SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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LANDMARK WEST! INC., 91 CENTRAL PARK WEST CORPORATION and THOMAS HANSEN,	:	Index No. 650354/08
Petitioners,	:	
- against -	:	SECOND AMENDED VERIFIED PETITION
CITY OF NEW YORK BOARD OF STANDARDS AND APPEALS, NEW YORK CITY PLANNING COMMISSION, HON. ANDREW CUOMO, as Attorney General of the State of New York, and CONGREGATION SHEARITH ISRAEL, also described as the Trustees of Congregation Shearith Israel,	:	
Respondents.	:	

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Petitioners, by their attorneys, Marcus Rosenberg & Diamond LLP, as their amended verified petition, upon information and belief, state:

As And For A First Cause Of Action

Overview

1. This action is brought to challenge an extraordinary and unprecedented resolution (the "Resolution") of respondent the New York City Board of Standards and Appeals ("BSA").

2. Pursuant to § 20 of the General City Law, the express purpose of the zoning regulations relating to the height, bulk and location of buildings, including rear yards and other open space, is "to promote the public health and welfare, including . . . provision for adequate light, air [and] convenience of access."

3. The challenged BSA Resolution would permit respondent Congregation Shearith Israel, also referred to as the Trustees of Congregation Shearith Israel (together, "CSI"), to violate important zoning regulations in order to construct a new building (the "New Building"), with a residential tower containing five luxury condominium apartments.

4. The luxury condominium apartments are not for CSI's religious mission or "programmatic needs". They are simply to be sold to generate a cash windfall or, in the words of CSI's attorney, to "monetize" the violation of the New York City Zoning Resolution (the "Zoning Resolution").

5. The BSA Resolution granted CSI other unwarranted benefits, including the right to violate height, bulk, setback and other regulations adopted by the City to protect the neighborhood and its residents.

6. In so doing, BSA permitted CSI to violate the New York City Charter (the "Charter"), the Zoning Resolution and BSA's own rules, to the extent that

BSA was deprived of jurisdiction to entertain CSI's application (the "Application") for zoning variances.

7. Throughout the process, BSA ignored the factual presentations of Petitioners and others, affording complete and utter "deference" to CSI's factual claims, thereby illegally abdicating its statutory responsibility.

The Parties

8. Petitioner Landmark West! Inc. ("Landmark West!") is a New York not-for-profit corporation. Since 1985, Landmark West! has worked with other individuals and grassroots community organizations to protect the historic architecture and development patterns of the Upper West Side and to improve and maintain the community for all of its members.

9. Intentionally omitted.

10. Intentionally omitted.

11. Petitioner 91 Central Park West Corporation ("91 CPW") is the owner of the cooperative apartment building located at 91 Central Park West, at the northwest corner of Central Park West and West 69th Street, in the County, City and State of New York.

12. Petitioner Thomas Hansen is the owner of the shares allocated to, and is the occupant of, an apartment in the cooperative apartment building at 11 West 69th Street, in the County, City and State of New York.

13. Respondent BSA is the governmental body of the City of New York charged by the General City Law, the Charter and the Zoning Resolution with the authority to entertain and decide applications for variances from the requirements of the Zoning Resolution.

14. Respondent New York City Planning Commission ("City Planning Commission") is named as a respondent due to the obligation to enforce and maintain the objectives of the Zoning Resolution and to prevent "spot zoning".

15. Respondent, Hon. Andrew Cuomo, as Attorney General of the State of New York, is named by reason of the fact that issues as to violations of the New York State Constitution are raised by this action.

16. Respondent CSI is a religious organization, which owns the synagogue building (the "Synagogue") and adjacent parsonage (the "Parsonage") at 99 Central Park West, at the southwest corner of Central Park West and West 70th Street, in the County, City and State of New York, and the four-story school building (the

"Community House") and a vacant parcel identified as 6-10 West 70th Street, adjacent to the Synagogue on the west (with the Community House, the "Development Site").

17. 91 CPW is adjacent to the south side of the Synagogue, Parsonage and the Development Site.

18. Intentionally omitted.

19. Intentionally omitted.

20. Mr. Hansen occupies an apartment in the building adjacent to the south side of the Development Site.

21. 91 CPW (the "Co-op") is a taxpayer with assessments exceeding $1,000.

22. The Co-op contain the homes and major assets of the owners of the individual apartments, who are taxpayers and members of the community represented by Landmark West!

23. All Petitioners are suing to enforce their rights, to prevent illegal actions and to prevent waste of City property and assets, pursuant to General Municipal Law, § 51, and their other statutory and common law rights.

24. All Petitioners are within a zone immediately and directly impacted by the New Building proposed to be constructed in the Development Site.

25. All Petitioners will experience a reduction of the light, air and convenience of access which the Zoning Resolution is required to protect.

BSA Lacked Jurisdiction Because
The Department of Buildings ("DOB")
Objections Were Not Issued By The
DOB Commissioner Or The Manhattan
Borough Commissioner

26. Charter § 666 states:

§ 666 Jurisdiction

The board shall have power:

* * *

6. To hear and decide appeals from and review,

(a) except as otherwise provided by law, any order, requirement, decision or determination the commissioner of buildings or any borough superintendent of buildings acting under written delegation of power from the commissioner of buildings filed in accordance with the provisions of subdivision (b) of section six hundred forty-five. . . .

27. Petitioners provided indisputable proof that the October 28, 2005 DOB Notice of Objections (the "Original Notice of Objections"), which formed the basis of CSI's Application to BSA, was not issued by the then Commissioner of Buildings, Patricia J. Lancaster, or the then Manhattan Borough Commissioner, Christopher Santulli, as expressly required by Charter § 666, but by Kenneth Fladen, a "provisional Administrative Borough Superintendent, who also signed on the line for "Examiner's Signature".

28. CSI did not deny this or offer an explanation.

29. In its Resolution, BSA claims that jurisdiction is not required by Charter § 666 because this is an application for a variance pursuant to Charter § 668.

30. Charter § 666 expressly defines the jurisdiction and power of BSA. Section 668 merely describes the added requirements for a variance or a special permit.

31. BSA's own website describes its authority as follows:

> The majority of the Board's activity involves reviewing and deciding applications for variances and special permits, as empowered by the Zoning Resolution, and applications for appeals from property owners whose proposals have been denied by the City's Department of Buildings, Fire or Business Services. The Board also reviews and decides applications from the Departments of Buildings and Fire to modify or revoke certificates of occupancy.

> The Board can only act upon specific applications brought by landowners or interested parties who have received prior determinations from one of the enforcement agencies noted above. The Board cannot offer opinions or interpretations generally and it cannot grant a variance or a special permit to any property owner who has not first sought a proper permit or approval from an enforcement agency. Further, in reaching its determinations, the Board is limited to specific findings and remedies as set forth in state and local laws, codes, and the Zoning Resolution, including, where required by law, an assessment of the proposals' environmental impacts.*

32. The failure of CSI to have obtained objections issued by the Commissioner of Buildings or the Borough Superintendent of DOB deprived BSA of jurisdiction to entertain CSI's Application, requiring that the Resolution be vacated.

BSA Lacked Jurisdiction Because The Plans Filed With BSA Were Not The Plans Filed With Or Reviewed By DOB

33. On April 2, 2007, CSI submitted its Application for a variance to BSA, based upon the Original DOB Notice of Objections, which included eight DOB objections to plans submitted by CSI for the New Building under DOB application No. 104250481. Objection No. 8 stated:

> PROPOSED SEPARATION BETWEEN BUILDINGS IN R10A DOES NOT COMPLY. 0.00' PROVIDED INSTEAD OF 40.00' CONTRARY TO SECTION 24-67 AND 23-711.

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* Unless otherwise indicated, all emphasis herein is added.

34. In response to the Application, BSA issued a June 15, 2007 Notice of Objections (the "Original BSA Objections"), which required CSI to address, individually, 48 BSA Objections.

35. Among the BSA Objections, the following three required CSI to address objection No. 8 to the Original DOB Notice of Objections:

> 20. Page 24: Please correct the title of the first full paragraph by replacing "Building Separation" with "Standard Minimum Distance Between Building."
>
> 21. Page 24: Please note that ZR § 23-711 prescribes minimum distance between a residential building and any other building on the same zoning lot. Therefore, with the first full paragraph, please clarify that the DOB objection for ZR § 23-711 is due to the lack of distance between the residential portion of the new building and the existing community facility building to remain.
>
> 25. It appears that the "as-of-right" scenario would still require a BSA waiver for ZR § 23-711 (Standard Minimum Distance Between Buildings) given that it contains residential use (see Objection # 21). Please clarify.

36. CSI's September 10, 2007 response failed to address these three BSA Objections, stating:

> N/A: DOB Objection #8 omitted by DOB upon reconsideration (See, DOB Objection Sheet and Proposed Plans, dated August 28, respectively).

37. CSI has claimed that it filed an application with "Proposed Plans, dated August 28, 2007" with DOB for reconsideration of the Original DOB Notice of

Objections and the August 28, 2007 DOB Notice of Objections (the "Revised DOB Notice of Objections") omitted Objection No. 8 from the Original DOB Notice of Objections.

38. DOB issued the Revised DOB Notice of Objections even though there is no indication that the "Proposed Plans" submitted with the reconsideration application were revised to comply with the noted provisions of the Zoning Resolution.

39. BSA did not produce to BSA its alleged reconsideration application or the documents allegedly submitted therewith, nor are they on file at DOB.

40. When Landmark West! raised this issue at the February 23, 2008 BSA public hearing, the following colloquy took place:

> MR. ROSENBERG: There's been no explanation required as to the difference between the original plans which formed the basis for the application to this Board and the subsequent plans which they claim were provided to DOB.
>
> VICE-CHAIR COLLINS: I don't understand the relevance of that.
>
> The Buildings Department has given an objection sheet. They told us where these filed plans don't meet the zoning. That's what we're here to rule on.
>
> MR. ROSENBERG: They're not filed plans.
>
> VICE-CHAIR COLLINS: Now, do you think that there should be further objections based on the plans that you have access to?
>
> MR. ROSENBERG: As far -- this Board should ask for the answers to its 8th objection that it raised.

VICE-CHAIR COLLINS: But that objection is not before us anymore because revised plans were filed and a new objection sheet was filed. It's a common practice. We see it all the time. I think you're seeing demons where none exist.

MR. ROSENBERG: No, we haven't been told what the difference is between the revised plans and the original plans, if there is any.

VICE-CHAIR COLLINS: All of our files are completely open. You can make an appointment to come and see them. It's my understanding that they've been made available to you from the beginning. I think it is a bogus issue you're raising.

I don't think there's any legal basis for it.

MR. ROSENBERG: Well, with all due respect, what is the difference between the original plans and the revised plans?

CHAIR SRINIVASAN: It doesn't matter. We have a set of objections which is what we're reviewing.

41. In fact, CSI's attorney, Shelly Friedman, later admitted that the plans claimed to be the basis for the various applications to BSA were <u>not</u> the plans presented to or reviewed by DOB:

MR. FRIEDMAN: With regard to the issues raised by counsel to the building regarding the objection sheet, I'm prepared to give you an explanation, if you wish now, of what that situation is all about. It's really up to the Board.

CHAIR SRINIVASAN: Why don't you just tell us what the situation is.

MR. FRIEDMAN: Fine. I would be happy to do so.

CHAIR SRINIVASAN: It seems like you can put it to rest after that.

MR. FRIEDMAN: The original objection sheet that was obtained at the request of the counsel at the Landmarks Commission when this matter was before the Landmarks Commission, which is kind of unusual, because you're in gross schematics at that stage. You haven't really submitted anything to the Buildings Department but the Landmarks Commission wants to know what the Building Department feels are the zoning waivers requested. We submitted that.

Originally, the building, the tower had a slot between the residential building and the synagogue. There was a physical space there that several of the Landmark's Commissioners wanted us to explore. They thought some separation between the two were important.

That gave rise to an objection regarding the separation of buildings.

Now, that zoning -- that envelope did not emerge from Landmarks, although, by that time, nobody was thinking about the objection sheet that had been asked about in 2003.

So, when we got to the Building's Department and it was submitted for zoning review, we recognized that the zoning objection sheet was in error because the building no longer contained the separation issue between the buildings because the two buildings were -- now the new and the old were now joined. That was amended.

42. In other words, until the February 12, 2008 hearing, CSI had represented that the plans which:

- CSI filed to commence its Application; and
- CSI represented under penalty of perjury to be the plans which resulted in the Original DOB Notice of Objections from which BSA's jurisdiction was sought

were not the plans filed at DOB or the ones resulting in the Original DOB Notice of Objections. Rather, the DOB Objections were issued on gross schematics of a different structure in 2003.

43. The representation which was the basis of CSI's Application to BSA was untrue. More importantly, it deprived BSA of jurisdiction, requiring that the Resolution be vacated.

BSA Improperly Authorized A Variance
Solely For Income Generation

44. CSI admitted, and BSA's Resolution held, that the New Building will violate Zoning Resolution parameters for:

> (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 0.80;
>
> (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.--' provided instead of 30.00' contrary to Section 24-36;
>
> (4) Proposed initial setback in R8B does not comply. 12.00' provided instead of 25.00' contrary to Section 24-36;
>
> (5) Proposed base height in R8B does not comply . . . contrary to Section 23-633;
>
> (6) Proposed maximum building height in R8B does not comply . . . contrary to 23-66;

> (7) Proposed rear setback in an R8B does not comply. 6.67' provided instead of 10.00' contrary to Section 23-633. . . .

45. CSI admitted, and BSA's Resolution held, that CSI's Application for waivers of four of seven zoning requirements (items 4 through 7 above) was required solely "to accommodate a market rate residential development that can generate reasonable financial return".

46. CSI admitted, and BSA's Resolution held, that more than 50% of the New Building -- the upper five stories, entrance, elevators and related space, containing 22,352 of 42,406 square feet of the total floor area -- will consist of five condominium apartments and related space to be sold to the public at market rates.

47. In its Resolution, BSA noted:

> [CSI] proposed the need to generate revenue for its mission as a programmatic need, [but] New York law does not permit the generation of income to satisfy the programmatic need requirement of a not-for-profit organization, notwithstanding an intent to use the revenue to support a school or worship space. . . . [F]urther, in previous decisions, [BSA] has rejected the notion that revenue generation could satisfy the (a) finding for a variance application by a not-for-profit organization (see BSA Cal. No. 72-05-BZ, denial of use variance permitting operation by a religious institution of a catering facility in a residential district) and, therefore, requested that [CSI] forgo such justification in its submissions.

48. Moreover, it has been held repeatedly that a zoning board of appeals, such as BSA, may not grant a variance solely on the ground that the use will yield a higher return than permitted by the zoning regulations.

49. As admitted in CSI's Application, "the addition of residential use in the upper portion of the building is consistent with CSI's need to raise enough compiled funds to correct the programmatic deficiencies described. . . . "

50. Thus, the Application "[seeks to produce] capital fundraising that includes a one-time monetization of zoning floor area through developing a moderate amount of residential space. . . . "

51. In spite of this, BSA concluded "that while a nonprofit organization is entitled to no special deference for a development that is unrelated to its mission, it would be improper to impose a heavier burden on its ability to develop its property than would be imposed on a private owner."

52. Ignoring its own prior determinations that unrelated revenue generation for a not-for-profit organization does not warrant the granting of a variance, BSA granted the variance for the residential portion of the New Building solely for this purpose.

53. The Resolution, which permits CSI to construct a residential tower with five luxury apartments solely for the purpose of generating income, violates the Zoning Resolution and BSA's own precedents, requiring that it be vacated.

BSA Applied Improper Methods
<u>For Determining Financial Return</u>

54. Since the construction and sale of five apartments was not proposed to meet CSI's programmatic needs, BSA directed CSI to perform a financial feasibility study of CSI's ability to realize a reasonable financial return from an as-of-right residential development.

55. In calculating the financial return of the proposed and as-of-right residential development, CSI employed a rate of return on "project expense", rather than on the basis of invested equity, claiming that such methodology is "characteristically used" for condominium or home sales.

56. Other than the opinion of CSI's witness, no support was offered for this claim.

57. In response, Petitioners pointed out that BSA's instructions for a variance application for condominium development [Item M(5)] requires that the applicant

state the amount of equity invested and the return on equity, where the project expense is the sum of borrowed funds and the development's equity.

58. Without citing to any contrary authority, and ignoring its own stated requirements and prior determinations, BSA's Resolution concluded:

> [BSA] notes that a return on profit model which evaluates profit or loss on an unleveraged basis is the customary model used to evaluate the feasibility of market-rate residential condominium development.

59. In fact, "return on profit" is a nonsensical term and not a recognized methodology.

60. Thus, the financial underpinning of the Resolution is defective and the Resolution must be vacated.

CSI Failed To Demonstrate That An
As-Of-Right Building Was Financially
Infeasible

61. By applying improper methodology, CSI sought to demonstrate that an as-of-right building would be financially infeasible, thereby justifying the requested variances.

62. To the contrary, Petitioners demonstrated that, applying well-recognized and accepted methodology, an as-of-right building would be financially feasible.

63. By refusing to apply well-recognized and accepted methodology -- and the methodology expressly required by BSA's application instructions -- BSA reached an erroneous determination, which must be vacated.

64. Moreover, in violation of its own application instructions [Item M(6)], BSA accepted from CSI unsealed construction cost estimates from an unqualified source.

65. CSI's Application was based, in large part, on its "need" to provide space for an unrelated school, which paid rent to CSI.

66. In spite of BSA's request that CSI set forth the amount of such rental income, CSI failed and refused to do so, thereby failing to establish the required element of financial infeasibility.

67. For all of these reasons, the Resolution must be vacated.

CSI Failed To Satisfy § 72-21(e)
Of The Zoning Resolution

68. As acknowledged by the BSA Resolution "as pertains to the (e) finding under ZR § 72-21, [BSA] is required to find that the variance sought is the minimum necessary to afford relief."

69. In two respects, CSI failed to establish this required element.

70. The BSA Resolution acknowledges that the residential tower is not necessary for CSI's programmatic needs.

71. Moreover, BSA's Resolution found that the addition of the residential tower on top of CSI's community facility required:

- An undefined amount of mechanical space and accessory storage space on the cellar level of the community facility;
- Approximately 1,018 square feet of lobby and elevator space on the first floor of the community facility; and
- Approximately 325 square feet of elevator, stair and core building space on each of the second, third and fourth floors of the community facility.

72. The construction of the residential tower, admittedly not required to meet CSI's programmatic needs, would eliminate over 2,000 square feet from the approximately 20,000 square foot community facility, or about 10% of that space.

73. Thus, it cannot be said that the Application established that the proposed community facility variances were the minimum necessary, since their need indisputably would be reduced were not the residential tower to be constructed on top of the community facility.

74. It also is a fundamental principle that, in order to obtain a variance, the applicant must exhaust all other administrative and other remedies to obtain relief before seeking a variance.

75. Pursuant to § 74-711 of the Zoning Resolution, where a zoning lot contains a building designated as a landmark by the Landmarks Preservation Commission or where the zoning lot is located within a Historic District designated by the Landmarks Preservation Commission -- both of which apply to CSI's property -- "the City Planning Commission may permit modification of the use and bulk regulations."

76. Here, CSI admittedly could have obtained relief pursuant to an application to the City Planning commission for a special permit, pursuant to Zoning Resolution § 74-711.

77. CSI's election not to pursue this relief, which would have eliminated the need for all or part of the variances sought, requires a finding that CSI failed to comply, as a matter of law, with Zoning Resolution § 72-21(e).

78. By reason of all of the foregoing, CSI failed to establish a required element for the variance it sought and BSA's Resolution must be vacated.

BSA's "Deference" to CSI Constituted An Improper
Unconstitutional Delegation Of Its Authority

79. In its Resolution, BSA concluded that CSI, as a religious institution, is entitled to substantial deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application, citing Cornell University *v.* Bagnardi, 68 N.Y.2d 583 (1986), a case which merely held that the courts will not review a nonprofit institution's need to expand into a particular neighborhood, not its alleged need to a particular configuration of its building.

80. Similarly, the BSA Resolution cites Guggenheim Neighbors *v.* Board of Estimate (unreported) and Jewish Reconstructionist Synagogue of the North Shore *v.* Roslyn Harbor, 38 N.Y.2d 283 (1975), both of which are limited to the same issue as decided in Bagnardi.

81. In fact, BSA "deferred" to CSI's determination as to the need and propriety of each of the seven variances granted in the Resolution.

82. As noted previously, BSA is charged by the General City Law, the City Charter and the Zoning Resolution with the sole and exclusive authority to determine variance applications.

83. By deferring to CSI for such determinations, BSA abrogated its duty and responsibility and improperly and illegally delegated its authority to CSI.

84. In so doing, BSA refused to consider Petitioners' factual presentation that CSI's programmatic needs could be accommodated within an as-of-right building, especially if the space required for the residential tower's entrance, elevators, stairs and other features were included in the base building.

85. Moreover, by applying different standards to CSI as a religious institution, BSA violated the First, Fifth and Fourteenth Amendments to the United States Constitution and Article 1, § 11, of the New York State Constitution.

86. BSA's refusal to consider opposing presentations and its delegation of its authority to CSI require that the Resolution be vacated.

BSA Improperly Considered The
Landmarking Of The CSI Synagogue
<u>As A Unique Physical Condition</u>

87. CSI admitted, and BSA's Resolution expressly recognizes, that § 72-21(a) of the Zoning Resolution requires BSA to find (the "a finding"), as a prerequisite for a variance, that "there are unique physical conditions in the Zoning Lot which create practical difficulties or unnecessary hardship in strictly complying with, the requirements".

88. However, BSA's Resolution states that CSI, as a religious institution, need not comply with the "a finding".

89. The Resolution then recites that CSI "represents that the variance request is necessitated not only by its programmatic needs, but also by physical conditions on the subject site -- namely -- the need to retain and preserve the existing landmarked Synagogue . . . [and CSI] states that as-of-right development of the site is constrained by the existence of the landmarked Synagogue building which occupies 63 percent of the Zoning Lot footprint".

90. BSA's Resolution notes:

> WHEREAS, as to the impact of the landmarked Congregation Shearith Israel synagogue building on the ability to develop an as-of-right development on the same zoning lot, the applicant states that the landmarked synagogue occupies nearly 63 percent of the Zoning Lot footprint; and

> WHEREAS, the applicant further states that because so much of the Zoning Lot is occupied by a building that cannot be disturbed, only a relatively small portion of the site is available for development. . . .

91. The BSA Resolution concludes:

> WHEREAS, the Board notes that the site is significantly underdeveloped and that the location of the landmark Synagogue limits the developable portion of the site to the development site; and
>
> * * *
>
> WHEREAS, the Opposition contends that the inability of the Synagogue to use its development rights is not a hardship under ZR § 72-21 because a religious institution lacks the protected property interest in the monetization of its air rights that a private owner might have, citing Matter of Soc. for Ethical Cult. *v.* Spatt, 51 N.Y.2d 449 (1980); and
>
> WHEREAS, the Opposition further contends that the inability of the Synagogue to use its development rights is not a hardship because there is no fixed entitlement to use air rights contrary to the bulk imitations of a zoning district; and
>
> WHEREAS, the Board notes that Spatt concerns whether the landmark designation of a religious property imposes an unconstitutional taking or an interference with the free exercise of religion, and is inapplicable to a case in which a religious institution merely seeks the same entitlement to develop its property possessed by any other private owner; and
>
> * * *
>
> WHEREAS, the Board further notes that while a nonprofit organization is entitled to no special deference for a development that is unrelated to its mission, it would be improper to impose a heavier burden on its ability to develop its property than would be imposed on a private owner; and
>
> WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in light of the Synagogue's programmatic needs, create practical difficulties and

> unnecessary hardship in developing the site in strict compliance with the applicable zoning regulations; thereby meeting the required finding under ZR § 72-21(a). . . .

92. Section 74-711 of the Zoning Resolution provides:

> In all districts, for zoning lots containing a landmark designated by the Landmarks Preservation Commission, or for zoning lots with existing buildings located within Historic Districts designated by the Landmarks Preservation commission, the City Planning Commission may permit modification of the use and bulk regulations.

93. In its Application, CSI expressly disavowed reliance on this provision.

94. Pursuant to the Charter, the Landmarks Preservation Commission and the City Planning Commission are the sole agencies authorized and empowered to consider and resolve claims of prejudice to an owner caused by landmarking.

95. There is no authority in the General City Law, the Charter or the Zoning Resolution for BSA to entertain or decide such claims or to afford relief.

96. Thus, BSA's action, in considering the effect of the landmark status of the Synagogue was *ultra vires*. To the degree that such considerations cannot simply be excised from the Resolution, the entire Resolution is infirm and must be vacated.

Conclusion

97. Each of the foregoing material violations of applicable law and procedures requires that the Resolution be vacated; together, they conclusively require that result.

98. By reason of the foregoing, a dispute exists among the parties as to whether BSA's Resolution, and the procedures employed in considering and deciding CSI's Application, comply with applicable statutory and common law and precedent established by BSA.

99. Lacking other adequate remedies, Petitioners seek a judgment from this Court vacating the BSA Resolution and declaring it to be null and void and without force or effect.

As and For a Second Cause of Action

100. Petitioners repeat all prior allegations.

101. A balancing of the equities favors Petitioners, who will be irreparably harmed, and applicable law will be violated, unless the Court issues a judgment enjoining the Respondents from proceeding pursuant to the Resolution.

102. Lacking other adequate remedies, Petitioners seek a judgment from this Court enjoining any action based upon the BSA Resolution.

WHEREFORE, Petitioners demand judgment:

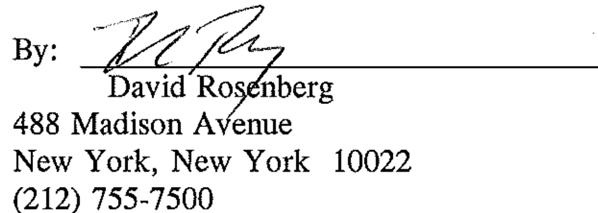
(1) Vacating the BSA Resolution and declaring it to be null and void and without force or effect;

(2) Enjoining Respondents from taking any action based upon the BSA Resolution; and

(3) Granting to Petitioners such other and further relief as is appropriate.

Dated: New York, New York
May 12, 2009

MARCUS ROSENBERG & DIAMOND LLP
Attorneys for Petitioners



By: ______________________
David Rosenberg
488 Madison Avenue
New York, New York 10022
(212) 755-7500

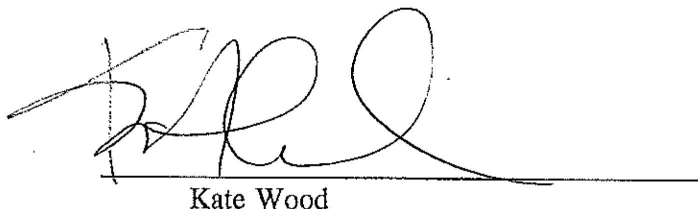
VERIFICATION

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

Kate Wood, being duly sworn, deposes and says:

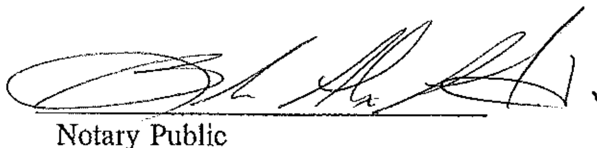
1. I am Executive Director of plaintiff Landmark West! Inc. and make this verification on behalf of Landmark West! Inc.

2. I have read the foregoing second amended complaint and the contents thereof and I know the same to be true to my own knowledge, except as to matters therein stated upon information and belief, as to which latter matters, my belief is based upon documents and records in our office.



Kate Wood

Sworn to before me this
12 day of May, 2009



Notary Public