

NEW YORK CITY
BOARD OF STANDARDS AND APPEALS

Application of
Congregation Shearith Israel
For
Variance
From the Application of Provisions of
The New York City Zoning Resolution

BSA Cal No: 74-07 BZ
CEQR No: 07BSA071M
Premises
6-10 West 70th Street
Manhattan

PRELIMINARY
STATEMENT BY
PROTECTWEST70.ORG
OPPOSING ISSUANCE OF
VARIANCES

This preliminary statement in opposition to the Application of Congregation Shearith Israel (“CSI” or the “Congregation”) is submitted by Alan D. Sugarman and ProtectWest70St.org¹, an informal coalition of residents of West 70th Street who oppose the variances requested by Congregation Shearith Israel ("Opponents"). This statement is directed to the Board of Standards and Appeals (the “BSA”). However the issues addressed here equally apply to Community Board 7 (“CB7”). Opponents request that CB7, when considering these matters, fully address the conditions required for the granting of a variance.

¹ Alan D. Sugarman provides a non-profit web site, [ProtectWest70.org](http://www.protectwest70.org), which contains a collection and compilation of [documents relating to the Congregation’s proposed](#) project. See Acrobat files of all filings, schematic plans, letters and related documents. This Preliminary Opposition Statement is available at <http://www.protectwest70.org/2007-docs/2007-09-19-PreliminaryOpposition.pdf>, which is hot-linkable, with linked cross-references to other documents cited herein .

On April 2, 2007, the Congregation submitted an [application](#) (the ‘Initial Application’) with the Board of Standards and Appeals for variances to construct on West 70th Street in Manhattan a non-complying building adjoining its landmarked synagogue at Central Park West and West 70th Street.² As was previously demonstrated to the BSA by community opponents, the Initial Application failed to support the legally mandated findings for a variance, failed to include information mandated by BSA rules and was otherwise incomplete and misleading. On June 15, 2007, the BSA issued a [detailed objection letter](#) to the Congregation requiring 48 changes to the application before the BSA would even consider the application. Community opponents provided similar objections.

The Congregation’s Revised Application was submitted on September 10, 2007 (the ‘Revised Application’) restating and resubmitting almost all of the filings of the Initial Application, but including a new [Statement in Support](#) (‘Revised Statement’). The exception was the Freeman Frazier economic feasibility report, supplementing, rather than restating, the April submission. The supplemented Freeman Frazier report shows that the Congregation would be able to construct the as-of-right building with no need for additional cash contribution from congregants and Trustees and any supporting members of the community.)

This Preliminary Statement will not attempt to summarize the entire project nor will it specify all deficiencies in the Revised Application, but will address only selected issues raised by the Revised Application. The purpose is to suggest further clarifications that the BSA should

² The Congregation [submitted](#) 194 pages of material including 89 pages of drawings. The submission was made two days before the commencement of the Jewish High Holy days. The Congregation did not provide a comparison between the old and the new documents. This parallels the earlier submission of the Congregation which was served, coincidentally, on another High Holy Day.

require before scheduling any hearings. Moreover, Opponents request that CB7 require the same additional information and receive the information prior to scheduling any meetings.

I. The Congregation's Position

The Congregation's position may be summarized as follows: Because the Congregation is a non-profit religious organization in existence for many years and because it owns a landmarked Synagogue, it is not required to meet the legally required standards for a variance in order to construct a commercial project designed to generate income for the benefit of the Congregation, and, thereby, implicitly, its members. Because of the Congregation's 'unique status', the Congregation essentially argues:

- (1) regardless of the financial resources available to the Congregation,
- (2) value should be transferred from specific property owners and the community in general to the Congregation and its members,
- (3) so as to permit the Congregation to construct a facility,
- (4) without the need of asking its members and donors for the financial support for the alleged critical needs faced by the Congregation; and,
- (5) that the BSA grant a variance to the Congregation without making all of the required findings.

II. The Congregation's Inability to Respond to Significant BSA Objections

In responding to the BSA Objections, the Congregation is still unable to meet the conditions of the so-called five findings imposed by the Zoning Resolution.

The BSA, apparently with required finding (e)³ in mind, issued the following objection:

BSA Objection #5. Pages 10 & 11: These pages contain information describing the proposed building. For clarity, this section should be combined with the "New Building Development Program" on Pages 17 and 18. This combined section should provide more detail of the alleged nexus of CSI's programmatic needs and the proposed waivers requested. The following four objections (#6-#9) should be addressed within this combined section.

The Congregation states that its response to Objection 5 would be found on Pages 20-24.

BSA Objection #14. Page 20: Within the first paragraph, one of the elements of the suggested "(a) finding," is "...the dimensions of the zoning lot that preclude the development of floor plans for community facility space required to meet CSI's...programmatic needs." Please specifically explain in what way the site's "dimensions" hamper CSI's programmatic needs."(emphasis supplied).

The Congregation states that its response to Objection 5 would be found on Pages 25-27 .

Implicit in the BSA objections was the position³ that unless the Congregation could provide a nexus between its programmatic needs and the requested variances, the Congregation

³ The Zoning Resolution 72-21 provides that the BSA must make five findings in order to grant a variance from the zoning law. The fifth required finding, ZR 72-21 (e) provides that any variance, if granted "is the minimum variance necessary to afford relief ..."

would not be allowed to obtain a variance.⁴ Further, the Congregation must adequately respond to Objection 14 relating to the site dimensions.⁵

The principal variances sought by the Congregation relate to the increase in the height of the building and the increase in the depth of the building. However, in responding to the BSA objection, the Congregation was unable to show any nexus between the variances requested and the Congregation's programmatic needs.

Significantly, the Congregation's Revised Application fails to demonstrate, in response to Objection 14, how the "dimensions " hamper' CSI's programmatic needs" -- for the programmatic needs of the Congregation are fully met in an 'as-of-right' building. BSA objection 14 reflected the statutorily mandated conditions that the Congregation must satisfy, even if other conditions are met.⁶

The Congregation's stated principal programmatic needs fall into several areas (disregarding the clear income producing objectives of the school and banquet hall.)

⁴ This is not to suggest that merely demonstrating a nexus would be sufficient -- rather that it was a sine qua non of even proceeding.

⁵ BSA Objection 14 clearly is dictated by the first required finding which requires :(a) that there are unique physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular zoning lot; and that, as a result of such unique physical conditions, ..." Nowhere does the Congregation provide any evidence whatsoever that there are unique physical conditions on this lot. Since the Congregation has not and cannot provide a factual underpinning for this finding, it may not obtain a variance.

⁶ It is revealing that the Congregation is unable respond in a sentence or two showing the "nexus of CSI's programmatic needs and the proposed waivers requested:" or "in what way the site's "dimensions" hamper CSI's programmatic needs. Instead, it responds with prolix and convoluted multi-page responses, because, in fact, CSI has no adequate responses to objections 10 and 14.

A. Circulation and Accessibility Modifications Require No Variances

All accessibility and circulation needs laboriously and repeatedly claimed by the Congregation are met in the *as-of-right* building plans submitted by the Congregation. Indeed, the schematic drawings for the basements and first four floors of the proposed building (requiring variances) are virtually identical with those shown in the *as-of-right* buildings. Both the proposed and *as-of-right* buildings have the same size lobbies, the same single elevators and the same passageways into the Synagogue sanctuary building.⁷

Because the programmatic needs are addressed equally by the proposed and the *as-of-right* buildings, the Congregation has failed completely to provide a coherent and succinct response to the BSA's request that the Congregation "provide more detail of the alleged nexus of CSI's programmatic needs and the proposed waivers requested." There is no such nexus. Thus, the Congregation cannot show a basis for having the BSA issue a variance on these grounds.

The new drawings from the Congregation show that both the current and the proposed (and *as-of-right*) buildings have a single elevator with the same passageways to the Sanctuary. The proposed and *as-of-right* buildings provide an enlarged lobby. It is noteworthy that all of these "improvements" are within the footprint of the front part of the current building. When the Congregation constructed the current community house in 1954, it added an elevator to provide access to the upper floors and provided an accessory lobby in the then new building. The

⁷ The Revised Statement asserts that the new building will provide: "New barrier-free elevator dedicated solely to accessing the Synagogue's upper levels." This statement is deceptive. There is already an existing elevator in the existing Community building providing such access. Further, the elevator in the proposed community house provides access to the four school floors above, so it is untrue that it is "dedicated solely to" the stated purpose.

Congregation may now need to modernize and extend the current lobby (although it could have done the same in 1954) – but no variances are needed for that work today. Indeed, not even a new building is required since these needs could easily be met by renovating the current building.

B. Facilities for Archives and Expanded Small Synagogue Require no Variances

The Congregation has asserted the urgent need to expand its facilities for its valuable historic archives and to provide an expansion area of the small synagogue that is on the ground floor and to the South of the Sanctuary. Two points are critical to understanding why this position is incorrect: First, no variances at all are required for the extensions of the first floor to the property line for a community building. Second, the archives and synagogue extension proposed to be included on the ground level do not require the granting of any variances.

This is clear again by comparing the schematic plans for the proposed building to the *as-of-right* building – in each set of plans, the provisions made for the archives and small synagogue expansion are the same in both sets of plans. Once again, the Congregation is unable to “provide more detail of the alleged nexus of CSI's programmatic needs and the proposed waivers requested.” Again, there is no nexus.

Though the Parsonage⁸ is part of the Congregation's zoning lot, the Congregation is strangely silent as to the uses of the Parsonage, which is under renovation. The new drawings presented by the Synagogue now describe the upper floors of the Parsonage as having six bedrooms, a roof terrace, an elevator, two bathrooms, a kitchen, a large living room, and a large dining room. On the same level as the small synagogue (the ground floor) the Parsonage is now shown to have is a large meeting room, and another bathroom and kitchen.⁹ Despite the integral nature of the Parsonage to the entire site, and the Congregation repeatedly asserts that the Parsonage is part of the zoning site, other than information revealed in the latest drawings, the Congregation is completely silent about the Parsonage. Without question, the Small Synagogue expansion as well as the archives could easily be housed in this historic structure by eliminating the meeting room and moving the Small Synagogue – see drawing P-8.

Instead, the Congregation is using the Parsonage for some other purposes– in prior communications to the BSA, it has been suggested that the Congregation, as part of its real estate operations, had been renting the Parsonage as a private residence for substantial sums of money. The silence by the Congregation in response suggest the truth of these allegations, showing the commercial real estate impetus in the Congregation's proposals.

⁸ The Parsonage building was built in 1896-7 concurrent with the construction of the Synagogue sanctuary. The Parsonage serves an important aesthetic and cultural purpose by creating a separation space from adjoining buildings, permitting the 1896-97 Trustees to honor the Jewish tradition of not permitting a building adjacent to a Synagogue to be taller than the Synagogue.

⁹ The Parsonage is shown in the lower left corner of the zoning lot – e.g., P-8, P-9, P-10 and P-11. The schematics presented in April 2007 omitted the labels referring to a roof terrace, the bedrooms etc. The bedrooms in the earlier drawings are described as rooms; moreover, the earlier drawings did not describe a terrace, and did NOT show an elevator in the Parsonage.

C. A Variance In Height Is Not Required For The Classrooms Proposed By The Congregation

The Congregation also proclaims an urgent need for classrooms on second, third and fourth floor of the proposed building. In the rear of the building, to accommodate allegedly its Sunday school, the Congregation has requested a variance to extend the depth of the building so that six of the rear classrooms would extend deeper in the lot. Thus, the Congregation has requested that the building extend 80.5 feet into the lot which requires a variance from the as-of-right depth on upper floors of 70.5 feet.

In addition, and relevant to this section, the Congregation also requires a variance for maximum building height¹⁰, but it is clear that the zoning variance for the proposed height of the building is unrelated to the asserted need for classroom space.

Once again, the Congregation was unable to “provide more detail of the alleged nexus of CSI's programmatic needs and the proposed waivers requested.” There is no nexus whatsoever between the school classrooms and the height variance requested.

D. A Variance for Lot Depth to Permit Some Larger Classrooms Is Not Justified By the Facts

The previous section (Section C) mentions the variance the Congregation seeks regarding an increase to the setback of the building from 70.5 feet to 80.5 feet.¹¹ This would permit six classrooms on floors three and four to be slightly larger. Compare AOR-10 to P-11.

¹⁰ DOB Objection 6 states: “Proposed maximum building height in R8B does not comply. 113.70' provided instead of 75.00' contrary to section 23-633.”.

The Congregation's Revised Application provides for 12 classrooms. However, both the proposed and as-of-right building provide additional space that can be used for teaching purposes: the large meeting room between the Small Synagogue and the Parsonage, the Small Synagogue Expansion, the space available in and around the Levy Auditorium, and the 6400 sq. ft. "multi-function" room in the sub-basement.

Moreover, the Congregation seems to suggest that all of the classrooms are needed for the few hours a week of classroom use for classes run by the Congregation such as Sunday School, etc. Yet, the Congregation [readily admits](#) that it has only 40 students in its Hebrew School, and does not even claim that these 40 students are in attendance simultaneously – clearly, a 12 classroom school has nothing to do with the Congregation's programmatic needs, and everything to do with its real estate leasing needs.

Were the Congregation more forthcoming, it would be clear that the Beit Rabban day school is the tail wagging the real estate development dog here – the building is being configured for the purposes of it the Beit Rabban school as the anchor tenant, so that the school can maximize students for what is in effect a private day school.

A second factor for the extra ten feet of setback is for the other "anchor tenants/target purchasers": i.e., the variance here is intended as well to provide larger apartments – each floor having another 60 square feet of space – and has nothing to do with the school.

¹¹ DOB Objection 2 states: "Proposed rear yard in R10A interior portion does not comply. 20.00' provided instead of 30.00' contrary to section 24-36." In other words, the Congregation wants a building 80 feet deep while the zoning would limit the building to 70 feet.

Once again, the Congregation was unable to “provide more detail of the alleged nexus of CSI's programmatic needs and the proposed waivers requested. ” There is no nexus at all between the Congregation school use requirements and the setback variance.

E. *The Proposed Building Negatively Impacts the Neighborhood*

In order to obtain a variance, the BSA must make a finding that:

(c) that the variance, if granted, will not alter the essential character of the neighborhood or district in which the zoning lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare ...

1. *Lot Line Windows*

In view of this required finding, and after community complaints as to the failure of the Congregation in its Initial Application to describe the windows being blocked in 18 West 70th Street, the BSA in its objection number 22 asked the Congregation: “Within the suggested "(c) finding," please note the number of lot-line windows for adjacent residential buildings that would be blocked for both the as-of-right, lesser variance ... and proposed scenarios.” In response, the Congregation stated that:

With respect to the adjacent nine-storey building along the proposed New Building's western lot line, eight lot line windows will be blocked. In the as of right schemes three windows would be blocked.

Translated into plain English, what the Congregation is actually saying is:

CSI's proposed building will brick-up 8 windows of privately owned cooperative apartments in 18 West 70th Street rather than only three windows in the as-of-right building. CSI will not provide photographs or sketches showing which windows will be bricked up, although BSA rules require such information. CSI's extra floors will also adversely affect other windows in 18 West 70th, by blocking views and air of additional

apartment owners. CSI interpreted “blocking” to mean only windows bricked up, so CSI will provide no information.

Because the only reason for the extra floors is to provide a financial subsidy to the Congregation and thereby to its member, the net effect of a variance, if granted, would be to seize financial value from the cooperative owners and transfer that value to the members of the Congregation.

Clearly it would be an abuse of discretion for the BSA to grant the height variance requested -- because this would allow the Congregation to brick up and interfere with the windows of numerous apartment in 18 West that would not be so affected if an *as-of-right* building were constructed. Now that the Congregation has admitted to that it will be bricking up windows, it should not provide the [photographs](#) and [adjoining conditions plans](#) required by BSA rules Items J and L.

2. Shadow Studies

Shadows cast by the proposed building will have an impact on the narrow West 70th Street. Residents from the time that the Congregation was first before the Landmarks Commission have complained repeatedly about the refusal of the Congregation to have its able architects use their sophisticated computer-assisted design software to output shadow studies for West 70th Street from the data already residing in their computers. These objections as to absence of such shadow studies on West 70th Street are reflected in the minutes of prior Community Board 7 committee hearings, in multiple communications to the BSA, LPC, and in proceedings before [Community Board 7](#) about the intransigence of the Congregation.¹²

¹² The Shadow Study provided by the Congregation with its Application are studies of the impact of shadows on Central Park only. Although West 70th Street is shown in the Study, the studies provide absolutely no meaningful information as to West 70th St,. However, the provision of the Central Park

Opponents therefore suggest that this failure of the Congregation (to provide these studies) must compel the CB7 and BSA to conclude that the height variance will negatively impact the community due to excessive shadows on a narrow street. To describe the current situation in legalistic language, the BSA has no factual basis to make a finding that the shadows cast by the proposed building “will not alter the essential character of the neighborhood or district in which the zoning lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.”

3. The Banquet Hall and Community Impacts

The BSA is acutely aware, as a result of other variance proceedings, of the potential for the abuse of banquet facilities by religious non-profits. In the proposed project, the Congregation is constructing an enormous 6,432 sq. ft. “multi-function” room in the sub-basement, with dairy and meat kitchens and large bathrooms on the basement floor above.

In Objection 9, the BSA inquired as to the intended use of the sub-basement space. In its Revised Statement the Congregation acknowledges that the sub-basement will indeed be used for wedding and bar mitzvahs and other life cycle events. Given the other commercial uses to which the Congregation’s property is being put (and despite the Congregation’s protestations) there would be no prohibition other than self-control, to prevent renting the facility to others.

Shadow Study show that the architects have the necessary data on their computer systems to provide studies for the north building on West 70th St, if so directed by BSA or CB7.

Clearly, a banquet hall of this quality and size in this location is a major business unto itself -- and would rent for as much as \$10,000 to \$20,000 per event.¹³

Were the Congregation not intending to use the facility for large gatherings (and 6000 square feet will accommodate many hundreds of people) then the Congregation would not be planning and financing its construction.¹⁴ Clearly, this business/facility will attract hundreds of automobiles as well service vehicles and buses on the narrow West 70th Street. Despite the Congregation's claim that traffic is not an issue because Orthodox Jews do not drive on religious days, the functions will be held on non-religious days, and traffic will be enormous. No traffic study at all, which would require disclosure of accurate use information, has been provided. Large events now clog West 70th Street. The Congregation's environmental analysis conveniently ignores these issues.

Alternative uses for the sub-basement space would include placing archives and offices and museums and meeting rooms in this area, perhaps moving offices from the current "multi-function" Levy Auditorium beneath the 10,000 sq. ft. Synagogue. It appears that as designed by the original architects, there was a 10,000 square foot assembly room under the Sanctuary, but this encroached by carving up the space with additional rooms. Moving these functions to the

¹³ Even if not rented, the space provides an economic value to the congregants who would be able to use the space for a large wedding or Bar Mitzvah – value which is not included in the Freeman Frazier economic study. Moreover, it is obvious that the sub-basement facility will be used by the Beit Rabban school for recreation and other purpose, but, the value of the room to the school is not included in the Freeman Frazier study.

¹⁴ From an environmental and safety perspective, one does wonder how the Congregation is planning to deal with proper fire exits in a facility the City describes as "sensitive" for security and how the Congregation plans to handle the mounds of garbage that will be created by large events.

sub-basement would permit more of the above ground space to be used for income producing residential uses.

III. The Freeman Frazier Feasibility Study is Fatally Flawed

Ordinarily, the BSA must make the following finding as a condition to granting a variance:

(b) that because of such physical conditions there is no reasonable possibility that the development of the zoning lot in strict conformity with the provisions of this Resolution will bring a reasonable return, and that the grant of a variance is therefore necessary to enable the owner to realize a reasonable return from such zoning lot; this finding shall not be required for the granting of a variance to a non-profit organization; (emphasis supplied)

In the first instance, finding (b) under its terms is not required for the proposed community house facility because the Congregation is a non-profit organization – for the reason that most non-profit organizations do not construct facilities for the purpose of obtaining a rate of return, but for the charitable purposes of the organizations. Thus, charitable non-income producing facility or activity will reduce the potential rate of return, or even create a negative rate of return. Where there are mixed objectives, the results of an economic analysis readily become nonsensical. Moreover, condition (b) presupposes the existence of unique physical conditions, which have not and cannot be shown by the Congregation for this perfectly rectangular building site.

However, it does seem that the BSA may sometime consider economic viability even when there is a non-profit organization.. This might be relevant were a non-profit organization to

construct a market rate residential project on its property solely to derive income. Then there would be no reason to treat a non-profit entity in a different manner than a for-profit entity.

It is not clear why BSA apparently invited the Congregation to submit an economic feasibility study given the nature of this project.¹⁵

To fully understand the Freeman Frazier study, one must first understand how Freeman Frazier arrived at a “land cost” or “land value” to use in computing profitability and rate of return. To estimate the value of the land in its April, 2007 report, Freeman Frazier states in [Section 2.10](#) of its April report that:

Vacant land sale prices, adjusted for comparability ranged from \$453.09/sq.ft. of F.A.R. development area to \$565.62/sq.ft. with an average of \$500.31/sq.ft. For purposes of this analysis, a value of \$500/sq.ft., or slightly above the average, was used. **The site area is approximately 6,427 sq. ft. with a potential residential zoning floor area of 37,889 sq. ft.**, Therefore, the acquisition cost for Lot 37 for residential use is estimated at \$18,944, (Emphasis supplied.)

Assuming that a six story residential property could be built at 8-10 West 70th Street, Freeman Frazier valued the 37,899 sq. ft. of potential residential zoning floor area at \$500 a sq. ft. or \$18.9 million. Implicit in this analysis is that at \$500 per sq. ft., and for \$18.9 million, a developer could acquire this site, build an *as-of-right* building, and make a profit. If a profit cannot be made, then the land cost “computed” is too high.

¹⁵ The issues of economic feasibility studies appears to have been discussed at an improper ex parte meeting held on November 10, 2006, among BSA Commissioner, Congregation officers, the Congregation’s lawyers and architects, and Freeman Frazier. The BSA will not turn over notes of this meeting despite proper and repeated FOIL requests, and, for this reason, as well as the improper ex parte meeting in a quasi judicial proceeding such as this, recusal of the BSA commissioners has been requested.

Using an appropriate land cost factor, clearly a reasonable return should be obtained were a developer to construct an as-of-right¹⁶ residential project on the rectangular 6000 sq. ft. site at 8-10 West 70th Street. The BSA in Objection 37 asked Freeman Frazier to provide an analysis of an as of right residential building, but Freeman Frazier did not do so, but, rather prepared a building still containing substantial non-residential space and then claimed a loss of \$5 million!¹⁷

As will be seen below, either the cost of land was exaggerated or the construction costs were exaggerated, for Freeman Frazier is claiming that a profitable as-of-right building cannot be built on this site. By concluding that an as-of-right all six-story all residential building would lose money, Freeman Frazier is admitting that its assumptions and methodology are flawed.

Moreover, the land cost “computed” by Freeman Frazier makes no sense if the Congregation carves out for its own usage multiple floors of space. The building that the Congregation is constructing includes 4 above ground floors of non-residential property (and earning below cost revenue if one accepts the minimal valuation ascribed to the capitalized school income), two basements, and the residential floors. Yet, under the Freeman Frazier approach, no land cost is allocated to the Congregation for school and community uses. So, the

16 The architects presented three sets of As-Of-Right drawings, and the drawing in each set unfortunately are all prefixed with “AOR” – moreover, the Revised Application in no place clearly explains the differences between each of the three sets of As-Of-Right drawings.

¹⁷ That Freeman Frazier ignored the BSA request is evident in [Schedule C4](#) at Page 11 of its report and column 4 of [Schedule A](#) at page 7– which together ignore the Congregation use of the entire ground floor, basement, and sub-basement. Moreover, the All Residential F.A.R. 4.0 computation uses a built residential area of 25,642 fees whereas in the same column, the land cost of \$18.9 million is based upon 37,889 square feet. No wonder a loss is shown. What developer would pay for 37,889 square feet but only receive 25,642 square feet – or perhaps there is some other explanation not provided by Freeman Frazier as to the meaning of the terms and assumptions it used.

Freeman Frasier methodology would nearly always yield a negative return. This approach is 'cooked' in advanced.¹⁸

The BSA attempted to address the issue of valuing the community space by the following objection:

Notice of Objections #35: Although it is recognized that Congregation Shearith Israel has not-for-profit status, for the purpose of this study, please ascribe standard market-rate rents for community facility space based on comparable rents in the vicinity of the subject site for both the as-of-right and proposed scenarios.

Although Freeman Frazier did estimate the value for the school community space, it **did not** place a value on the other community facility space in the proposed and as-of-right buildings, as well as in the Parsonage, the other development site in the zoning lot. It is noted that there “community space”, “school space”, “non-residential” space, and similar phrases are used interchangeably at times in the Congregation’s Application, but not at all precisely.

Then the BSA requested the following:

Notice of Objections #37: Provided that the alleged hardship claim for the development site (Lot 36) is an inability to accommodate CSI's programmatic needs on Lot 37 please analyze a complying, fully residential development on Lot 36 as requested with Objection #31. This analysis is requested for the purposes of gauging what the economic potential of the development site would be without the alleged hardship.

¹⁸ To make this point another way, what Freeman Frazier is saying is that any non-profit could anywhere in the City acquire a plot of land at market rate prices which assume a full build out within the permitted zoning envelope. Then, any non-profit could decide to use 90% of the zoning envelope for non-income producing activities, and could obtain a variance to burst out of the zoning envelope and increase the height of the building over that permitted by zoning, so that the non-profit could obtain a free building and recover the land cost (and other construction costs as well). Thus, the Freeman Frazier analysis turns the variance procedures on their head, and only make sense in non-profit developer Wonderland.

Freeman Frazier response to objection 37 with the analysis in Schedule A, Column 4, Page 7 of its report.

SCHEDULE A: ANALYSIS SUMMARY - CONDOMINIUM USE

	ALTERNATIVE AS OF RIGHT CF/RESIDENTIAL DEVELOPMENT	REVISED AS OF RIGHT CF/RESIDENTIAL DEVELOPMENT	REVISED PROPOSED DEVELOPMENT	ALL RESIDENTIAL F.A.R. 4.0
BUILDING AREA (SQ.FT.)				
BUILT RESIDENTIAL AREA	11,936	7,594	20,863	25,642
SELLABLE AREA	8,593	5,316	14,980	15,883
CAPITAL INVESTMENT SUMMARY				
ACQUISITION COST	\$18,944,000	\$18,944,000	\$18,944,000	\$18,944,000
HOLDING & PREP. COSTS	\$0	\$0	\$0	\$0
BASE CONSTRUCTION COSTS	\$4,249,000	\$3,722,000	\$7,488,000	\$10,831,000
SOFT CONSTRUCTION COSTS	\$5,080,000	\$4,919,000	\$8,594,000	\$6,873,000
	<u>\$28,273,000</u>	<u>\$27,585,000</u>	<u>\$33,026,000</u>	<u>\$36,648,000</u>

Freeman Frazier Report, September 6, 2007, at 7.

What is obvious in column 4 of this analysis is that Freeman Frazier is using a land value of \$18.9 million computed at \$500 a sq. ft. for 37,889 per sq. ft., for an as-of-right building yielding only 15,883 square feet of sellable residential area. This suggests that a developer who would pay \$1200 per square foot of sellable area (\$18.9 million divided by 15,883) has seriously overpaid for the land, and will lose money. Having thus “fixed” the numbers up front, it is no surprise that Freeman Frazier finds a loss even for the All Residential FAR 4.0 proposal.¹⁹

¹⁹ Freeman Frazier of course leave out the entire first floor of the building in the FAR 4.0 computation and does not ascribe any land value to the basement and sub-basement. Thus, at least 6000 sq. ft. time \$500 or \$3 million is provided free to the Congregation.

RETURN ON INVESTMENT				
ESTIMATED PROJECT VALUE	\$20,624,000	\$14,820,000	\$39,556,000	\$33,018,000
(less) EST. TOTAL INVESTMENT	(\$28,847,000)	(\$28,139,000)	(\$33,689,000)	(\$37,388,000)
(less) EST. TRANSACTION TAXES	(\$359,000)	(\$221,000)	(\$689,000)	(\$841,000)
EST. PROFIT (loss)	(\$8,582,000)	(\$13,540,000)	\$5,178,000	(\$5,011,000)

Freeman Frazier does not provide the base point analysis that would take the valuation from Alice's Wonderland back to the real world New York City real estate market. Another way of putting this – if a developer purchasing this property at \$18.9 million could not make a profit and is going to lose \$5 million in an *as-of-right* residential project, then the land value property is not worth the \$18.9 million estimated by Freeman Frazier -- end of the analysis in the real world of New York City real estate.

The result of this 'exercise' is that in schedule A2 at Page 8, Freeman Frazier comes to the clearly incorrect conclusion that the capitalized value of the modern 12-classroom school facility with offices and a 6000 sq. ft. basement recreation/assembly area is only \$4,056,000.²⁰ If the school could acquire a property in this location for that amount, Beit Rabban would not need the Congregation! Single row houses cost \$6 to 10 million. Indeed, the most feasible alternative for Beit Rabban, should it wish to have a school on the West Side, would be to acquire two adjacent

20 The Freeman Frazier estimate of rental values for this quality school space at \$40 at sq. ft. is questionable, to say the least. To arrive at this number, Freeman Frazier provide Exhibit B: Comparable Community Center Rents. First, there is no 10,000 sq. ft. facilities suitable for a private school available on the market.. The largest available space shown of the Freeman Frazier schedule is only 3000 square feet and is renting for \$55.00 as sq. ft.. Freeman Frazier estimate a rental value of \$40 per sq. ft for the CSI/Beit Rabban private school space, but, only one space on its Exhibit B is lower than \$40.00 as sq. ft, and that is a small 450 sq. ft. property. It is not professional for Freeman Frazier to have included in its comparable analysis an unsuitable 450 sq. ft.. space at \$29.50 a sq.ft., and then used that to average out a 3000 sq. ft. \$55 a sq. ft. space.

Notably, the Congregation did not provide the relevant information as to the current rent to Beit Rabban and the rent being discussed for Beit Rabban in the new building.

row houses and convert the to a school facility.²¹ By anyone's estimate, this would have a capital cost far exceeding \$10 million. A more real world view of the value of the school facilities is shown in the Freeman Frazier study: The true cost of the school facility is shown in the construction cost estimates annexed to the Freeman Frazier report which show construction costs for the school to be \$10-\$12 million – yet, the resulting building, Freeman Frazier values at only \$4 million.

Similarly, the Freeman Frazier report fails to indicate the actual amount currently being paid by the Beit Rabban school, the terms of any lease that has or is being negotiated by the anchor tenant Beit Rabban for this space to run its private school, and the market rental value of a 6000 sq. ft. modern banquet hall in the heart of Manhattan with Kosher kitchens as well as the value to the school.

Finally, Freeman Frazier obscures an important point: it concludes that under the two *as-of-right* alternatives, the Congregation would have an estimated “loss” of \$8.5 million and \$13.5 million respectively. The average reader might then conclude that the Congregation, in order to construct an *as-of-right* building, would be required to raise \$8.5 to \$13.5 million of cash in order to build this allegedly urgently needed facility. But, that obvious conclusion would be mistaken -- there would be no cash outlay at all, and, indeed, the Congregation would end up with a positive net cash position. This is because the \$18.9 million in so-called acquisition cost would result in an \$18.9 million cash infusion to the Congregation. Thus, assuming the validity

²¹ The current community house, which is largely occupied by the Beit Rabban school is in fact two converted rowhouses – and to this, Beit Rabban has added a trailer for classrooms in the vacant lot. These current facts provide a gauge of the actual real estate demands of a fully functioning private day school.

of the Freeman Frazier study, none of the Congregation's Trustees, architects, consultants, or lawyers can deny that the Congregation would be able to construct the as-of-right buildings without needing to raise funds. Once again, the premise of the Freeman Frazier methodology is that there is a hypothetical sale of an hypothetical site from the Congregation to a hypothetical developer.²² But, the funds received by the Congregation from the sale of the condominiums are not hypothetical at all.

The prior paragraph illustrates the non-transparency of the Freeman Frazier methodology and the associated assumptions. There is no explanation by the Congregation or Freeman Frazier of its methodology, and a casual lay readers of the Frazier Report would not likely notice this significant point. The point is significant because the underlying theme of the Congregation's application is that it has not funds to meet its urgent programmatic needs – but in the Freeman Frazier world, there is a hypothetical sale by the Congregation to a hypothetical developer of the \$18.9 million dollar site., and, in all the computations of profit and loss and return, it is assumed by Freeman Frazier that there will be an \$18.9 receipt by the Congregation on it hypothetical sale, yet this salient fact would not be recognized by most readers.

Even worse, once the lay person understands the hypothetical sale, it is clear that there is not even a complete hypothetical sale of the land to the hypothetical developer: rather, the Congregation “sells” the development rights, but then takes back the spaces for the community facilities, lobby, museum, synagogue extension, banquet hall, kitchens etc.

²² The Congregation has also clearly stated there will be no developer as such involved in this project, and the Congregation would be an owner-developer, not unusual in a small project.

Analyses using the Freeman Frazier methodology, although not unusual in an arms length profit oriented words, really have no place in this type of proceeding where a large part of the site is being returned for non-income or under valued income generation. It is nonsense to ascribe a hypothetical "projected" or "hypothetical" cost based upon full use of all areas for income generation at its best use, and then not use all of the available property for the best use in valuation analysis such as being used here. It is, quite simply, just an accounting trick. As everyone involved here knows -- only the real market is the real market.

IV. Political Correctness Has No Place in A Variance Proceeding

One final issue must be confronted at the risk of committing the sin of not respecting political correctness. It is unfortunate that the Congregation builds so much of its economic case by trading on its tradition, religious observance, history, and claimed evidence of concern for community values.

At the heart of this proceeding is money. In the Landmarks Preservation Commission proceeding, the Congregation openly described the project as an "economic engine." Certainly, upon any evidence available, this is not a Synagogue even remotely close to being *in extremis* financially. Strangely, in its most recent submission, the Congregation in once again relying on its substantial history to make what is really a cash motivated 'sale', notes that its earlier congregants included persons of great financial substance:

officers and financiers of the Revolutionary War and founders of Columbia University, the New York Stock Exchange and Mount Sinai and Montefiore Hospitals. Emma Lazarus, whose poem is inscribed on the base of the Statue of Liberty, was a congregant, as were Supreme Court Justice Benjamin Cardozo and Commodore Uriah Phillips Levy,

Revolutionary War naval hero and later owner and restorer of Thomas Jefferson's Monticello.

Clearly, the 1896 and 1896 CSI Trustees who constructed the magnificent CSI Synagogue with its Tiffany window and imported Italian marble were also persons of great financial substance. It is equally obvious that among the current congregants and Trustees of the Congregation are persons of similar financial substance. So, when the Congregation asserts the right to block of windows of apartment in 18 West 70th Street in what is basically a profit making business effort, it should be noted that those apartments are owned by persons of far less financial substance. This raises questions of fairness, morality and appropriateness -- which must be added to the other shortcomings of the Application.

Moreover, just to provide balance to the record given the Congregation's irritating *ad hominem* arguments, the background here is not as one-sided as presented at length by the Congregation even in its latest submission. So, the Opponents would briefly list some basic additional facts:

- The Congregation has demolished three historic rowhouses at 8-10 West 70th Street, the site of the proposed building.
- The Congregation opposed Landmark designation of the Parsonage, built also in 1896-1897.
- The Congregation in the mid-90's refused to support the construction of the Jewish Community Center at Amsterdam and 75th Street, a community facility that enjoyed the support of the local Jewish community and was built entirely with private donations, according to a New York Times article of that time.
- The Congregation's first proposal for this site, in 1983, was for a 42 story, 488 foot tower, not indicative of concern for the community.

- The Congregation has refused for years to maintain the dirty and rust stained street façade of the current Community House, entangled with rusty air conditioners, dirty windows and tube and wires almost as if it wished to suggest perhaps that only a new building could remove this blight, when, just a little routine maintenance would end the blight. Similarly, until the last year, the vacant lot was a shambles with a rotting fence and even a source of rats, until the neighborhood complained.
- At the time the Synagogue was built in 1896-1897, the Congregation owned the land where the building is proposed to be built. The land was sold by the Congregation to third parties, but then reacquired starting in 1949.
- The Trustees in 1896-97 sought to assure that its monumental new Synagogue would not be overwhelmed by adjacent buildings.
- Accordingly, to the South, on Central Park West, the 1896-97 Trustee erected the equally beautiful Parsonage, part of the zoning site herein.
- To protect the property to the West at 8-10 W. 70th from overbuilding, the 1896-97 Trustees imposed [covenants](#) on the buyers of the property. These restrictive covenants required a separation zone, limited use to single family homes, and then later were amended to limit the height of an adjacent building. Though these covenants merged and disappeared when the properties were reacquired in 1949-1965, the covenants showed the intention of the original Trustees, the ones that financed the building, to not have adjacent building overpower the monumental Synagogue.
- The covenants further evidence the sense of respect that the original Trustees had for not only the architecture and beauty of the Synagogue, but to the centuries of Jewish tradition that a Synagogue should be the tallest building in the area.
- Twice in 2007, just prior to Passover and just prior to the High Holy Days, the Congregation has filed voluminous documents and then lobbied CB7 to schedule an immediate hearing, thereby forcing their Jewish opponents to focus on preparing an opposition, rather than enjoying these special periods.

Simply put, this issue is about whether the New York City zoning laws should be followed as written, not, twisted for the empowered. If a Yeshiva in Brooklyn cannot obtain variances for similar projects, neither should this Congregation.

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If and when the City decides to amend the zoning laws to permit variances on the assertions of good intentions backed up by fanciful plans and financial projections, then the Congregation can come back and seek a variance. For now, the law does not permit them to do what they wish to do.

Dated September 19, 2007

Respectfully Submitted,

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