

**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  
www.sugarlaw.com

April 22, 2015

Martin Rebholz  
Borough Commissioner  
NYC Department of Buildings  
Manhattan Borough Office  
280 Broadway, 3rd Fl.  
New York, NY 10007

Margery Perlmutter, Chair  
NYC Board of Standards and Appeals  
250 Broadway, 29th Floor  
New York, New York 10007

Elizabeth R. Caputo, Chair  
Community Board 7  
250 West 87th Street  
New York, NY 10024  
[office@cb7.org](mailto:office@cb7.org)

Re: 8 West 70<sup>th</sup> Street, Manhattan, Congregation Shearith Israel  
Proposed Condominium-Community House

Dear Commissioner and Chairs:

I bring to your attention the bait and switch tactics employed by Congregation Shearith Israel to obtain variances from the Board of Standards and Appeals for a proposed condominium/community house at 8 West 70 Street, Manhattan, 74-07-BZ, August 26, 2008. These tactics have made a mockery of the BSA variance approval system.

The DOB has yet to approve the Congregation's application for a building permit, the proposed plans last having been disapproved by the DOB on March 2, 2015. The BIS system does not reveal the reasons for the disapproval and contains no current building plans.

The BSA variances allow the Congregation to eliminate upper floor setbacks in the front and rear and increase overall height beyond 75 feet and to build five large luxury condominiums. The Congregation's asserted purposes underpinning the variances were to meet the programmatic needs of the Congregation to build classrooms on floors two, three, and four.

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The Congregation argued that the classrooms needed to be contiguous and required large floors and that other space available on its site could not be used for classrooms. Thus, rear extensions, it was argued, were required for floors three and four to accommodate the classroom uses. The Congregation provided no other reason for the need to have the rear extensions.

The Congregation contended that these classrooms could not be placed in the 10,000 square foot area under the Congregation's Sanctuary nor in the Parsonage town house at 99 Central Park West (since the granting of the variances, the Sanctuary, Parsonage, and community house site have been combined into one zoning site.)

The Congregation then argued to the BSA that because of these urgent programmatic needs for classrooms, as a property owner it was unable to use these three floors to generate income and that thus it had a right to add floors to create the luxury condominiums that could have been located on these school floors, if not for the urgent programmatic need. The Congregation asserted that there could be no front-setbacks for the condominium floors, because the proceeds from the sale of smaller condominiums would not generate sufficient income.

With little probing questions and testimony, the Board of Standards and Appeals accepted these arguments, over the objection of the Community Board 7.

The latest filings show that the Congregation grossly and substantially misled the BSA when claiming that the school classrooms were urgent programmatic needs of the religious institution. The Congregation implicitly argued that as a religious entity with First Amendment rights, the BSA therefore was obligated to grant the variances – because of the stated programmatic needs.

The Congregation misled the BSA as to the veracity of its asserted programmatic needs that underpinned the variances. The new documents show that the Congregation no longer has an urgent programmatic need for schools, if it ever did, and there are now classrooms only on a part of floor two, and none on floors three and four. Importantly, the Congregation's justification for enlarged floors with rear setback variances on floors three and four no longer exists.

Absent these so-called imperative programmatic needs, three condominiums floors could be relocated to floors two, three, and four, obviating the need for the taller building and the unjustified absence of front set-backs.<sup>1</sup>

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<sup>1</sup> The five condominiums occupy at total 15,797 square feet, with Central Park views. The financial projections produced in 2008 by the Congregation showed condominium sale proceeds of approximately \$30 million or \$6 million per apartment, or approximately \$1900 a square foot, less than current valuation for CPW property. The apartments have five bedrooms and five bathrooms.

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The chart below (see attachment for full size) shows the evolution of the uses of floors two, three and four over time. These documents are all available on the BIS site.

Note - B-SCAN ES documents may be found on the BIS site, listed under the Virtual Job File: <http://tinyurl.com/CSE-BIS-Job-Folder>

	Plans 3-11-08 Approved by BSA 5/13/2008 B-SCAN ES916645417	PW/IA May 10, 2013 B-SCAN ES421459135	PW/IA Filed by Congregation March 13, 2015 B-SCAN ES658111394	Variances Granted By BSA August 26, 2008 B-SCAN ES344012223
1	Lobby, Exhibition Space, Offices			
2	6 Classrooms	Classrooms, Library, Offices	Classrooms, Library and Reading Room, Outdoor Terrace	
3	6 Classrooms	Classrooms, Common Area	Offices, Accessory Caretaker Dwelling	15 Foot Rear Extension Based upon Classroom Programmatic Need
4	Caretaker Apt and 3 Classrooms	Offices, Mail Copy Room Incidental Use Include Mech. Room	Office Mechanical Room	15 Foot Rear Extension Based upon Classroom Programmatic Need
5	Condominium 4,512 sq.ft.	One Apartment	One Apartment	Programmatic Need Prevented Congregation from using floors 1-4 for development...
6	Condominium 4,346.63 sq. ft.	One Apartment	One Apartment	id. Plus setbacks needed to provide rear extension
7	Condominium 4,346.63 sq. ft.	One Apartment	One Apartment	id.
8	Condominium 4,346.63 sq. ft.	One Half Duplex Apt Lower Level	One Half Duplex Apt Lower Level - two apts.	id.
9 (formerly "Penthouses")	Condominium 2,756.85 sq. ft.	One Half Duplex Apt Upper Level	One Half Duplex Apt Upper Level - two apts. with floor 8	id.
Comments	Caretaker Apt on Fourth Floor Front	No Caretakers Apt anywhere No classrooms on Floor 8	Caretaker Apt is included and no classrooms on floor 3 and 4	

Excerpts from the BSA decision showing reliance upon these so-called imperative  
programmatic needs are shown in the second attachment.

Excerpts from BSA Decision 7407-82, August 26, 2008 - See B-SCAN ES344012223

<p><b>7407-82</b> CSE-BIS-JOB-FILE</p> <p>WHEREAS, the Board further notes that the waivers of lot coverage and rear yard requirements are requested to meet the Synagogue's need for additional classroom space and that the sub-cellular multi-purpose room represents an as-of-right use; and</p> <p>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); and</p> <p>WHEREAS, the Board finds that the requested lot coverage and rear yard waivers are the minimum necessary to allow the applicant to fulfill its programmatic needs and that the front setback, rear setback, base height and building height waivers are the minimum necessary to allow it to achieve a reasonable financial return; and</p> <p>THAT, the parameters of the proposed building shall be as follows: a total floor area of 42,400 sq. ft.; a community facility floor area of 20,054 sq. ft.; a residential floor area of 22,352 sq. ft.; a base height of 95'-11" with a front setback of 12'-0"; a total height of 105'-10"; a rear yard of 20'-0"; a rear setback of 6'-0"; and an interior lot coverage of 0.80; and</p> <p>Adopted by the Board of Standards and Appeals, August 26, 2008</p>
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We urge each of you to review your legal authorities and determine what action is appropriate under the circumstances and to decide if the Congregation should be allowed to abuse the system.

Sincerely,



Alan D. Sugarman

Cc: Jay Greer  
Ryan Singer, Executive Director BSA [rsinger@bsa.nyc.gov](mailto:rsinger@bsa.nyc.gov)

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8	Condominium 4,346.63 sq.ft.	One Half Duplex Apt Lower Level	One Half Duplex Apt Lower Level – two apts	id.
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<i>Comments</i>	<i>Caretaker Apt on Fourth Floor Front</i>	<i>No Caretakers Apt anywhere No classrooms on Floor #</i>	<i>Caretaker Apt is included and no classrooms on floor 3 and 4</i>	

**74-07-BZ**

**CEQR #07-BSA-071M**

APPLICANT – Friedman & Gotbaum, LLP, by Shelly S. Friedman, Esq., for Congregation Shearith Israel a/k/a Trustees of the Congregation Shearith Israel in the City of N.Y. a/k/a the Spanish and Portuguese Synagogue.

SUBJECT – Application April 2, 2007 – Variance (§72-21) to allow a nine (9) story residential/community facility building; the proposal is contrary to regulations for lot coverage (§24-11), rear yard (§24-36), base height, building height and setback (§23-633) and rear setback (§23-663). R8B and R10A districts.

WHEREAS, the Board further notes that the waivers of lot coverage and rear yard requirements are requested to meet the Synagogue's need for additional classroom space and that the sub-cellar multi-purpose room represents an as-of-right use; 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); and  
ZR § 72-21 (b) – Financial Return Finding

WHEREAS, the Board finds that the requested lot coverage and rear yard waivers are the minimum necessary to allow the applicant to fulfill its programmatic needs and that the front setback, rear setback, base height and building height waivers are the minimum necessary to allow it to achieve a reasonable financial return; and

THAT the parameters of the proposed building shall be as follows: a total floor area of 42,406 sq. ft.; a community facility floor area of 20,054 sq. ft.; a residential floor area of 22,352 sq. ft.; a base height of 95'-1"; with a front setback of 12'-0"; a total height of 105'-10"; a rear yard of 20'-0"; a rear setback of 6'-8"; and an interior lot coverage of 0.80; and

Adopted by the Board of Standards and Appeals,  
August 26, 2008.