

Statement of Alan D. Sugarman at BSA Hearing

October 14, 2016

(Edited and With Citation to Exhibits)

In the matter of Congregation Shearith Israel

74-07-BZ

Good Morning. I am Alan Sugarman, attorney for Nizam Kettaneh, owner of a townhouse located across the street from the Congregation's condominium and banquet hall project.

I will address two questions:

One, Why are we here today?

and,

Two, What is the elephant in the room?

First, why are we here?

In May 2015, the Department of Buildings (DOB) approved a building permit for the project.¹ Immediately my client (and Landmark West!) filed, with DOB, Zoning Challenges and Appeals.² In September, 2015, DOB, I believe in consultation with the Board of Standards and Appeals (BSA,) revoked the permit.³ The DOB instructed the Congregation to return to the BSA. Certainly, by September, 2015 the Congregation was aware that it would need to return to BSA. Indeed, the Congregation should have known of the need to return to the BSA even earlier, when the Challenges were file with the DOB in June, 2015 or when the bait-and-switch letter was sent to the BSA. The

¹ Opp.Ex.16

² Opp.Ex.10 and Opp.Ex,4, 5, and 6.

³ Opp. Ex. 15. September 22, 2015. Opponents advised the BSA as to the DOB action on October 28, 2015. Opp.Ex.18.

Congregation then delayed 9-12 months until June 2016 to return to the BSA with the present application, by which time the variances had lapsed.

I want to be clear; If the Challenges had not been made, the project would have proceeded and I believe the structure would have been erected by now.⁴ I know this because I live across the street. I saw the structural steel people taking fine measurements and they told me they were ready to install the steel. The Congregation after it received a demolition permit had moved aggressively and quickly by June, 2015 to demolish the old building and shoring efforts were underway by August to prepare for excavation. What that means is that the Congregation would have constructed a building with modifications which the BSA refused to accept in April, 2016 when the BSA denied the Congregation's request for a certificate of substantial compliance.

The principal issue raised by **our** Challenge, and accepted by the DOB, was the bait-and-switch by which the Congregation substituted offices for the classrooms shown in the 2008 BSA approved plans.

The board has shown no interest in the very essence of why we are here today – the bait-and-switch. No questions were raised by the Board a few minutes ago concerning this elephant in the room. Remember, the building would be almost completed by now had the DOB not halted construction due to the Congregation's bait-and-switch.

These classrooms were the programmatic needs the BSA relied upon to justify all the 2008 variances.⁵ This bait-and-switch is clearly shown in the Congregation drawings

⁴ In April, 2015, I alerted the BSA to the substantial changes and the Bait and Switch. The BSA took no action and did not respond to the letter. Letter of April 22, 2015 from Alan D. Sugarman to BSA re Congregation Bait-and-Switch. Opp.Exh.003. Indeed, by this time the Congregation also should have known that return to the BSA was inevitable. Additionally, the Congregation, though aware of the letter to DOB, did not correct their certificate of occupancy documents just filed at DOB which clearly showed the offices as being in the proper occupancy group of B, rather than the occupancy group E, as applies to classrooms. Opp.Ex.7.

⁵ Opp.Ex.2, 4, 5, and 6 provide detailed documentation of representations made by the Congregation in 2007-8 and accepted by the BSA.

filed in early 2013, and in subsequent filings, with both the Landmarks Preservation Commission (LPC) and the DOB.⁶

The offices were shown in the 2013 and subsequent drawings and also in separate certificates of occupancy documents filed with DOB.⁷

With this application under consideration today, the Congregation has been very careful not to file these particular drawings for the second, third and fourth floor with the BSA. BSA asked the Congregation to provide these drawing in it August 2016 notice of comments, but the Congregation failed to do so. The Congregation has not provided to the BSA the drawings they provided to the LPC and the drawings that were the basis for the 2015 building permit. This is a fact.⁸

If anyone on the board wishes to challenge me on that, I can document this.

I also emphasize that our challenge to DOB more than assert that the Congregation had misrepresented its programmatic needs. Indeed, the challenge detailed the misrepresentations that were made by the Congregation to the BSA to obtain the variances.⁹

The evidence of misrepresentation was so overwhelming that the DOB punted the issue back and that is why we are here today.

Another point ...

⁶ Opp. Ex. 1002 and 1003.

⁷ Opp.Ex.7, Certificate of Occupancy related documents filed with DOB in 2013-15 establish that the substitution of offices for classrooms was not a mistake.

⁸ Opp.Ex.9 and Opp.Ex.1004. Despite this assertion I made on October 14, 2016, the Congregation failed to remedy its failure to respond with its November 16, 2016 filing, demonstrating the intentional bad faith and concealment by the Congregation.

⁹ Opp. Ex. 4, 5, 6, and 10.

Three Commissioners here today, Commissioners Hinkson, Montanez, and Ottley-Brown were here in 2008 and voted to approve those variances.¹⁰ The fourth Commissioner at the time was then Vice-Chair Chris Collins, who now is the Executive Vice-President of Capalino+Company,¹¹ the lobbyists for the Congregation and I assume they are here today.¹²

The Commissioners from 2008 well remember that Community Board 7 did not accept¹³ the Congregation's numerous glaring and hard-to-believe assertions as to programmatic need.¹⁴ Now it turns out that in 2007 and 2008 CB7 and the opponents were entirely correct and that the Congregation had fooled the Board.

I wish to emphasize something about the relationship between the Bet Rabban private schools and the programmatic needs: the Congregation was asked over and over in 2007 and 2008, paraphrasing, "if there were no Beit Rabban and no school, would the Congregation still need the space." The response, "oh yes, we absolutely need the space" and the Congregation supplied elaborate assertions supporting this statement.¹⁵

¹⁰ Opp.Ex.2 - BSA Resolution 74-07-BZ, August 26, 2008, In Re Congregation Shearith Israel at 1.

¹¹ Opp.Ex.35 and 36, Chris Collins, Executive Vice President from Capalino+Co. web site, <http://www.capalino.com/team/chris-collins/>, (visited October 23, 2016).

¹³ Opp.Ex.8

¹⁴ Opp.Ex.40, May 16, 2016 Decision of the United States District Court, District of Rhode in Congregation Jeshuat Israel v. Congregation Shearith Israel. In this dispute the federal court concluded, at 103, By disavowing the trust and seeking to evict Jeshuat Israel from its place of worship, Shearith Israel has shown itself unfit to continue to serve as trustee. The law and the evidence in this case support removing Shearith Israel from its position as trustee over the Touro Synagogue and lands, and the Court does so no The court excoriates the CSI trustees of having engaged in a serious breach of trust. These are the same trustees making their unbelievable assertions to the BSA in this proceeding.

¹⁵ Opp. Ex.5 and 6. Excerpts of 2007 and 2008 Testimony.

The assertions were not true. When Beit Rabban pulled out from the Congregation, the classrooms disappeared from the Congregation plans, except for the toddler classrooms apparently programmed for a commercial day-care center.

But, all is not lost. Redemption is possible. Because the variances have now lapsed, the BSA simply may reject this application and not renew the expired variances.

After the Court of Appeals decided not to accept our appeal, the Congregation had four years to get their plans together. The Congregation waited over a year until 2013 they first went to DOB and Landmarks with preliminary plans; and they delayed nine months in filing this application.¹⁶

The Congregation could construct a conforming building to satisfy programmatic needs. Just look at the plans. Everything that relates to the program of the congregation is within the as-of-right envelope. I am sure you can all see that – it is in black and white.

As to the drawings and the submissions here, the Congregation should be providing the same type of elevations and views that they would provide on an initial application for a variance. The elevations and views should show the adjoining buildings with measurements.¹⁷

¹⁶ Opp.Ex.1002 and Opp.Ex.1003 are drawings submitted by the Congregation in 2013 showing the bait-and-switch in process.

¹⁷ With its November 11, 2016 submission, the Congregation did provide some further drawings and comparisons – but these omit the comparisons to the DOB permit plans. See CSI Illustrative Drawings, pages 5 to 10 filed as document 16c by the Congregation. Opp.Ex.1006-1011 include comparison provided by the opposition which include the bait-and-switch plans.

Moreover, these new drawings still do not provide important axonometric/perspective drawings from the West and Northwest including 18 West 70thj which would show the impact of the increased height of the building, although the Congregation provided such drawings from the Northeast (id. At 13 and 19) and Southeast (id. At 17). This is the type of bad faith that resulted in the federal court's finding of bad faith. The BSA cannot begin to evaluate the increased height-the Congregation has had its chance to show the reality, and has declined to do so.

We just heard today that the Congregation cannot build vents on the rear of the second floor because the rear abuts 91 Central Park West. But, we don't see this relationship on the drawings provided by the Congregation. The drawings should compare the variance plans and the current plans, showing adjoining buildings and measurements. That is the kind of detail that is required.

As to programmatic needs, the Board should not accept mere **assertions** as proof.¹⁸ The Board must also consider that the income received from the sale of Condominiums is not \$30 million as in the 2008 proceeding¹⁹, but \$60 million dollars.²⁰

Are there any questions?

Thank you.

¹⁸ Opp.Ex.2 - BSA Resolution 74-07-BZ, August 26, 2008, In Re Congregation Shearith Israel at 5, ¶168: WHEREAS, 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;

¹⁹ Opp.Ex.11, August 12, 2008, Congregation Financial Analysis In Support of Variance - valuing condominiums at \$30 million

²⁰ OppEx.12, February 10, 2012, Congregation Application to Test The Market to NY Attorney General and related documents. See page 11 re \$60 million.