

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

Affirmation of
Alan D. Sugarman

Submission of
Opposition Exhibit
Binder I

Alan D. Sugarman, does hereby affirm:

1. I am an attorney duly licensed in the State of New York and in good standing. I reside across the street from the Congregation Shearith Israel and am familiar with the facts and circumstances relating to this variance application. I make this affirmation in opposition to the granting of the variances requested.
2. The purposes of this affirmation are to introduce into the record of this proceeding the Opposition Exhibits contained in the accompanying Opposition Exhibit Binder I, to summarize documents already submitted into the record, and to provide a convenient reference. Many of the exhibits are abstracted from other documents previously filed

with the Board and are provided as group exhibits. Opposition Exhibit Binder I consists of Opp. Ex. A through Opp. Ex. FF. The exhibits are cumulatively numbered from Page 000001 through 000247.

3. All of the transcript excerpts are identified by the headings at the top of each transcript page. I confirm that the transcript excerpts have been copied from the indicated transcripts. The transcripts of the Landmarks Preservation Commission ("LPC") hearings of November 26, 2002 and February 11, 2003 were obtained by me from the LPC and were prepared at the request of the LPC. The BSA Transcript of November 27, 2007 was prepared by the BSA. The transcripts of meetings of Community Board 7 ("CB7) were prepared by a private court reporter at the request of Landmark West. I attended those proceedings and confirm that the excerpted pages are accurate. The complete transcripts will be filed separately. To many of the transcript pages, I have added the name of the person speaking and have highlighted with boxes significant information on certain pages.

4. Opposition Exhibit Binder I includes printed pages downloaded by me from web sites, with the url indicated on the printed pages, of various organizations on the dates also indicated on the printed pages, and without any modification. It is my belief that all of the web sites are authentic web sites of said organizations.

5. Opposition Exhibit Binder I includes a number of drawings of the proposed building prepared by the Congregation's Architect and filed with either the LPC or the

BSA. Each drawing contains a date and a title. Drawings dated prior to 2007 were filed with the LPC by the Congregation and obtained by me from the LPC. Drawings dated thereafter were filed by the Congregation with the BSA in this variance proceeding.

6. Certain other exhibits are from other sources as is indicated below.

7. Opposition Opp. Ex. A contained abstracts relating to the Congregation's radical view that a variance should be granted to a non-profit in order to fund asserted programmatic needs, and even without a showing of financial need, and even though the programmatic needs may be accommodated in an as-of-right building. In Opp. Ex. A-3-4, the BSA chair at the November 27, 2007 hearing asked the Congregation to provide caselaw for the position.

And, if you think that there's case law that speaks to the issue of a religious institution needing to fund itself by a revenue generating stream on their property, then you can brief us on that. But, it seems to me, that we have haven't come across that case law. And, in the absence of that case law that supports the market rate funding the institution, you have to look at something else to make the findings.

The Chair of the CB7 Land Use Committee asked the Congregation a similar question at Opp. Ex. A-16 et.:

In support of the
5 E finding, you wrote, without the
6 waivers requested in this application,
7 CSI will not be able to build a
8 community house in a manner in which
9 addresses the access deficiencies of the
10 synagogue, nor can it hope to provide
11 better classrooms, offices and
12 specialized facilities that are critical
13 to the continuation of its religious
14 educational and cultural omissions.

The chair then asked the Congregation's attorney at Opp. Ex. A-20:

17 And I would hope that in our

18 next session you can provide it or maybe
19 before our next session, you can provide
20 us with cases that say that that
21 analysis was appropriate, and if you do
22 provide us with those cases, I would

Finally, the CB7 Committee Chair asked the Congregation's attorney at Opp. Ex. A-21:

1 hope that you conduct an economic
2 analysis, which has not yet been
3 conducted in my judgment, which proves
4 that five floors of condominiums, not
5 four, not three, not two, not one, not
6 zero, but five floors of condominiums
7 are necessary, the minimum necessary,
8 the minimum necessary, that's what you
9 have to show to sustain the construction
10 of your institution.

As of the last Congregation submission on December 28, 2007, the Congregation has failed to provide the case law requested or to provide such an analysis (though, we do not agree that such any such financial analysis would reflect the statutory requirements for a variance.)

8. Other excerpts in Opp. Ex. A clearly demonstrate that, starting with the Congregation's application to the LPC in 2002, the Congregation has been clear that the sole purpose of the condominiums is to generate funds for the Congregation's programs. In 2002, though, the funds were not described as being needed only to construct a community house to meet programmatic needs: rather, the funds the Congregation claimed were required, to restore the Sanctuary, restore the Parsonage, and replace the Community House Opp. Ex. A-9, A-10 and A-11, A-13, and A-14. After 2002, the Congregation was able to fund the restoration of the Parsonage and the Sanctuary using its own funds, belying the urgent need expressed in 2002. Then, in 2007, when the Congregation appeared before the board, the new rationale was restricted to the

community house replacement. The Congregation claims now: "There is no other programmatic purpose for these funds other than to replace the aging facilities that we have now." (Opp. Ex. A-4) and "the addition of residential use in the upper portion of the building is consistent with CSI's need to raise enough capital funds to correct the programmatic deficiencies described throughout this Application." Opp. Ex. A-5. Just as in 2002, the Congregation claimed that even more apartments were critically needed to restore the landmarked Sanctuary and Parsonage - now today the Congregation claims at Opp. Ex. A-6:

The successful deployment of that floor area resolves a complex matrix of Synagogue circulation issues, educational issues and administrative issues. ... This successful deployment cannot occur without the approval of this Application.

The credibility of this new claim is undermined by the fact that in 2002, the same claim was made as to the need of condominium to restore the Sanctuary and the Parsonage, but the Congregation in fact was able to restore these buildings without the condominiums.

9. Opp. Ex. B relates to inconsistent Congregation statements made concerning the small synagogue. At the CB7 Land Use Committee hearing on October 17, 2007, the Congregation states:

18 That little synagogue is not
19 going to be touched as a programmatic
20 issue and as an issue, you know it as a
21 synagogue, this is fair game. As a
22 programmatic tissue issue,
1 it's an issue of faith, that synagogue is not going to
2 be touched as part of this renovation
3 project.

Oddly, though, this "issue of faith" was not an "issue of faith" to the Congregation between 2002 and 2006, when the Congregation submitted plans to the LPC showing that the small synagogue was to be moved to the proposed new building. (See Opp. Ex. E).

The LPC transcripts show the following statements by the Congregation at Opp. Ex. B-3:

The
21 small synagogue is burdened by extra traffic
22 internally, and the new building would remove the
23 small synagogue and allow corridors and appropriate
24 egress for the safety and the ongoing life of the
25 building.

And at Opp. Ex. B-2:

15 First floor would be built full with a small
16 synagogue -- it starts -- it's currently in the
17 parsonage building -- moved and re-accommodated in
18 the back of the new development.

Whether or not the Congregation is using "issues of faith" inappropriately, the reconfiguration of the Small Synagogue shows the flexibility of the mandatory "one solution only" claims of the Congregation. The reconfiguration leads one to the suggestion that the so-called Synagogue Expansion shown on the first floor is actually another space configurable for meetings and classes and that religious dictates are not the true motivation. These position serve to undermine the credibility of the Congregation's representatives when claims are made that religious dictates and "issues of faith" require certain actions.

10. Opposition Opp. Ex. C was compiled to illustrate issues relating to the Parsonage, now rented as a 6 Bedroom house with terrace, living room, and dining room to a "private individual". Opp. Ex. C-5. The "private individual" to whom the Congregation is the well known conductor Loren Maazel, which is confirmed by the entry in the Manhattan telephone book page copied by me and shown at Opp. Ex. Ex. P. The Congregation admitted that it was renting out the Central Park West townhouse Parsonage to a tenant at "market rate", which opponents have asserted, without correction

by the Congregation, is in excess of \$18,000 a month. The Congregation has testified that the Parsonage was part of an "interconnected whole" with the Sanctuary and the Community House. Opp. Ex. C-3. The Congregation was clear that the alleged need for an economic engine was to not only build the new community house and restore the Sanctuary, but was also to restore the Parsonage. Opp. Ex. C-2. We also learn, from the transcripts that the Parsonage is not landmarked (Opp. Ex. C-6) and that there are air rights over the Parsonage. Opp. Ex. C-9. Clearly, the Parsonage is available to satisfy some of the programmatic needs asserted by the Congregant, needs that it claims implausibly can only be satisfied in the proposed building.

11. Taking one exhibit out of order, I now discuss Opp. Ex. H, which are floor plans for the fourth floor of the As of Right and Proposed Buildings. In 2002, the Fourth Floor drawings submitted by the Congregation to LPC showed on the Fourth Floor only offices with one conference room and no classrooms. H-1. By, 2006, the space was designated as "offices or school space or residential." H-2. Only when the Congregation applied for the variance in 2007, did the plans now show a caretaker's apartment on the Fourth Floor together with classrooms. One, then wonders how and why it became so compelling to locate the caretaker's apartment, not in the Parsonage, and not on the fifth or sixth floor of an as-of-right building, but ONLY on the fourth floor, sharing space with the classroom of children and "creating" the programmatic need for the rear variances. The contradictory drawings question the credibility of these contention that the caretaker's apartment must be located on the Fourth Floor, and only the Fourth Floor, of the Proposed Building.

12. Returning now to Opp. Ex. D, it first must be repeated that the Congregation passionately claims that only by using the additional floors for condominiums to create an economic engine can it construct the community house to meet its asserted programmatic needs. Clearly, the Congregation is on the one hand, asserting financial need and on the other hand, failing to provide any financial information at all. Putting aside whether even financial need would under variance law provide what the Congregation wants, it is useful to review just a little of what we do know of the Congregation's financial situation. Opp. Ex. D-1 shows that at the first Landmark's hearing in 2002, testifying for the Congregation was a Mr. Jack Rudin, who stated that he had been a trustee for the Congregation for over 30 years. Opp. Ex. D-2. Mr. Rudin then testified that he "represents a family that has ten apartment houses between 67th and 86th Street", not mentioning real estate in other parts of New York City and elsewhere. Certainly, not a pauper. Googling Mr. Rudin, we learn that he is both a well known philanthropist and real estate developer (Opp. Ex. D-12 to Opp. Ex. D-17) with close association with Mayor Bloomberg. (Opp. Ex. N-4 et. seq.). Another Trustee of the Congregation is Ronald B. Stanton, an industrialist and philanthropist who recent donated \$100 million dollars to the Yeshiva University. Opp. Ex. D-4. Both Rudin and Stanton were Honorary Chairman of the Congregation's 350th Year Campaign (Opp. Ex. D-8), in which the contribution level for Champion Sponsors was \$350,350 and above. Other members of the Campaign included names of other important figures. So, one is surprised to hear of the dire financial need of the Congregation. Similarly, it is useful to consider methods used by other similarly situated institutions to restore landmarked synagogues and construct community facilities. The first is the Jewish Community

Center in Manhattan which constructed an \$85 million 11 story community center in 2003 at Amsterdam and 76th Street in Manhattan, financed primarily by private donors. Opp. Ex. D-21. The Congregation elected not to participate in this project. Opp. Ex. D-22. Another comparable project is the restoration of another landmarked synagogue, the Eldridge Street Synagogue, which finished its restoration in December 2007, after raising \$16 million from private donors. Opp. Ex. D-18 to Opp. Ex. D-20.

13. Opp. Ex. F and Opp. Ex. G are floor plans for the second and third floor. As contrasted with the now one and only configuration insisted upon by the Congregation, these drawings show substantial variation in the configuration of these floors, calling into question the present claims of this is the only way it can be.

14. Opp. Ex. H and Opp. Ex. I are included with this document set to show the conditions in the basement. I refer to the other drawings submitted by the Congregation to the BSA from April 2, 2007 and part of the record herein.

15. Opp. Ex. K collects certain references to the Beit Rabban tenant School. Opp. Ex. K-1 is from the CB7 transcript of October 17, 2007 in which the Congregation claims that it had "been recently able to find a tenant to be able to use all that space during the daytime." Yet, at Opp. Ex. K-7, the Congregation states that "Beit Rabbin is a licensed private school that has been a tenant since 1994." The Congregation refuses to disclose its lease and other contractual arrangement with the Beit Rabban School; these conflicting statements and undisclosed information call into question the plausibility of the contentions made by the Congregation. At Opp. Ex. K-8, the Congregation claims that "CSI's classrooms are vacant during the hours of the regular school day." The rented space includes the large temporary classroom in the vacant lot - yet, the

descriptions of the Congregation programmatic usage in its December 28, 2007 statement omits all reference to the use of this very large space, as much as 1600 square feet, which appears to be used exclusively by the Beit Rabban school. The Congregation at page 12 of the December 28, 2007 refers to its own "oversubscribed" toddler program that is forced to meet only on Monday and Wednesday during the week in the lower level auditorium. Yet, at the same times, the Tenant School is using as many as 8 classrooms rented to it by the Congregation, and these classrooms are being used predominantly by young children. Opp. Ex. K-3 to K-5 is a print-out from the Beit Rabban web site which describes the current program. The pre-school Gan program has as many as 32 young children, and the Kindergarten and First Grade has 36 children. Opp. Ex. K-5. These Beit Rabban classes are meeting at the very same time that the Congregation's own Toddler program is "oversubscribed", calling into question the veracity of the Congregation claims that the Beit Rabban is only using space not needed by the Congregation. The fact that space leased to the Beit Rabban school are not used by the Congregation calls into question the veracity of the Congregation as to its claim that Beit Rabban only uses spaces needed by the Congregation, but not being used during the week.

16. Opp. Ex. L collect documents relating to the Banquet Hall. Opp. Ex. L-6 and L-7 are drawings which clearly show that the subbasement space is described as a Banquet Hall, calling into question the plausibility of the Congregation characterization that the space is a multi-purpose room. At Opp. Ex. L-1, the Congregation claims that the maximum occupancy of the "multi-function" room is 360, but at Opp. Ex. L-5, the

Congregation admitted that the permitted occupancy was 440. Further, the only programmatic need that the Congregation has assigned to this 6400 square foot space are banquets - no meetings, films, play areas, seminars, adult education - nothing - only banquets.

17. Opp. Ex. M are drawings which I compiled from the As-Of-Right Drawings and the Proposed Drawings submitted by the Congregation to BSA. These drawings compare the elevators and interconnection between the community house and the Sanctuary building. The drawings show that both the existing building and the as of right building allocate one elevator to access and circulation. The Proposed building has a large elevator with double doors.. This elevator configuration is the principal difference between the existing and proposed building. Opp. Ex. M shows that all of the circulation and access needs claimed by the Congregation are resolved within the footprint of the existing building, and, indeed, upon a small portion of this footprint. Opp. Ex. M demonstrates that resolution of the asserted programmatic needs of access and circulation are accommodated within the envelope of the existing building. Related to Opp. Ex. M is Opp. Ex. FF prepared by me compiling the Congregation drawings, which compares the cellar and first four floors of the As-Of-Right with those of the Proposed Buildings. The comparison shows that these are virtually identical as to the access and circulation issues. Thus, the Proposed Building adds nothing more in function as to that provided by the As-Of-Right Building as to resolving the asserted programmatic need of access and circulation.

18. Opp. Ex. N collects documents relating to the Congregation's assertion that the Bloomberg administration has "approved" the project and has the "imprimatur of the Bloomberg administration," claims made by the Congregation openly at the October 17, 2007 CB7 Land Use Committee hearing. Opp. Ex N-2 and N-3. Opp. Ex. D discussed above showed the prominent role on behalf of the Congregation played by Jack Rudin, Trustee of the Congregation. Opp. Ex. N is a Google search of "jack rudin Bloomberg contribution" which shows numerous interrelationships between Jack Rudin and Mayor Bloomberg. Suffice it to say, Mayor Bloomberg's only proper connection with this BSA proceeding was the appointment of the BSA Commissioners to the BSA. The BSA Commissioners in this matter are acting as a quasi-judicial hearing body to interpret the facts and apply 72-21 of the zoning resolution. The legislature has determined that variances from the zoning law are to be determined not by the executive, but by an independent administrative agency after proper hearings according all interested parties with due process, without bias for or against applicants. The opinions and political motives of the Bloomberg administration are irrelevant - and, ex parte contacts between any Commissioner and any member of the Bloomberg administration with regard to this proceeding are per se prohibited and improper.

19. Opp. Ex. O collects information related to the history of the site, especially since the Congregation has provided so many conflicting versions. In fact, its most accurate description of the site history was provided by its preservation consultant, Elise Quaseberth, to the LPC and her description is shown at Opp. Ex. O-1 et seq., describing the reconstruction of the buildings that became the Community House in 1954, and its

design by architects Cole & Lieberman. Omitted in the description of the site history by the Congregation's lawyers and consultants, because the facts are both inconvenient and embarrassing to the Congregation, is the fact that the site of the existing building was not only once owned by the Congregation, but the Congregation had imposed restrictive covenants in effect limiting the height of any building to not exceed the height of the Synagogue. Opp. Ex. O-1. This is shown in the copy of the March 22, 1941 Agreement filed with the City of New York attached as Opp. Ex. O-1, which I obtained from a title company in connection with a title search of the property. This document is inconvenient to the Congregation, because it is inconsistent with its claims of its carrying on a great tradition in the Congregation's 350 year history, since, the Trustees who built the Sanctuary in 1897 were clear in their desire that tall buildings not surround the 1897 glorious Sanctuary. The narrative in the December 28, 2007 submission shows as well that the vacant lot site was acquired by the Congregation in 1965 at the time the new Landmarks law was being enacted in the City, and the building once on the vacant lot was demolished by the Congregation before the area was designated as a landmark district.

20. Opp. Ex. P-1 is a page I had copied from the current New York City telephone book which shows that Lorin Maazel, the famous conductor, has an address a 8 West 70th Street, which is the address of the Congregation's Community House, evidently the address used for telephone records reflecting his occupancy of the Parsonage. This listing confirms the allegations, never denied by the Congregation, that the Parsonage has been rented to Lorin Maazel.

21. Opp. Ex. Q is a letter written by my client Nizam Peter Kettaneh to the BSA and already a part of the record.

22. Opp. Ex. R is a copy of a previous submission by Simon Bertrang dated September 26, 2007, which previously was made part of the record herein by Landmark West.

23. Opp. Ex. S is a copy of a submission dated November 7, 2007, made by Ross Moskowitz of Stroock in another matter before the board, and which provides a legal analysis issues similar to those in this proceeding.

24. Opp. Ex. T is a copy of the Resolution of CB7 of December 4, 2007, disapproving all seven of the variances requested by the Congregation.

25. Opp. Ex. V and W are copies downloaded from the BSA web site of two of its decisions respectively Cong. Shomlou, 245 Hooper Street, Brooklyn, 7 2-05-BZ, Board of Standards and Appeals, May 2, 2006 and Yeshiva Imrei Chaim Viznitz, 1824 53rd St. Brooklyn, 290-05-BZ, Board of Standards and Appeals, January 9, 2007

26. Opp. Ex. X is a Map of Existing Buildings Bulk .

27. Opp. Ex. Y are images of West 70th Street which I hereby confirm are accurate photographs.

28. Opp. Ex. Z are photographs taken by me in 2007 and 2008 to illustrate impacts on West 70th street not analyzed by the BSA or the Congregation.

29. Opp. Ex. AA is a composite prepared by me and submitted by me to Community Board 7 at its December 4, 2007 meeting. The images derive from a 3-D model which was prepared by Alice Sterling, a Yale Architecture graduate with my collaboration and supervision. I have verified all information on the model and this is an accurate presentation of the scale and impact of these buildings. The model was first shown at the CB7 Land Use Committee hearing in October, 2007, and other images from the model were shown to the BSA at its meeting of November, 2007.

30. Opp. Ex BB is a chart prepared by Jay Greer showing the school usage as set forth in the narratives and drawings submitted by the Congregation on December 28, 2007 and also using the information from the Beit Rabban web site, as shown in Opp. Ex K-3 to Opp. Ex K-5. A memorandum by Jay Greer validating the chart is shown separately as Opp. Ex BB-1.

31. Opp. Ex. DD is an extract from the March 2006 transcript of the LPC, which transcript was submitted by the Congregation as part of its December 28, 2007 submission. The Congregation has repeatedly claimed that the LPC unanimously

approved its proposal - but, that is not true. This extract is the statement of LPC Commissioner Roberta Gratz, which concludes: "I regretfully vote no." Moreover, Commissioner Gratz specifically objected to the top "penthouse floor" - and observed:

Clearly, this is an enormous improvement, and will still add generously to the already generous space that the synagogue enjoys.

If the Congregation is arguing that since the LPC approved the building under the Landmarks law, then that means the building should receive a variance under the zoning law. The observation of LPC Commissioner Gratz would argue against an (e) finding as to the minimum variance required.

32. Opp. Ex. EE is another exhibit produced using the opponent's 3D model referred to above prepared under my supervision. This is an example of shadows that could be cast from the proposed building compared to the as-of-right building. I am very familiar with and have studied the shadows cast on West 70th Street at various times and this comparison, as of January 6 at 8:30 is consistent with the shadows that one would expect. It should be understood that the proposed building will cast shadows similar to those cast by 18 West 70th Street, although of course, more to the East. That building cast shadows which cover the entire face of the opposing brownstones.

Dated: January 28, 2008



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