

Alan D. Sugarman  
Attorney At Law

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

September 1, 2006

Meenakshi Srinivasan  
Chair  
NYC Board of Standards and Appeals  
40 Rector Street  
9<sup>th</sup> Floor  
New York, NY 10006-1705  
(212) 788-8769 (Fax)

Re: Freedom of Information Request  
Shearith Israel Project at 8 West 70<sup>th</sup> Street, New York, New York

Dear Chair Srinivasan:

Reference is made to the mixed use tower that has been proposed by the Congregation Shearith Israel (the "applicant") at 8 West 70<sup>th</sup> Street, New York, New York. As you might note, I live across the street from the proposed project.

In a separate letter today, I filed a Freedom of Information request.

I now have another request to make of the BSA: in prior proceedings involving this applicant, the flow and distribution of information has been extremely inefficient and has in some way prevented the public from reviewing the information prior to meeting and hearings.

For example, at a Community Board committee meeting, the applicant presented a lengthy PowerPoint presentation, but, the applicant refused to make it available to the community (and indeed to the Community Board). At the last LPC meeting on March 14, 2006, the applicant filed new drawings, and opponents to the project did not obtain copies until a week after the meeting and after approval of the project.

What I am requesting is that the BSA require that the applicant provide its Draft Application and Application in electronic form such as Acrobat PDF format and PowerPoint. I note that the LPC has, after the fact, asked that this applicant provide material on a CD-ROM (see attached letter from the LPC.) I note that the CB-7 has posted applications with drawings etc. in Acrobat PDF format. Obviously, all of the information provided is generated electronically and plans and drawings may easily be exported to Acrobat PDF. Indeed, in the federal courts, all filings now must be made in Acrobat PDF form.

Alan D. Sugarman to BSA re Electronic Information  
September 1, 2006  
Page 2 of 2

In any event, it would be of no significant burden or cost to the applicant were the BSA to ask in this significant matter that this information be provided in digital format – indeed, this could even save money for the applicant if multiple copies of filings are not required.

This will make entire approval process more transparent, more efficient and more democratic, and will reduce suspicion on the part of the public. This is very much in accord with the policies being pushed by the Bloomberg administration.

It is inevitable that future regulations will require that this information be provided in electronic form – why not start now and start with this project?

Thank you very much.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alan D. Sugarman".

Alan D. Sugarman



THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION  
 1 CENTRE STREET 9TH FLOOR NORTH NEW YORK, NY 10007  
 TEL: 212 669-7700 FAX: 212 669-7780



March 14, 2006

ISSUED TO:

Dr. Alan Singer  
 Congregation Shearith Israel  
 8 West 70th Street  
 New York, NY 10023

Re: **STATUS UPDATE LETTER**  
 LFC - 032628  
 SUL 06-6545  
 8 WEST 70TH STREET  
CONGREGATION SHEARITH ISRAEL SYNAGOGUE  
 INDIVIDUAL LANDMARK  
 Borough of Manhattan  
 Block/Lot: 1122 / 36

This letter is to inform you that at the Public Meeting of March 14, 2006, following the Public Hearing of November 26, 2002, and the Public Meetings of November 26, 2002, February 11, 2003, July 1, 2003, December 9, 2003, July 19, 2005, and January 17, 2006, the Landmarks Preservation Commission voted to approve a proposal to demolish the existing community house and construct a new 8-story-plus-penthouse building at the subject premises.

No work can begin until a Certificate of Appropriateness has been issued. Upon receipt, review and approval of a reduced set of the presentation materials, a CD-ROM of the presentation materials, and two signed and sealed sets of the Department of Buildings filing drawings showing the approved design, a Certificate of Appropriateness will be issued.

Please note that all drawings, including amendments which are to be filed at the Department of Buildings, must be approved by the Landmarks Preservation Commission. Thank you for your cooperation.

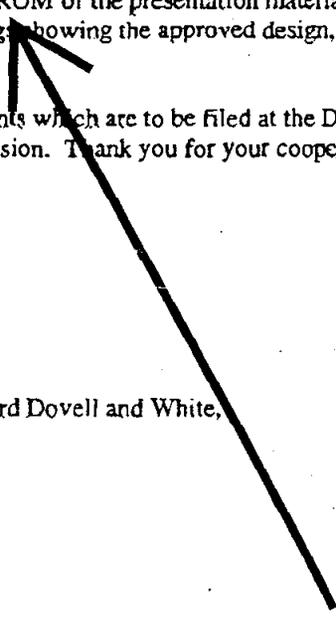
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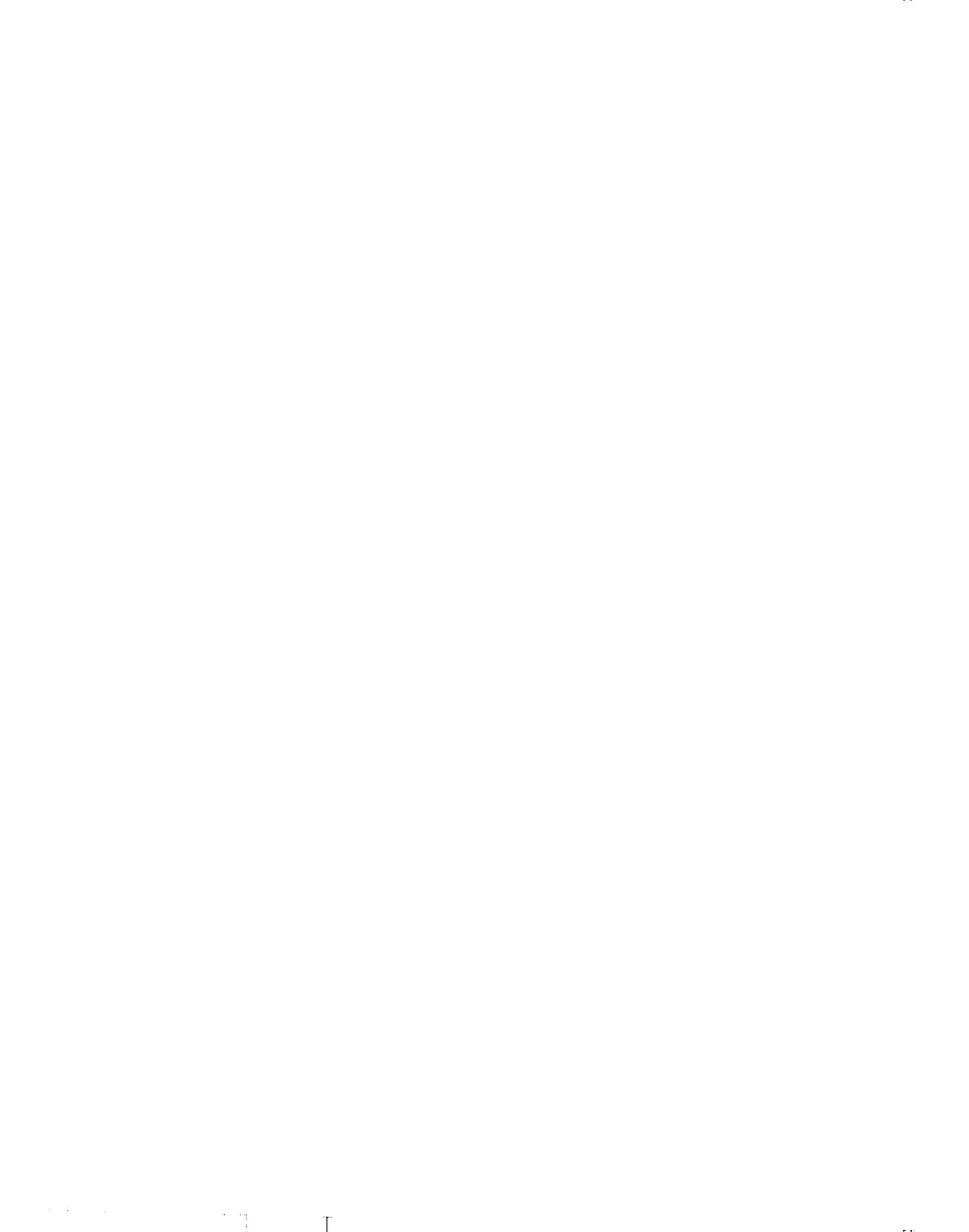
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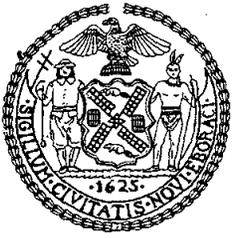
Meisha Hunter

**Please Note: THIS IS NOT A PERMIT**

cc: C. Kane Levy; S. Friedman, Esq.; Platt Byard Dovell and White, Architects







## BOARD OF STANDARDS AND APPEALS

40 Rector Street, 9<sup>th</sup> Floor  
New York, New York 10006-1705  
Phone: (212) 788-8500  
[www.nyc.gov/bsa](http://www.nyc.gov/bsa)

**MEENAKSHI SRINIVASAN**  
*Chairperson/Commissioner*

September 12, 2006

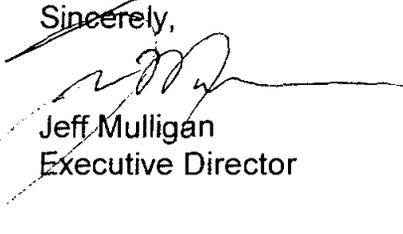
Alan D. Sugarman  
17 W 70<sup>th</sup> Street, Suite 4  
New York, New York 10023

Dear Mr. Sugarman:

We are in receipt of your two letters dated September 1, 2006. The first letter requests copies of all documents and other records that relate to a proposed variance for Shearith Isreal, located at 8 West 70<sup>th</sup> Street. To date, the Board has not had any pre-application meetings on this case or received any pre-application materials or correspondence. Your second letter asks that we direct the applicant to provide draft application material and the application in an electronic format. Please note that the Board requires the applicant, once the application has been filed and is in the public hearing process, to provide copies of the application, amendments and supporting material to interested parties. However, the Board does not require electronic filings and copies.

Please contact me at 212-788-8805 if you have additional questions.

Sincerely,

  
Jeff Mulligan  
Executive Director

Alan D. Sugarman  
Attorney At Law

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

September 1, 2006

Meenakshi Srinivasan  
Chair  
NYC Board of Standards and Appeals  
40 Rector Street  
9<sup>th</sup> Floor  
New York, NY 10006-1705  
(212) 788-8769 (Fax)

Re: Freedom of Information Request  
Shearith Israel Project at 8 West 70<sup>th</sup> Street, New York, New York

Dear Chair Srinivasan:

Reference is made to the mixed use tower that has been proposed by the Congregation Shearith Israel (the "applicant") at 8 West 70<sup>th</sup> Street, New York, New York. As you might note, I live across the street from the proposed project.

On March 14, 2006, the New York City Landmarks Commission approved this project, over the opposition of the community. Because the project is not in conformance with zoning requirements, we understand that the Congregation will require a variance from the BSA.

It appears that substantially all of the non-conforming parts of the project relate to the income generating condominiums on the upper floors of the project. It also appears that the Congregation intends to use a subbasement as a Banquet Hall which will impact the character of the neighborhood and that it is the practice of the Congregation to rent its facilities to third parties to generate income. Part of the extension of the project into the lot appears to relate to this Banquet Hall and will require a variance.

We understand that the BSA has a procedure for a pre-application meetings and for draft applications.

Pursuant to the Freedom of Information Law, we hereby request that the BSA provide copies of all documents and other records that relate to this project including without limitation:

Alan D. Sugarman to BSA

September 1, 2006

Page 2 of 2

- Correspondence with the applicant, member of the applicant, its attorneys, architects, and consultants, and other agencies with respect to the project in possession of the BSA.
- Any requests or discussions concerning a pre-application meeting.
- Any pre-application or application or draft thereof or documents relating thereto from the applicant
- Any comments provided by the BSA and its staff to the applicant.
- Minutes and notes of any meeting with applicant or its attorneys, architects, and consultants pertaining to the project.
- Any discussions or comments with the applicant or its attorneys, architects, and consultants, pertaining generally to zoning height waivers for not-for-profits where the waiver is requested to construct income generating property unrelated to the purpose of the not-for-profit.
- Any applicant financial information that supports a request by the applicant that waiver of the zoning laws is required in order to provide financial support for the applicant.
- Any professional comprehensive (or even cursory) studies of the shadows cast by the proposed building and the impact on the community.

This is a continuing request, and applies to records generated after the date of this request.

Sincerely,



Alan D. Sugarman

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September 1, 2006

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Alan D. Sugarman to BSA re Electronic Information  
September 1, 2006  
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Alan D. Sugarman



THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION  
1 CENTRE STREET 9TH FLOOR NORTH NEW YORK, NY 10007

TEL: 212 669-7700 FAX: 212 669-7780



March 14, 2006

ISSUED TO:

Dr. Alan Singer  
Congregation Shearith Israel  
8 West 70th Street  
New York, NY 10023

Re: **STATUS UPDATE LETTER**  
LFC - 032628  
SUL 06-6545  
8 WEST 70TH STREET  
CONGREGATION SHEARITH ISRAEL SYNAGOGUE  
INDIVIDUAL LANDMARK  
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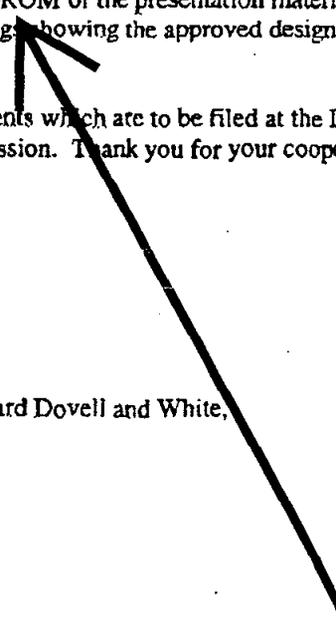
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Meisha Hunter

Please Note: THIS IS NOT A PERMIT

cc: C. Kane Levy; S. Friedman, Esq.; Platt Byard Dovell and White,  
Architects







# Board of Standards and Appeals

40 Rector Street, 9<sup>th</sup> Floor • New York, NY 10006-1705 • Tel. (212) 788-8500 • Fax (212) 788-8769  
Website @ [www.nyc.gov/bsa](http://www.nyc.gov/bsa)

November 14, 2006

MEENAKSHI SRINIVASAN  
Chair/Commissioner

VIA FACSIMILE AND FIRST CLASS MAIL

Alan D. Sugarman, Esq.  
17 W. 70<sup>th</sup> Street  
New York, NY 10023

Re: FOIL request

Dear Mr. Sugarman:

This letter is the response to your September 1, 2006 request made under the State Freedom of Information Law ("FOIL"). In this letter, you asked for various materials related to the potential Shearith Israel project at 8 West 70<sup>th</sup> Street, Manhattan (the "Project"). As noted in my September 12, 2006 reply to you, the Board did not have any materials responsive to the request at that time. However, a pre-application meeting was subsequently held.

Accordingly, please find documents responsive to your FOIL request. Please be advised that other materials have been withheld from disclosure because they are subject to attorney/client privilege or attorney work product privilege, or because they are exempt under FOIL § 87(2).

Should any other materials be received by the Board prior to a formal application, the Board will consider such materials and determine whether they must be disclosed pursuant to your request. However, if the Project is formally filed, all submitted materials will be a matter of public record, and will be available for your review at the Board's offices if they are not submitted directly to you by the applicant.

Sincerely,

Jeff Mulligan  
Executive Director/FOIL Officer

Enc.

c: John Reisinger, Counsel/FOIL Appeals Officer

C

### BSA - MEETING RECORD

w/ Lori Cusinier

Date of the Meeting: 11/8/2006 Time of the Meeting: 11:30 A.M.

Topic of the Meeting:  
10 West 70<sup>th</sup> Street, Manhattan

The purpose of the above referenced meeting is purely informational. The applicant(s) acknowledges that the views expressed at this meeting are those of individual commissioners and not the Board of Standards and Appeals. The applicant(s) further acknowledges that any discussions at this meeting are unofficial and have no bearing on the outcome of any proposed application to the Board of Standards and Appeals.

\*\*\*\*\*

Meeting attendees, please PRINT your name and information here.

<u>Name</u>	<u>Organization</u>	<u>Telephone Number</u>
1) Meenakshi Srinivasan	BSA	
2) John Reisinger		
3) Joel Weiss	BSA	
4) Lori Cusinier	POB	
5) Shelly Friedman	FEB	
6) Jack Friedman	FFA	
7) ZAY H. DOYER	PBDW	
8) LARRYN CROWLEY	PBDW	212 691 2440 x120
9) Jeff Mulligan	BSA	
10) Chris Collins	BSA	

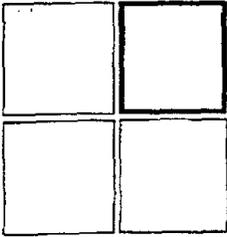
**Anita Lew**

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**Subject:** Meeting with Lori Cusinier  
**Start:** Wed 11/8/2006 11:30 AM  
**End:** Wed 11/8/2006 12:00 PM  
**Recurrence:** (none)  
**Meeting Status:** Meeting organizer  
**Required Attendees:** John Reisinger; Jed Weiss

Meeting - November 8th (Wednesday) at 11:30 a.m., with Ms. Cusinier.

Re: 10 West 70th Street, Manhattan



**FRIEDMAN & GOTBAUM LLP**

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

November 3, 2006

BY MESSENGER

The Hon. Meenakshi Srinivasan  
Chair  
NYC Board of Standards & Appeals  
40 Rector Street, 9<sup>th</sup> Floor  
New York, NY 10006

*for meeting  
on 11/8*  
*Meeting*

Re: Congregation Shearith Israel ("CSI")  
10 West 70<sup>th</sup> Street, Manhattan

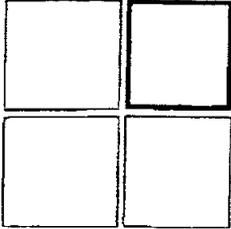
Dear Madam Chair:

Enclosed please find three (3) revised sets of proposed and as of right plans in connection with CSI's potential development project at the above noted site. We look forward to meeting with the Board on Wednesday, November 8 at 11:30AM to discuss this project. Thank you for your cooperation.

Very truly yours,

Lori G. Cuisinier

enc. (3)

**FRIEDMAN & GOTBAUM LLP**

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

October 13, 2006

BY MESSENGER

The Hon. Meenakshi Srinivasan  
 Chair  
 NYC Board of Standards & Appeals  
 40 Rector Street, 9<sup>th</sup> Floor  
 New York, NY 10006

Re: Congregation Shearith Israel ("CSI")  
10 West 70<sup>th</sup> Street, Manhattan

*Meet up  
 11/8 - 11:30 AM*

Dear Madam Chair:

We are special land-use counsel to the owner of the above-referenced site, which is being developed as a mixed-use building with community facility/educational use at the lower levels and residential use at the upper levels. The western portion of the site is located in an R8B zoning district and the eastern portion is located in an R10A zoning district. CSI may require bulk variances from the BSA to construct the new development. Attendees at the prospective BSA meeting will include the following:

Ray Dovell	Architect
Jack Freeman	Financial Analyst
Shelly Friedman	Counsel
Lori Cuisinier	Counsel

We look forward to meeting with the Board on Wednesday, November 8 at 11:30AM to discuss this project. Thank you for your cooperation.

Very truly yours,

Lori G. Cuisinier



Alan D. Sugarman  
Attorney At Law

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

November 20, 2006

Via Facsimile 212-788-8769

Jeff Mulligan  
Executive Director  
NYC Board of Standards and Appeals  
40 Rector Street 9<sup>th</sup> Floor  
New York, NY 10006-1705  
(212) 788-8769 (Fax)

Re: Shearith Israel Project at 10 West 70<sup>th</sup> Street, New York, New York

Dear Mr. Mulligan:

Thank you very much for providing to me on November 14, 2006 a response to my Freedom of Information request of September 1, 2006.

However, I do note that a meeting was held with the prospective applicant on November 8, 2006, and the meeting was scheduled weeks in advance as reflected by a letter of October 13, 2006 from the applicant to the BSA. Had my FOIL request been responded to in a timely manner on October 13, 2006, I would have been able to attend the November 8 meeting.

The meeting record provided to me shows that the ex parte private meeting included a BSA commissioner. I question the propriety of such a meeting. The fact that an application had not yet been submitted to the BSA does not make acceptable an ex parte meeting with a prospective applicant.

In your response, you did not include any notes as to the discussions during that meeting -- the meeting record merely lists the attendees. I hereby request that all notes of the meeting be provided -- I can see no basis for denying access to those notes. If redaction of internal thoughts is required, then that will be your choice.

The prior history of the applicant before the Landmarks Preservation Commission and Community Board reflects wanton ex parte contacts and irregular meetings together with the withholding of information from members of the public. I say this to explain to you the sensitivities and to explain why we feel a need to be explicit in our requests.

As an example, you provided for me a set of drawings -- "March 14, 2006 -- Amended Application" -- which appear to be the drawings submitted by the applicant to the LPC

Alan D. Sugarman to BSA

November 20, 2006

Page 2 of 3

for a March 14, 2006 meeting. The LPC posted this "meeting" on its calendar only 1 business day earlier. No copies of these new materials were made available to the public until after the close of the LPC meeting. Moreover, these materials contained new information. Also, new testimony by the applicant was considered by the LPC, turning the meeting improperly into a hearing.<sup>1</sup> The LPC then approved the project, without providing the public an opportunity to respond to the new material.

We are looking forward to greater transparency and regularity in the BSA proceedings.

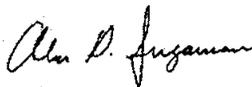
We will be requesting a meeting in the near future with the staff of the BSA (but not with any Commissioner) to address certain issues. But, first, we would like to know the nature of the November 8, 2006 discussion and to receive a description of representations made by the prospective applicant at the meeting.

We would like to discuss topics such as:

- The testimony by the prospective applicant before the LPC that the condominium floors were an "economic engine" for the congregation.
- The prospective applicant's non-use of current facilities including the building being demolished which is rented to an independent day school for substantial sums and the upper floors of the parsonage being rented to a private individual for \$19,000 a month.
- The prospective applicant's description of the subbasement as a banquet room in earlier drawings submitted to the LPC and the impact of a banquet room catering facility on the character of the neighborhood and traffic on a narrow street, as is already evidenced by daily congestion caused by the 100 plus students in the day school.
- The fact that the variance needed by the applicant is almost solely for non-religious purposes – i.e. the variances are required primarily to allow construction of the private condominiums or of the banquet hall.

Thank you for your assistance in permitting the record to be fully developed in this proceeding.

Sincerely,



Alan D. Sugarman

---

<sup>1</sup> Please note the absence of shadow studies. Please also note the perspective composites and in particular views 3 and 4 in which the top of the proposed building is not shown.

Alan D. Sugarman to BSA  
November 20, 2006  
Page 3 of 3

[www.protectwest70.org](http://www.protectwest70.org)



# Board of Standards and Appeals

40 Rector Street, 9<sup>th</sup> Floor • New York, NY 10006-1705 • Tel. (212) 788-8500 • Fax (212) 788-8769  
Website @ [www.nyc.gov/bsa](http://www.nyc.gov/bsa)

MEENAKSHI SRINIVASAN  
Chair/Commissioner

November 27, 2006

Alan D. Sugarman, Esq.  
17 W. 70<sup>th</sup> Street  
New York, NY 10023

VIA FACSIMILE AND FIRST CLASS MAIL

Re: FOIL request

Dear Mr. Sugarman:

Jeff Mulligan has asked me to respond to your November 20, 2006 letter regarding your previous FOIL request.

You request in your letter that the Board provide any notes of the meeting held on November 8, 2006. As explained in Mr. Mulligan's November 14, 2006 letter to you, hand-written notes were not disclosed because they are subject to attorney/client privilege or attorney work product privilege, or because they are exempt under FOIL § 87(2). Accordingly, your request for notes is denied. Please be advised that no other materials responsive to your request exist.

As to the Board's pre-application meetings in general, please review the enclosed description of this process. You may avail yourself of the procedure as well. Please contact Mr. Mulligan if you want to schedule a meeting.

You should understand that the Board takes the public hearing process very seriously. Any individual with standing may testify and make submissions. Further, all materials submitted into the record are made available for timely review. If you would like to know more about the Board's hearing process, you may review our Rules of Practice and Procedure, available on our web-site.

If you have any questions, please contact me at 212-788-0296.

Sincerely,

  
John Reisinger  
Counsel/FOIL Appeals Officer

Encl.

c: Jeff Mulligan, Executive Director

E



**CITY OF NEW YORK  
BOARD OF STANDARDS AND APPEALS**  
40 Rector Street, 9<sup>th</sup> Floor  
New York, New York 10006-1705  
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<http://www.nyc.gov/html/bsa/>

## **PROCEDURE FOR PRE-APPLICATION MEETINGS AND DRAFT APPLICATIONS**

Pre-application Meetings are designed to facilitate discussion between potential applicants and the BSA of development proposals that may require discretionary relief.

Such meetings are conducted on an informal basis, and have no bearing on the ultimate outcome of the case if subsequently filed. Although the BSA greatly favors the use of the Pre-application Meeting process, an application may be formally filed even though a meeting was not held.

Draft Applications, which are an adjunct to the Pre-application Meeting process, are submitted for staff-level review prior to formal filing. This review is designed to reduce the number of comments on the Notice of Objections, and to ensure that filed applications, which are later sent to community boards, elected officials, and neighbors, have fewer deficiencies.

This procedure statement: (1) sets forth the objectives of the Pre-application Meeting process; (2) establishes when a meeting is appropriate; (3) recommends who should attend, as well as what materials should be submitted in advance; (4) briefly explains what occurs at the meetings; (5) describes the Draft Application requirements; and (6) lists contact information for scheduling and advice.

### **Objectives**

The BSA historically has offered some form of pre-application meeting process to potential applicants. However, many major cases have been filed without any pre-application review. Some of these cases have been poorly presented, and were deficient in both substance and form. This causes unnecessarily protracted technical review and undue delay in calendaring.

When such cases come to public hearing, the Board often is compelled to remedy problems that could have been easily avoided prior to filing. Additionally, the Board must guide the applicant through the process of meeting the findings required for the grant, which usually necessitates numerous continued hearings.

Through the Pre-application Meeting process, the BSA seeks to:

- Facilitate a more efficient and expeditious technical and public review process;
- Provide technical and procedural advice to both inexperienced and experienced applicants on the formulation and execution of potential applications;
- Provide substantive feedback on the merits of the proposal;
- Ensure better quality of submissions, and reduce or eliminate the review of unnecessary or poor quality submissions;

- Establish case-to-case consistency in materials submitted for review;
- Identify early in the process the need for additional analyses, technical data, modifications, substantive discussion, and corrections; and
- Suggest alternative routes to achieve the desired outcome.

**When a Pre-application Meeting is Appropriate**

The Board *strongly encourages* potential applicants to seek Pre-application Meetings for any of the following types of proposals:

- All use changes, including legalizations;
- Significant bulk waivers;
- Variance proposals based upon novel uniqueness/hardship claims;
- Proposals in sensitive areas (areas under study or within proposed rezoning boundaries);
- Potentially controversial proposals (projects that generate major environmental impacts or projects with anticipated community opposition);
- Projects that have funding deadlines, such as schools or low-income housing developments;
- Projects that require coordinated review with the Department of City Planning or other City agencies;
- All new City projects;
- Major special permit applications; and
- Major amendments to existing grants.

Applications for the above types of proposals that are filed in the absence of a Pre-application Meeting will likely require more staff-level examination and more Board deliberation during public hearing. Consequently, they are less likely to be expeditiously calendared and decided than applications preceded by a meeting. Applicants should advise their clients accordingly.

If desired by the potential applicant, Pre-application Meetings may be conducted at the staff level for minor, routine applications on the Special Order Calendar, many special permit applications on the BZ Calendar, and for questions on technical or procedural issues. Pre-application meetings on appeals cases, except for General City Law or Multiple Dwelling Law matters, are generally not permitted. Applicants who are uncertain as to whether a Pre-application Meeting is appropriate may contact the Board's Executive Director or General Counsel to discuss the proposal.

**Attendees**

The potential applicant should bring those members of the development team necessary to provide an understanding of the proposal and to answer any foreseeable questions or concerns that may arise. Typically, this means the architect, the client or owner, and, depending on the type of application, the financial and/or environmental consultants.

However, an applicant may reasonably determine that the presence of the architect, client or consultant is not necessary for certain proposals that are in the formative stages. Again, applicants may contact the Executive Director or General Counsel for guidance in particular situations.

### Advance Submissions

Potential applicants should generally submit the following materials at least one week in advance of the scheduled meeting:

- A letter outlining the development proposal, the requested relief, and the rationale for any required findings;
- Zoning calculations that show the proposed waivers;
- Drawings that illustrate the proposed waivers; and
- Zoning and Sanborn maps highlighting the location of the subject parcel.

On an optional basis, certain other items, such as detailed land use maps, photographs, preliminary feasibility studies, engineering and/or environmental reports, or relevant Board or court cases, may also be submitted. Alternatively, applicants may present such materials, especially if voluminous, at the meeting. Occasionally, such materials will be requested by the BSA if the need for them is apparent after review of the initial submission.

Applicants should direct three copies of all submissions to the attention of the Chair or Executive Director.

### Meeting Process

Potential applicants are expected to provide a description of the proposal, the premises and its location, and the requested waivers. Clients often provide an initial statement as well. Architects or financial consultants may then elaborate on the proposal or explain submitted materials.

Applicants should anticipate questions as to the merits of the proposal, and suggestions on both substantive and procedural issues. If, at the conclusion of the meeting, significant outstanding issues remain, applicants may be advised to schedule a second meeting, or to submit a Draft Application.

### Draft Applications

Applicants who use the Pre-application Meeting process and then submit Draft Applications can reasonably anticipate that their formally filed cases may take less time to be reviewed and calendared than cases filed without any prior examination.

Complete Draft Applications should include the following materials: an application form, a proposed list of objections, a Statement of Facts and Findings, a zoning analysis, a full set of drawings, photographs, and a financial feasibility study and Environmental Assessment Statement (if either is required).

Draft Applications should be directed to the attention of the Deputy Director. Upon review of the application, the Deputy may recommend substantive changes or technical corrections, request additional information, and/or offer advice on filing procedures.

**Contact Information**

Please contact Anita Lew at (212) 788-8773 to schedule a meeting. Materials may be submitted to the attention of the Chair or the Executive Director.

For questions, please contact:

- Pat Pacifico, Executive Director, (212) 788-8805;
- Roy Starrin, Deputy Director, (212) 788-8797; or
- John Reisinger, General Counsel, (212) 788-0296.



Alan D. Sugarman  
Attorney At Law

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212-873-1371  
mobile 917-208-1516  
fax 212-202-3524  
sugarman@sugarlaw.com

December 18, 2006

Via Facsimile 212-788-8769

John Reisenger  
Counsel/FOIL Appeals Officer  
NYC Board of Standards and Appeals  
40 Rector Street 9<sup>th</sup> Floor  
New York, NY 10006-1705

Re: FOIL Request - Shearith Israel Project at 10 West 70<sup>th</sup> Street, New York, New York

Dear Mr. Reisenger:

I have received your letter of November 27, 2006 appearing to further deny my FOIL request. Am I correct in assuming that since you are the FOIL Appeals Officer, that your letter was deemed to be a denial of my appeal so that I may then initiate an Article 78 proceeding? In any event, please consider this letter to be an appeal or further appeal as the case may be.

I do have a couple of comments as to your letter.

Concerning a meeting with the BSA, I might wish to have a meeting, but, only with staff members. Were I to meet with a Commissioner, I would not wish to risk conceding my approval of ex parte meetings with Shearith Israel.

Prior to a meeting with staff, first, I want to know what occurred in the meeting with Shearith Israel. That is the simple reason for my FOIL request.

Next, you claim that the hand-written notes, which you admit exist, were not provided because you claim they are subject to attorney/client privilege or attorney work product privilege. Notes referring to the content of communications between the BSA staff and board to Shearith Israel are not privileged. There are innumerable court decisions on the issue of notes of meeting which do not support your position at all and I would be quite happy to litigate his issue.

You also provide a kitchen sink defense that the documents are exempt under FOIL 87.2. This provision states:

Alan D. Sugarman to BSA

December 18 2006

Page 2 of 2

2. Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that:

- (a) are specifically exempted from disclosure by state or federal statute;
- (b) if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article;
- (c) if disclosed would impair present or imminent contract awards or collective bargaining negotiations;
- (d) are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise;
- (e) are compiled for law enforcement purposes and which, if disclosed, would:
  - i. interfere with law enforcement investigations or judicial proceedings;
  - ii. deprive a person of a right to a fair trial or impartial adjudication;
  - iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or
  - iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures;

This exemption is not applicable to the substance of statements made by the respective parties at this meeting. Again, I would be happy to litigate that.

So, if you are unwilling to go through the notes of the meeting made by of any and all the BSA staff and commissioners at that meeting and merely redact internal thoughts, but, importantly leave undisturbed all statements or summaries of statements made by anyone at the meeting, then we will have to have this decided by a court.

So, please either provide me with this information, or, advise me that my appeal has been denied so that I can go to court.

Sincerely,



Alan D. Sugarman  
[www.protectwest70.org](http://www.protectwest70.org)

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Attorney At Law

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sugarman@sugarlaw.com

December 19, 2006

Via Facsimile 212-788-8769

Jeff Mulligan  
Executive Director  
NYC Board of Standards and Appeals  
40 Rector Street 9<sup>th</sup> Floor  
New York, NY 10006-1705

John Reisenger  
Counsel/FOIL Appeals Officer  
NYC Board of Standards and Appeals  
40 Rector Street 9<sup>th</sup> Floor  
New York, NY 10006-1705

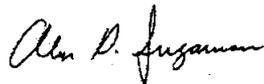
Re: Freedom of Information Law Requests  
Shearith Israel Project at 8,10, 12 West 70<sup>th</sup> Street, New York, New York

Dear Mr. Mulligan and Mr. Reisenger:

Reference is made to my letters of September 1, 2006, November 20, 2006, and December 18, 2006 concerning Freedom of Information Law Request made by me on behalf of myself and certain residents in the relevant neighborhood.

These requests are all being resubmitted for all records that may have come into existence subsequent to the intial requests – so as to avoid any claim that a FOIL request cannot be made for subsequently created records.

Sincerely,



Alan D. Sugarman





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sugarman@adgsuglaw.com

March 16, 2007

Via Fax 212-925-5199

Lori G. Cuisinier  
Shelley Friedman  
Friedman & Gotbaum, LLP  
568 Broadway  
Suite 505  
New York, New York 10012

Re: Congregation Shearith Israel Project at 8-12 West 70<sup>th</sup> Street, New York, New York

Dear Ms. Cuisinier:

I did not respond immediately to your letter of January 12, 2007, because of some intervening personal family issues. However, you and your client have not been forgotten.

This letter clearly documents that it would be false for your firm or Congregation Shearith Israel ("CSI") to assert before the Community Board or the BSA that your firm and CSI have been sharing information with the community concerning this matter. To the contrary, your firm and CSI, working with city agencies, have basically said: if you want the information, expend the funds and time and effort to sue the city agencies to obtain the information. The fact that you will release only your final official filing just days before a community board hearing without providing the community with time to analyze the material and build community support is too little too late. For CSI to make a false claim would also be inconsistent with the principles of Halachic Law.

To summarize the situation, on March 1, 2006, the Landmarks Preservation Commission approved the project of CSI at 8-12 West 70<sup>th</sup> Street, but it will not issue a Certificate of Appropriateness until it has received construction drawings. The DOB cannot approve drawings until the Board of Standards and Appeals ("BSA") approves a zoning variance, because the building height and depth violate the New York City Zoning Resolution. On September 1, 2006, I filed a Freedom of Information Law request as to the CSI project with the BSA.

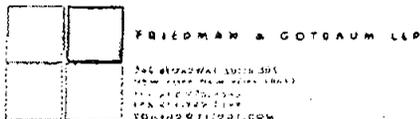
Meeting attendees, please PRINT your name and information here.

Name	Organization	Telephone Number
1. Meenakshi Srinivasan	BSA	
2. John Reisenger		
3. [Handwritten]	BSA	
4. Lori Cuisinier	CSG	
5. Shelley Friedman	F&G	
6. [Handwritten]	BSA	
7. [Handwritten]	BSA	
8. [Handwritten]	BSA	212 691 2712
9. [Handwritten]	BSA	
10. Chris Collins	BSA	

Nearly two months later, the BSA held an ex parte meeting with your firm and your clients. Even though the BSA was aware of my interest in this matter and lived across the street from the project, I was not notified of this ex parte meeting. As shown, two BSA commissioners were present at this meeting.

Alan Sugarman to Friedman & Gotbaum, LLP  
March 16, 2007  
Page 2 of 4

On November 14, 2006, after this meeting, the BSA provided me with certain ministerial documents including the agenda. One document, your letter to Chair Srinivisan, showed that the ex parte meeting had been set on October 13, 2006.



October 13, 2006

DLMESENBERG  
The Hon. Meenakshi Srinivasan  
Chair  
NYC Board of Standards & Appeals  
40 Rector Street, 9th Floor  
New York, NY 10006

Re: Completion Shantin Trust ("CSI")  
16 West 40th Street, Manhattan

*Handwritten notes:*  
Meeting of  
10/13/06

Dear Madam Chair:

We are special land-use counsel to the owner of the above-referenced site, which is being developed as a mixed-use building with community facility/educational use at the lower levels and residential use at the upper levels. The western portion of the site is located in an R5B zoning district and the eastern portion is located in an R10A zoning district. CSI duly requests bulk variances from the BSA to construct the new development. Attendees at the prospective BSA meeting will include the following:

- |                   |                   |
|-------------------|-------------------|
| Roy Dvoretz       | Architect         |
| Jack Feinman      | Financial Analyst |
| Geoffrey Friedman | Counsel           |
| Lori Chubbick     | Counsel           |

We look forward to meeting with the Board on Wednesday, November 8 at 11:30AM to discuss this project. Thank you for your cooperation.

*Very truly yours,*  
  
Jack G. Chubbick

Thus there was ample opportunity to notify me and other community members of this meeting.

However, the BSA refused to provide me with factual notes describing the meeting, on the spurious grounds that the notes were covered by the attorney-client privilege, thereby imposing on me the cost and expense of initiating a court action to force the BSA (and DOB – see below) what it should have done as a matter of course.

I also submitted a FOIL request to the Department of Buildings requesting documents relating to the CSI project; similarly, a FOIL request was submitted to DOB by Landmarks West. The DOB refused to provide documents based upon "security" grounds.

Due to the 9/11 tragedy, the records for the block and lot or address listed in your request are considered "sensitive". In order to obtain agency clearance to release these records, please forward a letter from the owner / managing agent (on record) authorizing you to have access.

Alan Sugarman to Friedman & Gotbaum, LLP  
March 16, 2007  
Page 3 of 4

Anticipating this, on December 19, 2006, I requested to your firm that CSI as the owner provide such a letter, and then, having received no response, I wrote a second letter to you on January 2, 2007 with the same request.

Even though I had sent you the statement from DOB that a letter from the owner was required to release the DOB document, you disingenuously replied that you were "unaware of any request." I then pointed this out in my letter of January, 9, 2007. You then responded with your letter of January 12, 2007.

As to CSI's continued collaboration with the Department of Buildings to thwart the transparency of DOB's processes and the public right to access public records, I enclose the statement by the DOB that they will only provide CSI records if consented to-by CSI based upon the completely dubious grounds of 9/11 security concerns. The fact that CSI will make some of these records available only when it suits the purposes of CSI shows there are no security issues. It is somewhat arrogant of CSI to say that documents, clearly subject to FOIL releases, will only be made available when CSI so desires -this is a perversion of FOIL. So, let's just hope that CSI does not once again stand up in a public hearing and falsely claim how it has worked with community groups and made information available to the public- that would just be a lie.

As to your statement that your firm routinely engages in ex parte meetings, with the BSA, you state:

Second, and with respect to your assertion regarding an alleged "ex parte meeting ... with Commissioner of the BSA to discuss...how to present the application so as to gain the BSA's waiver of zoning requirements," the BSA procedures for pre-application meetings and staff directory are both posted on its website. Our project team's meeting on November 8, 2006 was entirely within all procedural BSA guidelines as posted. As specifically stated on its website, these meetings are "conducted on an informal basis, and have no bearing on the ultimate outcome of the case if subsequently filed."

I might add that this firm's administrative practice before the BSA has in every case since the firm's founding, begun with a pre-application meeting with the Chair, Executive Director and whomever else the Chair asks to attend the meeting. Our pre-application meeting regarding CSI was no different than the dozens of other cases for which such meetings were routinely scheduled.

I draw little comfort that your firm and the BSA have normalized completely aberrant behavior undermining basic concept of due process in administrative proceedings, thereby corrupting the administrative process.

The procedural guidelines only of the BSA do contemplate meetings between applicants and the staff, not applicants and the adjudicator, and it would be immaterial even if the regulations did permit ex parte meetings.

Section 1046 of New York City's Administrative Procedure Act flatly states:

No ex parte communications relating to other than ministerial matters regarding a proceeding shall be received by a hearing officer, including internal agency directives not published as rules.

Alan Sugarman to Friedman & Gotbaum, LLP  
March 16, 2007  
Page 4 of 4

Section 307 of the New York State Administrative Procedure Act states:

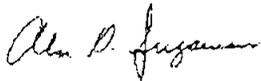
2. Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in an adjudicatory proceeding shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. Any such agency member (a) may communicate with other members of the agency, and (b) may have the aid and advice of agency staff other than staff which has been or is engaged in the investigative or prosecuting functions in connection with the case under consideration or factually related case.

Here, CSI had already proceeded through years of hearings before the Landmarks Preservation Commission, and CSI had filed information with the Department of Buildings. CSI has publicly stated that its project will require a hearing and a zoning waiver from the Board of Standards and Appeals. Moreover, BSA has a professional staff; therefore, there is no excuse for involving the adjudicators in such pre-application meetings. And, even then, there is no explanation as to why interested community groups were not advised of the meeting, and why no minutes or transcript was taken of the ex parte meeting.

Then, CSI contends that it is appropriate to hold a private meeting with the Chair of the BSA to discuss the upcoming adjudication of CSI's rights, a private meeting where the public was not invited and where no minutes were kept. The only justification provided by CSI is that everyone does it. Again, one wonders whether Halachic Law would approve this approach.

In summary, I request that your firm and CSA not utter the false claim that CSI has been cooperating with community groups, unless stonewalling is considered to be cooperation.

Sincerely,



Alan D. Sugarman

P.S. Supporting Documents are posted at [www.protectwest70.org](http://www.protectwest70.org)

cc: Office of the Mayor of the City of New York  
Betsy Gotbaum, Public Advocate of the City of New York  
Gail Brewer, New York City Council Member  
Hon. Scott Stringer Manhattan Borough President  
Hon. Richard Gottfried State Assembly Member  
Commissioner Patricia J. Lancaster, Department of Buildings  
Commissioner Meenakshi Srinivasan, BSA ✓  
Robert B. Tierney, Landmarks Preservation Commission  
Hon. Sheldon J. Fine, Chair Manhattan Community Board 7  
Kate Wood, Executive Director, Landmarks West



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sugarman@sugarlaw.com

April 10, 2007

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

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

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

Dear Chair Srinivasan and Vice-Chair Collins:

I am writing this letter to request that you both recuse yourselves from further involvement in the variance application to the Board of Standards and Appeals ("BSA") for the community house/condominium project filed by Congregation Shearith Israel ("CSI"), BSA 74-0-BZ. CSI has requested eight variances pursuant to Section 72-21 of the New York City Zoning Resolution.

The basis for this request is the ex parte meeting held by both of you with the variance applicant on November 8, 2006, as compounded by the failure of BSA to invite known community groups opposing the project to the meeting, the failure of BSA to record or otherwise transcribe the meeting, and the refusal of BSA to disclose notes taken at such meeting. If one believes statements made by CSI in its application, it appears that other inappropriate ex parte contacts may have taken place.

A variance proceeding is a quasi-judicial proceeding; ex parte meetings of this type accordingly are improper. Variance matters are to be distinguished from other matters which are within the jurisdiction of the BSA, such as Special Permits, which are not consider to be quasi-judicial in nature. In a variance provision, a party is seeking a waiver of the application of specific provisions of law, which, here, is the New York City Zoning Resolution. Jurisdictions within and without New York consider these types of

proceedings to be quasi-judicial, where ex parte contacts are improper, particularly where a zoning agency has a professional staff.

The CSI application was filed with the BSA on April 2, 2007<sup>1</sup>. CSI had initially filed an application for this project with the Department of Buildings of the City of New York ("DOB") on October 28, 2005. On March 14, 2006, following years of meetings and hearings, the Landmarks Preservation Commission approved the project, over the opposition of LPC Commissioner Gratz<sup>2</sup> as well as opposition by the community. The DOB issued its letter of objection, from which CSI is appealing to the BSA, on March 27, 2007<sup>3</sup> citing non-compliance as to lot coverage, rear yards, setbacks, base height, building separation, and, significantly, building height. The excess building height, above that of an as of right building, relates solely to the construction of condominium units which will be sold by CSI to finance the construction and to provide additional income to CSI.

I live across the street from the proposed project, and within a 400 foot radius. On September 1, 2006, I notified the BSA as to my opposition to this project and also filed a Freedom of Information Law request relating to the project. My letter also stated:<sup>4</sup>

It appears that substantially all of the non-conforming parts of the project relate to the income generating condominiums on the upper floors of the project. It also appears that the Congregation intends to use a subbasement as a Banquet Hall which will impact the character of the neighborhood and that it is the practice of the Congregation to rent its facilities to third parties to generate income. Part of the extension of the project into the lot appears to relate to this Banquet Hall and will require a variance.

BSA staff then telephoned me to state that no application had been filed by CSI. When I inquired about a pre-application meeting and whether one had occurred, I was told that generally, such meetings were held to familiarize applicants with BSA procedures, but, that in this case, a pre-application meeting was doubtful because of the extensive experience of the attorneys and architects for CSI.

Subsequently, on November 14, 2006, BSA supplied four documents in response to my FOIL request.<sup>5</sup>

These documents showed that on October 13, 2006, CSI confirmed a meeting to be held with the BSA for November 8, 2006. This shows that BSA had ample opportunity to

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<sup>1</sup> CSI Application to the BSA filed April 2, 2007 (120 pages).

<sup>2</sup> Statement of Roberta Brandes Gratz dated March 14, 2006.

<sup>3</sup> DOB Statement of Required Actions dated March 27, 2007.

<sup>4</sup> Letter of September 1, 2006 from Alan D. Sugarman to BSA, posted on the Internet, together with other documents cited herein, at <http://www.protectwest70.org/topic-pages/BSA-DOB-FOIL.html>.

<sup>5</sup> Letter of November 14, 2006 from BSA to Sugarman with enclosures.

contact other interested parties and invite them to the meeting.”<sup>6</sup> Interestingly, the letter also stated that one of the attendees would be “Jack Freeman, Financial Analyst.” The reference to Jack Freeman would indicate that CSI had retained Mr. Freeman prior to October 13, 2006. Yet, as discussed below, CSI would later maintain that it retained a financial analysts at the suggestion of the BSA Board, indicating other ex parte contacts.



October 13, 2006

BY MESSENGER  
The Hon. Meenakshi Srinivasan  
Chair  
NYC Board of Standards & Appeals  
40 Rector Street, 9<sup>th</sup> Floor  
New York, NY 10006

Re: Congregation Shearith Israeli ("CSI")  
10 West 70<sup>th</sup> Street, Manhattan

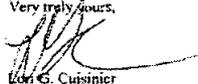
Dear Madam Chair:

We are special land-use counsel to the owner of the above-referenced site, which is being developed as a mixed-use building with community facility/educational use at the lower levels and residential use at the upper levels. The western portion of the site is located in an R8B zoning district and the eastern portion is located in an R10A zoning district. CSI may require bulk variances from the BSA to construct the new development. Attendees at the prospective BSA meeting will include the following:

Ray Dovel	Architect
Jack Freeman	Financial Analyst
Shelly Friedman	Counsel
Lori Cuisinier	Counsel

We look forward to meeting with the Board on Wednesday, November 8 at 11:30AM to discuss this project. Thank you for your cooperation.

Very truly yours,

  
Lori C. Cuisinier

The meeting between BSA Commissioners and Staff and CSI did in fact take place on November 8, 2006. The BSA Meeting Record<sup>7</sup>, provided in response to the FOIL request, disclosed that Chair Srinivasan and Vice-Chair Collins attended the ex parte meeting. Also in attendance were CSI attorneys, architects and consultants including Jack Freeman, Lori Cuisinier and Shelly Friedman (attorneys for CSI), Ray Dovel and Kathryn Growley (architects for CSI), and John Reisenger, Jed Weis and Jeff Mulligan of BSA's professional staff.

<sup>6</sup> Letter of October 13, 2006 from Friedman & Gotbaum to BSA.

<sup>7</sup> BSA – Meeting Record dated November 8, 2006 re 10 West 70<sup>th</sup> Street.

Meeting attendees, please PRINT your name and information here.

Name	Organization	Telephone Number
11. Meenakshi Srinivasan	BSA	
12. [Handwritten Name]		
13. Sid Weiss	BSA	
14. Kurt Casper	PTO	
15. Shelly Friedmann	FEB	
16. [Handwritten Name]	FFA	
17. [Handwritten Name]	FRIDAY	
18. [Handwritten Name]	PTO	212 491 2442
19. Jeff Mulligan	BSA	
20. Chris Collins	BSA	

One week later, for the first time, I and community groups were advised of this meeting. No transcript, apparently, was kept, nor recording made. Notes were taken by the BSA commissioners and staff in attendance, but, the BSA refused to provide me with factual notes describing the meeting, on the spurious grounds that the notes were covered by the attorney-client privilege.<sup>8</sup>

Jeff Mulligan has asked me to respond to your November 20, 2006 letter regarding your previous FOIL request.

You request in your letter that the Board provide any notes of the meeting held on November 8, 2006. As explained in Mr. Mulligan's November 14, 2006 letter to you, hand-written notes were not disclosed because they are subject to attorney/client privilege or attorney work product privilege, or because they are exempt under FOIL § 87(2). Accordingly, your request for notes is denied. Please be advised that no other materials responsive to your request exist.

On December 18, 2006, I appealed this determination to the BSA, but, no action has been taken by BSA on the appeal.<sup>9</sup>

Having now reviewed CSI's April 2, 2007 application, it appears that our concerns as to improper ex parte contacts were not misplaced. To the contrary: the novel position by CSI that its desire to earn a profit and build a building at no cost as a justification for a variance will be the most hotly contested issue before the BSA. It now appears that this topic was discussed between the BSA and CSI:<sup>10</sup>

<sup>8</sup> Letter dated November 14, 2006 from BSA to Sugarman and Letter dated November 27, 2006 from BSA to Sugarman.

<sup>9</sup> Letter dated December 18, 2006 from Sugarman to BSA.

<sup>10</sup> Statement in Support of Certain Variances filed April 2, 2007, pages 24-25.

CSI's status as a not-for-profit religious organization renders this finding unnecessary. At the Board's request, however, due to the fact that the Application presents a situation in which Use Group 2 floor area is being created for sale to third parties as a component of the CSI's financial strategy for producing the New Building, CSI has retained the services of Freeman Frazier Associates to provide a Feasibility Study analyzing potential mixed use development on Lot 37. This analysis compared the rate of return that could be expected from the New Building containing 16,242 sf of residential floor area with a hypothetical as-of-right building that would provide 5,022 sf of residential floor area. It concluded that due to existing physical conditions on the zoning lot, including the need to address the Synagogue's circulation problems and the need to replace and enlarge the functions in the Community House, there is no reasonable possibility

FG-03/30/2007 24

that a financially feasible mixed use building could be developed in strict conformity with the Zoning Resolution. The 27,302 sf as-of-right building yields 5,022 sf of residential sellable area. The total investment for such a project would be \$27,696,000 on a net project value of \$11,574,000, producing a capital loss to a developer of \$8,672,000.

Setting aside for a moment the lack of legal substance in CSI's position and the unsettling suggestion that the BSA is prepared to ignore all of its own precedents, CSI states that the financial consultant was retained by CSI as a result of a request by the Board. Yet, the meeting attendance sheet for the November 10, 2006, meeting shows that the financial consultant, Mr. Freeman from Freeman Frazier Associates attended that meeting. Not only does CSI indicate that other inappropriate ex parte contacts at which the Board requested that a financial consultant be retained took place prior to that meeting, but, without doubt, the most central hot issue of this application was discussed at the meeting, without notice to community opponents and without a record of the meeting.

Accordingly, we are compelled, most respectfully, to request that you both recuse yourselves from this matter as well as to immediately disclose all notes of any type of the meeting and all other communications with the applicant and its representatives, without regard to claims for privilege.

It is true that the BSA circulates a "procedure statement"<sup>11</sup> that contemplates meetings between applicants and the staff, though not applicants and the adjudicator. Even if a strained reading of the BSA "procedure statement" might suggest that the meetings with Commissioners were contemplated, any ambiguity must be read so as not to authorize ex parte meetings with Commissioners because the ex parte meetings in this circumstance are improper and would flaunt well accepted administrative law. Also, within the BSA's jurisdiction, are areas not necessarily quasi-judicial – but a variance proceeding is unquestionably a quasi-judicial proceeding, as to which ex parte meetings are simply improper. Moreover, this meeting certainly skirted, if not violated, the law as to public meetings, given that there are only four Commissioners appointed at the present time, and two attended the meeting. I do not know the number of Commissioners duly appointed in November 2006, when the meeting was held.

Section 1046 of New York City's Administrative Procedure Act flatly states:

No ex parte communications relating to other than ministerial matters regarding a proceeding shall be received by a hearing officer, including internal agency directives not published as rules.

Section 307 of the New York State Administrative Procedure Act states:

2. Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in an adjudicatory proceeding shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. Any such agency member (a) may communicate with other members of the agency, and (b) may have the aid and advice of agency staff other than staff which has been or is engaged in the investigative or prosecuting functions in connection with the case under consideration or factually related case.

Here, CSI had already proceeded through years of hearings before the Landmarks Preservation Commission, and CSI had filed information with the Department of Buildings. CSI has publicly stated to the LPC and Community Board 7 and others that its project would require a zoning waiver from the Board of Standards and Appeals.

The BSA has a full professional staff, apart from the Commissioners. Thus, any claim of necessity for this departure from the prohibition against ex parte contacts cannot be justified. See In the Matter of General Motors Corporation, 82 N.Y. 2d 183 (1993). And,

---

<sup>11</sup> BSA Procedure for Pre-Application Meeting and Draft Application. There is no indication that the procedure was ever a part of a formal rulemaking. Even so, the Procedure does not explicitly describe meetings with Commissioners.

Alan Sugarman to The Honorable Meenakshi and Collins  
April 10, 2007  
Page 7 of 7

even then, there is no explanation as to why interested community groups were not advised of the meeting, and why minutes or transcript were not taken of the ex parte meeting.

The BSA, when considering the granting of variances, is acting in a quasi-judicial role. The BSA recognizes, apparently, its quasi-judicial role: after an application is actually filed, then, and only then, do BSA commissioners not engage in ex parte contacts. This is not a meaningful distinction, especially where the subject project has already completed review by one city agency (LPC) and was then undergoing extended review by another (the DOB) and where opponents to the project were identifiable and indeed had identified themselves.

This situation is not so different from one where in a judicial proceeding a prospective plaintiff discusses the complaint and theories of the case with the judge prior to the filing of the complaint.

Sincerely,



Alan D. Sugarman

P.S. Supporting Documents are posted at [ProtectWest70Street.org](http://ProtectWest70Street.org).

cc: Office of the Mayor of the City of New York  
Hon. Betsy Gotbaum, Public Advocate of the City of New York  
Hon. Gail Brewer, New York City Council Member  
Hon. Scott Stringer Manhattan Borough President  
Hon. Richard Gottfried State Assembly Member  
Hon. Patricia J. Lancaster, Department of Buildings  
Hon. Robert B. Tierney, Landmarks Preservation Commission  
Hon. Sheldon J. Fine, Chair Manhattan Community Board 7  
Norman Marcus  
Kate Wood, Executive Director, Landmarks West  
Shelly Friedman, Esq, Friedman & Gotbaum LLP



Alan D. Sugarman  
Attorney At Law

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

April 12, 2007

Via Facsimile 212-788-8769

Jeff Mulligan  
Executive Director  
NYC Board of Standards and Appeals  
40 Rector Street 9<sup>th</sup> Floor  
New York, NY 10006-1705

Re: Freedom of Information Law Requests  
Shearith Israel Project at 8.10, 12 West 70<sup>th</sup> Street, New York, New York

Dear Mr. Mulligan:

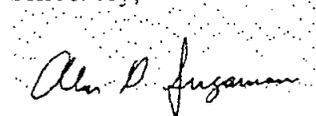
Reference is made to my letters of September 1, 2006, November 20, 2006, December 18, 2006, and December 19, 2006 concerning Freedom of Information Law Request made by me on behalf of myself and certain residents in the relevant neighborhood.

These requests are all being resubmitted for all records that may have come into existence subsequent to the initial requests (and documents not provided as previously requested) – so as to avoid any claim that a FOIL request cannot be made for subsequently created records.

I wish of course to update the FOIL request to include all matters relating to the application filed by Shearith Israel on April 2, 2006. However, I have obtained a copy of the application and diagrams filed therewith so you do not need to provide those to me. I do wish to have copies of all notices of service, including service on the Community Board.

In addition, I wish to emphasize that I specifically would wish to see all documents relating to the request for recusal filed by me two days ago. For example, were Mr. Friedman to have a conversation with anyone at BSA concerning the recusal, the records of that telephone call and notes made thereof would be documents that must be provided.

Sincerely,



Alan D. Sugarman





# Board of Standards and Appeals

40 Rector Street, 9<sup>th</sup> Floor • New York, NY 10006-1705 • Tel. (212) 788-8500 • Fax (212) 788-8769  
Website @ [www.nyc.gov/bsa](http://www.nyc.gov/bsa)

MEENAKSHI SRINIVASAN  
Chair/Commissioner

April 17, 2007

Alan D. Sugarman  
17 West 70<sup>th</sup> Street  
New York, New York 10023

Dear Mr. Sugarman:

This is the Board's response to your April 12, 2007 request, made pursuant to the State's Freedom of Information Law. The date of your last request was December 19, 2006, so the Board searched for records dated between December 19, 2006 and April 12, 2007. This letter responds only to your request for documents during this time period.

Attached are copies of all notices of service, including service on the Community Board, for the application for a variance by Shearith Israel (application no. 74-07-BZ).

Attached are all of the emails exchanged between the BSA and an external source.

You also request all documents relating to your recusal request, set forth in a letter dated April 12, 2007. The Board does not have any documents other than your letter regarding your request.

Please be aware that certain records of this agency were not disclosed because they are exempt. Specifically, e-mails to and from the Board's counsel are subject to attorney-client privilege and therefore are exempt. Further, e-mails between Board staff are exempt pursuant to FOIL § 87(2)(g), which provides that the Board may not disclose materials that "are inter-agency or intra-agency materials which are not: i. statistical or factual tabulations or data; ii. instructions to staff that affect the public; iii. final agency policy or determinations; or iv. external audits, including but not limited to audits performed by the comptroller and the federal government"

Based on our review, there are no other documents responsive to your request and not exempt aside from those attached.

This letter is a final determination of the Board. You have the right to seek review of this determination pursuant to Article 78 of the Civil Law Practice and Rules, and Public Officers Law § 89(4)(b). In any further contact with this office, please reference FOIL Appeal No. 05-18-5A.

Sincerely,



Jeff Mulligan  
Executive Director/Records Access Officer

K





# Board of Standards and Appeals

40 Rector Street, 9<sup>th</sup> Floor • New York, NY 10006-1705 • Tel. (212) 788-8500 • Fax (212) 788-8769  
Website @ [www.nyc.gov/bsa](http://www.nyc.gov/bsa)

MEENAKSHI SRINIVASAN  
Chair/Commissioner

April 19, 2007

Alan D. Sugarman  
17 West 70<sup>th</sup> Street  
New York, New York 10023

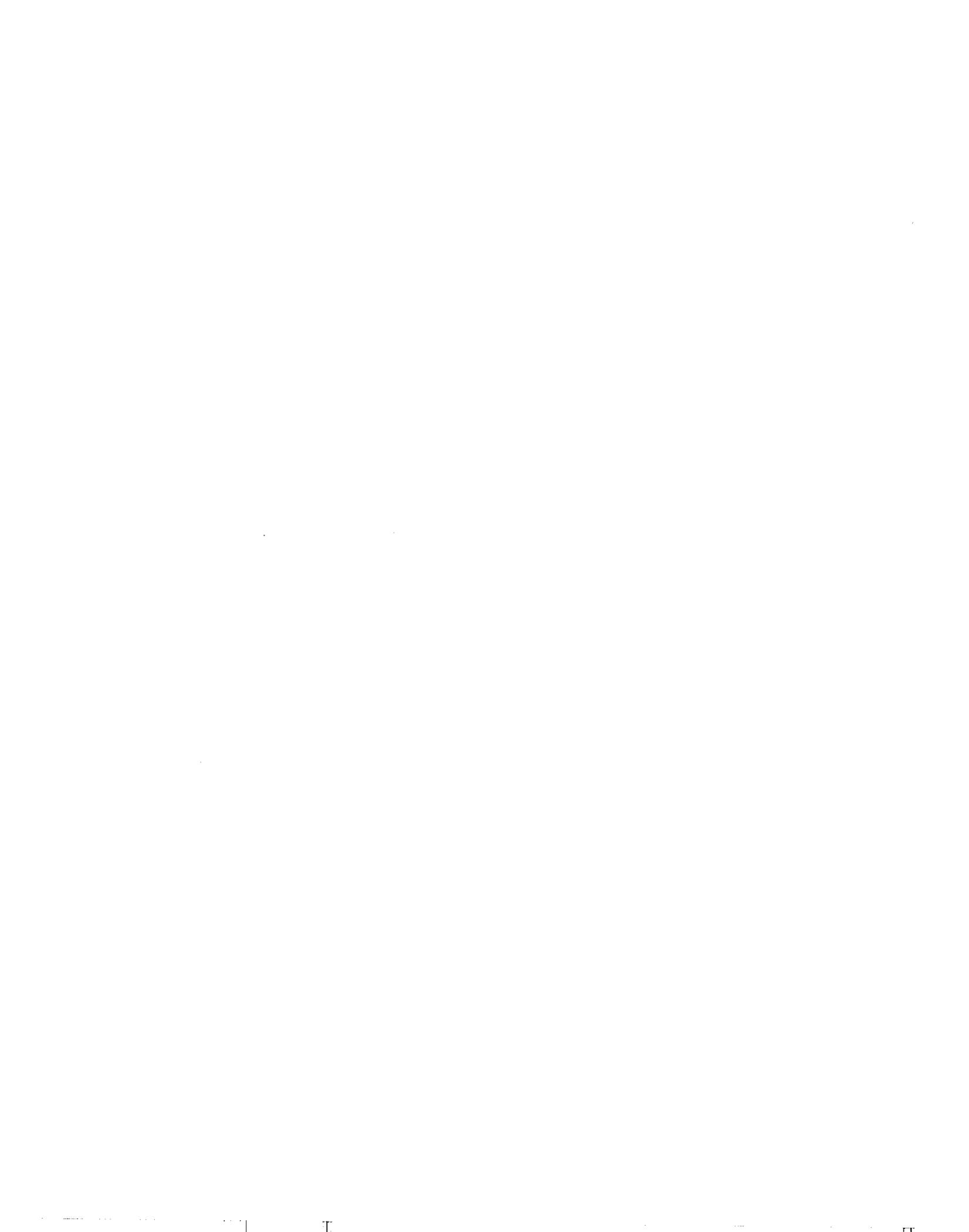
Dear Mr. Sugarman:

This letter is in response to your letter dated April 10, 2007 in which you request BSA Chair Meenakshi Srinivasan and Vice Chair Chris Collins to recuse themselves from involvement with the variance application by Shearith Israel. Please be advised that this request will be discussed at the first public hearing on the application, on a date to be scheduled.

Sincerely,



Jeff Mulligan  
Executive Director



Alan D. Sugarman  
Attorney At Law

17 W. 70 Street  
Suite 4  
New York, NY 10023  
212-875-1371  
mobile 917-208-1516  
fax 212-202-3524  
sugarman@sugarlaw.com

April 26, 2007

Via Facsimile 212-788-8769

Jeff Mulligan  
Executive Director/Access Officer  
NYC Board of Standards and Appeals  
40 Rector Street 9<sup>th</sup> Floor  
New York, NY 10006-1705

Re: Freedom of Information Law Requests  
Shearith Israel Project at 8,10, 12 West 70<sup>th</sup> Street, New York, New York  
FOIL Appeal No. 05-18-5A.

Dear Mr. Mulligan:

Thank you for your letter of April 17, 2007 responding to my renewed FOIL Request and to earlier FOIL requests<sup>1</sup>. I am hereby renewing my FOIL request for documents relating to the above application.

I am somewhat puzzled by the FOIL documents provided. Apart from filings, there is only one document provided in your response which in any way relates to communications between the applicant and BSA relating to the April 2, 2007 application. This is the e-mail dated April 9, 2007 from Lori Cuisinier, counsel for the Congregation, to the Jed Weiss of the BSA:

**Jed Weiss**

---

From: Lori Cuisinier [L.Cuisinier@frigo.com]  
Sent: Monday, April 09, 2007 12:18 PM  
To: Jed Weiss  
Subject: re: shearith...

Hi jed  
how are you?  
JUST wondered when we might expect comments back on shearith israel.  
please let me know.  
thank you.  
lori

---

<sup>1</sup>[http://www.protectwest70.org/2007-docs/2007-04-17\\_BSA\\_Response\\_to\\_Foil.pdf](http://www.protectwest70.org/2007-docs/2007-04-17_BSA_Response_to_Foil.pdf). Although your letter was dated April 17, 2007, it was not received by me in the mail until Wednesday, April 26, 2007.

M

Alan D. Sugarman to BSA  
September 26, 2006  
Page 2 of 4

There is no e-mail response to this e-mail and there are no notes of any telephone calls to or from BSA and Ms. Cuisinier or any one else representing the Congregation in response to this email, or otherwise. Do I then assume that Ms. Cuisinier was ignored?

Further, I once again must take exception to your assertions of Attorney-Client privilege:

Please be aware that certain records of this agency were not disclosed because they are exempt. Specifically, e-mails to and from the Board's counsel are subject to attorney-client privilege and therefore are exempt. Further, e-mails between Board staff are exempt pursuant to FOIL § 87(2)(g), which provides that the Board may not disclose materials that "are inter-agency or intra-agency materials which are not: i. statistical or factual tabulations or data; ii. instructions to staff that affect the public; iii. final agency policy or determinations; or iv. external audits, including but not limited to audits performed by the comptroller and the federal government"

Clearly, BSA cannot simply shield all of its records and notes by having an attorney involved in all documentation relating to the Application. I suggest that you consult with the Corporation Counsel as to our position.

That simply is not the law. The statement that "e-mails to and from the Board's counsel are subject to attorney-client privilege are therefore exempt" is not an accurate statement of the law. The applicable attorney-client privilege law is that contained in the Civil Practice Law and Rules (CPLR) which applies in general to New York state litigation.

If your statement is taken literally, you seem to be asserting that an e-mail from BSA counsel to Mr. Friedman is subject to attorney client privilege. If you are saying this, then your position has no support under the CPLR. The fact that you have provided no e-mails to and from BSA counsel or to and from counsel for the Congregation suggests that this might be your position.

Even so, the CPLR does not provide a shield for every communication to and from an agency attorney as shown by excerpts from just a few cases indicated below.

Although typically arising in the context of a client's communication to an attorney, the privilege extends as well to communications from attorney to client. The privilege is of course limited to communications -- not underlying facts ( *Upjohn Co. v United States*, 449 U.S., at 395-396, *supra*). In order for the privilege to apply, the communication from attorney to [\*378] client must be made "for the purpose of facilitating the rendition of legal advice or services, in the course of a professional relationship." ( *Rossi v Blue Cross & Blue Shield*, 73 NY2d 588, 593.) The communication itself must be primarily or predominantly of a legal character ( *id.*, at 594).

Spectrum Sys. Int'l Corp. v. Chem. Bank, 78 N.Y.2d 371, 378 (N.Y. 1991)

Further, HN5while the privilege protects communications with counsel, it does not apply to "information obtained from or communicated to third parties or to underlying factual information" (Eisic Trading Corp. v Somerset Mar., 212 A.D.2d 451, 451, 622 N.Y.S.2d 728 [1995] [citations omitted]; see Matter of Civil Serv. Empls. Assn. v Ontario County Health Facility, 103 A.D.2d 1000, 478 N.Y.S.2d 380 [1984], lv dismissed 64 N.Y.2d 816, 476 N.E.2d 325, 486 N.Y.S.2d 926 [1985]). The memorandum at pages 49-50, while written [\*\*\*6] to counsel by respondent's employee, contains only factual information gained through an investigatory interview with a third party. In addition to being purely factual, it is unlikely that the memorandum was to be kept confidential as it was in response to the letter at pages 35-37 which was disclosed to a third party, implying that the answer would also be disclosed. Consequently, as respondent failed to meet its burden of establishing a FOIL exemption for those documents, pages 35-37 and 49-50 should have been disclosed.

Morgan v. N.Y. State Dep't of Env'tl. Conservation, 9 A.D.3d 586, 588 (N.Y. App. Div. 2004)

As set forth above, HN8the attorney-client privilege does not bar disclosure of all communications between counsel and client. [\*\*\*19] (Matter of Jacqueline F., supra.) Only those communications which have as their purpose the obtaining by the client, or the providing by the attorney, of legal advice or assistance, come within the privilege. It is for that reason that communications between counsel and other third parties are not privileged. (See, Matter of King v Ashley, 179 NY 281 [1904]; Kenford Co. v County of Erie, 55 AD2d 466, 469 [4th Dept 1977].) Thus, for example, correspondence, conferences and telephone conversations between opposing parties, or opposing counsel, as well as other communications made in the presence of other third parties, are not within the scope of the privilege. (See, Matter of Stefano v C. P. Ward, Inc., 19 AD2d 473 [3d Dept 1963].)

Orange County Publs. v. County of Orange, 168 Misc. 2d 346, 356 (N.Y. Misc. 1995)

As to the other exceptions you assert, you do not provide sufficient information to addresses those exceptions. But, the complete absence of any meaningful disclosure suggests abuse there as well.

Please provide a privilege list.

I note as well that in an Article 78 proceeding as to, for example, the recusal request, the CPLR will permit discovery of all these documents related to contacts between the agency and the applicant, or, for example, the Mayor's office and the agency. Indeed, the abuse of the FOIL process by the agency provides gravitas to the recusal request.

Please consider this letter to be an appeal of the prior FOIL determinations of the agency.

Alan D. Sugarman to BSA  
September 26, 2006  
Page 4 of 4

Sincerely,

A handwritten signature in cursive script that reads "Alan D. Sugarman". The signature is written in dark ink and is positioned above the printed name.

Alan D. Sugarman





**The Public Advocate for the City of New York**

*Improving Access to City Services*

**Betsy Gotbaum**  
Public Advocate

May 9, 2007

Jeff Mulligan, Executive Director  
NYC Board of Standards & Appeals  
40 Rector Street, 9<sup>th</sup> Floor  
New York, NY 10006

Re: Mr. Alan Sugarman  
17 west 70<sup>th</sup> Street, Suite 4  
New York, NY 10023

Dear Mr. Mulligan:

Public Advocate Betsy Gotbaum received a request for assistance from the aforementioned constituent, regarding his allegation on behalf of himself and his neighbors that your office has not cooperated on the case of BSA 74-07-BZ Congregation Shearith Israel, 6-10 West 70<sup>th</sup> Street, a/k/a/ 99 Central Park West, Block 1122, Lots 36-37 Manhattan.

Reportedly, your agency representatives met with the applicants without community representatives being invited to attend. Subsequently, a Freedom of Information Law (FOIL) request was submitted for the minutes of that meeting without success. They contend that your agency representatives are not performing their duties according to BSA guidelines, and are having ex-parte meetings with the applicant. They have formally filed a letter of objection, which should also be on file with the NYC Department of Buildings.

Therefore, we are respectfully requesting an investigation of his charges, and a reply to our office with your findings.

Sincerely,

Ralph Perfetto  
Ombudsman

cc: Comm. Christopher Santulli, DOB  
Mr. Alan Sugarman







# Board of Standards and Appeals

40 Rector Street, 9<sup>th</sup> Floor • New York, NY 10006-1705 • Tel. (212) 788-8500 • Fax (212) 788-8769  
Website @ [www.nyc.gov/bsa](http://www.nyc.gov/bsa)

MEENAKSHI SRINIVASAN  
Chair/Commissioner

May 10, 2007

**BY TELECOPIER AND REGULAR MAIL**

Alan D. Sugarman  
17 West 70<sup>th</sup> Street  
New York, New York 10023

Dear Mr. Sugarman:

This is the Board's response to your letter of April 26, 2007 by which you appeal BSA's denial of your request under the State's Freedom of Information Law ("FOIL"), dated April 12, 2007, for access to records of this agency relating to the application of Shearith Israel dated between November 27, 2006 and April 12, 2007. That denial was set forth in a determination by Jeff Mulligan, BSA's FOIL Access Officer, dated April 17, 2007.

Mr. Mulligan's determination of April 17 is hereby affirmed on the ground that the records of this agency relating to the application of Shearith Israel dated between November 27, 2006 and April 12, 2007 are exempt from disclosure under FOIL. Specifically, e-mails to and from the Board's counsel are subject to attorney-client privilege and therefore are exempt from disclosure under FOIL §87(2)(a) and sections 3101 and 4503 of the Civil Practice Law and Rules ("CPLR"). Further, e-mails between and among Board staff are exempt from disclosure pursuant to FOIL § 87(2)(g), which applies to materials that "are inter-agency or intra-agency materials which are not: i. statistical or factual tabulations or data; ii. instructions to staff that affect the public; iii. final agency policy or determinations; or iv. external audits, including but not limited to audits performed by the comptroller and the federal government." Finally, handwritten notes, to the extent they exist, are similarly exempt from disclosure under FOIL §87(2)(g).

Based on our review, there are no other documents responsive to your April 12 request that are not exempt.

This letter is a final determination of the Board with respect to the documents described above. You may seek judicial review of this determination pursuant to CPLR Article 78 and Public Officers Law § 89(4)(b).

Sincerely,

Gregory R. Belcamino  
General Counsel/Records Appeal Officer

Cc: J. Mulligan

Robert J. Freeman  
Director, Committee on Open Government





# Board of Standards and Appeals

40 Rector Street, 9<sup>th</sup> Floor • New York, NY 10006-1705 • Tel. (212) 788-8500 • Fax (212) 788-8769  
Website @ [www.nyc.gov/bsa](http://www.nyc.gov/bsa)

MEENAKSHI SRINIVASAN  
Chair/Commissioner

May 29, 2007

Ralph Peretto  
Ombudsman  
The Public Advocate for the City of New York  
One Centre Street  
New York, New York 10007

Dear Mr. Peretto:

We are in receipt of your letter dated May 9, 2007 asking the Board of Standards and Appeals to investigate allegations from Alan Sugarman that the Board is not cooperating on providing information on the application for a variance at 6-10 West 70<sup>th</sup> Street (Congregation Shearith Israel, BSA 74-07-BZ). We are also in receipt of Mr. Sugarman's correspondence to the Public Advocate, which you have shared with us after our request.

Your letter states that representatives of the Board met with the applicants without community representatives invited to attend. Please be advised that Board staff and two Board members met with the applicant prior to the filing of the application, in a meeting that is entirely consistent with the Procedure for Pre-Application Meetings, as posted on the Board's website. There is no requirement that community representatives be invited to attend such a meeting. After receiving Mr. Sugarman's complaint that community representatives had not been invited, we extended an invitation to Mr. Sugarman to also meet with representatives of the Board. He did not accept the invitation.

Your letter also states that we did not provide notes of the meeting pursuant to a FOIL request. Please note that I, as the Board's FOIL Officer, along with the Board's FOIL Appeals Officer have explained in letters to Mr. Sugarman that hand-written meeting notes are not disclosed because they are subject to attorney/client privilege or attorney work product privilege, or because they are exempt under FOIL §87(2). Copies of the Board's letters to Mr. Sugarman are attached.

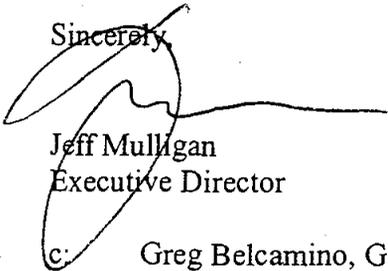
Mr. Ralph Perfetto  
May 29, 2007  
Page 2

Your letter also refers to Mr. Sugarman's allegation that the pre-application meeting was an ex-parte meeting. Please see the attached letter which states that we will address Mr. Sugarman's allegations of ex-parte communication at the first public hearing of this case, when calendared.

Finally, you have also attached letters from Mr. Sugarman which identify questions and concerns based on his review of the filed application for the variance – including the date of the DOB objection letter for the proposed project. Please be advised that we will consider the issues raised in Mr. Sugarman's letter as we review the application for the variance.

Please contact me at (212) 788-8805 should you have any questions.

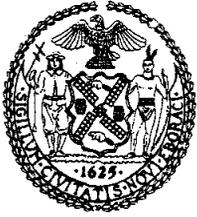
Sincerely,



Jeff Mulligan  
Executive Director

c: Greg Belcamino, General Counsel





# Board of Standards and Appeals

40 Rector Street, 9<sup>th</sup> Floor • New York, NY 10006-1705 • Tel. (212) 312-2000  
Website @ [www.nyc.gov/bsa](http://www.nyc.gov/bsa)

• Fax (212) 788-8769

MEENAKSHI SRINIVASAN  
Chair/Commissioner

June 1, 2007

Mr. Alan Sugarman, Esq.  
17 West 70<sup>th</sup> Street, Suite 4  
New York, New York 10025

Dear Mr. Sugarman:

This letter is in response to your May 24, 2007 request made under the State Freedom of Information Law ("FOIL"). The date of your last request was April 12, 2007, so the Board searched for records dated between April 12, 2007 and May 24, 2007.

Attached you will find a letter and attachments from the Public Advocate; your faxed correspondence to the Public Advocate; your letter to Roberto Valez, Chief Administrative Law Judge of OATH and his response to your letter; and a letter from Friedman & Gotbaum, LLP to David Rosenberg; Esq.

Based on our review, there are no other documents responsive to our request.

This letter is a final determination of the Board. You have the right to seek review of this determination pursuant to Article 78 of the Civil Law Practice and Rules, and Public Officers Law § 89(4)(b).

Please also be aware that it is the Board's policy to charge 50 cents/page for copies made in response to a FOIL request. Since the attachments total 17 pages, please forward a check or money order to the NYC Board of Standards and Appeals for \$8.50.

Sincerely,

  
Jeff Mulligan  
Executive Director/Records Access Officer



## The Public Advocate for the City of New York

*Improving Access to City Services*

**Betsy Gotbaum**  
Public Advocate

May 9, 2007

Jeff Mulligan, Executive Director  
NYC Board of Standards & Appeals  
40 Rector Street, 9<sup>th</sup> Floor  
New York, NY 10006

Re: Mr. Alan Sugarman  
17 West 70<sup>th</sup> Street, Suite 4  
New York, NY 10023

Dear Mr. Mulligan:

Public Advocate Betsy Gotbaum received a request for assistance from the aforementioned constituent, regarding his allegation on behalf of himself and his neighbors that your office has not cooperated on the case of BSA 74-07-BZ Congregation Shearith Israel, 6-10 West 70<sup>th</sup> Street, a/k/a/ 99 Central Park West, Block 1122, Lots 36-37 Manhattan.

Reportedly, your agency representatives met with the applicants without community representatives being invited to attend. Subsequently, a Freedom of Information Law (FOIL) request was submitted for the minutes of that meeting without success. They contend that your agency representatives are not performing their duties according to BSA guidelines, and are having ex-parte meetings with the applicant. They have formally filed a letter of objection, which should also be on file with the NYC Department of Buildings.

Therefore, we are respectfully requesting an investigation of his charges, and a reply to our office with your findings.

Sincerely,

Ralph Perfetto  
Ombudsman

cc: Comm. Christopher Santulli, DOB  
Mr. Alan Sugarman



# FAX COVER SHEET

TO	Jeff Mulligan
COMPANY	
FAX NUMBER	12127888769
FROM	Alan Sugarman
DATE	2007-05-01 19:55:18 GMT
RE	Shearith Israel

## COVER MESSAGE

This letter details further errors in the Congregation's Application to BSA and requests that the Congregation refile the Application

Alan D. Sugarman  
Attorney At Law

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

May 1, 2007

Jeff Mulligan  
Executive Director  
NYC Board of Standards and Appeals  
40 Rector Street - 9th Floor  
New York, New York 10006

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

Dear Mr. Mulligan:

On April 23, 2007 I wrote you concerning two deficient aspects of the Congregation Shearith Israel BSA Application relating to the lack of shadow studies and the failure to provide information relating to 18 West 70<sup>th</sup> Street. On April 26, 2007, I wrote to you concerning jurisdictional deficiencies relating to the stale DOB application and other non-compliance with BSA requirements as to variance applications.

I have further reviewed the Application and noted a number of other factual omissions and inaccuracies. The factual misstatements may not on their face be major, but, together with all of the other errors and omissions, still create substantial confusion.

I do not wish to nit-pick the Application, but the Congregation did spend over a year in preparing the BSA application, and so I am not willing to assume that any omission or inaccuracy is not intentional.

So, I am writing to provide further information not contained in my last two letters;

### **DOB Objections:**

First, though, I would like to discuss again the curious fact that the DOB objections were issued prior to three LPC meetings/hearings in this matter.<sup>1</sup>

---

<sup>1</sup> On April 26, 2007, in connection with my FOIL requests to DOB, I had conversations with DOB legal staff who assured me that they had absolutely no record of any March, 2007 DOB objection letter.

On August 15, 2005, the Congregation filed a new set of plans with LPC showing a building 124' 5" high:

The October 28, 2005 DOB objections state:

8. PROPOSED MAXIMUM BUILDING HEIGHT IN REB DOES NOT COMPLY. 113.70' PROVIDED INSTEAD OF 124.05' DUNNARY TO SECTION 23-652.

What is curious is that the DOB objections dated October 28, 2005 refers to a building with maximum building height of 113.70 feet.

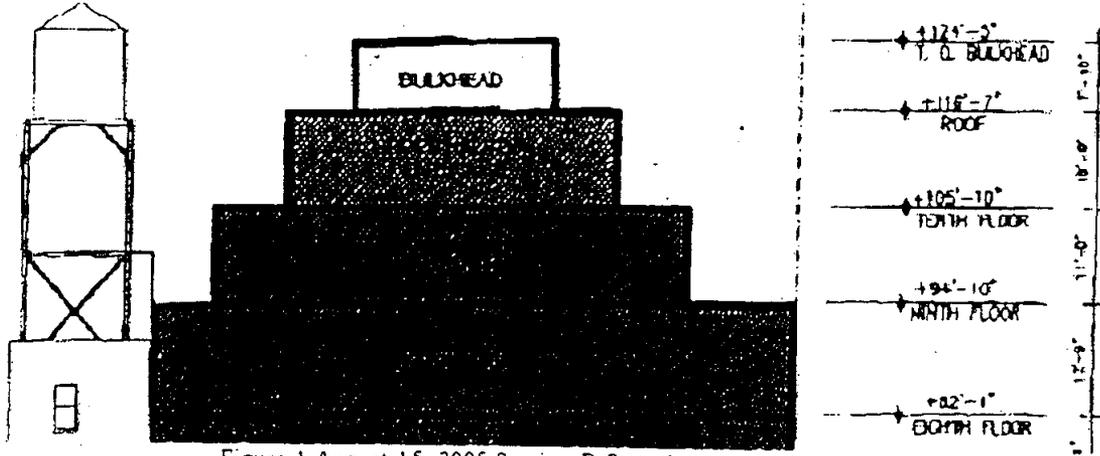


Figure 1 August 15, 2005 Section B 8 stories plus 2 penthouse

Yet, as shown above, the plans provided to LPC and Community Board 7 at that point in time, as shown above, reveal a 124.5 foot building. This is the proposal considered by the Community Board in September and October 2005 and on November 15, 2005 by LPC.

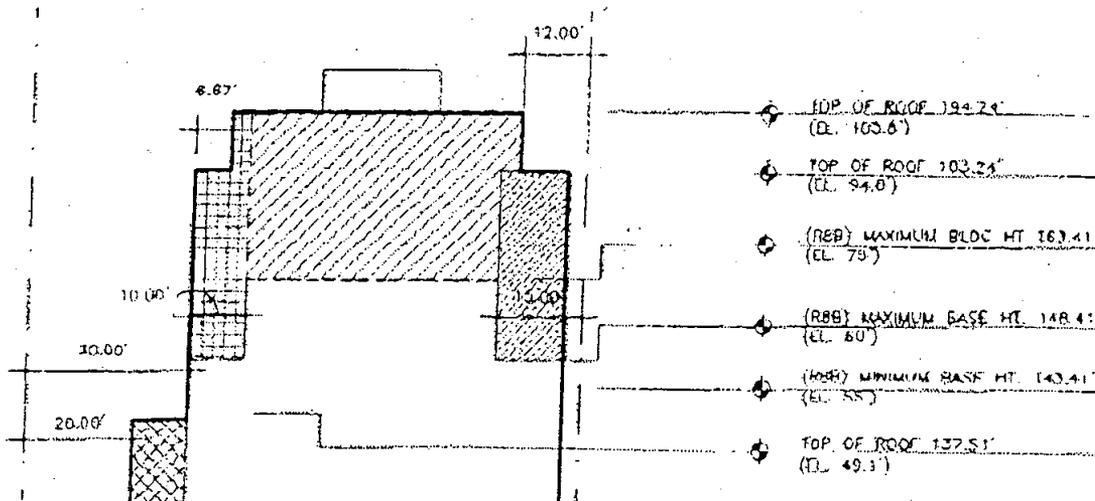


Figure 2 P-4 BSA Application April 2, 2007 8 stories plus 1 penthouse

Above is an excerpt from the street wall section filed with BSA on April 2, 2007. There is a clear discrepancy – was the Congregation filing one set of plans in November 2005 with DOB, but presenting another set of plans later to LPC??

Moreover, the DOB objections number 3 and 7 are not consistent with either set of drawings.

6. PROPOSED INITIAL SETBACK IN R8B DOES NOT COMPLY. 12.00' PROVIDED INSTEAD OF 15.00' CONTRARY TO SECTION 23-663.

7. PROPOSED REAR SETBACK IN R8B DOES NOT COMPLY. 6.67' PROVIDED INSTEAD OF 10.00' CONTRARY TO SECTION 23-663.

Quite clearly, the rear setback shown from floor S-7 is not 6.67 feet, but is no setback at all (because the Congregation failed to provide required cross-sections with the floor heights, it is not simple to determine the floor.) The same discrepancy exists as to the initial setback – there is no initial setback until 94.8 feet. These are significant discrepancies, one that should have been noticed by the Congregation when discussing its proposal with DOB.

## ***INACCURACIES AND OMISSIONS***

In addition, I would like to point out some other factual errors or omissions in the Congregation's Application, not mentioned in my prior two letters:

### **1. Date of Acquisition of 12 West 70<sup>th</sup> Street.**

The Congregation states in its Statement in Support of Certain Variances (Statement) at p 14 states that "Tax Lots 36 and 37 have been in common fee ownership since 1949." This is not true: the Congregation acquired 12 West 70<sup>th</sup> Street in 1965 and demolished the brownstone in 1970.<sup>2</sup>

A similar incorrect statement appears at 26.

### **2. Misstatement as to two rowhouses once on vacant lot**

On page 17, the Statement claims as follows;

"The vacant portion of Lot 37 was created when two of the four rowhouses

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<sup>2</sup> Title acquired under deed dated 52865 in Liber 5327 cp 339.

owned by CSI, presumably numbered Nos. 16 and 14 West 70th Street, were demolished in 1950" is totally inaccurate, and serves to perpetuate the mistaken claim that the Congregation owned 12 West prior to 1949.<sup>3</sup>

Of course, there was on building on this site; it was acquired in 1965 and demolished in 1970.



## 2. Prior Ownership of 8 West 70<sup>th</sup> Street

Relevant to the issue of self-imposed hardship, the Statement does not disclose that when the Synagogue was constructed in 1896-7, the Synagogue owned the property located at 8 West 70<sup>th</sup> Street and then conveyed the property to another party - showing that the Trustee owned the land in 1896, which would have allowed a lobby building to be constructed then.

## 3. Covenants Limiting Height of Buildings next to Synagogue.

The Statement does not disclose that when the Trustees conveyed 8 West in 1897 to a third party, the 1897 Trustees imposed restrictive covenants upon 8 West 70<sup>th</sup> Street

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<sup>3</sup> These facts are described in an Agreement with the Congregation filed at L-4112, cp 178, dated March 22, 1921 and documents cited therein.

limiting the height of any building on 8 West 70<sup>th</sup> Street to not be taller than the Synagogue building, so as to avoid a violation of Jewish Law.

#### **4. Confusing East and West:**

At page 7 of the Statement the Congregation states:

It is perhaps the most glaring design flaw of the Synagogue. Because according to Jewish Law a synagogue must be designed so worshippers face west when praying toward the altar, the altar is located along the western wall of the Synagogue.

Not only is this an exaggeration, and as can be shown self-imposed, but the writer of the Statement incorrectly describes Jewish Law. Jewish Law provides that when praying facing the Ark, the worshiper must face East (in the Americas) toward Jerusalem. And, indeed, the Ark in the Congregation's Synagogue is in fact on the Eastern wall.

<http://en.wikipedia.org/wiki/Synagogue>.

We will not at this point discuss the convoluted over-the-top self-serving rhetoric associated with this error, but, this error alone establishes the factual disconnects in the Statement's rhetoric.

Nor does the Congregation, in discussing Jewish Law, mention the prohibition of constructing a building taller than a Synagogue, next to a synagogue. This prohibition was well understood by the Trustees of the Congregation when the Synagogue was constructed in 1896-7, imposing a restrictive covenant on 8 West and constructing the low Parsonage to the South on Central Park West.

#### **5. Absence of Factual Predicate for Rhetoric**

The Statement is permeated with repetitive conclusory narratives, replete with 72-21 code words, but absent specific factual predicates. For, example, there are multiple references to elevators resolving accessibility issues, but not even one indication on any of the drawings as to where this elevator (or is there only one) is located and how replacement or creation of a new elevator required construction of the proposed building or relates to the requested variances.

It is requested respectfully that the Applicant prepare a drawing which illustrates the location of the rhetorical exercises in the present and proposed buildings. Conclusory representations by an applicant are not a sufficient basis for findings by the BSA - findings must be supported by facts, and not merely self-serving representations of an applicant. Furthermore, there must be a factual predicate for each of the eight variances.

## 6. Uses of the Parsonage

The Congregation has included the Parsonage as being within the Synagogue site, but, strangely, is silent as to the use of the Parsonage space. It is not clear why certain of the essential programmatic needs of the Synagogue are not being accommodated in this building, such as offices and archives. At the present, or in the recent past, some state that the upper floors have been rented to a third party. DOB records show that in 2003, the Congregation obtained a permit for \$350,00 of interior demolition and construction in the Parsonage. DOB Job No 103500329.

## Conclusion

The BSA should reject the application, and require the Congregation to submit a new application in conformance with BSA requirements and without these errors and omissions.

The Community Board and the Community must have a complete and accurate Application sufficiently in advance of any Community Board meetings and of course prior to the BSA hearing. The public should not be subjected to a moving target, which could easily be remedied before the beginning of the hearing process. The Zoning Resolution is clear that the Applicant must establish a factual, not rhetorical, basis for each of the five findings for each of the 8 requested variances. It is improper for the Applicant to so confuse the facts with incomplete drawings, missing drawings, misstated facts, and assertions unsupported by facts. Moreover, if one assumes the accuracy of DOB files, the representations of DOB officials, and the dates on the DOB objections, resubmission to DOB is required.

Sincerely,



Alan D. Sugarman

P.S. Supporting Documents are posted at [ProtectWest70Street.org](http://ProtectWest70Street.org).

cc: Office of the Mayor of the City of New York  
Hon. Betsey Gotbaum, Public Advocate of the City of New York  
Hon. Gail Brewer, New York City Council Member  
Hon. Scott Stringer, Manhattan Borough President  
Hon. Richard Gottfried, State Assembly Member  
Hon. Sheldon J. Fine, Chair, Manhattan Community Board 7  
Norman Marcus  
Kate Wood, Executive Director, Landmarks West  
Shelly Friedman, Esq., Friedman & Gotbaum LLP

# FAX COVER SHEET

TO	Betsy Gotbaum
COMPANY	
FAX NUMBER	12126694701
FROM	Alan Sugarman
DATE	2007-05-14 16:11:19 GMT
RE	Re Recusal of BSA Commissioners

## COVER MESSAGE

Letter of May 14, 2007 to the Honorable Robert Velez,  
Chief Judge, Office of Administrative Trials and Hearings,  
re request for recusal of BSA Commissioners.

# FAX COVER SHEET

TO	Jeff Mulligan
COMPANY	Board of Standards and Appeals
FAX NUMBER	12127888769
FROM	Alan Sugarman
DATE	2007-05-14 16:11:19 GMT
RE	Re Recusal of BSA Commissioners

## COVER MESSAGE

Letter of May 14, 2007 to the Honorable Robert Velez,  
Chief Judge, Office of Administrative Trials and Hearings,  
re request for recusal of BSA Commissioners.

Alan D. Sugarman  
Attorney At Law

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212-873-1371  
mobile 917-208-1516  
fax 212-202-3524  
sugarman@sugardlaw.com

May 14, 2007

Fax 212-442-8910

The Honorable Robert Velez  
Chief Judge  
Office of Administrative Trials and Hearings  
City of New York  
40 Rector Street  
New York, NY 10006

Re: BSA 74-07-BZ  
Congregation Shearith Israel  
Recusal Request

Dear Judge Velez:

I am enclosing a letter dated April 10, 2007 to Commissioners Meenakshi Srinivasan and Christopher Collins of the Board of Standards and Appeals ("BSA") asking that they recuse themselves from further involvement in the variance application for the community house/condominium project filed by Congregation Shearith Israel, BSA 74-0-BZ.

The basis for that request is the ex parte meeting held by these Commissioners with the variance applicant on November 8, 2006, as compounded by the failure of BSA to invite known community groups opposing the project to the meeting, the failure of BSA to record or otherwise transcribe the meeting, and the refusal of BSA to disclose notes taken at such meeting.

Since my letter of April 10, 2007, the Executive Director of the Board advised me that the recusal request would not be considered until the first BSA hearing. A hearing has yet to be scheduled. In the meantime, the BSA has decided to stonewall proper Freedom of Information Law requests and refuses to provide documents of any type whatsoever concerning its communications with the applicant. This correspondence may be found on the web site I established for these documents:

<http://www.profectvest70.org/topic-pages/BSA-DOB-FOIL.html>.

The ongoing stonewalling suggest the intention of the Commissioners to not recuse themselves - moreover, the communications with the Applicant are themselves ex parte, in that the BSA keeps no public records of the communication. Accordingly, I will be

Alan Sugarman to Office of Administrative Trials and Hearings  
May 14, 2007  
Page 2 of 2

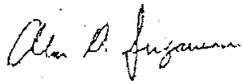
initiating litigation within the next few days. Because the BSA is a part of the Office of Administrative Trials and Hearings, I will also be naming your Office as a defendant.

The Office of Administrative Trials and Hearings of the City of New York has functioned since 1979 as a central tribunal with the authority to conduct administrative hearings for any agency, board or commission of the city. OATH was established by Executive Order No. 32 in 1979, to professionalize the administrative hearing system serving city government. To secure this objective, OATH was meant to function as an independent agency of government so that its judges would not be unduly influenced by the prosecutor or petitioning agency. As stated by OATH, administrative adjudication is a "quasi-judicial" process: that is, a judicial function conducted within the executive branch of government. Variance proceedings consistently have been held to be quasi-judicial proceedings. Full administrative due process takes the form of a trial or hearing in which an administrative law judge serves as the trier of fact. And, similar to the role of the courts, independent administrative tribunals like OATH serve as a protective barrier to unwarranted or improvident executive action.

The position of the BSA as to ex parte meetings is improper; moreover, its claims of attorney-client privilege to avoid disclosure of the content of communications with applicants in the quasi-judicial proceeding is abusive and improper and further creates ex parte communications.

Please have your office contact me immediately if you believe that this matter can be resolved without initiating a court action.

Sincerely,



Alan D. Sugarman

cc: The Honorable Meenakshi Srinivasan  
The Honorable Christopher Collins  
Office of the Mayor of the City of New York  
Hon. Betsy Gotbaum, Public Advocate of the City of New York  
Hon. Gail Brewer, New York City Council Member  
Hon. Scott Stringer Manhattan Borough President  
Hon. Richard Gottfried State Assembly Member  
Hon. Patricia J. Lancaster, Department of Buildings  
Hon. Robert B. Tierney, Landmarks Preservation Commission  
Hon. Sheldon J. Fine, Chair Manhattan Community Board 7  
Norman Marcus  
Kate Wood, Executive Director, Landmarks West  
Shelly Friedman, Esq., Friedman & Gotbaum LLP

# FAX COVER SHEET

TO Betsy Gotbaum

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COMPANY

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FAX NUMBER 12126694701

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FROM Alan Sugarman

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DATE 2007-04-26 14:44:46 GMT

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RE Incomplete Shearith Israel BSA Application

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## COVER MESSAGE

This letter to BSA, among other things, describes the fact that the DOB objection letter which is the basis of the BSA filing is dated over 30 days prior to the BSA application, and indeed over one year prior to the BSA application, and, under BSA rules must be rejected.

Moreover, it is interesting that the DOB objection letter is dated prior to three LPC hearings, as to which a different building was described.

Alan D. Sugarman  
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April 26, 2007

Jeff Mulligan  
Executive Director  
NYC Board of Standards and Appeals  
40 Rector Street - 9th Floor  
New York, New York 10006

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

Dear Mr. Mulligan:

On April 23, 2007 I wrote you concerning two deficient aspects of the Congregation Shearith Israel BSA Application relating to the lack of shadow studies and the failure to provide information relating to 18 West 70<sup>th</sup> Street.

Later that day, the Congregation provided studies relating to the impact of the proposed building on shadows in Central Park. Those studies miss the point of the issue described in my letter and of concern to the community, which was the absence of shadow studies showing the impact of the proposed building versus an as of right building on the surrounding buildings. Thus, these deficiencies remain.

After further review of the application, I am writing this letter to describe further material non-compliance by the Congregation of requirements established in the BSA Detailed Instructions for Completing BZ Application.<sup>1</sup> I note again that the Congregation and its counsel, architects, and consultants are highly sophisticated and should be expected to comply with the requirement. If this applicant is not able to comply, one wonders why the instructions even exist.

The responses to my FOIL request (updated as of April 25, 2007) reveal that the BSA has not provided to the Congregation any waivers of the requirements of the Instruction - in fact, the BSA FOIL responses show that there have been no communications between BSA and the Congregation since the application was filed, except for the submission of the shadow studies letter.

#### 1. DOB Objections - Stale and Must be Issued Again

<sup>1</sup> [http://www.nyc.gov/html/bsa/downloads/pdf/forms\\_bz\\_instructions.pdf](http://www.nyc.gov/html/bsa/downloads/pdf/forms_bz_instructions.pdf)

Alan Sugarman to The Honorable Meenakshi  
April 26, 2007  
Page 2 of 5

The DOB objections filed by the Congregation with its application were issued by the DOB on October 28, 2005, and then stamped "Denied" by the Borough Commissioner on March 27, 2007, nearly 17 months later. The Instructions are clear that the Application must be rejected under these circumstances. Item F of the Instructions states that if the DOB objection is more than 30 days old, it is to be rejected.

*IF THE DATE OF THE OBJECTION STAMPED "DENIED" IS MORE THAN 30 DAYS OLD, YOU MUST RETURN TO THE BUILDINGS DEPARTMENT OR THE DEPARTMENT OF SMALL BUSINESS SERVICES TO OBTAIN AN UPDATED OBJECTION AND DENIAL.*

This is hardly a minor issue in this case. The LPC records show that the date of the objection letter, October 28, 2005 was prior to the November 15, 2005 hearings at which a different proposal by the Congregation was considered. The proposal was rejected, another meeting/hearing by LPC held on January 17, 2006, and a further meeting/hearing held by LPC on March 14, 2006. The proposed building presented by the Congregation in this BSA application is different from the proposed building at the November 15, 2005 LPC hearing. Something appears to not be regular - but it is clear that the DOB objections are completely outdated.

In addition, the Form BZ itself is inaccurate, and misstates the date of the DOB Decision:

Division of Department of Buildings Decision	REGULATORY ACTION(S): Z.R. 9 72-21	<input checked="" type="checkbox"/> HURLED	<input type="checkbox"/> SPECIAL PERMIT (Section 22.4)
	SECTION OF ZONING RESOLUTION SOUGHT TO BE ENFORCED	Z.R. 99-24-1177-24, 23-053, 23-053	
	DOB DECISION (OBJECTION / DENIAL) DATED: March 27, 2007	ACTING ON APPLICATION NO. NB-104250493	

Thus, the Congregation attempted to obfuscate this inconvenient fact<sup>2</sup>

## 2. Statement of Findings – Item H

The Applicant is required to provide a statement of findings which "must explain how the required findings are met." The Congregation here is applying for 8 separate variances and each of the five findings must be met for each variance, thus requiring 40 different findings. What the Congregation submitted was a mish-mash discussion where it merged together the discussion, without connecting each requested variance to each required finding. Moreover, none of the variances in any way seem to be related to the asserted physical conditions on the site - NONE

<sup>2</sup> Another irregularity by a city agency was disclosed in the latest April 23, 2007 letter from the Congregation, which shows that on March 21, 2007, the Landmarks Preservation Commission issued a Certificate of Appropriateness, one year after the meeting/hearing where this was approved, the LPC having stated that it only issues a COA after action by BSA. Apparently, this was a highly irregular action by LPC, based on its own statements. See [http://www.philadelvest70.org/2006-corresp-docs/2006-04-11-Letter-LPC\\_To\\_Sugarman\\_Re\\_March\\_Meeting.pdf](http://www.philadelvest70.org/2006-corresp-docs/2006-04-11-Letter-LPC_To_Sugarman_Re_March_Meeting.pdf)

**3. Plans – Adjoining Conditions. Item J**

The Instructions are clear that a plan of adjoining conditions are to be provided – by failing to describe the adjoining conditions in the adjacent east face of 18 West 70<sup>th</sup> Street, the Congregation failed in a material way to comply with the Instructions.

**4. Sections– Item J**

Item J of the instructions require floor plans and sections which must "indicate floor to ceiling height" among other things. The Congregation has asserted that the physical condition justifying the variances (some or all?) related to circulation and accessibility issues, and, so this is a highly material issue in this application. However, the Congregation failed to provide sections of the building, making it impossible to ascertain either the asserted physical condition, or the way in which the proposed building and variances resolve those conditions. The physical conditions are not shown anywhere on the drawings.

**5. Permitted (As of Right) Drawings and Conditions**

The Instructions require the drawings to show permitted conditions, but the drawings submitted by the Congregation fail to show the impact of all of the 8 variances. For example, the eighth variance request relates to a 40 foot separation between buildings. This is not reflected in the as of right building drawings. Moreover, other variances, including the fourth and seventh variances, are not shown on any of the drawings in a way that provides an understanding of that which is being requested.

**6. Photographs – Item L**

The Instructions require that photographs be provided showing the conditions of the side and rear of the lot. As noted in my prior letter, no photographs were provided of 18 West's east façade. This is a material omission. I cannot provide these photographs without entering the Congregation property.

**7. Financial Feasibility Study – Item M**

The financial feasibility study provided by the Congregation does not conform to the requirements of the Instructions, Item M.

The financial submission should illustrate the hardship caused by the claimed unique physical conditions present at the site. Financial data is requested by the Board to explain why a reasonable return on the property is not possible and to demonstrate, in part, why the variance proposed is the minimum variance necessary to provide relief to the property owner.

Alan Sugarman to The Honorable Meenakshi

April 26, 2007

Page 4 of 5

The financial study fails to connect its rate of return analysis to any "physical condition present at the site" and, moreover, groups together all of the requested variances in a way that does not connect the analysis to the site or the requested variances. Nor does the study address the other factors.

The financial submission apparently is provided from the point of view of a hypothetical developer, but the applicant here is not a developer. The analysis is in no way an analysis of the rate of return for or impact upon the Congregation - and, indeed, the financial impact on the Congregation is completely ignored in the study. It ignores, for example, rental revenues anticipated by the Congregation. Since the Congregation intends to rent its school space and perhaps banquet space, it also failed in this analysis to provide rental information required under M-4. It also ignored other financial resources available to the Congregation.

The financial study does not meet this requirement as well:

3. The economic hardship that arises from the unique physical conditions must be quantified and the cost to remedy such hardship should be given in dollar figures.

The construction cost estimate was not signed by the person providing the estimate as required by Item M-6. This is important, because there seems to be a disconnect in that there are issues of allocation of costs and, according to the study, not all costs were provided in the study.

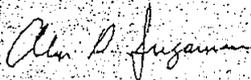
In the end, the report fails to explain how an unremarkable 6000 square foot rectangular lot valued in the report at \$19 million has some type of physical condition that is in any way related to the rate of return analysis or to any need for a variance.

#### **8. Item N - Certificate of Occupancy.**

The Certificate of Occupancy provided shows that the property, as used currently, is in violation of the Certificate of Occupancy.

Clearly, the Congregation should prepare all the required elements of its proposal, obtain the DOB letter in a regular fashion, then file a complete application, and then, and only then, should the 60 day period for community review be started.

Sincerely,



Alan D. Sugarman

P.S. Supporting Documents are posted at [ProtectWest70Street.org](http://ProtectWest70Street.org).

Alan Sugarman to The Honorable Meenakshi  
April 26, 2007  
Page 5 of 5

cc: Office of the Mayor of the City of New York  
Hon. Betsy Gotbaum, Public Advocate of the City of New York  
Hon. Gail Brewer, New York City Council Member  
Hon. Scott Stringer Manhattan Borough President  
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Hon. Sheldon J. Fine, Chair Manhattan Community Board 7  
Norman Marcus  
Kate Wood, Executive Director, Landmarks West  
Shelly Friedman, Esq, Friedman & Gotbaum LLP

# FAX COVER SHEET

TO Betsy Gotbaum  
COMPANY  
FAX NUMBER 12126694701  
FROM Alan Sugarman  
DATE 2007-05-01 19:55:19 GMT  
RE Shearith Israel

## COVER MESSAGE

This letter details further errors in the Congregation's Application to BSA and requests that the Congregation refile the Application

RECEIVED  
MAY 31 10 27 AM '07  
THE PUBLIC ADVOCATE OFFICE

Alan D. Sugarman  
Attorney At Law

17 W. 70 Street  
Suite 4  
New York, NY 10023  
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May 1, 2007

Jeff Mulligan  
Executive Director  
NYC Board of Standards and Appeals  
40 Rector Street - 9th Floor  
New York, New York 10006

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

Dear Mr. Mulligan:

On April 23, 2007 I wrote you concerning two deficient aspects of the Congregation Shearith Israel BSA Application relating to the lack of shadow studies and the failure to provide information relating to 18 West 70<sup>th</sup> Street. On April 26, 2007, I wrote to you concerning jurisdictional deficiencies relating to the stale DOB application and other non-compliance with BSA requirements as to variance applications.

I have further reviewed the Application and noted a number of other factual omissions and inaccuracies. The factual misstatements may not on their face be major, but, together with all of the other errors and omissions, still create substantial confusion.

I do not wish to nit-pick the Application, but the Congregation did spend over a year in preparing the BSA application, and so I am not willing to assume that any omission or inaccuracy is not intentional.

So, I am writing to provide further information not contained in my last two letters.

**DOB Objections:**

First, though, I would like to discuss again the curious fact that the DOB objections were issued prior to three LPC meetings/hearings in this matter.<sup>1</sup>

<sup>1</sup> On April 26, 2007, in connection with my FOIL requests to DOB, I had conversations with DOB legal staff who assured me that they had absolutely no record of any March, 2007 DOB objection letter.

Alan Sugarman to Jeff Mulligan BSA  
May 1, 2007  
Page 2 of 6

On August 15, 2005, the Congregation filed a new set of plans with LPC showing a building 124' 5" high.

The October 28, 2005 DOB objections state:

5. ENFORCED MAXIMUM BUILDING HEIGHT IN ZONE DOES NOT COMPLY. 113.70' PROVIDED INSTEAD OF 120' ULTIMATE TO SECTION 23-633.

What is curious is that the DOB objections dated October 28, 2005 refers to a building with maximum building height of 113.70 feet.

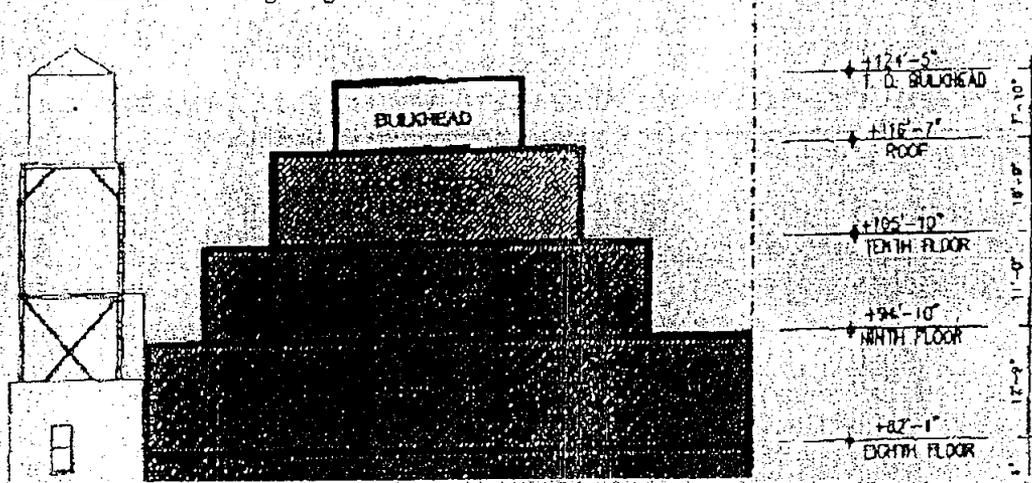


Figure 1 August 15, 2005 Section B-B stories plus 2 penthouse.

Yet, as shown above, the plans provided to LPC and Community Board 7 at that point in time, as shown above, reveal a 124.5 foot building. This is the proposal considered by the Community Board in September and October 2005 and on November 15, 2005 by LPC.

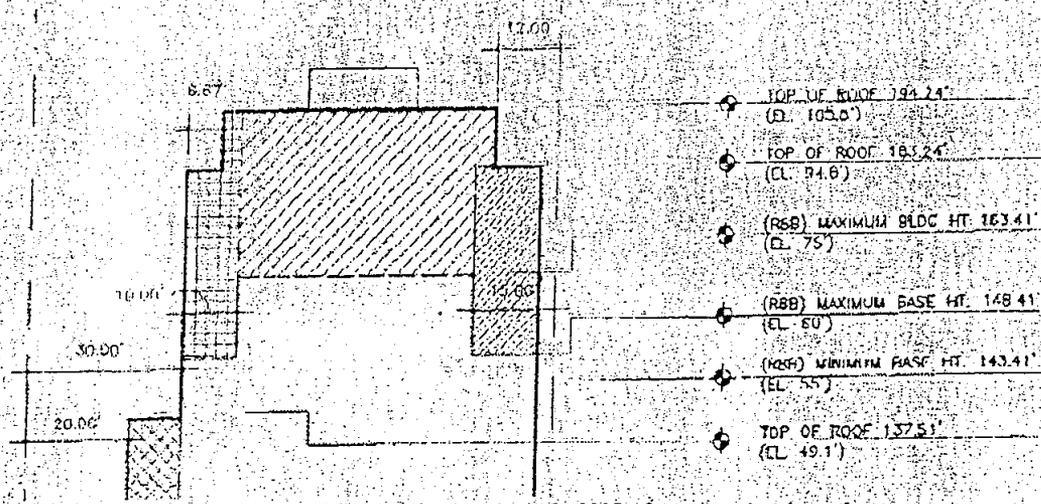


Figure 2 P-4 BSA Application April 2, 2007. 3 stories plus 1 penthouse

Alan Sugarman to Jeff Mulligan BSA

May 1, 2007

Page 3 of 6

Above is an excerpt from the street wall section filed with BSA on April 2, 2007. There is a clear discrepancy - was the Congregation filing one set of plans in November 2005 with DOB, but presenting another set of plans later to LPC??

Moreover, the DOB objections number 3 and 7 are not consistent with either set of drawings.

4. PROPOSED INITIAL SETBACK IN RBE DOES NOT MEET SECTION 23-653. 12.00' PROVIDED INSTEAD OF 15.00'

7. PROPOSED REAR SETBACK IN RBE DOES NOT MEET SECTION 23-653. 6.67' PROVIDED INSTEAD OF 10.00'

Quite clearly, the rear setback shown from floor 3-7 is not 6.67 feet, but is no setback at all (because the Congregation failed to provide required cross-sections with the floor heights, it is not simple to determine the floor). The same discrepancy exists as to the initial setback - there is no initial setback until 9.8 feet. These are significant discrepancies, one that should have been noticed by the Congregation when discussing its proposal with DOB.

## **INACCURACIES AND OMISSIONS**

In addition, I would like to point out some other factual errors or omissions in the Congregation's Application, not mentioned in my prior two letters:

### **1. Date of Acquisition of 12 West 70<sup>th</sup> Street.**

The Congregation states in its Statement in Support of Certain Variances (Statement) at p 14 states that "Tax Lots 36 and 37 have been in common fee ownership since 1949." This is not true: the Congregation acquired 12 West 70<sup>th</sup> Street in 1965 and demolished the brownstone in 1970.<sup>2</sup>

A similar incorrect statement appears at 26.

### **2. Misstatement as to two rowhouses once on vacant lot**

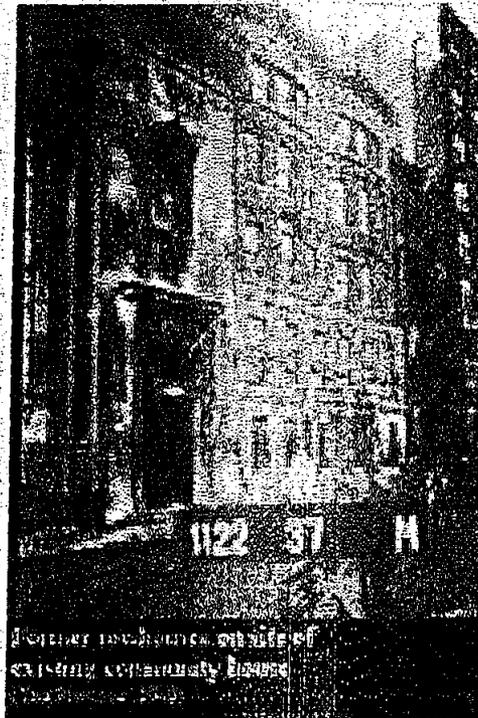
On page 17, the Statement claims as follows:

"The vacant portion of Lot 37 was created when two of the four rowhouses

<sup>2</sup> Title acquired under deed dated 52865 in Liber 5327 cp 339

owned by CSI, presumably numbered Nos. 16 and 14 West 70th Street, were demolished in 1950" is totally inaccurate, and serves to perpetuate the mistaken claim that the Congregation owned 12 West prior to 1949.<sup>3</sup>

Of course, there was no building on this site; it was acquired in 1965 and demolished in 1970.



## 2. Prior Ownership of 8 West 70<sup>th</sup> Street

Relevant to the issue of self-imposed hardship, the Statement does not disclose that when the Synagogue was constructed in 1896-7, the Synagogue owned the property located at 8 West 70<sup>th</sup> Street and then conveyed the property to another party - showing that the Trustee owned the land in 1896, which would have allowed a lobby building to be constructed then.

## 3. Covenants Limiting Height of Buildings next to Synagogue.

The Statement does not disclose that when the Trustees conveyed 8 West in 1897 to a third party, the 1897 Trustees imposed restrictive covenants upon 8 West 70<sup>th</sup> Street.

<sup>3</sup> These facts are described in an Agreement with the Congregation filed at L-4112, cp 178, dated March 22, 1921 and documents cited therein.

limiting the height of any building on 8 West 70<sup>th</sup> Street to not be taller than the Synagogue building, so as to avoid a violation of Jewish Law.

#### **4. Confusing East and West:**

At page 7 of the Statement the Congregation states:

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Not only is this an exaggeration, and as can be shown self-imposed, but the writer of the Statement incorrectly describes Jewish Law. Jewish Law provides that when praying facing the Ark, the worshiper must face East (in the Americas) toward Jerusalem. And, indeed, the Ark in the Congregation's Synagogue is in fact on the Eastern wall.  
<http://en.wikipedia.org/wiki/Synagogue>.

We will not at this point discuss the convoluted over-the-top self-serving rhetoric associated with this error, but, this error alone establishes the factual disconnects in the Statement's rhetoric.

Nor does the Congregation, in discussing Jewish Law, mention the prohibition of constructing a building taller than a Synagogue next to a synagogue. This prohibition was well understood by the Trustees of the Congregation when the Synagogue was constructed in 1896-7, imposing a restrictive covenant on 8 West and constructing the low Parsonage to the South on Central Park West.

#### **5. Absence of Factual Predicate for Rhetoric**

The Statement is permeated with repetitive conclusory narratives, replete with 72-21 code words, but absent specific factual predicates. For example, there are multiple references to elevators resolving accessibility issues, but not even one indication on any of the drawings as to where this elevator (or is there only one) is located and how replacement or creation of a new elevator required construction of the proposed building or relates to the requested variances.

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## 6. Uses of the Parsonage

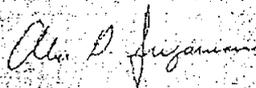
The Congregation has included the Parsonage as being within the Synagogue site, but, strangely, is silent as to the use of the Parsonage space. It is not clear why certain of the essential programmatic needs of the Synagogue are not being accommodated in this building, such as offices and archives. At the present, or in the recent past, some state that the upper floors have been rented to a third party. DOB records show that in 2003 the Congregation obtained a permit for \$350,00 of interior demolition and construction in the Parsonage. DOB Job No. 103500329

## Conclusion

The BSA should reject the application, and require the Congregation to submit a new application in conformance with BSA requirements and without these errors and omissions.

The Community Board and the Community must have a complete and accurate Application sufficiently in advance of any Community Board meetings and of course prior to the BSA hearing. The public should not be subjected to a moving target, which could easily be remedied before the beginning of the hearing process. The Zoning Resolution is clear that the Applicant must establish a factual, not rhetorical, basis for each of the five findings for each of the 8 requested variances. It is improper for the Applicant to so confuse the facts with incomplete drawings, missing drawings, misstated facts, and assertions unsupported by facts. Moreover, if one assumes the accuracy of DOB files, the representations of DOB officials, and the dates on the DOB objections, resubmission to DOB is required.

Sincerely,



Alan D. Sugarman

P.S. Supporting Documents are posted at [ProtectWest70Street.org](http://ProtectWest70Street.org)

cc: Office of the Mayor of the City of New York  
Hon. Betsy Gotbaum, Public Advocate of the City of New York  
Hon. Gail Brewer, New York City Council Member  
Hon. Scott Stringer Manhattan Borough President  
Hon. Richard Gottfried State Assembly Member  
Hon. Sheldon J. Fine, Chair Manhattan Community Board 7  
Norman Marcus  
Kate Wood, Executive Director, Landmarks West  
Shelly Friedman, Esq, Friedman & Gotbaum LLP

Office of the Public Advocate for the City of New York  
Betsy Gotbaum



1 Centre Street, 15<sup>th</sup> floor, North, New York, NY 10007  
(212) 669-7200 phone (212) 669-4701 fax  
[www.pubadvocate.nyc.gov](http://www.pubadvocate.nyc.gov)



**FACSIMILE TRANSMISSION**

To:	MR. MULLIGAN	From:	RALPH PERFETTO
Fax:	212-788-8807	Pages:	
Phone:		Date:	5/18/07
Re:		CC:	

<i>As Requested</i> <input checked="" type="radio"/>	<i>For Review</i> <input type="radio"/>	<i>Please Comment</i> <input type="radio"/>	<i>URGENT</i> <input type="radio"/>
--	---	---	-------------------------------------

FAX DID NOT GO THROUGH

Confidentiality Notice: This facsimile communication and any attachments may contain confidential and privileged information for the use of the designated recipients named above. If you are not the intended recipient, you are hereby notified that you have received this communication in error and that any review, disclosure, dissemination, distribution or copying of it or its contents is prohibited. If you have received this communication in error, please contact above number immediately. Thank you.



The Public Advocate for the City of New York

Betsy Gotbaum  
Public Advocate

May 3, 2007

Alan Sugarman  
17 West 70th Suite 4  
New York, NY 10023

Case #: 22593

Dear Mr. Sugarman:

Public Advocate Betsy Gotbaum has asked me to acknowledge receipt of your recent letter. We are currently investigating your inquiry and will write you as soon as our review is complete. Your letter has been assigned to Ralph Perfetto who will be in contact with you directly. In the interim you may call Mr. Perfetto at 212-669-4092.

As you know, Betsy Gotbaum has pledged to be a watchdog over city government and is committed to working in partnership with all levels of government and others to improve the delivery of city services in every neighborhood. We hope you will continue to forward your concerns and ideas to our office.

Thank you for writing to the Public Advocate.

Sincerely,

  
Elizabeth Blaney  
Deputy Advocate for  
Ombudsman Services



# The Public Advocate for the City of New York

Improving Access to City Services

Betsy Gotbaum  
Public Advocate

May 9, 2007

Jeff Mulligan, Executive Director  
NYC Board of Standards & Appeals  
40 Rector Street, 9<sup>th</sup> Floor  
New York, NY 10006

Re: Mr. Alan Sugarman  
17 West 70<sup>th</sup> Street, Suite 4  
New York, NY 10023

Dear Mr. Mulligan:

Public Advocate Betsy Gotbaum received a request for assistance from the aforementioned constituent, regarding his allegation on behalf of himself and his neighbors that your office has not cooperated on the case of BSA 74-07-BZ Congregation Shearith Israel, 6-10 West 70<sup>th</sup> Street, a/k/a/ 99 Central Park West, Block 1122, Lots 36-37 Manhattan.

Reportedly, your agency representatives met with the applicants without community representatives being invited to attend. Subsequently, a Freedom of Information Law (FOIL) request was submitted for the minutes of that meeting without success. They contend that your agency representatives are not performing their duties according to BSA guidelines, and are having ex-parte meetings with the applicant. They have formally filed a letter of objection, which should also be on file with the NYC Department of Buildings.

Therefore, we are respectfully requesting an investigation of his charges, and a reply to our office with your findings.

Sincerely,

Ralph Perfetto  
Ombudsman

cc: Comm. Christopher Santulli, DOB  
Mr. Alan Sugarman





copy to  
Jeff's copy to me

THE CITY OF NEW YORK  
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

40 RECTOR STREET • NEW YORK, N. Y. 10006-1705  
212-442-4900 FAX 212-442-4981 TDD 212-442-4939  
NYC.GOV/OATH • RVELEZ@OATH.NYC.GOV

ROBERTO VELEZ  
CHIEF ADMINISTRATIVE LAW JUDGE  
212-442-4911

May 16, 2007

Alan D. Sugarman, Esq.  
17 West 70<sup>th</sup> Street – Suite 4  
New York, NY 10023

Re: Recusal Request

Dear Mr. Sugarman,

This is in response to your letter dated May 14, 2007, concerning procedures followed by the Board of Standards and Appeals in processing a variance application. You ask whether I can address your concerns without the need for litigation because the Board is part of this tribunal.

Although section 659 of the City the Charter establishes BSA within OATH, the Charter clearly states that BSA is an independent body. As such, I exercise no oversight authority with respect to the Board's processing of variance applications or its variance procedures.

Sincerely,

Roberto Velez

c: Hon. Meenakshi Srinivasan  
Hon. Christopher Collins

## Jeffrey Mulligan

---

**From:** Kate Wood [katewood@landmarkwest.org]  
**Sent:** Monday, April 30, 2007 6:13 PM  
**To:** Jeffrey Mulligan  
**Subject:** Congregation Shearith Israel

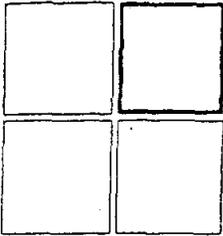
Dear Jeff:

I heard from the applicant that Congregation Shearith Israel will not present its proposal to Community Board 7 until June. Since they submitted their application to BSA on April 2, I had thought that CB7 only had until June 1 (60 days) to vote on the application. Has another arrangement been made?

Thanks,  
Kate

Kate Wood  
Executive Director  
Landmark West!  
45 West 67th Street  
New York, NY 10023  
Phone: 212-496-8110  
Fax: 212-875-0209  
[katewood@landmarkwest.org](mailto:katewood@landmarkwest.org)  
[www.landmarkwest.org](http://www.landmarkwest.org)

5/10/2007



**FRIEDMAN & GOTBAUM LLP**

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

May 21, 2007

BY HAND AND TELEFAX 212-755-8713

David Rosenberg, Esq.  
Marcus Rosenberg & Diamond, LLP  
488 Madison Avenue  
New York, NY 10022

Re: 74-07-BZ  
Congregation Shearith Israel  
Block 1122 Lots 36 & 37  
Manhattan

Dear Mr. Rosenberg:

This letter responds to your letter dated May 9, 2007 on behalf of your clients "Landmark West and various Upper West Side residents" conveying a number of requests with regard to documents relating to the subject Variance application, which proposes replacement of Congregation Shearith Israel's ("CSI's") current community house with a new community house and four floors of condominium units.

First permit me to say that CSI's Trustees wholeheartedly support the Department of Building's ("DOB's") policy of requiring an owner's consent prior to the release of sensitive structural information regarding synagogues and other similar sacred and public sites. If it is the combined and apparently uniform opinion of Mayor Bloomberg's Administration and federal agencies that sensitive construction and structural information should not be disseminated to the general public, the Trustees would consider it imprudent to disregard that opinion. Accordingly, the Trustees will not provide their wholesale consent to the release of such material to Landmark West! and certainly not to "various" unnamed persons but will take such requests under consideration on a case-by-case and need-to-know basis.

In light of the above, the responses to your specific requests are as follows:

On page two of your letter you state:

*[I]t would be unfair to force our clients – and the members of Community Board 7 – to attempt to respond to your Application without having access to the documents filed with and produced by DOB. Under the circumstances, this is to*

*request that you immediately provide CSI's written authorization for my firm to access and obtain copies of all records relating to the Property and the New Building in DOB's possession, custody or control.*

With all due respect, the Community Board and others in the community received full copies of the application and therefore have all the documents necessary to inform themselves and others of the contents of the application under consideration. Accordingly, the Trustees are not prepared to act on your omnibus request. Moreover, you have not indicated what documents you believe DOB is holding or has produced and for what purpose and by whom they are going to be reviewed. Please identify the documents or types of documents you believe are in "DOB's possession, custody or control." Access to documents is also a much different issue than dissemination of copies. There is a strong predisposition due to security concerns against providing consents for any copies whatsoever, so it would be helpful to understand why whatever materials you are seeking need to be released and disseminated as opposed to reviewed *in situ*. Finally, please provide the names and addresses of the individuals who would review any shared documents. Confidentiality agreements with named individuals appropriate to the obvious security concerns will be required.

On page two of your letter you state:

*The only DOB documents we have seen indicate that plans and applications for the New Building were filed on October 7, 2005, objections were issued by the DOB on on [sic] October 28, 205 [sic] and the application was disapproved on November 10, 2005. Then, on March 28, 2007, CSI apparently obtained a DOB stamp which sated [sic]: "Denied for appeal to the Board of Standards and Appeal" and indicated that it had been signed by the Borough Commissioner.*

*Since it had not been possible to obtain the New Building filings from DOB and since I also have been advised that they are not obtainable from the BSA, this is to request that you immediately provide me full and complete copies, including evidence of filing and objections issued.*

The materials requested have already been provided to your client. Consistent with a commitment I made to Landmark West! over a year ago, I provided Kate Wood with a complete set of our application on April 3, 2007, the day after it was filed at the BSA. The application includes copies of the complete set of plans filed at DOB and the Objections Sheet issued with regard thereto.

There is certainly no procedural mystery regarding these filings. It is common knowledge that the Landmarks Commission requires an Objections Sheet in connection with a review of an application for which its form of application indicates the project will require land use discretionary approvals. This accounts for the 2005 Objections Sheet, which remains in the Landmarks Commission's publicly accessible files. For BSA purposes, an Objections Sheet must be dated within thirty (30) days of the submission of an application, thus accounting for the more recent Objections Sheet. The subsequent Objections Sheet was also required because the New Building approved by the Landmarks Commission was smaller and shorter than the building associated with the earlier Objections Sheet.

On page three of your letter you state:

*It is also my understanding that DOB's rules require that a request for a reconsideration be filed in order to obtain a determination by the Borough Commissioner. Under the circumstances, I request a copy of the submission by CSI to obtain the denial and the dates of any meetings held, with the identity of the participants, in connection therewith.*

Once again, the "submission by CSI to obtain the denial" is already in your client's possession, being the plans and the Objections Sheet included in the application and provided to Kate Wood on April 3, 2007. A copy of the Objections Sheet is once again enclosed. Complete disclosure on this point having already been provided, I see no relevance between the stated purpose of your letter and the further submission to you of names and dates of meetings.

Very truly yours,



Shelly S. Friedman

Enclosure

cc: Hon. Scott Stringer  
Hon. Betsy Gotbaum  
Hon. Richard Gottfried  
Hon. Jeff Mulligan  
Hon. Sheldon Fine  
Kate Wood  
Norman Marcus, Esq.  
Rabbi Marc Angel  
Peter Neustadter  
David Nathan, Esq.



THE CITY OF NEW YORK  
 DEPARTMENT OF BUILDINGS  
 http://www.nyc.gov/buildings

X  
 MANHATTAN (1) 3RD BROADWAY 3<sup>RD</sup> FLOOR New York, NY 10007  
 BRONX (2) 1932 ARTHUR AVENUE BRONX, NY 10457  
 BROOKLYN (3) 210 JEROME STREET BROOKLYN, NY 11201  
 QUEENS (1) 120-55 CUFENS BLVD. QUEENS, NY 11124  
 STATEN ISLAND (5) BORO HALL ST. GEORGE STATEN ISLAND, NY 10301

DOB Application # 104250481	Examiner:	Date: 10/28/05
	Application Type: <del>XXX</del> NB	Doc (s):
	Address / Location: 10 West 70th Street	Block: 1122
	Zoning District: R8B; R10A	Lot: 37

Examiners Signature: *[Signature]*

To discuss and resolve these objections, please call 311 to schedule an appointment with the Plan Examiner listed above. You will need the application number and document number found at the top of this objection sheet. To make the best possible use of the plan examiner's and your time, please make sure you are prepared to discuss and resolve these objections before your scheduled plan exam appointment.

Obj. #	Doc #	Section of Zoning/ Code	Objections	Date Resolved	Comments

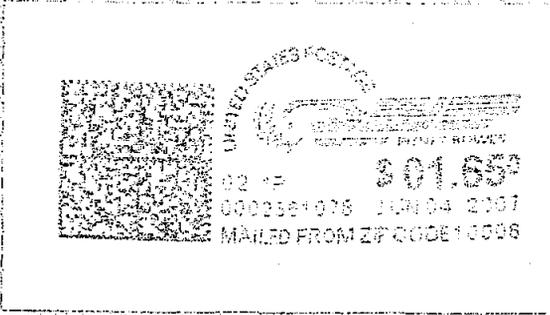
REQUIRED ACTIONS BY THE BOARD OF STANDARDS & APPEALS

1. PROPOSED LOT COVERAGE FOR THE INTERIOR PORTIONS OF R8B & R10A EXCEEDS THE MAXIMUM ALLOWED. THIS IS CONTRARY TO SECTION 24-11/77-24. PROPOSED INTERIOR PORTION LOT COVERAGE IS .80.
2. PROPOSED REAR YARD IN R8B DOES NOT COMPLY. 20.00' PROVIDED INSTEAD OF 30.00' CONTRARY TO SECTION 24-36.
3. PROPOSED REAR YARD IN R10A INTERIOR PORTION DOES NOT COMPLY. 20.00' PROVIDED INSTEAD OF 30.00' CONTRARY TO SECTION 24-36.
4. PROPOSED INITIAL SETBACK IN R8B DOES NOT COMPLY. 12.00' PROVIDED INSTEAD OF 15.00' CONTRARY TO SECTION 23-633.
5. PROPOSED BASE HEIGHT IN R8B DOES NOT COMPLY. 94.80' PROVIDED INSTEAD OF 60.00' CONTRARY TO SECTION 23-633.
6. PROPOSED MAXIMUM BUILDING HEIGHT IN R8B DOES NOT COMPLY. 113.70' PROVIDED INSTEAD OF 75.00' CONTRARY TO SECTION 23-633.
7. PROPOSED REAR SETBACK IN R8B DOES NOT COMPLY. 6.67' PROVIDED INSTEAD OF 10.00' CONTRARY TO SECTION 23-663.
8. PROPOSED SEPARATION BETWEEN BUILDINGS IN R10A DOES NOT COMPLY. 0.00' PROVIDED INSTEAD OF 40.00' CONTRARY TO SECTION 24-67 AND 23-711.

**DENIED**  
 FOR APPEAL TO BOARD OF  
 STANDARDS AND APPEALS

MAR 27 2007  
*[Signature]*  
 BORO COMMISSIONER

C



Mr. Alan D. Sugarman, Esq.  
17 West 70th Street , Suite 4  
New York, New York 10023



Alan D. Sugarman  
Attorney At Law

17 W. 70 Street  
Suite 4  
New York, NY 10023  
212-873-1571  
mobile 917-208-1516  
fax 212-202-3524  
sugarman@augsdaw.com

June 8, 2007

Ralph Perfetto  
Ombudsman  
The Public Advocate for the City of New York  
One Centre Street  
New York, New York 10007

Re:  
Congregation Shearith Israel  
6-10 West 70 Street/99 Central Park West  
BSA Improper Meetings and Failure to Comply With FOIL

Dear Mr. Perfetto:

Thank you for forwarding the letter you received dated May 29, 2007 from Jeff Mulligan of the Board of Standards and Appeals.

Interestingly, on the same day, I received from Mr. Mulligan a letter dated June 1, 2007, purporting to respond to my recent Freedom of Information Request – unbelievably, Mr. Mulligan did not provide to me a copy of his May 29 letter to you in his June 1 FOIL response to me. If anything can demonstrate the BSA's abusive and irresponsible refusal to comply with the requirement of FOIL, this failure to provide to me the letter to you is conclusive.

Mr. Mulligan is as well completely misapplying the attorney client exception provided in FOIL – it only applies to communications in the course of providing legal advice to a client. Anyone with the slightest understanding of the attorney-client privilege and acting in good faith would know that the meeting notes made by attorney of the improper November 8, 2006 meeting between BSA staff and Commissioners and the applicant are not subject to privilege.

Present at the November 8 meeting were five BSA representatives, only one of whom possibly was an attorney. So are we to believe that none of Commissioner Srinivasan, Commissioner Collins, Director Mulligan, and Senior Examiner Ned Weiss took notes at the improper November 8, 2006 meeting? Or did these public servants, in order to conceal what was being said, have a BSA attorney attend the meeting to take meeting notes so as to artificially create a FOIL privilege where none existed?

Or, do these BSA officials claim that the meeting was part of the deliberative process and so exempt from FOIL? Now we have BSA's dilemma – if the meeting was a deliberative

R

Office of the Public Advocate

June 8, 2007

Page 2 of 2

meeting, then OF COURSE there was an improper ex parte adjudicative meeting. The BSA cannot have it both ways. But, even then, notes of what was said cannot be privileged.

Finally, BSA could still redact attorney-client communications from the notes, if any privileged matter does in fact exist—something routinely done in litigation discovery (which are the rules that apply under FOIL for these types of documents.)

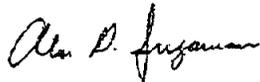
Remember, all I am asking to know is what did the Congregation representatives say to the BSA commissioners and staff, and vice versa? What is more appropriate for FOIL than this?

Finally, I note that the only communication between BSA and the applicant that BSA has provided in response to FOIL requests since the application was filed was an e-mail from the Congregation's attorney to BSA – and, of course, communications with other agencies such as the letter to you were not provided.

Clearly, BSA is abusing FOIL – and, it is even more improper because they are covering up the improper November 8, 2006 meeting.

As to the BSA reasons justifying the improper ex-parte meeting involving adjudicating hearing examiners in a quasi-judicial proceeding concerning the waiver of zoning laws, clearly, BSA cannot write rules to make legal that which is not legal.

Sincerely,



Alan D. Sugarman

P.S. Supporting Documents are posted at [ProtectWest70Street.org](http://ProtectWest70Street.org).

cc: Jeff Mulligan and other city officials.



# Board of Standards and Appeals

40 Reator Street, 9<sup>th</sup> Floor • New York, NY 10006-1705 • Tel. (212) 755-8300 • Fax (212) 755-8769  
Website @ [www.nyc.gov/bsa](http://www.nyc.gov/bsa)

MEENAKSHI SRINIVASAN  
Chair/Commissioner

June 1, 2007

Mr. Alan Sugarman, Esq.  
17 West 70<sup>th</sup> Street, Suite 4  
New York, New York 10025

Dear Mr. Sugarman:

This letter is in response to your May 24, 2007 request made under the State Freedom of Information Law ("FOIL"). The date of your last request was April 12, 2007, so the Board searched for records dated between April 12, 2007 and May 24, 2007.

Attached you will find a letter and attachments from the Public Advocate; your faxed correspondence to the Public Advocate; your letter to Roberto Valez, Chief Administrative Law Judge of OATH and his response to your letter; and a letter from Friedman & Gotbaum, LLP to David Rosenberg, Esq.

Based on our review, there are no other documents responsive to our request.

This letter is a final determination of the Board. You have the right to seek review of this determination pursuant to Article 78 of the Civil Law Practice and Rules, and Public Officers Law § 89(4)(b).

Please also be aware that it is the Board's policy to charge 50 cents/page for copies made in response to a FOIL request. Since the attachments total 17 pages, please forward a check or money order to the NYC Board of Standards and Appeals for \$8.50.

Sincerely,



Jeff Mathigan

Executive Director/Records Access Officer



# Board of Standards and Appeals

40 Rector Street, 9<sup>th</sup> Floor • New York, NY 10006-1705 • Tel. (212) 788-8500 • Fax (212) 788-8769  
Website @ [www.nyc.gov/bis](http://www.nyc.gov/bis)

MEENAKSHI SRINIVASAN  
Chair/Commissioner

May 29, 2007

Ralph Perfetto  
Ombudsman  
The Public Advocate for the City of New York  
One Centre Street  
New York, New York 10007

Dear Mr. Perfetto:

We are in receipt of your letter dated May 9, 2007 asking the Board of Standards and Appeals to investigate allegations from Alan Sugarman that the Board is not cooperating on providing information on the application for a variance at 6-10 West 70<sup>th</sup> Street (Congregation Shearith Israel, BSA 74-07-BZ). We are also in receipt of Mr. Sugarman's correspondence to the Public Advocate, which you have shared with us after our request.

Your letter states that representatives of the Board met with the applicants without community representatives invited to attend. Please be advised that Board staff and two Board members met with the applicant prior to the filing of the application, in a meeting that is entirely consistent with the Procedure for Pre-Application Meetings, as posted on the Board's website. There is no requirement that community representatives be invited to attend such a meeting. After receiving Mr. Sugarman's complaint that community representatives had not been invited, we extended an invitation to Mr. Sugarman to also meet with representatives of the Board. He did not accept the invitation.

Your letter also states that we did not provide notes of the meeting pursuant to a FOIL request. Please note that I, as the Board's FOIL Officer, along with the Board's FOIL Appeals Officer have explained in letters to Mr. Sugarman that hand-written meeting notes are not disclosed because they are subject to attorney/client privilege or attorney work product privilege, or because they are exempt under FOIL §87(2). Copies of the Board's letters to Mr. Sugarman are attached.

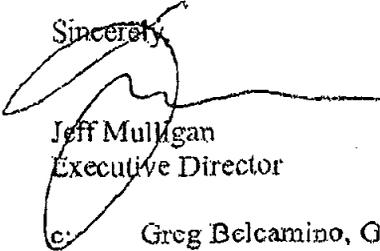
Mr. Ralph Perfetto  
May 29, 2007  
Page 2

Your letter also refers to Mr. Sugarman's allegation that the pre-application meeting was an ex-parte meeting. Please see the attached letter which states that we will address Mr. Sugarman's allegations of ex-parte communication at the first public hearing of this case, when calendared.

Finally, you have also attached letters from Mr. Sugarman which identify questions and concerns based on his review of the filed application for the variance – including the date of the DOB objection letter for the proposed project. Please be advised that we will consider the issues raised in Mr. Sugarman's letter as we review the application for the variance.

Please contact me at (212) 788-8805 should you have any questions.

Sincerely,



Jeff Mulligan  
Executive Director

c: Greg Belcamino, General Counsel



Alan D. Sugarman  
Attorney At Law

17 W. 70 Street  
Suite 4  
New York, NY 10023  
212-875-1571  
mobile 917-208-1516  
fax 212-202-3524  
sugarman@sugardlaw.com

October 2, 2007

Via Facsimile 212-788-8769

Jeff Mulligan  
Executive Director  
NYC Board of Standards and Appeals  
40 Rector Street 9<sup>th</sup> Floor  
New York, NY 10006-1705

Re: Freedom of Information Law Requests  
Shearith Israel Project at 8,10, 12 West 70<sup>th</sup> Street, New York, New York

Dear Mr. Mulligan:

Reference is made to my prior FOIL request including the latest FOIL request of May 24, 2007.

On June 1, 2007, BSA responded by providing documents that I had filed with the BSA, but not providing an important document which was a May 29, 2007 letter from you to The Public Advocate, as I described in my letter of June 8, 2007. BSA then charged me \$8.50, most of which was for pages I had sent to BSA.

In this request, please exclude copies of any documents sent by me or Landmark West to the BSA. Also, please exclude the revised application and drawings filed by the Congregation on September 2, 2007/

For purpose of definition, Congregation herein shall mean Congregation Shearith Israel, and any of its attorneys, consultants and architects acting for or on behalf of Congregation Shearith Israel, and any members and trustees of Congregation Shearith Israel.

For this request, the BSA shall mean the Commissioners, counsel, and staff of the BSA. Counsel shall mean present and prior attorneys employed by the BSA.

Pursuant to FOIL, please provide the following documents that in any way relate to the above application.

I. All e-mails including attachment between the Congregation and any counsel for the BSA.

Alan D. Sugarman to BSA

October 2, 2007

Page 2 of 2

II. All other correspondence between the Congregation and any counsel for the BSA, not included in item I.

I you feel that I should still pay the \$8.50 which you billed me for previously, I will do so when the new documents are available.

Sincerely,

A handwritten signature in cursive script that reads "Alan D. Sugarman". The signature is written in black ink and is positioned above the typed name.

Alan D. Sugarman

# **FAX COVER SHEET**

<b>TO</b>	Jeff Mulligan
<b>COMPANY</b>	Board of Standards and Appeals
<b>FAX NUMBER</b>	12127888769
<b>FROM</b>	Alan Sugarman
<b>DATE</b>	2007-10-02 20:35:56 GMT
<b>RE</b>	Foil Request

## **COVER MESSAGE**





**The Public Advocate for the City of New York**

*Improving Access to City Services*

**Betsy Gotbaum**  
Public Advocate

October 2, 2007

Jeff Mulligan, Executive Director  
NYC Board of Standards & Appeals  
40 Rector Street, 9<sup>th</sup> Floor  
New York, NY 10006

Re: Mr. Alan Sugarman  
17 West 70<sup>th</sup> Street, Suite 4  
New York, NY 10023

Dear Mr. Mulligan:

Public Advocate Betsy Gotbaum asked me to write to you on behalf of the aforementioned constituent, regarding his objections to your reply to our initial inquiry on his behalf last spring for BSA 74-07-BZ Congregation Shearith Israel, 6-10 west 70<sup>th</sup> Street, 99 Central Park West.

Mr. Sugarman has submitted to you his objections in a letter dated to you on September 19, 2007. Therefore, we are respectfully requesting a review of his objections, and a reply to our office with your findings.

Sincerely,

Ralph Perfetto  
Ombudsman

cc: Mr. Alan Sugarman



T





# BOARD OF STANDARDS AND APPEALS

40 Rector Street, 9<sup>th</sup> Floor · New York, NY 10006-1705 · Tel. (212) 788-8500 · Fax (212) 788-8769  
Website @ [www.nyc.gov/bsa](http://www.nyc.gov/bsa)

MEENAKSHI SRINIVASAN  
Chair/Commissioner

October 12, 2007

Alan D. Sugarman  
17 West 70<sup>th</sup> Street  
New York, New York 10023

Dear Mr. Sugarman:

This letter is in response to your October 2, 2007 request made under the State Freedom of Information Law ("FOIL"). The date of your last request was May 24, 2007, so the Board searched for records dated between May 24, 2007 and October 2, 2007.

Your request was for the following documents that in any way relate to the subject application:

- I. All emails including attachment between the Congregation (Shearith Israel) and BSA counsel (including commissioners, counsel and staff).
- II. All other correspondence between the Congregation and any counsel for the BSA, not included in item I.

You also ask us to exclude copies of any documents sent by your or Landmark West to the BSA, and to exclude the revised application and drawings filed by the applicant on September 2, 2007.

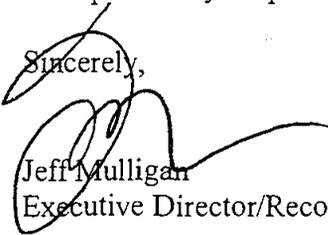
Based on our review, there are no other documents responsive to your request.

Your letter also notes that we did not provide the May 29, 2007 letter to the Public Advocate in our June 1, 2007 response to your May 24, 2007 FOIL request. As we stated in our June 1, 2007 letter, the Board provided records dated between April 12, 2007 and May 24, 2007. The letter to the Public Advocate was dated May 29, 2007.

This letter is a final determination of the Board. You have the right to seek review of this determination pursuant to Article 78 of the Civil Law Practice and Rules, and Public Officers Law Sec 89(4)(b).

Please also forward the payment for the outstanding balance of \$8.50 for the documents provided in response to your previous FOIL request.

Sincerely,

  
Jeff Mulligan  
Executive Director/Records Access Officer

c: Margaret P. Stix, General Counsel

✓



Alan D. Sugarman  
Attorney At Law

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

October 15, 2007

212-595-9317 Re: BSA 74-07-BZ  
Congregation Shearith Israel  
6-10 West 70th Street/99 Central Park West  
Block 1122 Lots 36, 37 - Manhattan

Hon. Sheldon J. Fine  
Chair Manhattan Community Board 7  
250 W. 87<sup>th</sup> St.  
New York, NY 10024

Dear Chair Fine:

On October 12, 2007, in the above matter the Board of Standards and Appeals issued a letter of objections to the revised application of the Congregation Shearith Israel and determined that the application remains not complete.

The BSA stated that if the Congregation is "unable to make a complete submission" within 60 days, the matter could be dismissed. The BSA stated that the issues "need to be addressed before these applications may be calendared by the Board."

Community Board 7 had previously scheduled a meeting of the Land Use Committee to consider this matter for October 17, 2007. It stands to reason that if the Congregation's application is so incomplete that the BSA will not even calendar the matter, then similarly, the Community Board has no reasonable basis to hold a meeting or hearing on the matter. Such a Community Board meeting or hearing at this time is entirely premature.

The BSA objections show that the Congregations' application:

- Incorrectly describes the requested variances both in the narrative and the accompanying drawings. (New BSA Objection 7-11)
- Provides confusing drawings that are mislabeled, and even has distinct sets of drawing that have the same labels. (New BSA Objection 13, 14, and 15).
- Misdescribes the actual square footage devoted to the Beit Rabban school (which would include office, bathroom, assembly, and recreation areas), thereby understating the valuation of the use by the school. (New BSA Objection 3).

✓

- Does not analyze uses on the entire zoning lot: the submissions by the Congregation continue to skirt around the residential rental use and income from the Parsonage which is part of the zoning lot claimed by the Congregation. (New BSA Objection 5).
- Fails to provide the contextual information as requested before in the BSA Initial Objection 23, which had stated:

BSA # 23. Page 25: Within the suggested "(c) finding," please discuss the built context along the subject blockfronts of West 70th Street and the alleged appropriateness of the proposed building in terms of neighborhood character. Please reference drawing P-17.

We believe that a context of the subject blockfronts on this narrow street showing the wall of buildings that will result on the south side of West 70<sup>th</sup> street will illustrate the compelling need for shadow studies as to the affect on the blockfronts. (New BSA Objection 12).

- Continues to adequately disclose the lot line windows of adjacent buildings, the obstruction of which had previously been concealed from the Community Board and BSA. (new objection 17).
- Overstates the valuation of the land by utilizing overstated development rights, the effect of which is to improperly decrease alleged rates of return. (New BSA Objection 22).
- Provides incomplete feasibility analysis for the various schemes. ( New BSA Objections 19-21).

Accordingly, it would be premature, if not wholly inappropriate, for Community Board to hold a meeting or hearing on this matter until such time as the Congregation has provided the minimal information required for BSA to even calendar the application. Neither the BSA nor the Community Board can consider an application that misdescribes the requested variances, includes inaccurate and confusing drawings, withholds significant base information, does not describe the objective contextual impact on the surrounding area, and uses patently incomplete (if not distorted) feasibility studies.

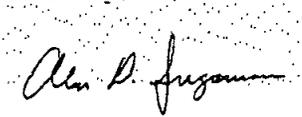
Even then, there is no doubt that as the facts are developed at the initial BSA hearing and any Community Board meetings or hearings, it will be seen that there is no legal or factual basis for the requested variances, and further gaps and distortions in the Congregation's application will be revealed.

Letter to Sheldon Fine

October 15, 2007

Page 3 of 3

Sincerely,



Alan D. Sugarman

P.S. Supporting Documents are posted at [ProtectWest70Street.org](http://ProtectWest70Street.org).

cc: Jed Weiss, NYC Board of Standards and Appeals  
Jeff Mulligan, NYC Board of Standards and Appeals  
Hon. Betsy Gotbaum, Public Advocate of the City of New York  
Hon. Gale Brewer, New York City Council Member  
Hon. Scott Stringer Manhattan Borough President  
Hon. Richard Gottfried State Assembly Member  
Norman Marcus  
Kate Wood, Executive Director, Landmark West  
Shelly Friedman, Esq, Friedman & Gotbaum LLP





# NEW YORK STATE ASSEMBLY

RICHARD N. GOTTFRIED  
75TH ASSEMBLY DISTRICT

CHAIR  
COMMITTEE ON HEALTH

822 LEGISLATIVE OFFICE BUILDING, ALBANY, NY 12248  
TEL: 518-455-4949 FAX: 518-455-5939

242 WEST 27TH STREET, NEW YORK, NY 10001  
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COMMITTEES:  
RULES  
HEALTH  
HIGHER EDUCATION  
MAJORITY STEERING

CHAIR  
MANHATTAN DELEGATION

October 17, 2007

Meenakshi Srinivasan  
Chair  
Board of Standards and Appeals  
40 Rector Street, 9th Floor  
New York, NY 10006

Dear Chairperson Srinivasan:

It has come to my attention that adjudicatory officers of the New York City Board of Standards and Appeals participate in closed ex parte meetings with applicants.

For example, I have been informed that such a meeting took place with attorneys, architects, and consultants hired by Congregation Shearith Israel prior to their submission of an application for zoning variances on an expansion project.

While it is appropriate for agency *staff* to meet with applicants and potential applicants, I believe contacts such as these are inappropriate for *adjudicatory officers* of a quasi-judicial agency such as the BSA.

I believe these meetings may be contrary to City and State administrative procedure laws. Such meetings deprive interested parties of their right to know what arguments and information are being submitted to the adjudicatory officer and to present opposing material. The continuation of this policy may promote the appearance of inappropriate influence, and could potentially prejudice the Board on matters it reviews.

I would appreciate it if you would advise me of BSA's policy and practice regarding ex parte meetings and the legal basis for the policy and practices.

Very truly yours,

Richard N. Gottfried  
Assembly Member

RNG/mk





# BOARD OF STANDARDS AND APPEALS

40 Rector Street, 9<sup>th</sup> Floor · New York, NY 10006-1705 · Tel. (212) 788-8500 · Fax (212) 788-8769  
Website @ [www.nyc.gov/bsa](http://www.nyc.gov/bsa)

MEENAKSHI SRINIVASAN  
Chair/Commissioner

October 17, 2007

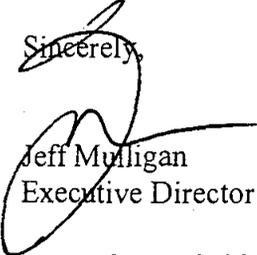
Ralph Perfetto  
Ombudsman  
Public Advocate for the City of New York  
One Centre Street  
New York, New York 10007

Dear Mr. Perfetto:

We are in receipt of your letter dated October 2, 2007 requesting a review of a September 19, 2007 letter from Alan Sugarman. Mr. Sugarman's letter provides details on his opposition to the revised application for a variance filed by Shearith Israel. Mr. Sugarman's letter has been reviewed by staff and has been entered into the case file. The commissioners will have copies of Mr. Sugarman's letter when they review the application once it has been placed on the public hearing calendar.

Please contact me should you need additional information on the application.

Sincerely,

  
Jeff Mulligan  
Executive Director

c: Meenakshi Srinivasan, Chair  
Margaret Stix, General Counsel

X

II



**The Public Advocate for the City of New York**

*Improving Access to City Services*

**Betsy Gotbaum**  
Public Advocate

October 2, 2007

Jeff Mulligan, Executive Director  
NYC Board of Standards & Appeals  
40 Rector Street, 9<sup>th</sup> Floor  
New York, NY 10006

Re: Mr. Alan Sugarman  
17 West 70<sup>th</sup> Street, Suite 4  
New York, NY 10023

Dear Mr. Mulligan:

Public Advocate Betsy Gotbaum asked me to write to you on behalf of the aforementioned constituent, regarding his objections to your reply to our initial inquiry on his behalf last spring for BSA 74-07-BZ Congregation Shearith Israel, 6-10 west 70<sup>th</sup> Street, 99 Central Park West.

Mr. Sugarman has submitted to you his objections in a letter dated to you on September 19, 2007. Therefore, we are respectfully requesting a review of his objections, and a reply to our office with your findings.

Sincerely,

Ralph Perfetto  
Ombudsman

cc: Mr. Alan Sugarman



X



Alan D. Sugarman  
Attorney At Law

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New York, NY 10023  
212-873-1371  
mobile 917-208-1516  
fax 212-202-3524  
sugarman@sugarlaw.com

October 29, 2007

Jeff Mulligan, Executive Director  
Jed Weiss, Senior Examiner  
NYC Board of Standards and Appeals  
40 Rector Street - 9th Floor  
New York, New York 10006

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

Dear Messrs. Mulligan and Weiss:

Without providing the community and Community Board 7 any opportunity to consider the merits of the Congregation Shearith Israel's Second Revised Application filed this past Thursday, October 24 at 2:00 PM, the Board of Standards and Appeals is moving forward with a full hearing on Tuesday, November 27, 2007, just after Thanksgiving.

I received a copy of the Notice of Hearing which was dated today. Under the BSA rules, this notice is to be provided 30 days prior to the hearing. Therefore, the notice is untimely and the hearing is improper under BSA rules.

In addition, to hold this hearing so abruptly contravenes the spirit and letter of the BSA rules. Clearly, under the City Charter (Chapter 27 § 668) and under the BSA's own rules of procedure (§ 1-06), the BSA is not supposed to hold its hearing until 60 days AFTER the Community Board receives the entire package of materials. Neither the Congregation nor the BSA had the courtesy to provide CB7 with this full package last week. In fact, the Community Board was not even informed of the filing for over 24 hours. Apparently the package was received today and that means it has 60 days from today to hold its hearings.

In the interim, it appears that within hours of its receipt, the BSA was able to review the new documents – 21 pages of detailed financial numbers and new assumptions, a 41 page new statement in support with changes on every page, and 70 pages of drawings, added to the prior material, all of which was not superseded. And, then, the BSA apparently immediately determined that the new application was substantially complete.

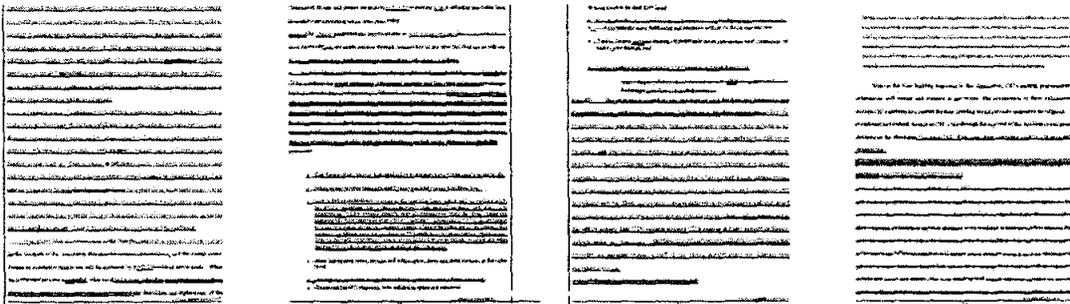
To be clear, all of the problems the Congregation is having is its own doing for having filed incomplete, incorrect, misleading, and indeed duplicitous versions of its application.

What was filed last week by the Congregation is nothing more than a new application package, to which the full 60 day period applies. We cannot understand why BSA is manipulating the rules to accommodate an applicant who ignores the rules.

What is worse, this is the second time that this same lawyer for a similarly positioned synagogue has maneuvered the BSA to prevent a community board from completing the mandated review process – and I refer to the deplorable situation as to the Ramaz project on the East Side.

The BSA must allow CB7 to have an opportunity to give the application the full consideration that it deserves and hold off calendaring this application until CB7 has completed its review process and the community has had an opportunity to review and study, and then comment on the Second Revised Application.

The Second Revised Statement in Support has changes on almost every single page.



Redline of pages from the Second Revised Statement Showing Changes on Every Page

As well, the Second Revised economic feasibility study is a substantial departure from the prior versions and is based upon a completely new methodology with new numbers that vary by millions of dollars with completely different assumptions.

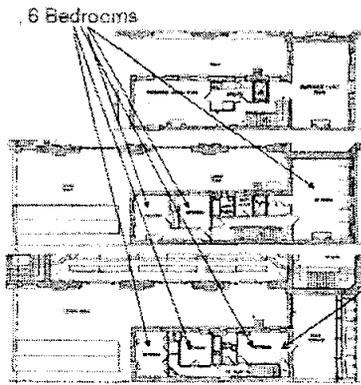
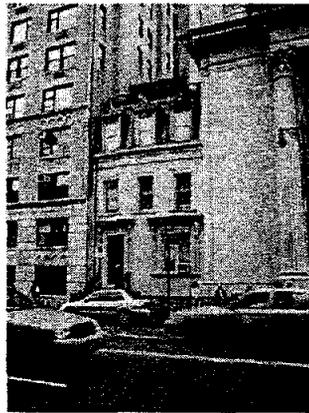
Similarly, the Second Revised Application remains severely deficient, partly as a result of the BSA's failure and refusal to meet its obligations to collect information it knows is relevant to the necessary variance findings.

Examples:

- The Second Revised Application continues to fail to disclose the facts about the Beit Rabban School. Despite the community having explicitly alerted BSA staff as to this issue, BSA seems to be intimidated from asking o the Congregation to provide a copy of current lease information and future commitments. The school income is part of the major new reworking of the feasibility study. Why will the BSA not ask for the facts?

- The Second Revised Application fails to disclose all relevant information about the renovated six bedroom Parsonage townhouse on Central Park West, which is part of the zoning site and is being rented out at \$18,000 a month or more. This is relevant to the financial need asserted by the Congregation as well as to whether alternatives exist to meet the Congregation's asserted needs.<sup>1</sup> Clearly, many of the urgent needs asserted by the Congregation could be accommodated by the Parsonage space. And, the BSA has never even asked for specific information about the Parsonage even though the community over many months has explicitly informed the BSA of this situation.

### CPW Parsonage: 6 br, terrace, living room, dining room



- The Second Revised Application continues to fail to provide any back-up in its narrative as to the supposed access, accessibility and circulation issues that the Congregation claims only a new nine-story building will resolve. Despite having been explicitly alerted by the community as to the gross distortions in the previous application, the BSA continues to avoid requiring any back-up or specificity by the applicant as to its wild conclusory assertions.

---

<sup>1</sup> At its 17 October preliminary hearing held by CB7 on the incomplete application, the Congregation finally admitted that the Parsonage is being rented out at market rates and was recently renovated:

Page 119

9 It did renovate it, it did

10 imply landmarks for facade work and the

11 like, and has again **rented it out and,**

12 **at market rate to a tenant who has a**

13 **family there** and can use the building in

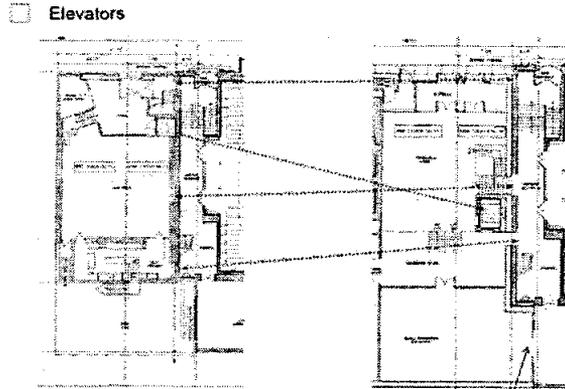
14 which it was built for the purposes it

15 was built as a residential unit. How

16 that might have been different

17 architecturally beyond that tied into

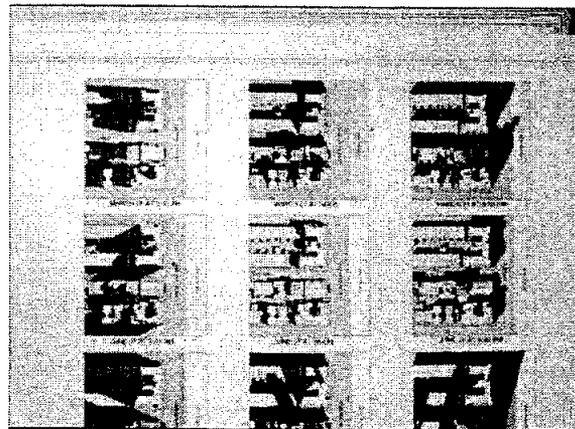
## First Floor Access



Identical Access in Existing and Proposed Building

As one example, the latest Second Revised Statement in Support continues with a new narrative that claims multiple new elevators will service the sanctuary, when, in fact there is an elevator working today which is merely being replaced in the new building. But, the BSA stands by in silence.

- The Second Revised Application continues to fail to provide information absolutely required to support findings as to the impact on the community in the form of shadow studies showing the impact on West 70<sup>th</sup> Street. This is despite the fact that the essential issue in the case is the desire of the Congregation to vitiate mid-block zoning. Intrinsicly, mid-block zoning is about bulk, light and air. The issues of light, air and bulk have not been decided—not by the LPC and not by the CB7. At the landmarks stage of this matter, both the Congregation and the LPC agreed that issues of light, air, and bulk were not matters for consideration by LPC. Now, that we are at the BSA stage, the Congregation, is insisting that issues were resolved by the LPC approval. (See below). Why would the Congregation make such a representation?



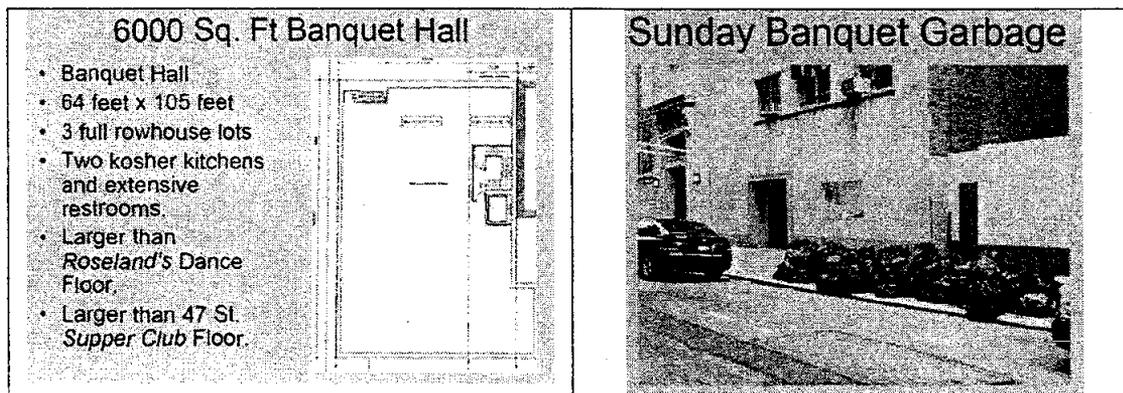
2002-3 Shadow Studies Provided to LPC by CSI

So, why is it that the LPC, which **has no jurisdiction** over shadows supposedly, receive shadow studies, but, the BSA, which **does have** jurisdiction, did not receive or even ask for shadow studies.

Could it be that the shadow studies they have done but have not provided to either the CB7 or the public disclose the true impact of the proposed luxury condominium project on light and air?

Yet BSA staff adamantly refuses to request that the Congregation provide shadow studies, despite the fact that in 2003, the Congregation did provide limited shadow studies to LPC, studies so damaging to the Congregation, that no further studies every surfaced. Why is the BSA ignoring its responsibilities to gather this information?

There are other issues where large factual gaps exist, including issues relating to the 6000 square foot banquet hall.



But let us assume that finally the BSA insists upon this relevant core information at the BSA hearing – this means that the Community Board will never ever have a chance to review and comment upon core factual matters. This is NOT how the system was intended to work.

Even more troubling, the Congregation announced to the Community Board that this project is all but approved by the BSA and that it has been approved by the Bloomberg Administration. I am sure the BSA will be pleased to know that this matter has already been decided by the Bloomberg administration, and, that its role now is to rubber stamp that decision. As Shelly Friedman stated to CB7's Committee on October 17, 2007:

Page 7

3 Tonight we appear before you  
4 with the full imprimatur of the  
5 Landmarks Commission, **which is approved**  
**6 on behalf of the Bloomberg**  
**7 administration, everything you see here**  
**8 tonight.**

9 At this point, I think it's  
10 fair to say that that in and of itself  
11 is a big change. We are no longer  
12 simply an applicant. We have a design  
13 **approved by and supported by the**  
**14 Bloomberg administration,** the Landmarks  
15 Commission and we think that's a  
16 significant difference that appeared  
17 before you last time.

Page 8:

6 [T]he issues regarding scale and  
7 appropriateness and historical district  
8 are now, as far as the State of New York  
9 is concerned, the voice of the Landmarks  
10 Commission has been heard.  
11 As you know, this was the  
12 building you're going to see was  
13 unanimously approved by the Landmarks  
14 Commission and that is, and that is an  
15 important element of any application to  
16 the Board of Standard and Appeals with  
17 regard to the required findings.  
18 **In addition to the imprimatur**  
**19 of the Bloomberg administration,** we have  
20 a monitor of the community board in  
21 several respect.

For the Congregation and Mr. Friedman, the BSA is an "easy" agency:

Page 15

8 So that's why we're at the  
9 Board of Standards and Appeals through  
10 absolutely no effort of our own to get  
11 to the **easier** agency.

That of course brings up the relationship between the Congregation and Mr. Friedman and the BSA. First, the central issue of the role of the economic feasibility study was the

### **Community Requests for Further Information**

The Congregation has been less than cooperative when approached by the community with requests for information and less than forthcoming when making presentations to city agencies. I believe that it is crucially important that the BSA insist on direct and complete responses to the following questions. These questions relate to the Revised Application – so far I have not completed a review of the Second Revised Application. We have also been unable to make any sense at all as to the Feasibility Study second supplement which we just received.

These questions are indicative or more to come after we review the new material.

1. What is the rent being paid on the Parsonage?
2. What renovations were performed on the Parsonage within the last 4 years, and how much was expended?
3. As to the “Hebrew School” operated by the Congregation and stated as part of its program, please provide a schedule showing when the school meets with detail as to the number of students actually attending the sessions and the specific classrooms utilized by this “Hebrew School.”
4. What is the rent being paid by the tenant Beit Rabban School?
5. Provide a copy of the lease with the Beit Rabban School?
6. What is the tuition range for students at the Beit Rabban School?
7. Who paid, and how much, for the renovations in the Community House and vacant site for improvement for the Beit Rabban School – including window openings and the trailer?
8. Is there a memorandum of understanding or lease as it would apply to the new Beit Rabban School?
9. How many of the students of the Beit Rabban School live within 1 mile of the school?
10. How many of the directors of the Beit Rabban School live within 1 mile of the school?
11. Please provide a shadow study showing the impact of shadows on West 70<sup>th</sup> Street and show at least 50 percent of the West 70<sup>th</sup> block.
12. What is the proposed use and permitted occupancy that will be in the Certificate of Occupancy for the Banquet Hall?
13. How does the Congregation propose to provide adequate exits for the subterranean banquet hall, especially for a building which the NYC Department of Buildings has designated as sensitive: i.e., a potential terrorist target?

Alan Sugarman to Jeff Mulligan BSA

October 29, 2007

Page 9 of 10

14. What will be their impact on traffic by banquet hall use? (If each member of the Congregation holds one event every 15 years, then there will be an event every single weekend with traffic related to 6000 square feet.)
15. What accommodations are made for garbage generated by banquet events?
16. Page 11 of the revised Application, it states that: "Its primary sanctuary cannot be reached without great labor." Please provide a drawing showing exactly where members face "great labor" entering the sanctuary and provide photographs of the specific areas.
17. On page 11 of the revised Application, it states that "These access deficiencies can only be addressed by demolishing the Community House and replacing it with a new contiguous building designed with circulation systems ..." Please mark clearly on drawings exactly where these circulation systems are improved and show the difference between the current and proposed building as to the circulations systems. Also, please provide a copy of the studies referred to on page 11. Please mark the multiple elevators claimed to service the upper floors of the synagogue. Please show the handicapped ramps to provide accessibility between the lower levels of the sanctuary and the new building, and show how this accessibility is different from that in the current building.
18. Please provide an existing conditions drawing showing the entire eastern face of 18 West 70<sup>th</sup> Street as requested previously.

Please adjourn the scheduled BSA meeting, require complete information from the Applicant, and then provide the Community Board with the 60 day review period allowed under the City Charter and BSA rules.

Sincerely,



Alan D. Sugarman

P.S. Supporting Documents are posted at [ProtectWest70Street.org](http://ProtectWest70Street.org).

cc:

Hon. Betsy Gotbaum, Public Advocate of the City of New York  
Hon. Gale A. Brewer, New York City Council Member  
Hon. Scott M. Stringer, Manhattan Borough President  
Hon. Richard N. Gottfried, State Assembly Member, District 64  
Hon. Thomas K. Duane, State Senator, District 29  
Hon. Sheldon J. Fine, Chair, Manhattan Community Board 7  
Hon. Helen Rosenthal, Chair-elect, Manhattan Community Board 7  
Alan Geiger, Department of City Planning  
Kate Wood, Executive Director, LANDMARK WEST!

Alan Sugarman to Jeff Mulligan BSA  
October 29, 2007  
Page 10 of 10

Shelly Friedman, Esq. and Lori Cuisinier, Friedman & Gotbaum LLP





# Board of Standards and Appeals

40 Rector Street, 9<sup>th</sup> Floor • New York, NY 10006-1705 • Tel. (212) 788-8500 • Fax (212) 788-8769  
Website @ [www.nyc.gov/bsa](http://www.nyc.gov/bsa)

MEENAKSHI SRINIVASAN

Chair/Commissioner

**VIA FACSIMILE  
AND FIRST CLASS MAIL**

November 7, 2007

Hon. Richard N. Gottfried, 75<sup>th</sup> A.D.  
NYS Assembly  
242 West 27<sup>th</sup> Street  
New York, New York 10001

Dear Assemblyman Gottfried:

I am responding to your October 17, 2007 letter to Chairperson Meenakshi Srinivasan in which you inquire whether the Board's participation in pre-application meetings constitutes ex parte communication. Your letter cites a meeting with representatives of Congregation Shearith Israel as an example.

Please be advised that the Board has a strict policy prohibiting commissioners from communicating with applicants or the general public – outside of the public hearing process – on pending/filed cases. However, the Board does hold informal pre-application meetings with potential applicants that are generally attended by staff, the Board chair, and sometimes an additional commissioner. Potential applicants may meet with the Board to ensure that they fully understand the Board's procedures and requirements before beginning the lengthy application process (see [http://www.nyc.gov/html/bsa/downloads/pdf/forms/pre-ap\\_instructions.pdf](http://www.nyc.gov/html/bsa/downloads/pdf/forms/pre-ap_instructions.pdf) describing the procedure for pre-application meetings). These meetings, which have no bearing on the ultimate outcome of the case if subsequently filed, are a common practice among zoning boards to promote efficiency (see *Comment: Ex Parte Communications in Local Land Use Decisions*, 15 B.C. Env'tl. Aff. L. Rev. 181, 187 (1987)).

The Board's pre-application meetings do not constitute ex parte communications under the State or City Administrative Procedure Act ("CAPA") which defines ex parte communications as "communications relating to other than ministerial matters *regarding a hearing*" which are received by a hearing officer (see CAPA § 1046(c) (emphasis added)). Because a pre-application meeting occurs outside a hearing context, indeed occurs before an actual application is even filed, such a meeting does not therefore constitute ex parte communication.

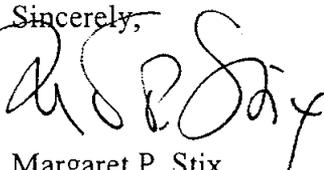
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11

Please note that, in the case of Shearith Israel, the pre-application meeting to which you refer occurred on November 8, 2006, well in advance of the April 2, 2007 filing of the application. Since that meeting did not occur while the application was pending, it was not ex parte.

Should you or any member of your staff have additional questions regarding the Board's pre-application process, please feel free to contact Jeff Mulligan, the Board's Executive Director, at (212) 788-8805.

Sincerely,



Margaret P. Stix  
General Counsel

C: Meenakshi Srinivasan, Chair  
Jeff Mulligan, Executive Director



Alan D. Sugarman  
Attorney At Law

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212-875-1571  
mobile 917-208-1516  
fax 212-202-5524  
sugarman@sugardaw.com

November 14, 2007

Jeff Mulligan, Executive Director  
NYC Board of Standards and Appeals  
40 Rector Street - 9th Floor  
New York, New York 10006

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

Dear Mr. Mulligans:

I have received a copy of a letter dated November 7, 2007 from Margaret O. Stix, General Counsel of BSA, to Assemblyman Richard Gottfried concerning improper ex parte meetings by BSA hearing examiners adjudicating waivers of zoning laws at quasi judicial proceedings. As you know, I have a pending request that two Commissioners recuse themselves from this proceeding.

I am aware that this would mean that the proceeding would need to be adjourned until Mayor Bloomberg appoints another Commissioner, but, this issue of recusal has been on the table since at least April of this year, if not last November. Furthermore, the Applicant should have considered this possibility of delay when it solicited such a obviously improper meeting.

Ms. Stix's response is wholly disingenuous - to suggest that the November meeting is part of this proceeding is a gross misrepresentation of the facts. No authority can be provided to show that hearing examiners of zoning boards with full time professional staff may meet with quasi judicial applicants for the purpose of discussing a proposed application.

In any event, Ms. Stix asserts there are strict policies prohibiting ex parte communications by the Board. I note that in many variance proceedings, Commissioners make on-site visits.

If an on-site visit is made of the Congregation's site (which I would assume would include inspection of the private home at the Parsonage and the interior where all of the alleged access issues exist), what provision is made to avoid discussions of any type between the Applicant and the Commissioners?

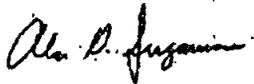
AA

Alan Sugarman to Jeff Mulligan BSA  
November 14, 2007  
Page 2 of 2

In any event, I formally request that I be advised of any such proposed site visit and that I, along with other opponents of this project who are on record as being opposed, be invited to accompany the Commissioner's at any such visit. This would be an excellent opportunity to explore the innumerable inconsistencies between the Second Revised Statement in Support and the actual situation at the site.

As I have also noted in prior communication, and a significant fact ignored by Ms. Stix's letter, that just prior to the improper November, 2006 meeting both I and Landmark West had already communicated with the BSA as to our opposition to the project. Yet knowing the identity of opponents to the project, the BSA went ahead and held a private ex parte meeting and has adamantly refused since to provide notes of the meeting or to otherwise explain what occurred.

This situation should not be made worse by one more ex parte meeting.



Alan D. Sugarman

P.S. Supporting Documents are posted at [ProtectWest70Street.org](http://ProtectWest70Street.org).

cc:

Hon. Richard N. Gottfried, State Assembly Member, District 64  
Hon. Meenakshi Srinivasan, Chair, Board of Standard and Appeals  
Margaret P. Stix, General Counsel, Board of Standards and Appeals  
Richard Asche, Co-Chair CB7 Land Use Committee  
Page Cowley, Co-Chair CB7 Land Use Committee  
Hon. Betsy Gotbaum, Public Advocate of the City of New York  
Hon. Gale A. Brewer, New York City Council Member  
Hon. Scott M. Stringer, Manhattan Borough President  
Hon. Thomas K. Duane, State Senator, District 29  
Alan Geiger, Department of City Planning  
Kate Wood, Executive Director, LANDMARK WEST!  
Shelly Friedman, Esq. and Lori Cuisinier, Friedman & Gotbaum LLP



Alan D. Sugarman  
Attorney At Law

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

April 11, 2008

Via US Mail  
Via Facsimile 212-788-8769  
Via E-Mail [jmulligan@dcas.nyc.gov](mailto:jmulligan@dcas.nyc.gov)

Jeff Mulligan  
Executive Director  
NYC Board of Standards and Appeals  
40 Rector Street 9<sup>th</sup> Floor  
New York, NY 10006-1705

Re: Freedom of Information Law Request -FOIL  
Shearith Israel Project at 8, 10, 12 West 70<sup>th</sup> Street, New York, New York

Dear Mr. Mulligan:

On behalf of myself, Nizam Peter Kettaneh, and other residents of West 70th St., I hereby make this formal FOIL request.

In this request, please exclude copies of any documents sent by me, Landmark West, or David Rosenberg to the BSA. Also, please exclude the application and drawings packages filed by the Congregation on or about April 2, 2007, September 2, 2007, October 27, 2007, December 28, 2008, March 11, 2008, and April 1, 2008. Please also exclude the transcripts of the two public meetings.

For purpose of definition, Congregation or CSI herein shall mean Congregation Shearith Israel and any of its attorneys, consultants and architects acting for or on behalf of Congregation Shearith Israel, and any members or trustees or honorary trustees of Congregation Shearith Israel.

For this request, the BSA shall mean the Commissioners, counsel, and staff of the BSA.

Pursuant to FOIL, please provide the following documents (including of course e-mails, notes of meeting and telephone calls) that in any way relate to the above application.

1. All documents concerning on-site visits at Shearith Israel by Commissioners or anyone else at the BSA including documents showing the names of representatives of CSI present at the site visits and the date or dates of said site visits.

Alan D. Sugarman to BSA  
April 11, 2008  
Page 2 of 2

2. All documents including notes of meeting whereby the BSA referred to, waived, modified, varied or clarified the application and other information requests or requirements of BSA including without limitation BSA's "Detailed Instructions for Completing BZ Application" and without limitation those reflected in objection letters, letters provided by BSA, BSA regulations, statutes, or requests by BSA to CSI at transcribed hearings, or in or by any other documents.

3. All documents reflecting communications between BSA and DOB concerning this application including references to the issues raised by David Rosenberg in the litigation with DOB related to CSI and the letters from David Rosenberg to BSA.

3. All other communications including e-mails, correspondence and notes of communications, between CSI and BSA not previously supplied by BSA in response to a FOIL from me and not excluded above.

It is our position that in an Article 78 proceeding appealing any action on the variance application, the City and the BSA cannot use any documents or information not disclosed to us pursuant to this and other FOIL requests. Nor can the BSA itself in making its findings rely upon or refer to documents and information not so disclosed.

I you feel that I should still pay the \$8.50 which you billed me for previously for documents including documents I generated. I will do so when the new documents are available or will pay now if you so advise. This is the second time I have stated this.

Sincerely,



Alan D. Sugarman





# Board of Standards and Appeals

40 Rector Street, 9<sup>th</sup> Floor • New York, NY 10006-1705 • Tel. (212) 788-8500 • Fax (212) 788-8769  
Website @ [www.nyc.gov/bsa](http://www.nyc.gov/bsa)

MEENAKSHI SRINIVASAN  
Chair/Commissioner

April 21, 2008

Alan D. Sugarman  
17 West 70<sup>th</sup> Street  
New York, New York 10023

Dear Mr. Sugarman:

This letter is in response to your April 11, 2008 request made under the State Freedom of Information Law ("FOIL"). The date of your last request was October 2, 2007, so the Board searched for records dated between October 2, 2007 and April 11, 2008.

Based on our review, the following documents are provided pursuant to your request:

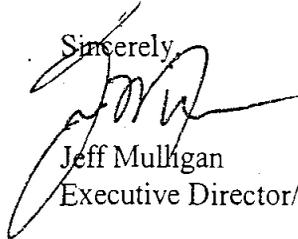
1. An email from Shelly Friedman of CSI on March 4, 2008 and a response from Jeff Mulligan on March 7, 2008. The attachment to the March 4, 2008 email is also enclosed.
2. An eight page fax from Jessica Daniels and Jack Freeman of CSI on February 22, 2008.
3. A February 11, 2008 email from BSA Commissioner Eileen Montanez re. site visit to CSI
4. A January 2, 2008 email from Shelly Friedman
5. A November 23, 2007 email from BSA Commissioner Dara Ottley-Brown re. site visit to CSI
6. A November 21, 2007 email from BSA Commissioner Susan Hinkson re. site visit to CSI
7. A November 26, 2007 email from Shelly Friedman
8. An October 16, 2007 email from Shelly Friedman (with attachments)

Please be advised that we do not have any additional documents responsive to your April 11, 2008 request. Please also be advised that, as we have stated in previous correspondence to you, handwritten notes, to the extent that they exist, are exempt from disclosure under FOIL Sec. 83(2)(g).

This letter is a final determination of the Board. You have the right to seek review of this determination pursuant to Article 78 of the Civil Law Practice and Rules, and Public Officers Law Sec 89(4)(b).

The total copying cost for these documents is \$12.50. Please also forward the payment for the outstanding balance of \$8.50 for the documents provided in response to your previous FOIL request.

Sincerely,



Jeff Mulligan  
Executive Director/Records Access Officer

c: Margaret P. Stix, General Counsel

**Jeffrey Mulligan**

---

**From:** Jeffrey Mulligan  
**Sent:** Friday, March 07, 2008 1:55 PM  
**To:** Shelly Friedman  
**Subject:** RE: CSI Response to Lebow Letter of 2/21/08

Shelly – Please submit a hardcopy. Thanks.

---

**From:** Shelly Friedman [mailto:sfriedman@frigot.com]  
**Sent:** Tuesday, March 04, 2008 6:24 PM  
**To:** Jeffrey Mulligan; iatholdings@aol.com; CAPlatt@pbdw.com; rhdovell@pbdw.com  
**Subject:** CSI Response to Lebow Letter of 2/21/08

CSI response attached. Jeff – Is it acceptable to email cc's like this? Will submit hardcopy if necessary.

*PLEASE CONSIDER THE ENVIRONMENT BEFORE PRINTING THIS EMAIL*

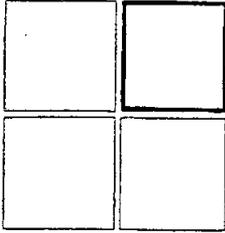
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**SHELLY S. FRIEDMAN**  
**FRIEDMAN &** 568 Broadway Suite 505  
**GOTBAUM, LLP** New York, NY 10012

Phone: 212.925.4545  
Fax: 212.925.5199

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**FRIEDMAN & GOTBAUM LLP**

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

March 4, 2008

**Via US MAIL**

Mark D. Lebow, Esq  
Lebow & Sokolow, LLP  
770 Lexington Avenue  
New York, NY 10065-8165

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

Dear Mr. Lebow:

I write in response to your letter of February 21, 2008.

Please be advised that we will submit for the record the floorplan drawing shown to the Board for illustrative purposes with our supplemental papers on March 11. Inasmuch as the floorplan was used only to respond to a Commissioner's question at the hearing and not as part of our application, no submission was necessary. Nor was any member of the public prevented from asking to examine the drawing at the time.

In addition, we will not accede to your request that Craig Morrison be given the opportunity to "tour all of the buildings on the zoning site that is [sic] the subject of this application." I note that Mr. Morrison did not believe a tour of the buildings was necessary prior to his offering his expert testimony at the February 12th hearing nor did he state during his testimony that his ability to offer his expert opinion was in any way hampered by lack of access to the buildings. I also note that he neither complied with the Board's schedule for timely submission of his report to the Board and Applicant, nor produced a copy of his report to any party until after the public hearing had closed for the day. Under the circumstances, your request appears to be a procedural afterthought on which to base further requests for extensions and delays. If Mr. Morrison now feels he lacks the factual basis necessary to render his opinion, he should feel free to direct any factual questions he may have in writing to Messrs. Platt and Dovell within the timeframe allowed each party for comment.

With regard to your third point, any documents filed and logged in at the Board office on behalf of the Applicant will be hand-delivered or overnight expressed to you as filed.

Very truly yours,

Shelly S. Friedman

cc: Hon. Meenakshi Srinivasan  
Hon. Jeff Mulligan  
Peter Neustadter  
Charles Platt  
Ray Dovell

LEBOW & SOKOLOW LLP

ATTORNEYS AT LAW  
770 LEXINGTON AVENUE, SIXTH FLOOR  
NEW YORK, NEW YORK 10065-8165  
TEL: 212-935-6000 FAX: 212-935-4865

February 21, 2008

VIA U.S. MAIL

Shelly S. Friedman, Esq.  
Friedman & Gotbaum LLP  
568 Broadway, Suite 505  
New York, New York 10012

**Re: Congregation Shearith Israel, 6-10 West 70<sup>th</sup> Street**

Dear Mr. Friedman:

Following up on the hearing of February 12, 2008, we have two requests:

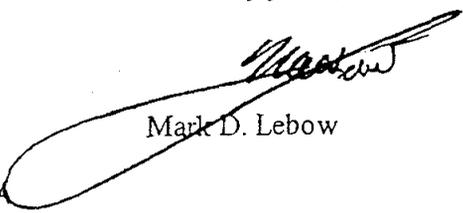
First, please provide us with copies of the drawings that you and Charles Platt presented to the BSA during the February 12 hearing. Among other subjects, the drawings appeared to contain another variation of the proposed building in which a "notch" was suggested relating to the windows in 18 West 70th Street. Not only does it appear that the drawings were not filed with the BSA, but the drawings were not shown to the public attending the hearing.

Second, we request that our architect Craig Morrison be permitted, as soon as possible, to tour all of the buildings on the zoning site that is the subject of the application. Please suggest times convenient to your client.

This letter also confirms our understanding that any documents the Applicant files with the BSA or provides to its staff will at the same time be hand delivered or faxed to me. We agree to reciprocate.

Thank you.

Sincerely yours,

  
Mark D. Lebow

cc: Hon. Meenakshi Srinivasan, BSA  
Mr. Jeffrey Mulligan, BSA

Norman Marcus, Esq.  
David Rosenberg, Esq.  
Alan D. Sugarman, Esq.  
James Greer, Esq.  
Ms. Kate Wood, Landmark West  
Mr. Craig Morrison, AIA  
Mr. Martin Levine, MAI

FREEMAN

**FRAZIER**

REAL ESTATE SERVICES

& ASSOCIATES, INC.

132 NASSAU STREET  
NEW YORK, NY 10038  
TEL: 212.732.4056  
FAX: 212.732.1442

FAX TRANSMITTAL

Date: February 22, 2008  
To: Jeffrey Mulligan + Jed Weiss  
Fax Number: 212-788-8769  
From: Jessica Daniels  
Re: 10 W 70<sup>th</sup> St Meeting Follow Up  
No. of Pages: 8 (including cover page)  
Fax Number: (212) 732-1442

<input type="checkbox"/> URGENT	<input checked="" type="checkbox"/> FOR REVIEW	<input type="checkbox"/> PLEASE COMMENT
<input type="checkbox"/> AS REQUESTED	<input type="checkbox"/> PLEASE REPLY	<input type="checkbox"/> FOR YOUR INFORMATION

NOTES/COMMENTS:

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FREEMAN

FRAZIER

REAL ESTATE SERVICES

& ASSOCIATES, INC.

132 NASSAU STREET

NEW YORK, NY 10038

TEL: 212.732.4056

FAX: 212.732.1442

**MEMORANDUM**

---

**Date :** February 22, 2008

**To :** Jeffrey Mulligan  
Jed Weiss  
New York City Board of Standards and Appeals

**From :** Jack Freeman

**Re :** 6-10 West 70<sup>th</sup> Street  
BSA Meeting Response

Attached please find a letter in response to the BSA meeting of February 20, 2008.

February 22, 2008

Jeffrey Mulligan, Executive Director  
New York City Board of Standards and Appeals  
40 Rector Street  
New York, New York 10007

Re: 6-10 West 70<sup>th</sup> Street  
New York, NY  
74-07-BZ

Dear Mr. Mulligan:

Following our meeting on February 20, 2008, we had the chance to review the materials we provided in our previous submissions and December 21, 2007 Response to the Board. Below we provide a summary to highlight the assumptions made for the most recent submission:

The floor area of the As of Right with Tower was determined by Platt Byard Dovell White's (PBDW) zoning analysis to be 37,888.11 sq. ft. This served as the basis of our property valuation and As of Right analysis. For your review we have attached is an axonometric drawing of the As of Right with Tower Development and floor area schedule as provided by PBDW (for current discussion purposes, PBDW's 37,888.11 sq. ft. is more or less consistent with the +/-36,000 sq. ft. you described at the meeting; differences can be discussed and resolved with PBDW).

Of the As of Right 37,888.11 sq. ft., 19,755 (as shown on floor area schedule) is residential square footage, and 18,133 is community facilities area. In our most recent submission, the acquisition cost of \$14,816,000 was determined based only on the 19,755 sq. ft. of As of Right residential area at \$750/sq. ft. In previous analyses, the acquisition costs were based on the entire building, which included the community facility areas.

Attached is a copy of page two of the December 21, 2007 Hearing Response submission, which describes the As of Right with Tower Development, as per the above. Schedule A from the same submission (attached), shows the As of Right scheme is not feasible and has a capital loss of \$7,076,000.

BSA Hearing Response  
6-10 West 70<sup>th</sup> Street  
New York, NY  
February 22, 2008  
Page 2

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The Proposed Development has slightly more floor area, 42,962 sq.ft. of total floor area, of which 14,430 sq.ft. is community facility area, and 20,863 sq.ft. is residential area. As seen in Schedule A, the return is 12.19%. This is somewhat higher than in previous analyses, but is a direct result of the decrease in acquisition costs based on the elimination of the Community Facility floor area requested by the Board. In other variances the Board has accepted increased returns, which result at changes in assumptions made at their request.

As we noted at the meeting, and as shown by the analysis of the As of Right with Tower Development, without the floor area included in the Proposed Development, the project would not be economically feasible. When PBDW completes their analysis of creating a courtyard, we will analyze the effect of the loss of floor area from the courtyard and discuss that with you at next Thursday's meeting.

Please feel free to call me if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Freeman", with a long horizontal flourish extending to the right.

Jack Freeman

C) As of Right with Tower Development

The As of Right with Tower Development would occupy the full zoning envelope, and would consist of a new synagogue lobby on the ground floor, and community facility space on floors two through four. Floors five through sixteen would be for sale condominium units. There would be a total of thirteen residential units.

The gross built area of this alternative would be 37,888 sq.ft., not including the cellar. The zoning floor area for this alternative would be 37,888 sq.ft. The total gross residential area, which includes residential lobby and core but does not include the cellar, would be 19,755 sq.ft. The residential sellable area is 10,795 sq.ft.

D) Proposed Development

The Proposed Development alternative would consist of new construction of an eight-story plus penthouse. The new development consists of a new synagogue lobby on the ground floor, and community facility space on floors two through four. Floors five through eight and the penthouse would be for sale condominium units. There would be a total of five residential units.

The gross built area of this alternative would be 42,962 sq.ft., not including the cellar. The zoning floor area for this alternative would be 42,962 sq.ft. The total gross residential area, which includes residential lobby and core but does not include the cellar, would be 22,907 sq.ft. The residential sellable area is 14,980 sq.ft.

This development program is referred to as the "Proposed Development".

E) As of Right Residential F.A.R. 4.0 – Scheme C

The "As of Right Residential F.A.R. 4.0" alternative was submitted at the request of the Board based on Notice of Objections of June 15, 2007, Objection #37. A revised analysis at the request of the Board was performed in the October 24, 2007 submission.

The specifics of this alternative are discussed in Exhibit C.

Value of the Property

Estimating the acquisition cost is part of every Economic Analysis Report submitted as part of the BSA procedure. For this mixed institutional and residential development, property valuation was estimated assuming complying development after review and analysis of comparable land sales, based on an average \$/square foot of buildable floor area.

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
<b>BUILDING AREA (SQ.FT.)</b>										
BUILT RESIDENTIAL AREA		7,594		12,575		20,019		20,863		28,724
SELLABLE AREA	70%	5,316	68%	8,593	76%	10,346	52%	15,799	62%	17,780
<b>CAPITAL INVESTMENT SUMMARY</b>										
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
<b>PROJECT VALUE</b>										
SALE OF UNITS		\$12,623,000		\$20,191,000		\$24,595,000		\$40,968,000		\$40,199,000
(less) SALES COMMISSIONS	6%	(\$757,000)		(\$1,211,000)		(\$1,476,000)		(\$2,458,000)		(\$2,412,000)
EST. NET PROJECT VALUE		\$11,866,000		\$18,980,000		\$23,119,000		\$38,510,000		\$37,787,000
<b>PROJECT INVESTMENT</b>										
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
CARRYING COSTS DURING SALES PERIOD		\$470,000		\$493,000		\$600,000		\$664,000		\$688,000
EST. TOTAL INVESTMENT		\$23,345,000		\$24,173,000		\$29,746,000		\$29,402,000		\$34,159,000
<b>RETURN ON INVESTMENT</b>										
ESTIMATED PROJECT VALUE		\$11,866,000		\$18,980,000		\$23,119,000		\$38,510,000		\$37,787,000
(less) EST. TOTAL INVESTMENT		(\$23,345,000)		(\$24,173,000)		(\$29,746,000)		(\$29,402,000)		(\$34,159,000)
(less) EST. TRANSACTION TAXES		(\$230,000)		(\$368,000)		(\$449,000)		(\$748,000)		(\$734,000)
EST. PROFIT (loss)		(\$11,709,000)		(\$5,561,000)		(\$7,076,000)		\$8,360,000		\$2,894,000
DEVELOPMENT/SALES PERIOD (MONTHS)		23		23		32		28		28
ANNUALIZED PROFIT (loss)		(\$6,109,000)		(\$2,901,000)		(\$2,654,000)		\$3,583,000		\$1,240,000
RETURN ON TOTAL INVESTMENT		0.00%		0.00%		0.00%		28.43%		8.47%
ANNUALIZED RETURN ON TOTAL INVESTMENT		0.00%		0.00%		0.00%		12.19%		3.63%



PLATT BYARD DOVELL WHITE  
Architects

Congregation Shearith Israel  
As-of-Right with Tower  
(existing synagogue not included)

	R8B RES	R10A CF	R10A RES	R8B & R10A CF	R8B & R10A RES	R8 & R10	ZONING FAR
C2	4723.50	1918.10		6641.60		6641.60	
C1CF	3247.68	1602.44		4850.12			
C1R	1339.75		315.66		1655.41	6505.53	
1CF	3705.44	1918.10		5623.54			
1R					1017.57	6641.11	6641.11
2CF	2988.00	1198.50		4186.50			
2R					325.50	4512.00	4512.00
3CF	2988.00	1198.50		4186.50			
3R					325.50	4512.00	4512.00
4CF	2938.50	1198.50		4137.00			
4R					375.00	4512.00	4512.00
5CF							
5R	3315.50		1198.50		4514.00	4514.00	4514.00
6	2138.50		1198.50		3337.00	3337.00	3337.00
7			1198.50		1198.50	1198.50	1198.50
8			1198.50		1198.50	1198.50	1198.50
9			1198.50		1198.50	1198.50	1198.50
10			1198.50		1198.50	1198.50	1198.50
11			1198.50		1198.50	1198.50	1198.50
12			773.50		773.50	773.50	773.50
13			773.50		773.50	773.50	773.50
14			773.50		773.50	773.50	773.50
15			773.50		773.50	773.50	773.50
16			773.50		773.50	773.50	773.50
	12619.94	5513.60	12257.00				
R8B	7497.57						
R10A	20,117.51	17,770.60		18,133.54		51,035.24	37,888.11
TOTAL CF							
TOTAL RES					19,754.57		
TOTAL FAR							
TOTAL ZONING FAR							

12/4/2007

## Jeffrey Mulligan

---

**From:** Eileen Montanez

**Sent:** Monday, February 11, 2008 11:30 AM

**To:** Meenakshi Srinivasan; Susan M. Hinkson; Dara Ottley-Brown; Christopher Collins; Jeffrey Mulligan

**Subject:** FW: site visits

On Friday, I visited the following sites:

124-07-BZ

824-61-BZ

74-07-BZ

233-07-BZ

221-07-BZ

218-07-BZ

261-07-A

**Jeffrey Mulligan**

---

**From:** Shelly Friedman [sfriedman@frigot.com]  
**Sent:** Wednesday, January 02, 2008 12:06 PM  
**To:** Jeffrey Mulligan  
**Subject:** Shearith

FYI - We hand-messengered copies to Lebow and Arlene Monday, so they have them ahead of the usual schedule. I am just too nice a guy for this business. Best.

---

Shelly S. Friedman    Friedman & Gotbaum, LLP

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**Dara Ottley-Brown**

---

**From:** Dara Ottley-Brown  
**Sent:** Friday, November 23, 2007 5:01 PM  
**To:** Meenakshi Srinivasan; Christopher Collins; Susan M. Hinkson  
**Subject:** Site Visit

<b>Tracking:</b>	<b>Recipient</b>	<b>Delivery</b>	<b>Read</b>
	Meenakshi Srinivasan	Delivered: 11/23/2007 5:01 PM	Read: 11/23/2007 5:01 PM
	Christopher Collins	Delivered: 11/23/2007 5:01 PM	Read: 11/23/2007 5:26 PM
	Susan M. Hinkson	Delivered: 11/23/2007 5:01 PM	Read: 11/26/2007 9:34 AM

I'm going to check out 74-07 BZ this evening.

**Dara Ottley-Brown**

**Commissioner**

**Board of Standards and Appeals**

**(212) 788-8788**

**Meenakshi Srinivasan**

---

**From:** Susan M. Hinkson  
**Sent:** Wednesday, November 21, 2007 1:11 PM  
**To:** Meenakshi Srinivasan  
**Subject:** Shearith

Hi

I'm going to go up there today and walk around. I want to get a feel for the neighborhood before the hearing.

Susan

Susan Hinkson, RA, JD, AIA

NYC Board of Standards and Appeals

Commissioner

40 Rector Street 9th Floor

New York, NY

**Jeffrey Mulligan**

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**From:** Shelly Friedman [sfriedman@frigot.com]  
**Sent:** Monday, November 26, 2007 9:36 PM  
**To:** Jeffrey Mulligan  
**Subject:** FW: Crucial Public Hearing on Shearith Israel Tower Proposal  
**Attachments:** BSA Objection Form.pdf

FYI.

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**From:** Jim Grossman [mailto:jgrossman@rubenstein.com]  
**Sent:** Monday, November 26, 2007 9:33 PM  
**To:** Shelly Friedman  
**Subject:** FW: Crucial Public Hearing on Shearith Israel Tower Proposal

**From:** LANDMARK WEST! [mailto:landmarkwest@landmarkwest.org]  
**Sent:** Mon 11/26/2007 6:01 PM  
**To:** landmarkwest@landmarkwest.org  
**Subject:** Crucial Public Hearing on Shearith Israel Tower Proposal

Congregation Shearith Israel: Important Public Hearing at the NYC Board of Standards and Appeals

Don't miss tomorrow's absolutely crucial public hearing, Tuesday, November 27, starting at 1:30 PM at 40 Rector Street, 6th Floor (take the #1 subway down to Rector Street and walk west). Bring photo ID. Congregation Shearith Israel's application is estimated to come up by about 2:30 PM, so time yourself accordingly!

Remember, the BSA is the final word on whether Congregation Shearith Israel gets the 7 zoning variances it wants to build a 9-story, 105'-tall community house with 5 floors of luxury condominiums stacked on top. Even though Shearith Israel can accommodate all of its mission-related activities in an as-of-right building (without getting any special waivers or exemptions), it seeks to violate the low-rise, mid-block zoning that protects West 70th Street and many other blocks throughout the Upper West Side/Central Park West Historic District. Why? Profit.

Tomorrow is your opportunity to make your opposition heard loud and clear (even if you don't plan to speak, your presence will speak volumes). See you there!

**Jeffrey Mulligan**

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**From:** Shelly Friedman [sfriedman@frigot.com]  
**Sent:** Tuesday, October 16, 2007 3:57 PM  
**To:** Jeffrey Mulligan  
**Subject:** FW: CSI Meeting on Wednesday  
**Attachments:** BSA Objections Oct 07.CV.CV02.pdf

Jeff - There is a high degree of confidence that we will have our responses into Jed in sufficient time to meet the deadline for a 11/28 hearing date. Accordingly, that is our preference as the Rabbi would like to avoid a repeat when community members complained (inaccurately) that submitting our application on the day of Passover Eve somehow violated Jewish Canon Law.

I am attached the edict sent out by the Community Board chairs. I think they are doing yeoman's work to make this a workable functional meeting in the face of tactics to delay. I know this was copied to Jed but I wanted to send it to you in furtherance of our past discussions so that you can see the havoc the "Objections" moniker and the reference to an incomplete application is having out there in the public realm (highlighted in red). The rallying cry now is the the BSA opposes the application and that the only thing that has prevented its denial prior to hearing is Shearith's political skulduggery. And the reference in the letter to an "incomplete application" has others saying that under BSA rules the application should never have gotten past intake if it were incomplete. Its all nonsense, but apparently there are lawyers out here spending somebody's money on that very issue.

There is a lot of effort and goodwill be spent trying to explain BSA procedure on these points. Neither an applicant nor a community board chair should be tagged with the burden of demonstrating the objectivity of the BSA in the face of false statements by others that the BSA Notice of Objections indicates the Board's opposition to an application. This would all be avoided with a different choice of metaphors for the innocent and helpful process of responding to staff questions.

Best, Shelly

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SHELLY S. FRIEDMAN

FRIEDMAN & 568 Broadway Suite 505  
GOTBAUM, LLP New York, NY 10012

Phone: 212.925.4545  
Fax: 212.925.5199

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**From:** Page Cowley [mailto:pcowley@pac-architects.com]

1/21/2008



**Sent:** Tuesday, October 16, 2007 2:08 PM

**To:** SFine50@aol.com; richard asche; Penny Ryan; Thomas Vitullo-Martin; Melanie Radley; Daniel Meltzer; Watson, Maria; LizSamurovich@aol.com; Siegel, Jeffrey; Helen Rosenthal; Lenore Norman; KNeuweit@aol.com; Ethel Sheffer

**Cc:** Hunter Armstrong; jweiss@dcas.nyc.gov; Shelly Friedman

**Subject:** FW: CSI Meeting on Wednesday

Dear Land Use Committee & CB7 Board Members

This Wednesday, October 17th, the CB7 Land Use Committee is holding a **PRELIMINARY INFORMATION SESSION** regarding an application before the Board of Standards & Appeals (BSA) relating to the **Spanish & Portuguese Synagogue a.k.a. Congregation Sherith Israel, 6-10 West 70th Street**. The meeting is being hosted by Congregation Rodeph Sholom, 7 West 83rd Street at 7:00 PM. The project was recently reviewed by the BSA and an objection sheet was issued. A copy of the letter to the applicant and the accompanying objection sheet is attached.

The cover letter from the BSA states that these objections must be addressed before the application may be calendared for a hearing at the BSA. As a result, this application is considered incomplete until all issues raised by the BSA are answered.

The meeting tomorrow evening is to provide CB7 and the community an opportunity to hear the application currently before the BSA and review the project as approved before the NYC Landmarks Preservation Commission.

Because this is a complicated application with interrelated requests for variances, we have copied from the BSA website the information about the findings that must be met before a variance may be granted. We urge you to familiarize yourself with this criteria so that the discussion and questions to the applicant are germane.

Please be advised that this meeting is for discussion and questions from both the community who are invited to attend and CB7. Questions from the Community at large will be considered first. **THERE WILL BE NO RESOLUTION OR VOTE AT THIS MEETING**. A second meeting will be scheduled once the applicant has resubmitted to the BSA in response to the BSA letter dated October 12, 2007.

If you require further information, the website for the BSA is: [www.nyc.gov/bsa](http://www.nyc.gov/bsa)

We look forward to seeing you on Wednesday.

Richard Asche, Page Cowley, Co-Chairs Land Use Committee  
Shelly Fine, Chair, CB7

FROM THE BSA WEB-SITE RE VARIANCES

**Applications that come before the Board**

*Variances*

Section 72-21 of the Zoning Resolution authorizes the Board to modify or waive zoning regulations. In applying for a variance, property owners typically claim that full compliance with zoning regulations is not possible in order to realize a reasonable economic return on their property. The Board must determine, in granting a variance, that each and every one of five findings identified in Section 72-21 are met. The five findings are excerpted from the Zoning Resolution below:

(a) that there are unique physical conditions .... inherent in the particular zoning lot; and that, as a result of such unique physical conditions, practical difficulties or unnecessary hardship arise;

(b) that because of such physical conditions there is no reasonable possibility that the development of the zoning lot will bring a reasonable return ... this finding shall not be required for the granting of a variance to a non-profit organization;

- (c) that the variance, if granted, will not alter the essential character of the neighborhood;
- (d) that the practical difficulties or unnecessary hardship claimed as a ground for a variance have not been created by the owner;
- (e) ...the variance, if granted, is the minimum variance necessary to afford relief.

#### *Special Permits*

Section 73-01 of the Zoning Resolution authorizes the Board to grant special permits for specified uses, or for the modification of use and bulk in appropriate cases.

Special permit applications that affect use regulations include auto service stations in designated commercial districts, eating and drinking establishments with entertainment in designated commercial and manufacturing districts, physical culture establishments (i.e., "health clubs") in designated commercial and manufacturing districts, cellular phone towers, and modification of zoning lots divided by zoning district boundaries and parking requirements.

Special permit applications that affect bulk regulations include the enlargement of single- and two-family residences in designated areas of Brooklyn, enlargement of non-residential buildings, and modification of community facility uses.

#### *Rights to Continue Construction/Vested Rights*

Section 11-331 of the Zoning Resolution authorizes the Board to renew (or "vest") building permits that have lapsed due to zoning changes. In order for the permits to be renewed, the Board must determine that, on the date that the permits lapsed, excavation of the site had been completed and substantial progress made on completion of the foundations.

The Board can also renew permits if an applicant files to vest under the common law doctrine. Based on case law, the Board can make a vesting determination if it is determined that work was commenced under validly-issued permits, tangible change to the property occurred, and economic loss would result due to significant expenditure or irrevocable financial commitment.

#### *Extensions and Modifications to Previous BSA Grants*

The Board reviews applications to extend the term of previously approved variances and special permits (if a term was imposed on the approval) and/or to modify previous approvals for both before and after 1961, under Sections 11-411, 11-412, and 11-413 of the Zoning Resolution. The Board also hears applications to extend the time to complete work and/or obtain a Certificate of Occupancy.

#### *General City Law Waivers*

Under specific circumstances, the Board may grant an administrative appeal to both Sections 35 and 36 of the NYS General City Law.

Section 35 generally prohibits building in the bed of any street identified on an official map. The Board may grant an appeal to allow issuance of a building permit when a property owner can establish that the land within the mapped street is not yielding a fair return, or when the proposed street extension has been mapped for 10 years but the City has yet to acquire title.

Section 36 generally prohibits the issuance of a certificate of occupancy for buildings that do not front on a mapped street. The Board may grant an appeal if compliance with Section 36 would result in a practical difficulty or unnecessary hardship.

Prior to making its determination, the Board forwards applications for waivers from the General City Law to the Departments of Transportation, Fire and Environmental Protection for review and comment.

#### *Appeals*

Section 72-11 authorizes the Board to hear and decide appeals to decisions rendered by the Department of Buildings or any City agency which, under the provisions of the Charter, has jurisdiction over the use of land or use or bulk of buildings or other structures. The Board is authorized to reverse, affirm (in whole or in part), or modify such decision. All appeals to the Board must be made within 30 days of the agency determination.

#### **Application Process**

Upon filing, an application is assigned a calendar number and is forwarded to a staff examiner for review. For applications on the Zoning ("BZ") and Special Order Calendars ("SOC"), applicants are required to provide copies of the filed applications to the local community board, borough president, councilmember and the Department of City Planning. When the examiner determines that the application is substantially complete, the application is scheduled for a public hearing. Applicants are notified by the Board of the hearing date at least 30 days in advance of the date.

**Notification of Public Hearings**

At least 20 days in advance of the public hearing, applicants must provide notice of the hearing to the local community board, borough president, councilmember and Department of City Planning for applications on the BZ and SOC calendars. Applicants with projects on the BZ calendar are also required to notify property owners within a 400 foot radius of the subject site (200 foot radius for applications that involve one- to three-family homes, or for special permit applications for lots of less than 40,000 square feet).

----- End of Forwarded Message



# Board of Standards and Appeals

40 Rector Street, 9<sup>th</sup> Floor • New York, NY 10006-1705 • Tel. (212) 788-8500 • Fax (212) 788-8769  
Website @ [www.nyc.gov/bsa](http://www.nyc.gov/bsa)

MEENAKSHI SRINIVASAN  
Chair/Commissioner

October 12, 2007

Shelly S. Friedman, Esq.  
Friedman & Gotbaum, LLP  
568 Broadway, Suite 505  
New York, NY 10012

BSA Cal No: 74-07-BZ  
CEQR No: 07BSA071M  
Premises: 6-10 West 70<sup>th</sup> Street, Manhattan

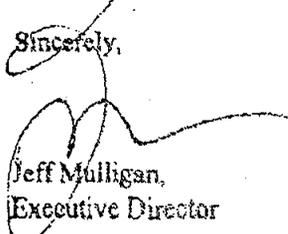
Dear Mr. Friedman:

Attached is a **Second Notice of Objections** for the above referenced BZ application which raises issues that need to be addressed before these applications may be calendared by the Board for a hearing. The Board desires to process applications on a timely basis and requests that applicants notify the Board if they are unable to make a complete submission within sixty (60) days. Failure to respond in a timely manner could lead to the dismissal of the application for lack of prosecution.

Each of the following objections should be addressed point-by-point. A copy of all materials sent in response to these objections must also be submitted to the applicable Community Board(s), Borough President, City Council member, Borough Commissioner of the Department of Buildings, Borough Director of the Department of City Planning (DCP) and to the BSA Liaison at the DCP, Mr. Alan Geiger. Applicants are required to notify each of these entities each and every time a submission is made to the Board of Standards and Appeals. Proof of proper notification may be provided by return receipts, copies of transmittal letters, carbon copy (cc's) lists or other comparable proofs.

For further information regarding these requirements, or for information relating to the following objections, please call Jed Weiss, Senior Examiner at (212) 788-8781 or email him at [jweiss@dca.nyc.gov](mailto:jweiss@dca.nyc.gov). For detailed instructions for completing BSA applications, please visit [www.nyc.gov/bsa](http://www.nyc.gov/bsa)

Sincerely,

  
Jeff Mulligan,  
Executive Director

# New York City Board of Standards and Appeals

## Second Notice of Objections

74-07-BZ / 07BSA071M

Premises: 6-10 West 70<sup>th</sup> Street, Manhattan  
Applicant: Shelly S. Friedman, Esq., Friedman & Gotbaum, LLP

Date: October 12, 2007

### STATEMENT OF FACTS AND FINDINGS

1. Page 1: As previously requested within Objection # 1 of the First Notice, please explicitly state the number of proposed stories (9) within the introductory section.
2. Page 3: Within the second paragraph, please change "...rear yard exceedances for the third and fourth floors" to "...rear yard exceedances for the second, third, and fourth floors."
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.
4. Page 21: Please replace the second sentence of the first full paragraph with the following: "While the Synagogue provides a full cellar level and a small sub-cellar, the demolition and replacement of the Community House will permit excavation of Lot 37 to provide both a sub-cellar and cellar level for the proposed building."
5. Page 23: Please revise the floor-by-floor table as follows:
  - o Analyze the entire zoning lot (both lots 36 and 37)
  - o Provide a "total" row noting the total square footage for each program element
  - o Provide "existing" and "proposed" conditions within separate columns
6. Page 23: Objection # 12 of the First Notice has not been adequately addressed. It is stated that "[t]hese new office areas will be utilized by CSI's new assistant Rabbi; program director, secretary and assistant; archivist and tour director." However, it is later stated within the endnote on this page that "staff is increased from approximately 12 to 16 persons. Given the apparent discrepancy of these two statements, please provide a precise written description of all existing and proposed staff members. Additionally, please state whether or not CSI anticipates employee growth.
7. Page 27: Within the "Lot Coverage in R10A and R8B" section, please change "...corner lots within 100 ft. of a corner" to "lots within 100 ft. of a corner."

8. Page 28: Within the final sentence of the "Rear Yard in R10A and R8B" section, please change "...provide a fully compliant rear yard" to "...do not further encroach into the required rear yard."
9. Page 29: Within the first sentence of the "Rear Setback" section, please change "rear lot line" to "rear yard line."
10. Page 29 & 30: Also within the "Rear Setback" section, please change "This 3.5 ft. setback differential resulted in the issuance of DOB objection #7" to "The proposed base height above the permitted 60' and the proposed rear setback at less than the required 10' resulted in the issuance of DOB Objection #7."
11. Page 30: Please remove the final sentence of the "Rear Setback" section. The discussion of the ground floor level which is allowed to be built full to rear lot line as a permitted obstruction is not germane to this section.
12. Page 31: For the suggested "(c) finding," as previously requested by Objection # 23 of the First Notice, please describe existing built conditions along both West 70<sup>th</sup> Street block-fronts between Central Park West and Columbus Avenue.

#### AS-OF-RIGHT CONDITIONS DRAWINGS

13. As-of-right schemes 'A' and 'B' both appear to violate the rear yard and thus are not "as-of-right." The rear portion of the building within the required rear yard appears to exceed one-story and thus does not qualify as a permitted obstruction pursuant to ZR § 24-33. Please revise these drawing sets to show a compliant rear yard.
14. Please re-label all as-of-right drawings so as each drawing set has its own unique identifier (e.g., AOR-A-3, AOR-B-3, and AOR-C-3).
15. Scheme C (Residential Scheme): This as-of-right scenario does not maximize floor area that can be accommodated within the R8B zoning envelope. Instead of showing a six-story building with five stories below the 60' maximum base height, please reduce the floor-to-ceiling heights and show a seven-story building with five stories up to the 55' minimum base height and two floors above.

#### PROPOSED CONDITIONS DRAWINGS

16. Drawing P-4 ("Proposed Areas of Non-Compliance"): A legend is provided on this sheet for four discrete non-complying elements (building height, base height, and front and rear setback); however the drawing only shows the area of non-compliance for building height. Please revise this drawing by graphically showing all areas of proposed non-compliance.
17. Please provide an illustrative elevation drawing showing a comparison of lot line windows on adjacent building(s) that would be blocked under an as-of-right and the proposed scenario.

"LESSER-VARIANCE" DRAWINGS

18. Objection # 30 has not been complied with. Please provide a full plan set for a lesser-variance scenario that shows compliant building height, base height, front and rear setback but non-complying rear yard and lot coverage.

FEASIBILITY STUDY

19. Please analyze the revised as-of-right scenarios ("Scheme A" and "Scheme B") as described by Objection # 13.
20. Please analyze the revised "Scheme C" (as-of-right residential scenario) as described by Objection # 15 of the Second Notice.
21. Please analyze the "lesser-variance" scheme as described within Objection # 30 of the First Notice.
22. The response given to Objection # 36 of the First Notice is not satisfactory. It does not directly respond to the overall point that because the development site, although partially located within an R10A district, is primarily zoned R8B and located entirely within an historic district, and thus cannot reasonably utilize additional floor area from the R10A district. Therefore, it is not appropriate to adjust upward the vacant land sales comparables for zoning.



**Alan D. Sugarman**  
**Attorney At Law**

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

April 22, 2008

Via US Mail  
Via Facsimile 212-788-8769  
Via E-Mail [jmulligan@dcas.nyc.gov](mailto:jmulligan@dcas.nyc.gov)

Jeff Mulligan  
Executive Director  
NYC Board of Standards and Appeals  
40 Rector Street - 9th Floor  
New York, New York 10006

Re: Freedom of Information Law Request -FOIL - Re BSA Feasibility Studies  
Shearith Israel Project at 8,10, 12 West 70<sup>th</sup> Street, New York, New York

Dear Mr. Mulligan:

On behalf of myself, Nizam Peter Kettaneh, and other residents of West 70th St., I hereby make this formal FOIL request.

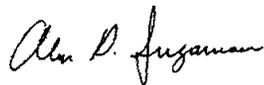
Pursuant to FOIL, please provide the following documents (including of course e-mails, notes of meeting and telephone calls) that in any way relate to the following:

1. All rules, regulations, policies, procedures, and other explanatory documents as to requirements for preparation, filing, analysis, and or interpretation of feasibility studies submitted with reference to finding (b) of 72-21 of the Zoning Resolution -
2. Information as to the drafting, adoption, modification, release date, and supporting studies or reports or comments upon Item M of the Detailed Instructions for Completing BSA Application..

Please exclude from this request formal adjudicated decisions of the BSA.

It is our position that in an Article 78 proceeding appealing any action on the above variance application, the City and the BSA cannot use or rely upon any documents or information ~~not disclosed to us pursuant to this and other FOIL requests. Nor can the BSA itself in making its findings rely upon or refer to documents and information not so disclosed.~~

Sincerely,



Alan D. Sugarman

DP  
II



# Board of Standards and Appeals

40 Rector Street, 9<sup>th</sup> Floor • New York, NY 10006-1705 • Tel. (212) 788-8500 • Fax (212) 788-8769  
Website @ [www.nyc.gov/bsa](http://www.nyc.gov/bsa)

MEENAKSHI SRINIVASAN  
Chair/Commissioner

May 7, 2008

Alan D. Sugarman, Esq.  
17 West 70<sup>th</sup> Street  
New York, New York 10023

Dear Mr. Sugarman:

This letter is in response to your April 22, 2008 request made under the State Freedom of Information Law ("FOIL").

Your request was for documents that in any way relate to the following:

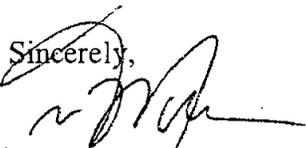
1. All rules, regulations, policies, procedures, and other explanatory documents as to requirements for preparation, filing, analysis, and or interpretation of feasibility studies submitted with reference to finding (b) of 72-21 of the Zoning Resolution.
2. Information as to the drafting, adoption, modification, release date, and supporting studies or reports or comments upon Item M of the Detailed Instructions for Completing BSA application.

You also asked us to exclude formal adjudicated decisions of the BSA.

I am aware that you are familiar with the Board's guidelines, posted on the website, for completing a financial feasibility analysis (Item M of the Detailed Instructions for Completing BSA application). Therefore, I am not providing you with a copy of those guidelines. Based on our review, there are no other documents responsive to your request.

This letter is a final determination of the Board. You have the right to seek review of this determination pursuant to Article 78 of the Civil Law Practice and Rules, and Public Officers Law Sec 89(4)(b).

Sincerely,

  
Jeff Mulligan  
Executive Director/Records Access Officer

EB

c: Margaret Stix, General Counsel