

**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 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**

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<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)

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:

<i>Section C Department Of Buildings Decision</i>	BSA AUTHORIZING SECTION(S): <b>Z.R. § 72-21</b>	FOR: <input checked="" type="checkbox"/> VARIANCE <input type="checkbox"/> SPECIAL PERMIT (including 11-41)
	SECTION(S) OF ZONING RESOLUTION SOUGHT TO BE VARIED:	Z.R. §§ 24-11/77-24; 23-633; 23-663; 23-711; 24-67; 24-36
	DOB DECISION (OBJECTION / DENIAL) DATED: <b>March 27, 2007</b> ACTING ON APPLICATION NO: <b>NB-104250481</b>	

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.protectwest70.org/2006-corresp-docs/2006-04-11-Letter-LPC\\_To\\_Sugarman\\_Re\\_March\\_Meeting.pdf](http://www.protectwest70.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 much “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. Betsty 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