶ 68 WHEREAS, the Board notes that the applicant has provided supportive evidence showing that, even without the Beit Rabban school, the floor area as well as the waivers to lot coverage and rear yard would be necessary to accommodate the Synagogue's programmatic needs;

¶ 79 WHEREAS, the applicant proposed the need to generate revenue for its mission as a programmatic need, New York law does not permit the generation of income to satisfy the programmatic need requirement of a not-for-profit organization, notwithstanding an intent to use the revenue to support a school or worship space;

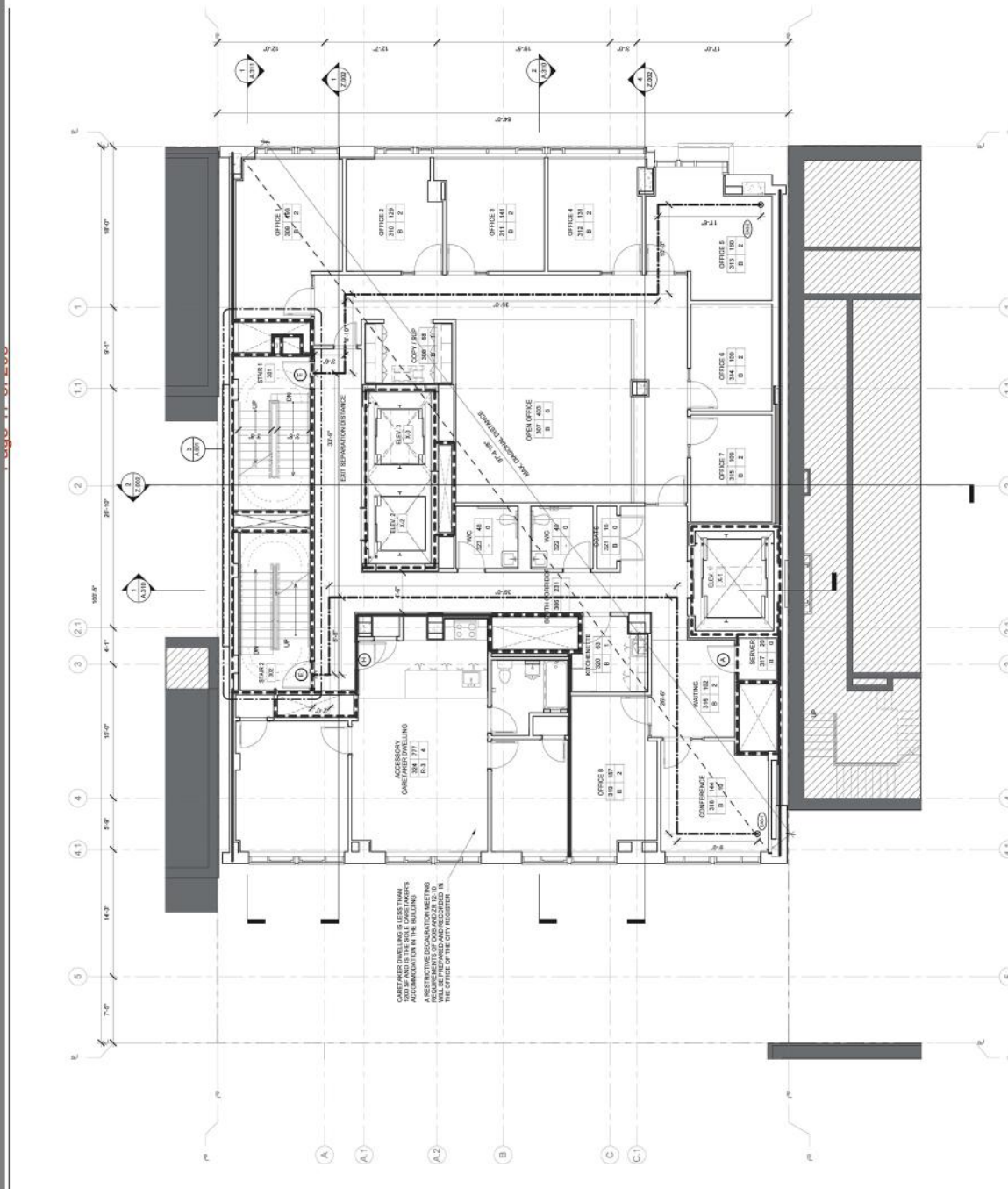
¶ 80 WHEREAS, further, in previous decisions, the Board has rejected the notion that revenue generation could satisfy the (a) finding for a variance application by a not-for-profit organization see BSA Cal. No. 72-05-BZ, denial of use variance permitting operation by a religious institution of a catering facility in a residential district) and, therefore, requested that the applicant forgo such a justification in its submissions; and

North
West 70th Street

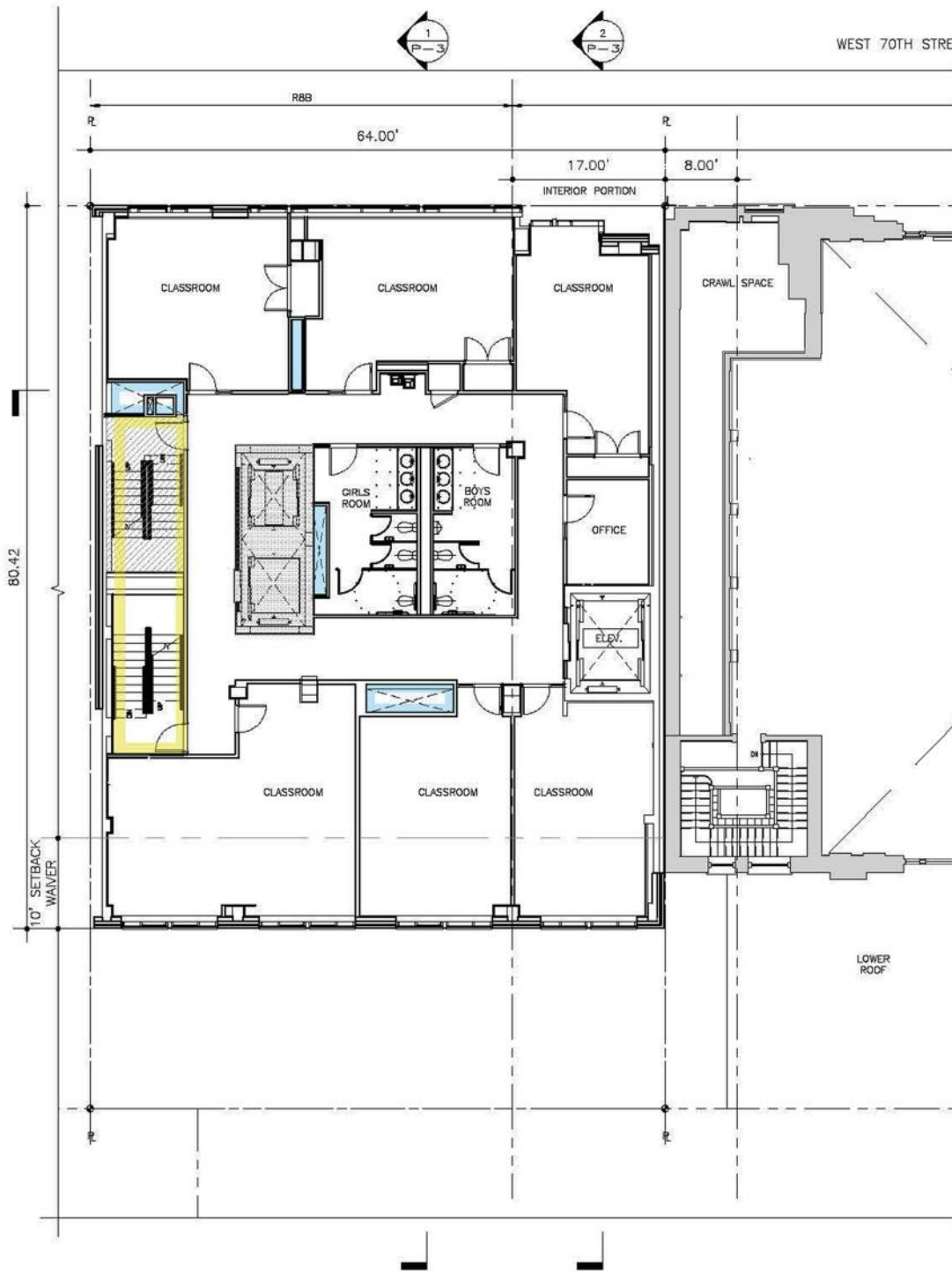


1 PLAN
THIRD FLOOR
SCALE: 1/16" = 1'-0"
INTERIOR LAYOUT AS SHOWN SHALL BE SUBSTANTIALLY COMPLIED WITH,
AND ALL EXITS SHALL BE APPROVED BY DOB.
MAXIMUM OCCUPANT LOAD PER FLOOR/ SPACE SHALL BE APPROVED BY DOB

APPROVED BSA - 3RD FLOOR



SUBMITTED TO DOB FOR PERMIT - 3RD FLOOR
2013-2015



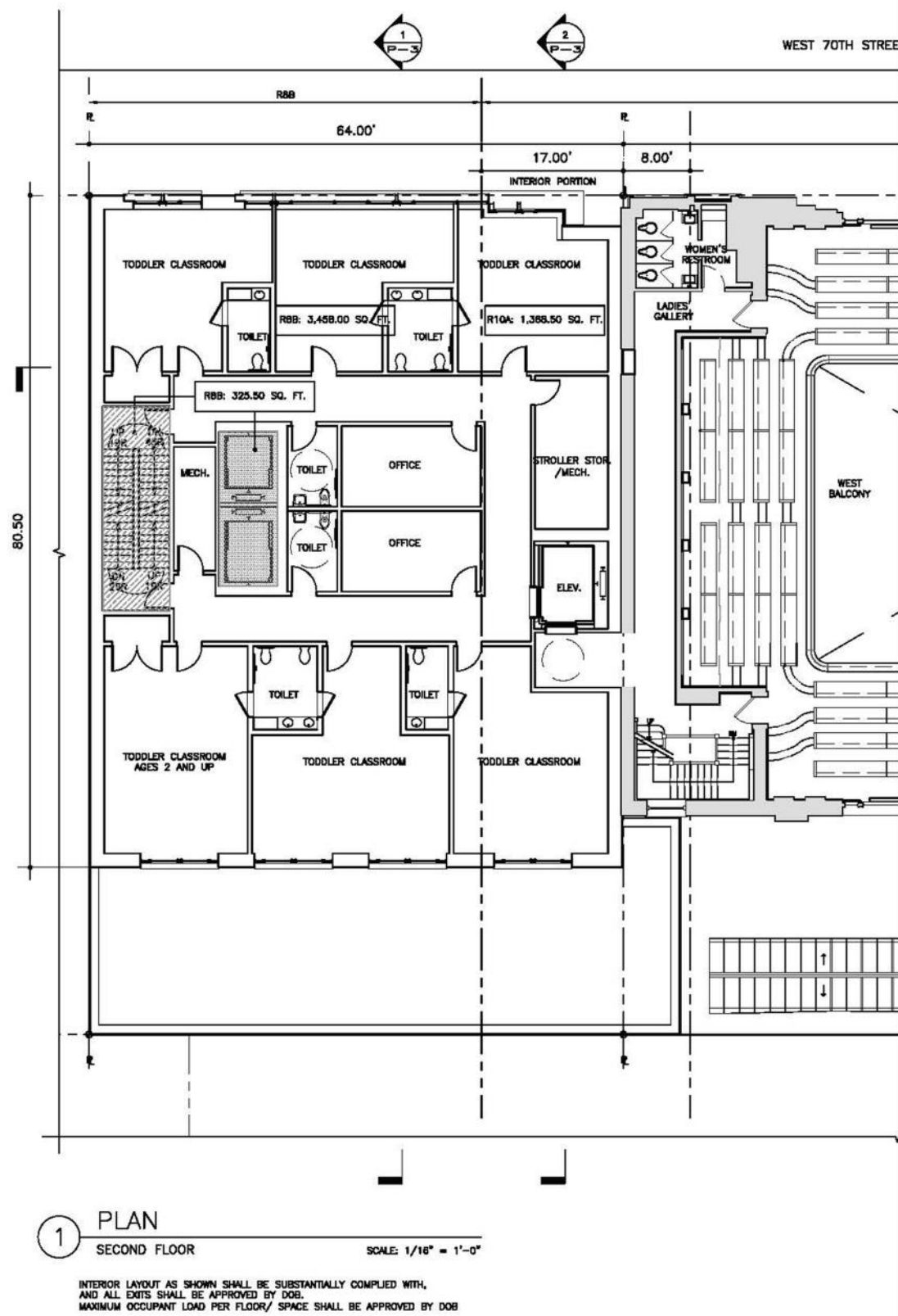
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PROPOSED BSA - 3RD FLOOR

From CSI "Booklet" to BSA

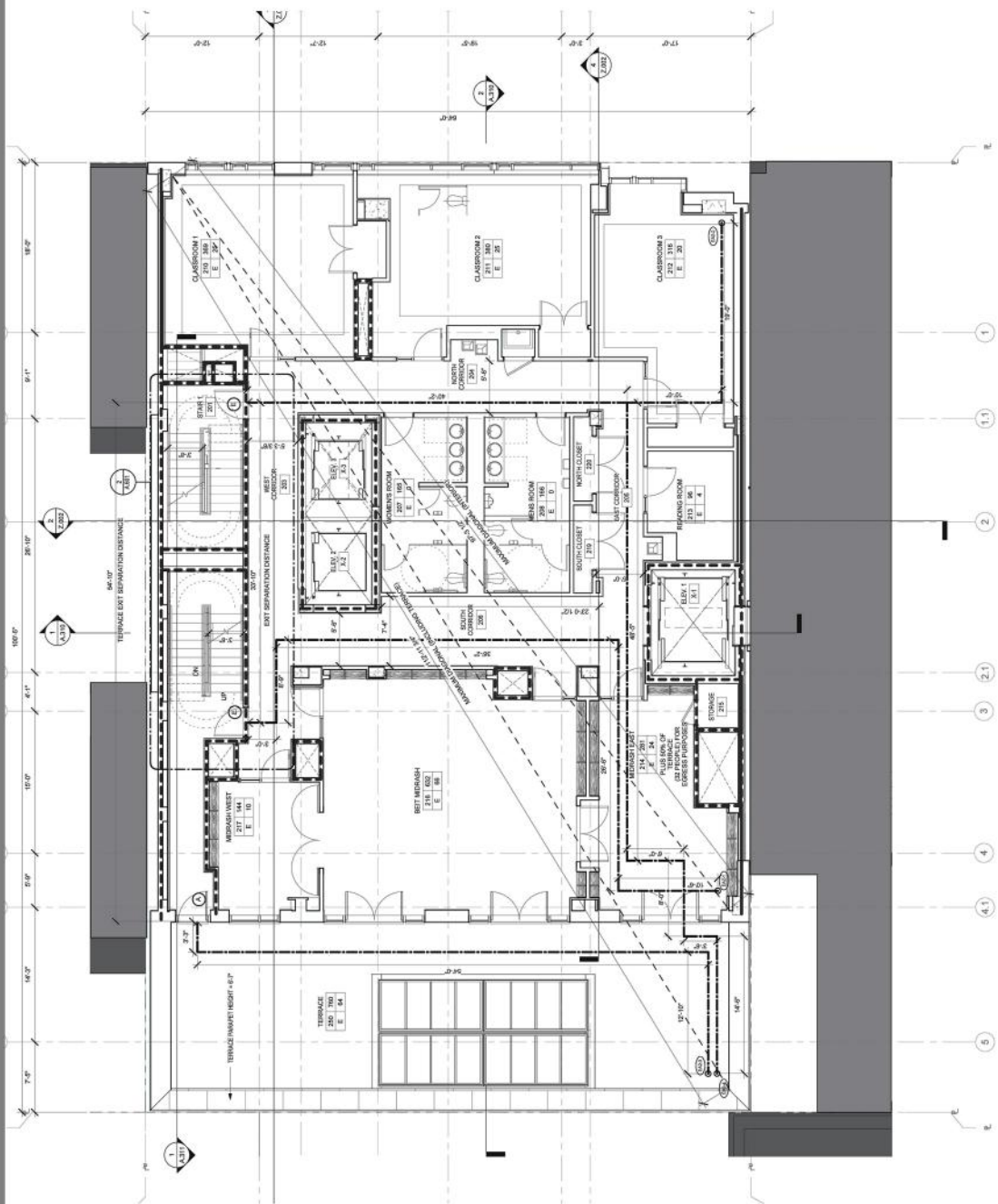
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North
West 70th Street



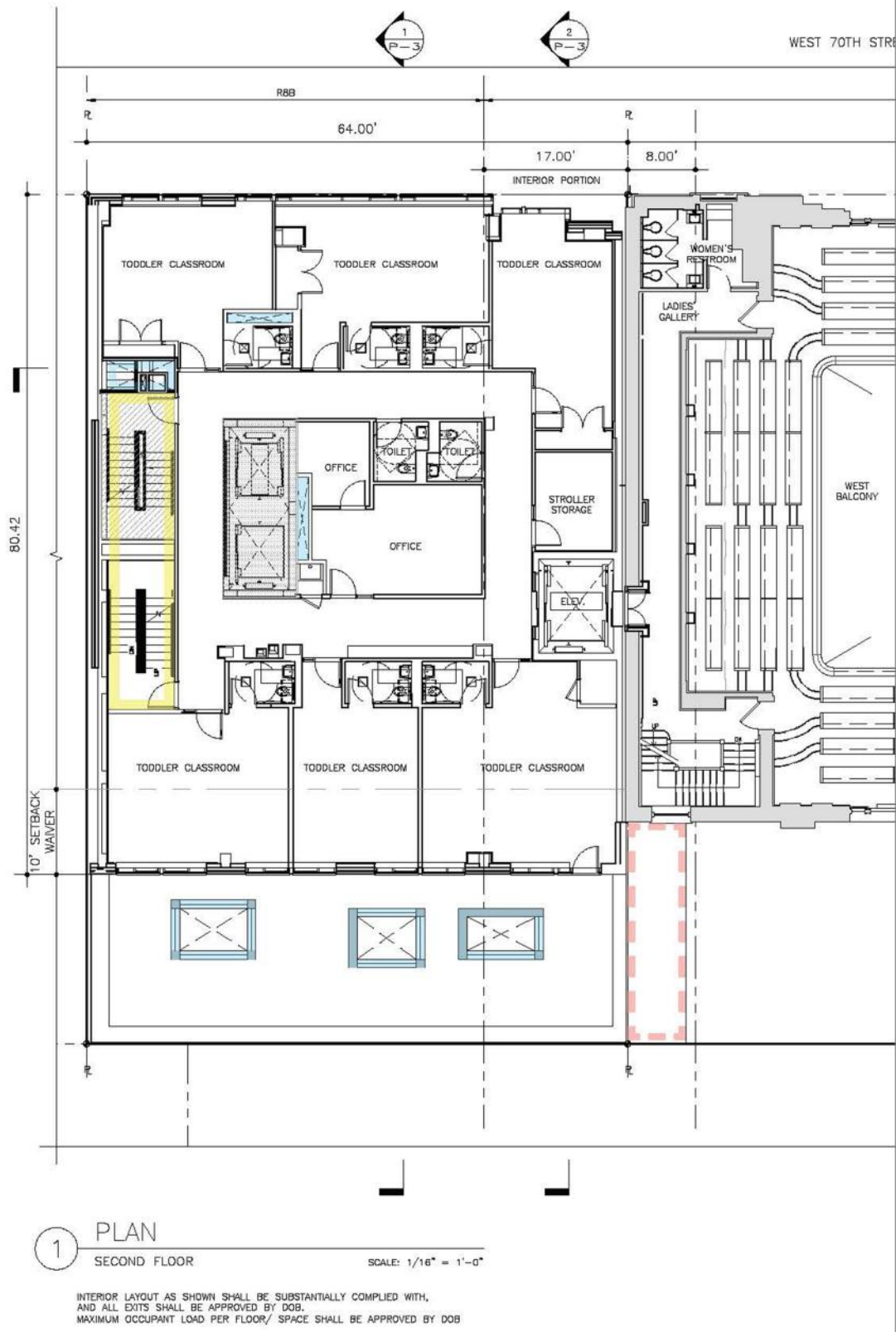
APPROVED BSA - 2ND FLOOR

From 2016 CSI "Booklet" to
BSA



SUBMITTED TO DOB FOR PERMIT - 2ND
FLOOR
2013-2015
[First Floor Note Says "Operable Roof
Above" in referring to 2nd Floor
Terrace

From 2015 DOB Permit Filing



PROPOSED BSA - 2ND FLOOR

From 2016 CSI "Booklet" to
BSA