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October 7, 2016

Hon. Margery Perlmutter, RA, Esq.
Chair of the New York City Board of
Standards and Appeals
250 Broadway, 29th Floor
New York, New York 10007

Re: BSA Application 74-07-BZ (the "2007 Application")
Congregation Shearith Israel ("CSI")
6-10 West 70th Street
New York, New York, 10023
Block 1122 Lots 36 and 37 (the "Property")

Dear Chair Perlmutter:

On behalf of Landmark West! and property owners and residents in the immediate vicinity of the above Project, this is to request that BSA reject CSI's June 16, 2016 application (the "2016 Application") improperly filed as a Special Order Calendar ("SOC") application.

BSA Must Require CSI
To Refile The Application
On The BZ Calendar

CSI's 2016 Application states:

"The Applicant also requests a waiver of Board rules, as permitted under Section 1-07.3(c)(2) of "the Board's rules, to allow an application to be filed on the Special Order Calendar within two years following the expiration of the initial time to complete substantial construction."

Section 1-07.1(a)(1) of BSA's Rules provides:

> If, in the course of further review of the application or during a hearing, the Board determines that the scope of the application is major, it may request that a new application be filed on the BZ calendar, with additional information and analysis provided.

For the reasons hereafter stated, CSI's Application is untimely, provides for major, not minor, modifications of BSA's August 26, 2008 variance resolution (the "Resolution") and should proceed through a normal Department of Buildings ("DOB") review and, then, if otherwise appropriate, pursuant to a BZ appeal to BSA.

CSI's effort to short-cut the important procedures required for an application—and to have BSA waive its express rules to permit this—would violate every principle of Due Process incorporated in the General Municipal Law, the Zoning Resolution, the Building Code and BSA's own Rules and Regulations.

CSI's Failure To Seek Or Obtain DOB Review of Its New Plans Requires Denial Of Its SOC Application

BSA's web-page states:

> The majority of the Board's activity involves reviewing and deciding applications for variance or special permits, as appeals empowered by the Zoning Resolution, and applications for appeals from property owners whose proposals have been denied by the City's Department of Buildings…
>
> 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 [including DOB]. The Board cannot offer opinions or interpretations generally and it cannot grant a variance…to any property owner who has not first sought a proper permit or approval from an enforcement agency.

The plans incorporated in CSI's 2016 Application have not been submitted to DOB and have not been reviewed by DOB.

Disingenuously, CSI's 2016 Application states "locations of partitions have shifted due to further development of the location of the building structure."

In fact, CSI's submission to Community Board 7 admitted that the plans were changed due to "[f]inalization of structural system."

In other words, when CSI submitted its plans to BS in 2008, CSI had not even completed its structural plans for the Project.

Moreover, among the claimed "minor" changes between the 2016 plans and the 2008 plans are:

Relocated staircases and enclosures;

Additional staircases;

Relocated means of emergency egress;

Relocated mechanical equipment and addition of mechanical equipment, directly affecting neighboring properties;

Other major changes will be described in submissions separately filed. At the end of the section of CSI's 2016 Application entitled "Compliance with Board Approval", CSI states, in intentionally ambiguous language: "The 2016 Plans will be filed with DOB for review for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code; and any other laws under DOB's jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

The 2016 Plans will also be filed with LPC".

In other words, CSI wishes to "put the cart before the horse".

CSI has offered no legal or factual basis for its request to "skip the line" and jump in before other applicants who duly followed the normally required procedures. It would be wrong and unfair to other similarly situated applicants for BSA to permit CSI to do so.

CSI's Application Must
Be Denied For Failure
To Provide Notice To
Neighboring Property Owners

Were CSI to have filed its present Application as a BZ application, Sections 1-02 and 1-05.6 of BSA's Rules would have been required that notice be provided to property owners within a 400-foot radius of the center of Property.

When CSI filed its original 2007 Application, it was required to, and did, provide notice to neighbors of the Project.

After 8 years of no action by CSI to construct its Project, neighboring community members reasonably considered that CSI had abandoned the Project.

During this 8-year period, many residents who had resided in the community in 2008 undoubtedly relocated elsewhere and new families moved into the community with no notice of the potential that CSI's Project would proceed, much less that CSI would seek major modifications of its Project.

For this reason, alone, CSI's Application should be denied and it should be required to provide the notice required by for a BZ application.

Even if some community members learned of CSI's Application when it was calendared for hearings at Community Board 7, they were not privy to the multiple subsequent submissions

to BSA, the most recent of which was filed on Friday, September 30, 2016 immediately prior to the weekend and Monday Rosh Hashanah holiday.

Without receiving CSI's multiple submissions, community members cannot possibly respond to them.

CSI's Materially Different Plans
Require Denial Of Its Application

While CSI characterizes its new plans as a "minor amendment to the plans previously approved by the Board", that is hardly a fair or accurate characterization. As noted previously and in separate submissions, the 2016 plans contain major material structural and other changes.

The Multiple Relief Requested
By CSI Requires a Full
BZ Application Review

CSI's "spin" notwithstanding, it does not seek mere minor relief. To the contrary, CSI's Application seeks:

> "an extension of time to complete substantial completion of construction";
>
> "amendment to the plans approved by BSA [in 2008]"; and
>
> "waiver of BSA rules to allow an application to be filed on the Special Order Calendar ("SOC") within two years following the expiration of the initial terms to complete substantial construction."

CSI's 2016 Application
Must be Rejected As Untimely

CSI is seeking to extend and modify BSA's 2008 Resolution issued more than 8 years ago;

Disingenuously, CSI claims that its Application is being made "within two years following the expiration of the initial term to complete substantial construction." That is a falsehood.

BSA's Resolution was issued on August 25, 2008. Pursuant to Section 72-23 of the Zoning Resolution and the express terms of the BSA's Resolution, the variance granted to CSI was to "automatically lapse if substantial construction, in accordance with the plans for which the variance was granted, has not been completed within four years form the date of such granting . . ."

While Section 12-23 provides for an extension during the pendency of litigation challenging the variance, all such litigation was terminated as of February 21, 2012. It is unfair for CSI to claim that its 2016 Application was made months after the "initial time to complete substantial construction".

Moreover, no adequate explanation has been offered by CSI for its failure to start, much less complete, any construction within four years from February 21, 2012.

Nor does CSI seek an extension of time for substantial construction pursuant to the plans approved in the 2008 BSA Resolution. Rather, CSI seeks an "extension" of time for construction pursuant to materially different plans, not reviewed or approved by BSA or DOB.

While Landmark West! and others challenged the Resolution in court, no injunction against CSI's Project was sought or obtained, by reason of which CSI was free to start, "substantially complete" and, in fact, fully complete the construction of the Project in the subsequent 8-year period.

As admitted by CSI, in spite of the fact that no court order prevented it from commencing the Project, it did not even have "an owner's representative (Harold Jupiter) to work with the architecture and engineering team for the project to prepare construction drawings" until some unspecified date after February 21, 2012—a date still more than 4 years ago.

CSI claims that the development of construction drawings "continued into 2014" in spite of the fact that the August 26, 2008 Resolution expressly required that "any and all work shall substantially comply with this application marked 'Received May 13, 2008' - nineteen sheets and 'Received July 8, 2008' - one (1) sheet."

CSI claims, without further support, that: "an arrangement of financing continued into 2014", this never previously was claimed by CSI to be required.

CSI has admitted that:

> it did not even execute a "term sheet", much less a contract, with its unidentified development partner until some unstated date in 2014; it did not execute a "term sheet" with an unidentified "equity investor" until an unstated date in 2014; and
>
> in mid-2014, Harold Jupiter "fell ill" and "passed away" in late 2014;
>
> in "early 2015, the [unidentified] development partner and the [unidentified] equity investor split up."

Even these multiple excuses, which read like a script for a television soap opera, provide no explanation for the delay in submitting the 2016 Application until June 2016, more than a year later.

CSI's Unclean Hands Require
Denial Of The Relief Requested

CSI's "unclean hands" requires denial of its Application.

It is a fundamental principle of the law of our country and our state law and the "dictates of natural justice" that one seeking equitable relief from a court or other appellate tribunal, including BSA, must come before the body with clean hands, fully and frankly presenting its claim Deweese v. Reinhard, 165 US 386, 390 (1897); *see,* also, Keystone Driller Co. v. General Excavator Co., 290 US 240 (1933).

To permit an applicant to obtain relief by violating this important principle effectively makes the tribunal "an abettor of inequity." Bein v. Heath 6 How. 228, 247 (1848).

In addition to CSI's other evidence of unclean hands, CSI's 2016 Application makes no mention of:

A. The plans CSI submitted to, and which were approved by DOB on May 4, 2105, which:

   substituted multiple offices for the classrooms claimed by CSI to be its "programmatic needs" and approved by BSA in the 2008 Resolution;

   substituted for other classroom space that CSI claimed to be required to satisfy its "programmatic needs" an open terrace area;

   reduced the total of 12 classrooms in the plans approved by the BSA 2008 Resolution to 3 classrooms, occupying 20% of the space originally claimed to be required by CSI;

B. CSI's February 18, 2016 fraudulent and intentionally misrepresenting application to BSA for a letter of substantial compliance of its 2015 DOB approved plans with BSA's 2008 Resolution.

C. The challenges filed by Landmark West! and others to CSI's February 18, 2016 BSA application;

D. The challenges filed by Landmark West! and others to DOB's approval of CSI's 2015 plans;

E. DOB's revocation of its approval of CSI's 2015 plans; and

F. BSA's April 19, 2016 denial of CSI's February 18, 2016 application for a letter of substantial compliance; and

G. The still pending and undetermined application by Landmark West! for BSA to enforce its 2008 Resolution.

CSI has mentioned none of these material matters, obviously hoping that BSA and its staff have incredibly short memories, as CSI did in failing to mention then to Community Board 7.

By failing even to mention these materially important matters, SI obviously hopes to avoid having to explain how and why it claimed a need for offices and a lack of need for the classrooms which were the express basis of the BSA 2008 Resolution or how the offices miraculously were changed back to classrooms in its 2016 Application.

By its actions, CSI has established, beyond dispute, its unclean hands.

Conclusion

CSI's bad faith, disingenuous, misrepresentations and unethical efforts require rejection of its Application.

The SOC hearing presently scheduled for October 14, 2016 should be decalendared and CSI's Application should be dismissed.

Respectfully submitted,

David Rosenberg

DR/cac

cc: David Schnakenberg, Esq.,
BSA General Counsel
Zachary Bernstein, Esq.
Landmark West!
Alan Sugarman, Esq.