



Zoning Challenge and Appeal Form

(for approved applications)

Must be typewritten

1 Property Information *Required for all challenges.*

BIS Job Number 121328919

BIS Document Number

BIN: 1028510

Borough Manhattan

House No(s) 8-10

Street Name

West 70th Street

2 Challenger Information *Optional.*

Note to all challengers: *This form will be scanned and posted to the Department's website.*

Last Name Rosenberg

First Name David

Middle Initial

Affiliated Organization Landmark West! and others

E-Mail dr@mrdllp.com

Contact Number 212 755 7500

3 Description of Challenge *Required for all challenges.*

Note: *Use this form only for challenges related to the Zoning Resolution*

Select one: ☒ Initial challenge ☐ Appeal to a previously denied challenge (denied challenge must be attached)

Indicate total number of pages submitted with challenge, including attachments: *(attachment may not be larger than 11" x 17")*

Indicate relevant Zoning Resolution section(s) below. *Improper citation of the Zoning Resolution may affect the processing and review of this challenge.*

Section 24-11/77-24; Section 24-36; Section 23-633; and Section 23-66

Describe the challenge in detail below: (continue on page 2 if additional space is required)

PLEASE SEE ATTACHED.

Note to challengers: *An official decision to the challenge will be made available no earlier than 75 days after the Development Challenge process begins. For more information on the status of the Development Challenge process see the Challenge Period Status link on the Application Details page on the Department's website.*

ADMINISTRATIVE USE ONLY			
Reviewer's Signature:	Date:	Time:	WO#:

Zoning Challenge and Appeal Form

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4 Description of Challenge *(continued from page 1)*

Note to challengers: An official decision to the challenge will be made available no earlier than 75 days after the Development Challenge process begins. For more information on the status of the Development Challenge process see the Challenge Period Status link on the Application Details page on the Department's website.

ADMINISTRATIVE USE ONLY			
Reviewer's Signature:	Date:	Time:	

This Zoning Challenge is submitted on behalf of: LANDMARK WEST!, 80 CPW Apartments Corp., 91 Central Park West Corp., 18 Owners Corp., 11-69 Owners Corp. and other community residents and organizations in opposition to a New Building Application. (Job No. 121328919; BIN: 1028510; Block 1122, Lot 37; 8 West 70th Street, Manhattan), approved May 4, 2015 (the "Application").

Applicant's ZD1 Zoning Diagram states that:

1. BSA Approval was granted by BSA Resolution 74-07-BZ; and
2. BSA Resolution 74-07-BZ is the basis for the Application's violation of the following 7 Zoning Resolution requirements:
 - The Lot Coverage;
 - 2 Building Height; and
 - 4 Required Setbacks

Applicant's Zoning Diagram States:

<u>REQUIRED SETBACKS</u>	<u>REQUIRED SETBACKS</u>	<u>LOT COVERAGE</u>	<u>BUILDING HEIGHTS</u>
Front: 12.00' as per ZR 24-522, 23-633, 77-28, & BSA Action #74-07-BZ	Rear Yard at Community Facility: 20.00' as per zoning regulation 24-36, 24-391, & BSA Action #74-07-BZ	R8B = 80% R10A = 80% as per ZR 24-11, 77-24 & BSA Action #74-07-BZ	Street Wall: 94.54' as per ZR 24-522, 23-633, 77-28, and BSA Action #74-07-BZ
Rear: 6.67' As per ZR 24-522, 23-633, 77-28 & BSA Action #74-07-BZ	Side court setback: 15.00' as per BSA action #74-07-BZ	Lot Area: R8B = 4,720 S.F. R10A = 1,707 S.F.	Max Building Height: 105.71' as per ZR 24-522, 23-633, 77-28, & BSA Action #74-07-BZ
Rear Yard: 30' as per ZR 24-36, 24-391, & BSA Action #74-07-BZ	Rear Court Setback: 10.67' as per BSA Action #74-07-BZ		

**DOB'S Disapproval of
Applicant's 2007 New Building Plans**

On August 28, 2007, DOB issued a Notice of Objections to Applicant's then-submitted building plans for violating Zoning Resolution restrictions as to:

interior lot coverage (24-11/77-24); or rear yard depth (24-36); set back (24-36); base height (23-633); building height (23-66); and rear setback (23-633).

BSA Resolution 74-07-BZ

Applicant appealed DOB's Notice of Objections to BSA, which issued a May 13, 2008

Resolution (copy attached) stating:

WHEREAS, the proposed building will have the following program . . . (2) dairy and meat kitchens, (3) a synagogue lobby, rabbi's office and archive space on the first floor; (4) toddler classrooms on the second floor; (5) classrooms for the Synagogue's Hebrew School and Beit Rabban day school on the third floor; and (6) a caretaker's apartment and classrooms for adult education on the fourth floor; and

WHEREAS, the first floor will have 5,624 sq. ft. of community facility floor area, the second and third floor will each have 4,826.5 sq. ft. of community facility floor area, and the fourth floor will have 4,777 sq. ft. of community facility floor area, for a total of 20,054 sq. ft. of community facility floor area; and

* * *

WHEREAS, the applicant represents that the programmatic needs and mission of [Applicant] include an expansion of its lobby and ancillary space, an expanded toddler program expected to serve approximately 60 children, classroom space for 35 to 50 afternoon and weekend students in [Applicant's] Hebrew school and a projected 40 to 50 students in [Applicant's] adult education program

...

* * *

WHEREAS, the applicant states that the required floor area cannot be accommodated within the as-of-right lot coverage and yard parameters and allow for efficient floor plates that will

accommodate the Synagogue's programmatic needs, thus necessitating the requested waivers of these provisions; and

* * *

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 . . .

* * *

WHEREAS, . . . [Applicant] submitted a detailed analysis of the program . . . on a space-by-space and time-allocated basis . . .

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration . . . to permit . . . the proposed construction of a nine-story and cellar mixed-use community facility/residential building that does not comply with zoning parameters for lot coverage, rear yard, base height, building height, front setback and rear setback contrary to ZR§§ 24-11, 77-24, 24-36, 23-66, and 23-633; on condition that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 13, 2008" – nineteen (19) sheets and "Received July 8, 2008" – one(1) sheet; and on further condition:

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 95'-1"; with a front setback of 12'-0"; a rear setback of 6'-8"; and an interior lot coverage of 0.80; and

* * *

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

* * *

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the

Administrative Code, and any other relevant laws under its jurisdiction . . .

The May 4, 2015 Dob Approved Plans
Subject of This Challenge

As illustrated below, DOB's May 4, 2015* approved plans are materially different from the plans approved by the BSA Resolution:

<u>FLOOR</u>	<u>MAY 13, 2008 BSA APPROVED PLANS</u>	<u>MAY 4, 2015 DOB APPROVED PLANS</u>
1	Lobby for use with existing Synagogue on adjoining lot, small Synagogue/library/residential lobby, offices (475 S.F.)	Residential lobby, trash room, elevator control rooms, food service staging, pantry, multi-assembly room/lecture hall, coat room, equipment room
2	3 Offices (1,1473 S.F.), storage, 6 classrooms (1,127 square feet) to be used by CSI Hebrew School	2,022 S.F. reception area, nurse's office, 3 offices, library, reading room outdoor terrace and classrooms (1,065 S.F.)
3	One office, 6 Classrooms (2,600 S.F.) and boys and girls restrooms	Offices and caretaker apartment
4	3 Classrooms (1,409 S.F.), caretaker apartment and boys and girls restrooms	Offices and mechanical room
5	4,512 S.F. of residential space	One Apartment
6	4,346 S.F. of residential space	One Apartment
7	4,346 S.F. of residential space	One Apartment
8	4,346 S.F. of residential space	Lower Level Duplex Apartment
9	2,757 S.F. of residential space	Upper Level Duplex Apartment

Applicant's 2007 BSA application claimed that its programmatic needs and mission required:

- 12 new classrooms (which later plans increased to 15), occupying 5,136 square feet;
- and

* DOB records indicate that Applicant first filed its plans on June 25, 2013, which were disapproved on April 29, 2014, May 8, 2014, September 8, 2014, March 2, 2015 and March 6, 2015. Applicant has provided no explanation for DOB's 5 disapprovals of its plans or the basis of the May 4, 2015 approval.

- reduction of the required 30 foot rear yard set-back to 20 feet to accommodate larger floor plates for classrooms on the 3rd and 4th floors. DOB's May 4, 2015 approved plans now provide that the ten foot space will be used for an open terrace, not classrooms.

DOB's May 4, 2015 approved plans provide for only 3 classrooms, occupying 1,065 square feet, 20% of the classroom space that Applicant told BSA that it required to satisfy its "programmatic needs and mission".

Expressly adopting Applicant's statement of its alleged "programmatic needs and mission" for 12 (later 15) classrooms, the BSA Resolution granted 7 Zoning Resolution variances to permit the construction of a building large enough to accommodate the classrooms.

The space which BSA approved for use as classrooms now has been "re-purposed" as offices, meeting rooms, conference facilities and an open terrace.

Applicant's current plans eliminate 642 square feet of community facility space and 69 square feet of residential space for a total reduction of 701 square feet of space, the equivalent of the reduced setback authorized by BSA.

Finally, the rooftop bulkhead has been increased dramatically in size and height from that approved by the 2008 BSA Resolution.

The 2008 BSA Resolution granted 7 Zoning Resolution variances expressly "on the condition that any and all work substantially conform to the drawings marked "Received May 13, 2008" adding that "this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB (other objectives) only; [and that] the approved plans shall be considered approved only for the portions related to the specific relief granted . . ."

The May 4, 2015 DOB approved plans are so materially different from those approved by the 2008 BSA Resolution that Applicant's claim to be authorized by 74-07-BZ must be held to constitute material misrepresentations and false filings.

**Applicant's Misrepresented
Use of The Fourth Floor**

Applicant's BSA appeal was based on its claimed "programmatic need" for additional classroom space. There was virtually no mention of office space in the 2008 BSA Resolution.

The 2008 BSA Resolution authorized the fourth floor to be occupied by 3 classrooms, a caretaker's apartment and boys and girls restrooms. All of these uses have been relocated to other floors or eliminated in the May 4, 2015 DOB Approved Plans.

Since Applicant never claimed to need such extensive office space, it appears that Applicant intends, in a post-approval application, to convert this space to residential condominium space, to be sold together with floors 5 through 9.

DOB has the right and obligation to demand that Applicant prove that it will use the fourth floor for its "programmatic needs and mission" and, upon Applicant's failure to do so, to revoke this issued permit. 9th & 10th St. L.L.C. v. Bd. of Stds. & Appeals, 10 NY 3d 264 (2008).

Conclusion

DOB's May 4, 2015 approved plans differ materially from those authorized by the 2008 BSA Resolution in: floor area; and use of space.

Since Applicant's current, materially changed, plans do not comply with the 2008 BSA Resolution Resolution, they violate the Zoning Resolution.

Unless Applicant obtains BSA authorization for its dramatically different plans, this Challenge must be granted.