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December 7, 2016

NEW YORK CITY BOARD
OF STANDARDS AND APPEALS

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In the Matter of the Application of	:	
CONGREGATION SHEARITH	:	
ISRAEL	:	
Cal. No. 74-07-BZ	:	OPPOSITION STATEMENT
6-10 West 70th Street	:	NIZAM KETTANEH ET AL
Manhattan Block 1122, Lots 36 and 37	:	
	:	
Applicant	:	
_____	x	

This opposition statement is submitted on behalf of Nizam Kettaneh, owner of a townhouse at 15 West 70th Street, and other interested persons, in opposition to the June 16, 2016 Application (June Application) of Congregation Shearith Israel for various relief including reinstating expired 2008 variances and modifying said variances. The classrooms come-and-go, offices come-and-go, synagogue expansions come-and-go, but the core of what remains are the condominiums to provide money to the Congregation and fund a free banquet hall (which may be a “want” rather than a “need”) and a lobby and elevators to ease access to the 1897 Sanctuary.

In the interim, between 2013 and 2016, the Congregation filed other plans, including the DOB Permit Plans, which individually and together, contradict the claims of programmatic needs which were the predicate for the variances approved by the BSA in 2008.

The June Application was the second application filed in 2016 with BSA by the Congregation. In February 2016, the Congregation filed a request for a confirmation of

substantial compliance, which request the BSA denied.¹ The February 18, 2016 Application is wholly inconsistent with the June Application, yet confirms the intentional bait-and-switch intentions of the Congregation. The February 18 submissions also are inconsistent with statements made by the Congregation at the October 14, 2016 BSA hearing.² After the denial of this request on April 19, 2016, the Congregation concocted new plans and new justifications, filing this application in June 2016, and not finishing concocting until November, 2016.

Between 2013 and 2015, the Congregation filed a series of plans with the LPC and DOB³ culminating with the DOB Permit Plans, filed in 2014, approved in 2015, and then effectively revoked on September 22, 2015.⁴ The Congregation likes to describe these plans as the “Interim Plans,” which is somewhat disingenuous, for without the filing by opponents of Zoning Challenges and Appeals in June 2015,⁵ the Congregation would be well on the way to finishing a building in accordance with these so-called “Interim Plans.” The so-called Interim Plans were plans approved by DOB for construction, and which until stopped, the Congregation intended to use. The Interim Plans are important in that the Congregation effectively contradicted most of the

¹ Opp.Ex.29, April 19, 2016, BSA Denial of CSI Request for Letter of Substantial Compliance. Two binders of exhibits, as listed at the end of this Statement, are filed with this Statement, Opp.Ex. 1- Opp.Ex. 41 and Opp.Ex. 1001-1015.

² The statement made by counsel at the hearing has been revised with the addition of references to the exhibits. Opp.Ex. 1, Sugarman Statement at BSA Hearing October 14, 2016, Revised with References

³ A listing of certain filings with DOB may be found on the DOB BIS System’s Virtual Job Folder at <http://a810-bisweb.nyc.gov/bisweb/BScanVirtualJobFolderServlet?requestid=6&allisn=0002280625&passjobnumber=121328919&passdocnumber=02&allbin=1028510>.

⁴ Opp.Ex.15. September 22, 2015 DOB Decision accepting Kettaneh Challenge. Technically, the DOB did not revoke the plans, though it threatened to and the DOB threats culminated in a stop work order on March 30, 2016. Opp.Ex. 23.

⁵ Opp.Ex.10 June 10, 2015, Kettaneh Initial Zoning Challenge to DO and Opp.Ex.14, Landmark West Development Challenge of June 18, 2015. The DOB technically decided only the Kettaneh Challenge, and, did not address the LW Challenge, although presumably DOB was aware of both Challenges. Opp.Ex.28, 2016-04-14-Landmark West Internal Appeal to DOB due to failure of DOB to respond to 2015 Challenge and Appeal of Landmark West.

programmatic need assertions made to support ALL of the 2008 variances, save for the need for a lobby to serve the 1897 Sanctuary. The plans with missing classrooms spanned a period of years.

In the two-and-a-half months between the BSA's denial of the request for a letter of substantial compliance and the filing of the within Application, the Congregation suddenly discovered that its programmatic needs never actually changed. The Congregation now attempts to revert to its 2008 plans in the vain hope of rewriting history. As shown below, the so-called Interim Plans were anything but interim, were intended to be final, and were anything but a mistake.

The Congregation's approach to this project appears puzzling, but is less puzzling if viewed as less of a community house, and more of a commercial endeavor. As originally presented in 2008, the commercial aspect of the project included condominium apartments, an income producing/prestige-creating banquet hall, an income producing day-care/toddler facility, and, in the initial 2008 version, an income producing day school facility. The non-income related aspects initially were an extension of the Congregation's small synagogue (since abandoned,) a lobby area to provide access to the adjoining 1897 Sanctuary, and elevators - also to provide access the Sanctuary. The 1897 architects elevated the Sanctuary in order to accommodate a naturally lit 10,000 square foot space beneath the Sanctuary. All of these programmatic needs are accommodated in the as-of-right portion of the New Building.

A. Once Beit Rabban Departed, the Congregation Filed Plans Contradicting Its Earlier Assertions of Programmatic Need.

After the litigation ended, the Congregation then presented plans to LPC and DOB from 2013-2016, eliminating many of the classrooms in the new building, since the intended occupant of the space during the day time, Beit Rabban, had not agreed to continue to lease the space. This is not all that surprising – unlike the Congregation, which is an Orthodox Congregation with women and men sitting apart, Beit Rabban is a non-denominational Jewish school, which in many ways is antithetical to the Congregation's approach. Further, such schools such as Beit Rabban would wish to have full use of the facilities, including in afternoons, evenings and weekends, when the

Congregation wishes to use the facilities at the same time. Indeed, Beit Rabban currently offers after school and evening programs/⁶

Once Beit Rabban pulled out, the Congregation, contradicting its original assertions in 2007 and 2008, filed plans replacing classrooms with offices. The Congregation would do this because it seems the classrooms were not so critically needed. What the Congregation actually wanted was a free community house and, importantly, a banquet hall/wedding palace. To do this, wished to create maximum value by constructing upper floor condominiums to fund the entire endeavor, plus spin-off additional money to the Congregation.

B. The Congregation Also Abandoned Another “Important” Rationale for the New Building, the Small Synagogue Expansion.

Further, in the new plans, the Congregation significantly reduced its other programmatic need assertions by eliminating the expansion of the small synagogue which was intended to utilize the rear of the ground floor of the new building, in the area where zoning allows 100% of lot coverage for certain community facilities. The explanation for the elimination of the small synagogue expansion is revealing as explained by Congregation Trustee Seth Haberman at the October 24, 2016, hearing essentially stating that the expansion of the Small Synagogue was really not that important. As discussed below at Part VI below, the mechanical/ventilation room now in the rear of the ground floor does not qualify as a “community facility use” as defined in the Zoning Resolution.

The intention of the Congregation is to build the largest building that it could build, as long as it was free, so as to create income producing components and to have a wedding palace/banquet hall and resolve a few access issues concerning the Sanctuary.

⁶ Beit Rabban describes itself as “progressive Jewish and secular” schools which is “intentionally non-denominational.” <http://www.beitrabban.org/about-us>. It provides after-school programs which would conflicts with the type of programmatic usage claimed by the Congregation. <http://www.beitrabban.org/programs/after-school-programs/> and http://www.beitrabban.org/uploads/admissions/After_School_Catalog_2016-2017_113016.pdf.

C. Does the First Amendment Require that Religious Non-Profits Be Allowed to Receive Variances to Both Satisfy Programmatic Needs and to Earn a Reasonable Return?

The BSA should now openly and transparently articulate its reasons for having in the first place allowed variances for the condominiums. The BSA should without ambiguity state the answer to this question: may a religious non-profit entity obtain variances for the sole purpose of creating income to support the non-profit entity? Another phrasing of this issue: is a religious non-profit entitled to variances so as to both satisfy its programmatic needs AND earn a reasonable return on its property?

The BSA in 2008 in words stated “no”, but, then apparently acted differently by accepting a series of incredible claims and assertions by the Congregation to allow the Congregation to both satisfy programmatic needs and earn a large profit. On appeal, the courts skirted around the issue, not addressing the issue one way or the other. Now, the unbelievable programmatic need assertions of 2008 have disintegrated, the circumstances are new, and the variances have terminated. We believe that all non-profits should be treated in the same manner and that the BSA should be completely transparent and not treat this Congregation as a special case, providing benefits not available to all non-profits (which would of course negatively impact many zoning protections in the City.)

We now address a few issues raised by the Congregation’s Application.

I. THE CONGREGATION WISHES TO EXPUNGE ITS BAIT-AND-SWITCH AND GROUNDLESS DELAY FROM CONSIDERATION BY THE BOARD.

The Congregation attempts to rewrite history and ignore the DOB’s Stop Work Order and Intent to Revoke the Building Permits, as well as all of its filings to LPC and DOB from 2013 to 2015 in which the Congregation substituted offices for classrooms. In these filings, the Congregation completely contradicts its claims of programmatic need upon which the variances were granted.

A. Incomplete Chronology Concealing DOB’s Revocation of Permit.

In the so-called Congregation’s Revised Statement of Facts chronology,⁷ the Congregation omits everything having to do with the revocation of the approved building

⁷ CSI Revised Statement of Facts, November 16, 2016, at 16.

permits and conceals drawings showing its bait-and-switch from the Board. The following events which occurred after the May 5, 2015 DOB approval of the DOB Permits are mysteriously missing from the Congregation history:

- June 10, 2015: Zoning Challenges and Appeals filed with DOB objecting to repurposing classrooms to offices and increasing the height of building.⁸
- September 22, 2015: DOB Accepts Zoning Challenge and Appeal and announces intent to revoke permits.⁹
- November 17, 2015: Congregation Lobbyists Capalino + Co. asks DOB not to revoke permits.¹⁰
- January 22, 2016: BSA 2008 Variances (as tolled four years by litigation) terminate.
- February 18, 2016: Congregation requests Letter of Substantial Compliance from BSA, with drawings still showing substitution of offices for classrooms, and not asking to reactivate the expired BSA variances.¹¹
- March 30, 2016: DOB issues Stop Work Order.¹²
- April 19, 2016: BSA denies Congregation's request for letter of substantial compliance.¹³

B. Systematic Concealment of Drawings Showing Bait-and-Switch.

Further, the Congregation has systematically concealed all drawings and documents showing the substitution of offices for classrooms and omits these drawings from its filings:

⁸ Opp.Ex. 10. Even prior to this date, on April 22, 2015, BSA and DOB were warned of the bait-and-switch the Congregation was attempting to perpetrate. Opp.Ex.3. April 22, 2015 Sugarman "Bait and Switch" Letter to BSA Advising BSA of Congregation Non-Complying filings to BSA.

⁹ Opp.Ex.15.

¹⁰ Opp.Ex. 37.

¹¹ Opp.Ex. 22.

¹² Opp.Ex. 23.

¹³ Opp.Ex. 29.

May 10, 2013	Congregation files Occupancy/Use form with DOB showing substitution of offices for classrooms. ¹⁴
June 25, 2013	Congregation files plans with DOB showing substitution of offices for classrooms. ¹⁵
August 6, 2013	Congregation files DOB plans and other plans with LPC showing substitution of offices for classrooms. ¹⁶
August 6, 2014:	Congregation files DOB plans and other plans with LPC showing substitution of offices for classrooms.
November 18, 2014	Congregation files final drawings with LPC showing substitution of offices for classrooms. ¹⁷
March 13, 2015:	Congregation files Occupancy/Use form with DOB showing substitution of offices for classrooms. ¹⁸
February 11, 2016:	Congregation, <u>having knowledge of the Zoning Challenges and Appeals and the DOB's intent to revoke permits</u> , files drawings with BSA showing substitutions of non-classrooms for classrooms. ¹⁹

Even the comparative drawings filed with the November 16, 2016 submission omitted the so-called interim plans.

C. Failure to Respond to BSA Notice of Comments Request for LPC Drawings.

In this proceeding, the BSA on August 12, 2016 sent to the Congregation a Notice of Comments requiring the Congregation to supply “Missing Items” including LPC approved drawings.²⁰ The December 25, 2014 LPC Certificate of Appropriateness listed

¹⁴ Opp.Ex.7, May 10, 2013 and March 13, 2015, PW1-A-Certificate of Occupancy Documents filed by Congregation With DOB.

¹⁵ Plan revision histories on drawings show that drawings were filed on or prior to this time.

¹⁶ Opp.Ex. 33, BSA Notice of Comments to CSI, August 12, 2016.

¹⁷ Id.

¹⁸ Opp.Ex. 7, May 10, 2013 and March 13, 2015, PW1-A-Certificate of Occupancy Documents filed by Congregation With DOB.

¹⁹ Opp.Ex. 1015, Revised Drawings Submitted by Congregation in Support of Substantial Compliance February 18, 2016 with offices on Fourth Floor.

²⁰ Opp.Ex. 33, BSA Notice of Comments to CSI, August 12, 2016.

31 drawings LPC-1 through 31 submitted to LPC on August 6, 2013 and approximately 200 final drawings submitted to LPC on November 18, 2014.²¹

The Congregation responded to the BSA Notice of Comments on September 8, 2016 the Congregation provided only four exterior drawings and concealing all drawings showing the bait-and-switch.²²

Pursuant to FOIL requests, opponents have obtained the drawings filed with LPC as well as, from DOB, all 200 of the so-called Permit Files. These are provided in Exhibit Binder Volume 2 as Opp.Ex. 1001 (Permit Drawings), Opp.Ex. 1002 (selected LPC drawings) and Opp.Ex. 1003 (selected DOB drawings). These show the repeated bait-and-switch positions of the Congregation starting in early 2013.

As discussed below, these filings show that the Congregation's bait-and-switch drawings commenced in early 2013 and continued until February 2016. These drawings also show that the Congregation also omitted the Small Synagogue expansion on the first floor after August 14, 2013,²³ but before August 6, 2014.²⁴ Thus, in a most essential and substantive way, the Congregation contradicted the programmatic needs which were the basis of the variances granted by BSA in 2008: it eliminated the small synagogue expansion, it eliminated many classrooms by substituting offices, and it moved the caretaker's apartment to the third-floor, despite asserting the absolute need for the caretaker's apartment on the fourth floor (not even considering providing a caretaker's apartment in the Parsonage building.)²⁵

²¹ Opp.Ex. 13, Certificate of Appropriateness issued December 16, 2014 by LPC.

²² Opp.Ex. 9 and Opp.Ex.1004. Group Exhibit Re Congregation Non-Response of September 8, 2016 to BSA Notice of Comments and Drawings Submitted by Congregation Purporting to be all Drawings Filed With LPC in 2013-4.

²³ Opp.Ex.1003, at 7. DOB 2013-4 Plans Submitted by CSI to LPC in Support of CofA-Selected.

²⁴ Opp.Ex.1001, at 15. Congregation Permit Drawings Supporting May 4, 2015 Permit to CSI - initially filed May 10, 2103 and modified.

²⁵ The Congregation's need for this Caretaker's Apartment is questionable. Such a modern apartment facing the street would have a rental value in excess of \$3000 a month. The Congregation is functioning perfectly well without an on-site caretaker. The caretaker could not reasonably be expected to be in the on-site-apartment 24/7. The most

II. THE CONGREGATION'S OWN ACTIONS HAVE LED TO THE EXPIRATION OF THE 2008 VARIANCES.

The Congregation offers a host of reasons as to why it was unable to substantially complete construction prior to January, 2016 when the 2008 variances, which had already been extended due to litigation, terminated.

A. Despite Substantial Changes and the DOB's Intention to Revoke Permits, the Congregation Did Nothing After June 2015 Except Hire Political Lobbyists and Allowed the Variances to Terminate.

It is clear that from May 2013 to June 2016, the Congregation was doing all that it could do to avoid coming before the BSA. Despite the many changes made in the plans after the 2008 variances were approved, the Congregation took no steps prior to February 2106 (after the variances had terminated) to obtain a statement of substantial compliance.

Yet, by April, 2015, when opponents began complaining to the BSA and DOB as to the bait-and-switch, the Congregation did nothing. Then, after the permits were approved in May, 2015, and opponents filed Zoning Challenges and Appeals, the Congregation did nothing, knowing both that its variances would be expiring soon and knowing that substantial changes had been made in the permit plans as compared to the BSA variance plans. Then, in September 2015, the DOB approved the Zoning Challenges and Appeals, effectively revoking the permits. The Congregation still did nothing except to hire politically connected lobbyists.²⁶ Then, under threats of permit revocation by DOB, the Congregation in February, 2015 requested a confirmation of substantial compliance from BSA, despite the material changes.²⁷ In that request, BSA failed to include a request to have the variances reinstated. This record demands that the Congregation not be allowed to reinstate its variances – the variance terminated because

reasonable use of the caretaker's apartment is to provide a superintendent to service the condominiums including removing garbage and snow, emergency repairs, and other services customarily demanded by owner of high-end condominiums. It would be improper for the Congregation to provide these services to the condominium, but, this will be impossible to enforce.

²⁶ Opp.Ex.36-37. About Chris Collins, Executive Vice President Capalino+Co, from Capalino+Co. Web Site and Group Exhibit Capalino + Co. Lobbyist Documents.

²⁷ Opp.Ex.22, February 18, 2016, CSI Request to BSA for Letter of Substantial Compliance.

the Congregation was trying to stay away from the BSA and hide from the BSA its changes.

B. The Congregation Waited for Over a Year After Being Outed as to its Bait-and-Switch Before Filing With the BSA.

Finally, in June, 2016, the Congregation filed this materially incomplete Application.

In the latest version of its Statement of Facts, the Congregation first states that it could do nothing until the Court of Appeals ruled on the appeal but then admits that it hired a real estate advisory firm three months before the Court of Appeals ruling:

On November 16, 2011, once it appeared that the litigation would be resolved in the BSA's favor, the Applicant hired a real estate advisory firm to seek construction financing. In January 2012, the Applicant hired an owner's representative (Harold Jupiter) to assemble an architecture and engineering team to prepare construction drawings and move forward with development.²⁸

Thus prior to the Court of Appeals refusal to accept the appeal, the Congregation had already begun hiring new consultants, though nothing had prevented it from moving forward by revising the plans to accommodate the now applicable 2008 Code.²⁹ To be clear, the Congregation could have taken many steps to move the project along.

C. The Congregation Failed to Anticipate the Probability of Application of the 2008 Building Code to Their Project.

First, the Congregation was always aware of the probability that the project would become subject to the new building code which took effect on July 1, 2008, nearly two months prior to the BSA variance approval at the end of August, 2008; the advent of the 2008 Code was known by 2006 and was no surprise to the Congregation.³⁰ Given that the Congregation had failed to address ventilation issues in its 2008 Plans, among other

²⁸ CSI Revised Statement of Facts dated November 16, 2016, at 14.

²⁹ It is interesting that two months prior to the Court of Appeals acting, the Congregation knew that it would win. We wonder how that was.

³⁰ The process of enacting the 2008 Code began in 2005 with Local Law 99, followed up by Local Law 33 in 2007, and thus the Congregation and its architects in 2008 surely contemplated changes at the same time it was presenting plans not compliant with the 2008 Code to BSA. See www2.iccsafe.org/states/newyorkcity/building/pdfs/preface.pdf

things, it clearly did not have substantially complete plans. Because the BSA required modifications to the building previously approved by LPC, the Congregation knew it had to return to LPC. Would this all have been completed by July, 2009 when the new code would become mandatory for new buildings, given that the Congregation was not able to get its act together for four years after the litigation ended? It would have been most prudent for the Congregation to have changed its plans even prior to the BSA 2008 approval, or to plan changes between 2008 and 2012. Some of the building code required changes, i.e. relating to stairs leading to the sub-cellar banquet hall, would have been prudent to implement, given that the banquet hall was and still is a fire-trap, with its 330 occupants at 27 feet below grade level, and limited exits.

In any event, at least when the litigation was resolved on February 21, 2012, the existing architects, who have been the same for years, should have commenced revising the plans to conform to the 2008 code. Instead, the architects waited for well over a year to file its first plans with the Department of Buildings, plans which did not deal with the mechanical ventilation issues in any detail. Indeed, prudence would have dictated making the modification in 2008 prior to obtaining the approval by the BSA, assuming the BSA would have approved the taller building.

There is just no reason to revive the expired variances, especially given the major changes and other important changes from the 2008 plans and the contradiction of the programmatic needs, as well as the Congregation's evident intention to not come before the BSA, even to extend the variance, so as to hide what they were doing.

III. THE CHANGES OF PROGRAMMATIC CONFIGURATION AS REVEALED IN CONGREGATION DOCUMENTS, WAS DELIBERATE.

The Congregation would have the Board believe that the changes in programmatic configuration as shown in its plans and documents between 2013 and 2016 are merely incidental, irrelevant, and a mistake. The Congregation is not quite sure how to explain this. At the hearing on October 12, 2016 the following was stated based upon an unofficial transcript:³¹

³¹ See the video transcript on YouTube at 2 hr 48 min 30 sec.

Susan Hinkson: One of the questions is, I guess, is that there's concern that on the 3rd and 4th floors you're showing on the drawings you filed to the building department, a change in use from classrooms to offices. And indeed, on your schedule you've got offices on the 3rd and 4th floor without any classrooms. And you also filed the BSA plan with your filing. So, one would assume that ??? looked at both and aah... changed it. So you could just walk us through that process and what happened.

Sam White: You know, I regret using the word offices when I filled out and stamped those plans and will be washing my hands for a long time to come. When I say office I'm really referring to the size of a room, not the function of a room. A classroom, I can see above as the room with windows, it holds 18 people. A room that is 8-feet by 10-feet is an office.

But in Jewish education, they need rooms of all sizes. I mean, working with these schools what I've found is every square foot is an educational space. And sometimes you want a space that is small because you're just having lessons between a candidate for a Bar-Mitzvah. And they have to learn something that they really need to learn, just the two of them. And you don't want to tie up a classroom for 18 people because 2 people are trying to learn how to sing from script.

And so those little rooms I called offices. Although the idea that-we're not planning a fortune 500 corporation in those. We're planning intimate teaching spaces. So every square foot of this building in every one of its iterations has been dedicated to education. [hands the microphone to Zack Bernstein]

Zack Bernstein: So, in the bit- there's a record of some files that clearly were not consistent with the original BSA plans and that was called out. And the synagogue had- or their architects had done some different partitioning of rooms. So to Sam's point. The labeling of something as offices. There's not some huge administration. Or not some- there were U-script 6 offices. They were frankly very few people who work in administration at the Synagogue.

But that was identified to the team as not being acceptable and not being a consistent way to move forward following the BSA approval. And so we the team- before my involvement- was back into the BSA when the Department of Buildings identified this. And has- The fact of the matter is that was is before you today is not that- The synagogue is not proceeding with that. They're not going to be allowed to proceed with that.

There can't be a bait and switch. We've asked you to approve extensions to the plans. And what are frankly very minor adjustments

from what you approved of in 2008 and we're very hopeful that you'll allow this project to move forward.

There is so much attention on this project. The synagogue can't go and file at the building's Department with some large Bait and Switch operation, that's now going to go through. It is an unfortunate recent history that there were filings that were not consistent with original approvals. But what we're all here talking about today is a set of plans that are consistent with those original approvals.

Sam White: [speaks inaudibly to Zack Bernstein, then takes the microphone] When we put the super's apartment on the 3rd floor rear, it only had a 20-foot rear yard. Which is not- what you require is a 30-foot rear yard. The building does allow a super's apartment, or a super intendent's apartment to have 20-foot rear yard. But we were required, if we put it on the 3rd floor rear, to make that restrictive declaration saying that that would only be a super's apartment.

Now, with the super's apartment on the 4th floor front. I believe we will no longer need a restrictive declaration.

In its Revised Statement of Facts, at 26, the Congregation states:

The Applicant notes that it submitted plans to DOB in August 2015 and to the Board in February 2016; these plans varied from the BSA-Approved Plans and the 2016 Plans,³² which are currently submitted for approval by the Board. In the time since these intermediate filings, the Applicant's engineers and architects have found design solutions that allow for restoration of the Applicant's full program. As discussed above, this Application proposes a design that fully meets the programmatic needs of the Applicant and seeks approval of minor changes to partitioning and layouts.

The CSI Revised Statement of Facts is quite inconsistent with the explanation given at the BSA's October 12, 2016 hearing. Clearly, the Congregation admits that the changes were not mistakes and did not meet the programmatic needs which the Congregation abandoned between 2013 and 2016. Indeed, the Congregation continued with non-compliant plans when it filed its early plans with its February 2016 request for a

³² The Statement of Facts as page 2 defines the "2016 Plans" as the plans enclosed with this Application, but there is another set of 2016 Plans, those filed with the request for a confirmation of substantial compliance in early February, 2016. Opp.Ex. 1015. The Congregation wishes to draw attention away from these plans, since they contradict many or the representation made by the Congregation in its June Application.

letter of substantial compliance, plans which still eliminated classrooms.³³ The so called proposed design first made its appearance in June 2016 with the filing of the within application.

In the Congregation's February 2016 request for a confirmation of substantial compliance,³⁴ the Congregation conceded that the 2013-16 changes were deliberate:

Design Development. The natural evolution of drawings from schematics to construction drawings, present CSI with cause to alter the interior layouts.

In summary, it seems abundantly clear that the changes reflected in the 2013-6 plans were deliberate and deliberately contradicted the programmatic needs asserted in 2007-2008.

Moreover, it is abundantly clear, that had opponents not filed the Zoning Challenges and Appeals in June, 2016, the Congregation would have proceeded to construct a building in accordance with the Permit Plans filed with DOB, but not complying with the 2008 variances, with, as one example, a New Building with no classrooms at all on the fourth floor and a New Building would exceed the height approved by the BSA. Indeed, in denying the Congregation's request of a statement of substantial compliance, the BSA has already concluded that the Congregation would have constructed a building in violation of the BSA variances. This is clear evidence of the Congregation's bad faith. We believe that excavation would have been completed by the winter of 2015 and that by now, the building would be substantially complete, with a building not-complying in significant ways with the 2008 variances.

IV. THE ENTIRE ZONING SITE IS AVAILABLE TO THE CONGREGATION TO SATISFY PROGRAMMATIC NEEDS.

The Congregation would like the BSA to believe that its programmatic needs may be satisfied only by using space on the first four floors and below in the New Building. This ignores the space available in the two other buildings on the site – and of course

³³ Opp.Ex.1015. Revised Drawings Submitted by Congregation in Support of Substantial Compliance February 18, 2016 with offices on Fourth Floor.

³⁴ Opp.Ex. 22.

ignores the fifth, sixth, and seventh floors of the New Building which may be constructed without zoning waivers. So the Congregation is attempting improperly to frame the issue of satisfaction of programmatic needs to prevent the BSA from considering the entire site – but the Congregation itself in its own planning considers the entire site.

A. The Congregation Has Ample Space Available on the Zoning Site to Satisfy All Programmatic Needs.

The BSA should not accept the Congregation’s self-serving framing of the facts and the issues. In evaluating the ability of the Congregation to satisfy its programmatic needs, the BSA should not restrict itself to the second, third and fourth floor of the proposed building – the BSA should evaluating the entire zoning lot which includes 10,000 square feet of space with natural light below the sanctuary and the Parsonage – all part of the zoning lot.

B. Floors 5, 6, and 7 of the New Building.

It is obvious that the Congregation could have placed any of its programmatic needs on the fifth, sixth, and seventh floors of the New Building. But placing optional condominiums on these floors, the Congregation is turning away from its religious and cultural purposes, and has locked-out future expansion of programs and facilities such as a museum to honor its distinguished history from 1654 to the present.

C. The Levy Auditorium.

The Levy Auditorium is located in the 10,000 square feet of space beneath the Sanctuary. It has natural light and is only a few feet below grade. The uses assigned to this space change from each version of the drawings.

The point of this is that uses are allocated at whim from the New Building to and from the 10,000 space under the Sanctuary. The further point is that after a new banquet hall is built, and some offices and kitchens are moved from this space to the New Building, the Congregation will be left with an enormous amount of space for its programming.

In the various plans, the Congregation assigns a multiplicity of uses to the space under the Sanctuary, most of which is occupied by the Levy Auditorium. Some of the uses are:

Levy Auditorium, Men's Restroom, Building Superintendent's Office, Executive Director's Office, Office 4 Workstations, Large Copy/Fax Room, Storage Rooms – 3, Offices – 3, Storage Rooms – 3., Lockers, Janitor's Closet, Mechanical Room, AC Room, Storage in Northwest Corner, Two areas labeled Auditorium, believed to be used as classrooms., Coat Room, Meat Kitchen, Archives Rooms, Locker, Another Storage Room, Two other offices., Wash Room, Refrigerator, Stage, Small Auditorium, and A/C Room.³⁵

The point to be emphasized again is that should the New Building be completed with its banquet hall, the Synagogue will still have the adjacent very large Levy Auditorium and thousands of square feet of space to program, since many uses would be relocated from beneath the Sanctuary to the New Building. The second point is that the Congregation, even without a Community House, had and has space available to provide expanded educational services, but from 2008 to 2015, they did not provide these services, or they cannot prove that they did.

D. The Parsonage.

The Parsonage is a Townhouse on the Congregation zoning site and located at 99 Central Park West and is physically attached to the Sanctuary and has access doors directly into the Sanctuary and to the cellar below where the Levy Auditorium is located, as shown on page 1 of Opp.Ex. 1013 which is a group exhibit of Parsonage floor plans.

The Parsonage is rented as a single-family townhouse for approximately \$20,000 a month. Opp.Ex. 39, at 4. As stated in a broker's description at Opp.Ex.39, at 6:

Located at 99 Central Park West, this single-family, townhouse is currently configured into nine rooms and includes five bedrooms and three and one-half bathrooms. This rental residence is approximately 3,274 square feet and includes outdoor space, central air, high ceilings, three decorative fireplaces and a washer and dryer.

Built in 1897, the original structure was developed by the Congregation Sherith Israel and designed by architects Brunner & Tryon in an Academic Classical and Beaux-Arts style. In 1902, the building was raised from two to three stories and the tin and copper mansard roof was added.

³⁵ Opp.Ex.1007. May 10, 2013 and March 13, 2015, PW1-A-Certificate of Occupancy Documents filed by Congregation With DOB.

In the September 2106 Existing plans, there is a “Robing Room”, though on other plans it is shown as a “Rabbi’s Study”.³⁶ In the rear of the First Floor is a large meeting room. Stairs lead down into the Levy Auditorium.

The second floor of the in Opp.Ex.39, at 1, the rooms are described as Parsonage Living Room, Kitchen, and Parsonage Dining Room. This is clearly part of the residential townhouse.

The second, third and fourth floors of the Parsonage (at, 2, 3 and 4 of Exhibit 1013) are residential space rented a private residence.

The Congregation chooses to rent the upper three floors as a private townhouse residence. This is the prerogative of the Congregation – but, in fact these floors are suitable for offices and smaller classrooms³⁷ and meeting rooms. This space could even be used for the Caretaker’s Apartment.

The first floor of the parsonage includes an Assembly Room and Rabbi’s Office. Presumably, the Assembly Room is used for classes and meetings. Behind the Assembly Room is the Small Synagogue – also available for meetings and classrooms.

Proposed plans seem to have two Rabbi’s Offices – one in the Parsonage and another in the new building.

E. When Changing Classrooms to Offices during the 2013-16 Period, the Congregation Relocated Uses to Other Parts of the Zoning Site.

When the Congregation decided not to use the third and fourth floor for classrooms – it merely relocated the uses from the New Building to the Levy Auditorium beneath the Sanctuary. In the February 2016 Plans, as explained in the statement to the BSA requesting a confirmation of substantial compliance, the Congregation merely relocated uses from the New Building to the Levy Auditorium area. This is seen in this excerpt from that statement. Opp.Ex. 22, at 5.

DwgNo.	Floor	Purpose for Substitution	Reason for Substitution
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³⁶ Proposed Drawings Filed June 6, 2016, P-8 Rev.

³⁷ As an example, the one-on-one training required for a Bat/Bar Mitzvah. The Parsonage would be perfect for these classes.

P-7 [A.100]	Cellar	Office & babysitting room omitted	Program evolution: uses <u>relocated</u> to Synagogue
P-8 [A.101]	First	Rabbi's/Secretarial Office, Exhibition Space and Archives Omitted	Program Evolution: uses <u>relocated</u> to Synagogue
P-8 [A.101]	First	Small Synagogue Expansion renamed to Function Room	Program evolution: increase flexible service/function space
P-11 [A.104]	Fourth	Classrooms: 3 approved/0 proposed. Deletion of Restrooms	Program evolution: classroom use and associated restrooms accommodated at lower floors.

The February 2016 Plans, to which the table applies, are not the Permit Plans approved by DOB but new plans created to obtain a certificate of substantial compliance. The DOB plans contain additional bait-and-switch substitutions of offices for classrooms.

This table is of further interest for several reasons:

- The Congregation admits that the bait-and-switch was not a mistake but represented a deliberate reprogramming of the space.
- The Congregation admits that functions did not have to be located in the new building, but could be “relocated” to other space on the zoning lot (i.e., the Sanctuary aka Synagogue.)
- The reason for eliminating the Small Synagogue Expansions differs from the reasons provided at the hearing.

The CSI Revised Statement of Facts submits yet another version of this table of uses. These table cannot be taken seriously – in an hour of work, one could easily expand the table to provide expanded school facilities with recreation rooms, art rooms, music rooms, science laboratories, etc. so as to fill another three floors to occupy seven floors of a New Building. These contrived and wishful “needs” cannot be the basis of variances to allow condominiums to be built.

V. A “FREE” BANQUET HALL AS THE IMPETUS FOR THE NEW BUILDING.

During the interim period 2013-2016, the Congregation seemed not to have any great interest in how floors 2-4 were utilized. Viewed in this way, the Congregation really did not need to decide how to use the space – it could decide that later, or even not

use the space for anything, since it would still receive the free New Building with a banquet hall/wedding palace, some programming flexibility, and resolution of a few of its pressing access needs.

It is clear that the sub-cellar banquet hall is a primary driving force for the Congregation desired New Building, which is not satisfied to use the 10,000 square feet beneath the Sanctuary for a banquet hall or even to build a less expensive banquet hall in the cellar or ground floor.³⁸ Rather, it seems that the Congregation wants, though it may not need, a new “free” banquet hall 27 feet below grade which will have only 4722 useable square feet.³⁹ As the Congregation’s Architect stated at the Hearing:

We looked at a number of alternative locations. We looked at, first of all, putting it in the sub-cellar, in the banquet room, the multi-purpose room, and what we found there, first of all you would still have to carry the supply and exhaust ducts up to the roof to get supply and exhaust air. We also found that, with respect to the smog-hog, by code the smog-hog, all that equipment, has to be above the kitchen. It can’t be below the kitchen. So, by placing the other units down in the sub-cellar, in the multi-purpose room significantly reduced the capacity of that room. Which was seen as a program requirement for the Synagogue. And they see over four hundred just on the ground floor of that sanctuary and they wanted a banquet space

It is clear that the banquet hall/wedding palace was the design choice, a questionable one, which overrode all common sense and economics in the design of the New Building.

VI. THE BANQUET HALL MECHANICAL ROOMS ARE NOT A COMMUNITY FACILITY USE QUALIFYING FOR 100% LOT COVERAGE AND CREATE SIGNIFICANT AND OBJECTIONABLE USES IN A RESIDENTIAL AREA.

The Congregation’s latest 2016 Plans utilizes the rear of the project’s First Floor to provide ventilation/mechanicals for the sub-cellar banquet hall and the kitchens in the cellar.⁴⁰ The 4772 net (6500 square foot gross) banquet hall located in a 27 foot below

³⁸ Without the condominium lobby and areas on the ground floor, the entire ground floor could be used for a safe less-expensive banquet hall.

³⁹ Opp.Ex.1007, Cellar Drawings.

⁴⁰ Opp.Ex. 1008, First Floor Plans.

grade sub-cellar is intended to accommodate at least 330 persons.⁴¹ The February 2016 Plans and the Permit Plans located the mechanical room on the fourth floor, while the original 2008 BSA Plans neglected to address the need for ventilation for the banquet hall altogether, using the rear of the Fourth Floor for classrooms⁴² and the rear of the First Floor for the Synagogue Expansion.

The Ground Floor occupies the entire lot, rather than 70% of the lot, because, according to the Congregation, “the portion of the building containing community facility use, up to a height of 23 feet above curb level, does not count towards lot coverage”.⁴³ The ventilation/mechanical room is located on the portion of the Ground Floor where the Congregation claims 100% lot coverage.

This mechanical room serving the banquet/wedding palace is not a “community facility use” as defined in the Zoning Resolution as, i.e. a use that does not “create significant objectionable influences in residential areas.” It cannot be denied that this wedding palace/banquet hall will create negative significant and objectionable uses in this residential area. There is no enforceable way to prevent improper use of this banquet hall – even if restricted to members, who might even be “members for a day” or distant relatives. The traffic from limousines can be anticipated to create substantial negative impacts on the community. There has been no finding as to the impact of the banquet hall on the neighborhood, and, certainly, such an objectionable facility does not qualify for full lot coverage.

In the 2008 plans, the Congregation assumed that the 100% lot coverage up to 23 feet was allowed because of a “community facility use” and programmed an extension of the small synagogue into the rear space of the lot. As stated in the Congregation’s Statement of Facts:

For the remainder of the Property, the maximum lot coverage is 70%, although the portion of the building containing community facility use, up to a height of 23 feet above curb level, does not count towards lot coverage.

⁴¹ Opp.Ex. 1006, Sub-cellar-Banquet Hall Plans.

⁴² Opp.Ex. 1011, Fourth Floor Plans.

⁴³Congregation’s Revised Statement of Facts, November 11, 2016, at 5.

Apparently, the Congregation relies upon ZR 24-11 and 24-12 which apply to a “community facility use”, which is defined by the Zoning Resolution:

A "community facility" use is any use listed in Use Group 3 or 4.
Community facility building (12/15/61) A "community facility building" is a building used only for a community facility use.

In the Schedule A – Occupancy/Use documents filed with DOB, the Congregation assigns the spaces to Zoning Use Group 4.⁴⁴

The Zoning Resolution defines Use Group 4 as follows:

22-14 Use Group 4 R1 R2 R3 R4 R5 R6 R7 R8 R9 R10 Use Group 4 consists primarily of community facilities that: (1) may appropriately be located in residential areas to provide recreational, religious, health, and other essential services for the residents; or (2) can perform their activities more effectively in a residential environment, unaffected by objectionable influences from adjacent medium and heavy industrial uses; and (3) do not create significant objectionable influences in residential areas. Those open uses of land which are compatible with a residential environment are also included.

Now, in the latest version of its 2016 modified plans, the Congregation has designated the uses as a “Multi-Function” Room. However almost all the other documents describe these rooms as what it really is – a wedding palace/banquet hall, as described by the Congregation’s architect as the last hearing.

The wedding palace/banquet hall comes at a significant cost and creates negative impacts for the Congregation. The subterranean hall is 27 feet below grade. The banquet hall is a fire safety hazard, with limited means of egress for the 330 persons planned, some of whom may have limited mobility. In the DOB Permit Plans, the banquet hall took programmatic precedence over the classrooms on the fourth floor. Now in the 2016 Plans, the banquet hall has taken precedence over use of the rear of the ground floor which in the DOB Permit Plans was intended for multi-purpose function rooms including classrooms, and in the 2008 Plans as an extension for the Small Synagogue.

The financial costs are of course not to be borne by the Congregation. The Congregation may “want” the Banquet Hall, but if not for the subsidy of the

⁴⁴ Opp.Ex.7. May 10, 2013 and March 13, 2015, PW1-A-Certificate of Occupancy Documents filed by Congregation With DOB.

condominiums providing this well-off congregation with a free New Building, would the Congregation really “need” the banquet hall if it were to pay for this excess? That is very doubtful.

The use of the rear of the building for ventilation equipment to support a wedding palace/banquet hall on a narrow residential street does not qualify as a Use Group 4 community facility and would clearly create objectionable influences in a residential area. Indeed, even the banquet hall would not qualify as Use Group 4. The banquet hall is an expensive undertaking – it requires digging 27 feet into bedrock in an area declared unstable by the Congregation’s soil engineers,⁴⁵ and requires sidewalk vaults, again an expensive undertaking. The subterranean banquet hall requires expensive and dangerous shoring of the adjacent 18 West 70th Street. It is not unreasonable to expect that to earn income, the Congregation will rent the luxury facility to third cousins, grandchildren, if not members of the general public. The banquet hall is a potential source of income. The Congregation is willing to devote prime space on the rear of the building to ventilate the

⁴⁵ The Congregation’s Soil Report available on line from the DOB BIS as document ES766577850 dated March 2014, and never updated, states the following:

It should be noted that there is a high level of risk associated with underpinning the adjacent building foundations related to excessive settlement of and potential damage to the existing structures, as well as potentially significant construction cost implications. (p.8).

Based on the results of this preliminary study, there are several geotechnical issues that will likely impact construction of the building as currently planned. In order to achieve the proposed subbasement level, it appears that excavation of weathered rock and hard bedrock will be required, significant underpinning of the adjacent building foundations will likely be required, and installation of a permanent dewatering system or designing the subbasement as a water-tight structure may be required. From a geotechnical perspective, it seems prudent to consider eliminating the subbasement level and adding an additional level to the above-grade portion of the building. This could reduce or eliminate the relatively premium site development costs, constructability issues, and increased risks associated with the aforementioned items. (p. 12).

In other words, this egoistic option sub-cellar banquet hall imposes substantial extra expense on the Congregation. In any feasibility study, these excess expenses are not legitimate in evaluating the economic feasibility of construction on the site.

subterranean banquet hall, rather than, for example, expand the religious uses of the facility by expanding the Small Synagogue.

Finally, because the Congregation and or its unknown joint venture partner apparently intend to place a mortgage on the New Building, that means by definition that the lender could take title to the New Building, with the Banquet Hall and 100% lot coverage now privately owned and not by a non-profit..

Adjacent to the proposed banquet hall is the Levy Auditorium, part of the 10,495.14 square foot area beneath the Sanctuary.⁴⁶ The Proposed banquet hall occupies about the same size as the Levy Auditorium and would occupy less than half of the space beneath the Sanctuary. Below is a graphic with the dotted area being the size of the proposed banquet hall superimposed in the center and the right upon the space under the Sanctuary. This graphic shows demonstrates the ample space already available to the Congregation, even without a new building.



VII. THE APPLICATION SHOULD BE DISMISSED FOR REPEATED FAILURE TO PROVIDE SIGNIFICANT INFORMATION.

The Congregation continues to fail to provide information to supports its modification from the 2008 plans.

A. Missing Axonometric and Perspectives From West and Northwest Which Include Adjoining Buildings – For Both 2008 Plans and Proposed.

⁴⁶ Opp.Ex. 1007, at 3.

One of the important changes made by the Congregation is the increase in the height of the New Building, which will have a direct impact on the adjoining building and views to the East on West 70th Street. There is a penthouse terrace on the roof of 18 West 70th Street. To understand the relationship of the changes, one would need to see perspective and axonometric views from the West and North West both from above and from street level. The Congregation has carefully omitted the most meaningful of drawings: it fails to provide axonometric or perspective drawings from the West looking East which include 18 West 70th. This makes it impossible to understand the impact of the increase in building height.

Similarly, perspective and axonometric drawing showing 91 CPW from the North and North West are missing from the Congregation's Drawing 16c submitted November 11, 2016. Other omissions making it difficult for the BSA to evaluate the project:

- Drawings 16c includes at 13. Perspective View From Central Park West and West 70th Street. A similar perspective from the Northwest including 18 West 70th is not provided.
- Page 15. The detailed Front Elevations comparing 2008 to Current omits the adjoining 18 West 70th.
- Drawing 16c, at 17. Rear Axonometric. This compares the 2008 and current drawing but again does not show either 18 West 70th or 91 CPW.
- Page 16 is a rear elevation comparing 2008 to the Current, but omits 18 West 70th.
- Page 19 – the Roof Axonometric comparing 2008 and Current omits 18 West 70th.

B. The DOB Permit Plans Are Missing From the Comparisons Which Compare 2008 to the latest 2016 Plans.

The Congregation's Drawings 16c submitted November 11, 2016 include, a number of floor plan comparisons are provided, such as the following:



These comparisons fail to include the DOB Permit Plans in the comparisons and thus fail to demonstrate the extent of the bait-and-switch reprogramming by the Congregation. We have sought to remedy this deficiency by preparing a comparison showing the DOB Permit Plans as well, such as this comparison at Opp.Ex. 1005, at 3.



We believe the Congregation should be required to provide these comparisons, so that there will be no question as to the accuracy.

In addition to providing these comparisons, we also provide group exhibits of the floor plans for the sub-cellar to the fourth floor at Opp.Ex. 1006 to 1011.

C. Unverified Information as to Current Use of Classrooms By Students

In all due deference to the Congregation, its claims of classroom usage found in its Revised Statement of Facts at 10-14 are creative, but imaginary, and unsupported by any facts. At page 14 it states: “The Applicant operates additional toddler, youth, and adult education programming around major holidays. ... A full description of such events is provided in the Applicant's fall 2016 bulletin, which has been provided to the Board as part of this Application.” First, it is clear that counsel for the Congregation engaged in no

due diligence to substantiate these claims. Second, the Fall 2016 bulletin is entirely self-serving and may have been prepared in anticipation of providing to the BSA. It includes no detailed calendar with assignment of locations of the alleged classes, and, no supporting information as to the attendance on an average basis, if the classes were held. The programs described on the prior four pages are concoctions by the Congregation.

This is as much of a fiction as the statement made in on pages 2 and 3 of its request for a confirmation of substantial compliance dated February 18, 2016.⁴⁷

PTTS has grown in size and importance to CSI's programmatic needs since the 2008 BSA Approval. Since 2009, the enrollment of the Hebrew School has tripled. In 2015, there were 44 children enrolled in PTTS [Polonies Talmud Torah School.]

This is preceded with an entire page of supposed classroom activities attempting to give the impression of large numbers of youth participating in these classroom activities. So, when do these 44 children show up and attend Hebrew School and how many actually show up and what rooms do they use?

It is not as if there is not space in the current facilities for teaching. There are two classrooms in the northeast corner of the Levy Auditorium. The Levy Auditorium itself can be used for classes. There is a meeting room behind the Parsonage. And, of course classes may be held in the Old Synagogue, and small tutoring classes in the Rabbi's Robing room/aka study. There are reasons for this lack of students, for there are many other public and private schools in the area including Jewish Schools. Many students are fully occupied in activities at their current schools. Many Congregants live a substantial distance from the Synagogue, and belong partly due to many years of family associations with the Congregation (perhaps hundreds of years.) The Congregation may claim to have a large number of adult students – but, sometime they have a problem finding a Minyan for the Small Synagogue. The undersigned, speaking as a neighbor, has never seen even a small volume of students entering the Synagogue facilities, once Beit Rabban moved out. No doubt programs are held and classes held, but no one knows any details and there is no reason to accept the Congregation's assertions.

⁴⁷ Opp.Ex.22. February 18, 2016, CSI Request to BSA for Letter of Substantial Compliance.

The fact is that from 2008 through at least 2014, the Congregation had the space available to run the programs which it projected in 2008, projections similar to the 2016 projections. Despite the availability of ample space in the Sanctuary building (and below) and the space available in the now demolished old Community House, the Congregation provided only a fraction of these programs during that period. Their projections used in 2008 to obtain the variances were fictional and the projections in the latest CSI Statement of “Facts” are similarly fictional.

Until the Congregation provides detailed verifiable usage statistics to date (for example, attendance sheets for 2015-16 and the entire fall of 2016 (with names redacted) showing the time of the classes), the Congregation’s assertions should just be ignored.

Let’s be clear – these programmatic needs are customized to create an alleged need for the space so that the variances may be obtained by the Congregation for a free community house and banquet hall from the proceeds of the sale of condominiums.

VIII. THE 2008 FEASIBILITY STUDIES ARE NO LONGER RELEVANT.

Due to the lapse of time and the lapse of variances, the 2008 feasibility studies used to support the variance are no longer relevant. Following are a few of the significant changes:

- The valuation of the Condominiums has increased from \$30 million to \$60 million.⁴⁸
- The Congregation has entered into a joint venture agreement with an unidentified joint venture partner changing the economics. In addition, financial schedules have no doubt been prepared and exchanged with this joint venture partner and never made available to the BSA.
- In evaluating the construction costs, as described below, the banquet hall and related facilities dramatically increases construction costs as a result of the vaults and excavation in sub-standard soil condition to 27 feet below grade – and those optional costs should not be allocated to a reasonable return computations.⁴⁹

⁴⁸ Opp.Ex.11, August 12, 2008, Congregation Financial Analysis In Support of Variance - valuing condominiums at \$30 million. Opp.Ex.12, February 10, 2012, Group Exhibits Congregation Application to Test The Market to NY Attorney General and related documents. See at 11 re \$60 million.

⁴⁹ See above footnote 45, Soil Engineer’s Report.

- The construction costs used in the 2008 computation included improved space in the condominiums, but the 2016 Plans show only open space.
- Interest rates have decreased substantially, affecting both construction interest and a reasonable return rate.

New feasibility studies need to be conducted in the context of a new variance proceeding. These are material changes in condition.

IX. CLAIMS MADE IN 2007-8 TO JUSTIFY VARIANCES.

A. Excerpts from the Record in 2007-2008 Compiling Programmatic Claims.

Accompanying this memorandum are various exhibits showing the changes in programmatic claims and use from 2007 to the present.

If there is any doubt now that the Congregation had admitted that the programmatic needs of 2008 had nothing to do with the Beit Rabban school, it is important to review the 2008 record, for, who knows, the Congregation may change its position again. In addition, it is quite clear that the rear yard waivers on floor 2, 3, and 4, relied upon the specious claims of “floor plates” needed for the various floors because of the alleged specialized classroom uses.

B. In 2008, The Congregation Repeatedly Asserted that the Primary Purpose of the New Classrooms was for Use by the Congregation, not the Tenant School.

The Congregation’s latest Revised Statement of Facts acknowledges that the Board did not did not rely on Beit Rabban's tenancy in granting the variances.⁵⁰ This is supported by the record and the excerpts below.⁵¹

⁵⁰ CSI Revised Statement of Facts, at 10-11.

Although Beit Rabban Day School is no longer proposed to be a tenant at the New Community House, the Board did not rely on Beit Rabban's tenancy in granting the Variance. The BSA Resolution states that “the Board notes that the applicant has provided supportive evidence showing that, even without the Beit Rabban school, the floor area as well as the waivers to lot coverage and rear yard would be necessary to accommodate the Synagogue's programmatic needs.”

⁵¹ Opp.Ex. 5 and 6. Summary of 2007-2007 Testimony and Statements Made by Congregation in Support of Variances and 2007-2007 Testimony and Statements Made by Congregation in Support of Variances, as filed with DOB Challenge.

Opp.Ex.006, at 1:

And it's the primary purpose of the expanded space with the new classrooms we'll be seeking. Those classrooms lie dormant during the regular school day when children are in other schools in their regular education. The synagogue has arranged a relationship with a day, scheduled day school to use those spaces that are already there. So it's not so the priority there and the zone of the space is not as a rental facility, and oh, by the way, this is not as a Hebrew school, the synagogue has the Hebrew school and have been recently able to find a tenant to be able to use all that space during the daytime.

Opp.Ex.006, at 14:

I will address that. The school, the Hebrew School of the synagogue has existed for a very long time. Recently, it has taken on a tenant, the Bakerbaun (Phonetic) School [Beit Rabban] that uses the classrooms during the typical school day; Hebrew School - - most religious schools are afternoons and weekends. That space lays fallow and the synagogue has signed a lease with Bakerbaun (Phonetic) to use its facilities. The application is based on the synagogue's needs and synagogue's needs solely. Ray referred to them as classrooms and they certainly are but on top of that, they're also adult education rooms. They are conference rooms. They are rooms for volunteers to do typical social services.

Opp.Ex.006, at 17:

MR. FRIEDMAN: Fine.

CHAIR SRINIVASAN: So, then, the tenant's school issue can just actually be a separate - - it may not really be a part of the equation anymore unless it's about the usage of space.

MR. FRIEDMAN: We don't consider it part of the equation but if the Board wants us to, I guess that's my question, we'd be happy to do it.

Opp.Ex.006 at 20

MR. FRIEDMAN: We were asked of the BSA whether this had anything, whether the application was predicated on the tenant school and we stated in front of the BSA as we stated in front of this committee, it does not.

Many opponents in 2008 did not believe the claim by the Congregation that its programmatic needs required the school space, even without the Beit Rabban tenant school. But, the Congregation was adamant and the BSA accepted this claim. But, when the Beit Rabban schools ended its lease, the truth was revealed, for the Congregation then

removed many of the classrooms which, as opponents always suspected, were only include to serve the tenant school.

C. Floor Plates as a Justification for Waivers as to Rear Yards.

Another relevant issue revealed in the transcripts relates to the rear yard waivers, which the Congregation claimed were required for the large floor plates required for a well-designed school.

Opp.Ex.006 at 23:

The floorplate configuration proposed in the Application for classrooms housing these three functions is the minimum response to the zoning lot's unique conditions on the CSI zoning lot, which must also accommodate on a 64 ft wide development footprint the intricate and interconnected needs of the landmarked Synagogue as well.

Opp.Ex.006, at 45:

as it is essential that the New Building's mission accommodate its role in providing circulation space for the Synagogue and appropriately sized floorplates for the Community House

Opp.Ex.006, at 46:

The lot coverage waiver, in tandem with provision of the 20-ft. rear yard, is required to meet CSI's educational purposes, specifically the Toddler Program, the Hebrew School and the Adult Education Program. The floorplate configuration for classrooms housing these three functions is the minimum response to the Zoning Lot's unique conditions on the CSI Zoning Lot, which must also accommodate on a 64-ft. wide development footprint the intricate and interconnected needs of the landmarked Synagogue as well. If the ground-floor were available for school Uses, a community facility school might well be able to fit the 15 classrooms called for in this Application with an allowable rear yard. However, the floor usually providing the most flexibility for community facility schools, the ground floor, is entirely unavailable for educational purposes because the Synagogue must "take" all of the ground floor and portions of floors 2 – 4 for an elevator and landing as well for its own remedial purposes.

Opp.Ex.006, at 23:

The floorplate configuration proposed in the Application for classrooms housing these three functions is the minimum response to the zoning lot's unique conditions on the CSI zoning lot, which must also accommodate on a 64-ft. wide development footprint the intricate and interconnected needs of the landmarked Synagogue as well.

X. ADDITIONAL DOCUMENTS PROVIDED AS EXHIBITS.

In addition to the excerpts with Congregation statements from 2007-2008, we include in the accompanying binders the following:

- A spreadsheet summarizing the excerpts of 2007-2008 testimony and statements. Opp.Ex.005.
- A table itemizing the changes between the 2008 Plans and the DOB Permit Uses. Opp.Ex.004
- A copy of the 2008 BSA Resolution highlighting relevant sections.
- The 2015 Challenge and Appeal to the DOB. Opp.Ex. 010
- The Internal Second Challenge and Appeal. Opp.Ex. 017
- The Supplement to Kettaneh's Challenge and Appeal. Opp.Ex. 021.
- The decision of the U.S. District Court of Rhode Island Finding Bad Faith on the Part of the Current Trustees of the Congregation. Opp.Ex.041.
- The Revised October 14, 2016 Statement by Alan D. Sugarman. Opp.Ex.001. This Statement should be read in conjunction with this brief.

XI. CONCLUSION

Due to the shortness of time and the amount of new information submitted by BSA on November 12, 2016, the undersigned was not able to review all of the documents submitted by the Congregation and requests the opportunity to supplement and amend this filing. On November 12, 2016, the Congregation filed a 34-page Revised Statement of Facts, a 32-page Noise Letter, and a 46-page Revised Technical Memorandum, as well as numerous new drawings and other documents.

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December 7, 2016

BINDER VOLUME 1 DOCUMENTS

Opp.Ex.000	Table of Contents Vol. 1, Documents	Opp.Ex.000 74-07-Bz Table of Contents Vol1 EX 1-41.pdf
Opp.Ex.1	Sugarman Statement at BSA Hearing October 14, 2016, Revised with References	Opp.Ex.001 74-07-Bz Sugarman Presentation at BSA Hearing of October

		14, 2016 Edited with Citations to Exhibits.pdf
Opp.Ex.2	August 26, 2008, Highlighted BSA Resolution 74-07-BZ, In Re Congregation Shearith Israel.	Opp.Ex.002 74-07-Bz BSA Decision.pdf
Opp.Ex.3	April 22, 2015 Sugarman “Bait and Switch” Letter to BSA Advising BSA of Congregation Non-Complying filings to BSA	Opp.Ex.003 74-07-Bz 2015-04-22 Sugarman Letter BSA DOB Re Congregation Shearith Israel Bait And Switch.pdf
Opp.Ex.4	Table of Changes of Use in DOB Plans between the 2008 BSA plans and the plans initially accepted by DOB in 2015 as filed with DOB Challenge.	Opp.Ex.004 74-07-Bz Table Changes Of Use.pdf
Opp.Ex.5	Summary of 2007-2007 Testimony and Statements Made by Congregation in Support of Variances.	Opp.Ex.005 74-07-Bz 16 2015-06-10 Summary Excerpts From Documents 2007-08.pdf
Opp.Ex.6	2007-2007 Testimony and Statements Made by Congregation in Support of Variances, as filed with DOB Challenge.	Opp.Ex.006 74-07-Bz 16 Excerpts Of 2007-8 Testimony And Statments.pdf
Opp.Ex.7	May 10, 2013 and March 13, 2015, PW1-A-Certificate of Occupancy Documents filed by Congregation With DOB	Opp.Ex.007 74-07-Bz Pwia Occupancy Filed With DOB.pdf
Opp.Ex.8	December 4, 2007 CB-7 and CB-7 Committee Resolutions Disapproving CSI Project	Opp.Ex.008 74-07-Bz 2007 Cb7 And Committee Resolutions.pdf
Opp.Ex.9	Group Exhibit Re Congregation Non-Response of September 8, 2016 to BSA Notice of Comments	Opp.Ex.009 74-07-Bz Excerpts CSI Response To BSA Request For LPC Documents.pdf
Opp.Ex.10	June 10, 2015, Kettaneh Initial Zoning Challenge to DOB Without Exhibits	Opp.Ex.010 74-07-Bz Kettaneh Challenge And Appeal To 8 West 70th St Manhattan Wo Exhibits.pdf
Opp.Ex.11	August 12, 2008, Congregation Financial Analysis In Support of Variance - valuing condominiums at \$30 million.	Opp.Ex.011 74-07-Bz 2008-08-12 Freeman Frazier 2008 Analysis.pdf
Opp.Ex.12	February 10, 2012, Group Exhibits Congregation Application to Test The Market to NY Attorney General and related documents. See page 11 re \$60 million.	Opp.Ex.012 74-07-Bz 2016-04-27 Congregation Condominium Value Market Test.pdf
Opp.Ex.13	Certificate of Appropriateness issued December 16, 2014 by LPC	Opp.Ex.013 74-07-Bz 2014-12-26 LPC Amended Cofa.pdf
Opp.Ex.14	Landmark West Development Challenge of June 18, 2015.	Opp.Ex.014 74-07-Bz Lw Development Challenge 06-18-15.pdf
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Opp.Ex.21	January 15, 2016, Supplement to Kettaneh DOB Appeal - With Second Challenge as Exhibit	Opp.Ex.021 74-07-Bz 2016-05-20 16 01 15 Kettaneh Supplement To Second Challenge And Appeal With Exhibits.pdf
Opp.Ex.22	February 18, 2016, CSI Request to BSA for Letter of Substantial Compliance.	Opp.Ex.022 74-07-Bz 2016-02-18 Friedman To BSA Request For Certificate Of Substantial Compliance.pdf
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