



Board of Standards and Appeals

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MEENAKSHI SRINIVASAN
Chair/Commissioner

**VIA FACSIMILE
AND FIRST CLASS MAIL**

November 7, 2007

Hon. Richard N. Gottfried, 75th A.D.
NYS Assembly
242 West 27th 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 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. Envtl. 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.

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