

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

Opposition Exhibit Binder I

January 28, 2008

Exhibits Opp. Ex. A - FF

NEW YORK CITY  
BOARD OF STANDARDS AND APPEALS

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Affirmation of  
Alan D. Sugarman

Submission of  
Opposition Exhibit  
Binder I

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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. 0-1, 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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Alan D. Sugarman, Esq,  
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**New York City Board of Standards & Appeals**

**TRANSCRIPTION OF TAPE**

*Case# 74-07-BZ.*

*6-10 West 70<sup>th</sup> Street, Borough of Manhattan.*

*11-27-07.*

494 We're not taking any floor area from the synagogue. We're simply using the  
495 floor area that the zoning permits us on our footprint but we're using it as a mixed use  
496 building.

497 And, I don't see that that locks us out of making the required findings. I simply  
498 need to know how you best want to analyze the situation.

499 [Chair Srinivasan] CHAIR SRINIVASAN: I think what we've heard today  
500 from the speakers, so far, has to do with the program of the synagogue.

501 Those can be accommodated on that site with maybe as-of-right but, at the most,  
502 there's waivers that relate to lot coverage and to the rear yard for the first - - second to  
503 fourth floor.

504 So, when you've made this presentation just as the program needs for the  
505 synagogue, well, then we see a proposal which includes another piece of it where you're  
506 asking for waivers which don't really relate directly to the program of the synagogue  
507 except that it gives you - - you're able to monetize your air rights and use it in a way,  
508 which I understand, may fund the congregation but those are not the typical cases that we  
509 see before the Board.

510 So, we're put in this hard place.

511 Typically, when you have a situation that goes through Landmarks where you're  
512 asking for height and setback waivers and they're not driven by hardship, there's another  
513 venue and I know that you just mentioned 74-711. It - - maybe it was foreclosed to you.  
514 That's unfortunate, but we're here looking at this case and it's just - - it's been very hard  
515 for us to get our hands around this.

[Chair Srinivasan]

516 And, if you think that there's case law that speaks to the issue of a religious  
517 institution needing to fund itself by a revenue generating stream on their property, then  
518 you can brief us on that.

519 But, it seems to me, that we have haven't come across that case law.

520 And, in the absence of that case law that supports the market rate funding the  
521 institution, you have to look at something else to make the findings.

[Shelly Friedman,

MR. FRIEDMAN: Well, I think we're trying to bring to

523 the Board the historical pattern here and the historical pattern of this congregation and  
524 other congregations simply is the cycle that I alluded to earlier.

525 You know, in my mind, it kind of presents itself as the hermit scrap. You know,  
526 it has to leave its shell and it has to go find a bigger shell and if it stays in the shell, it  
527 dies.

528 And, if it goes out looking shell and it doesn't find a new shell, it dies.

529 And, certainly, that's been - - that's analogist to the cycle that we're speaking to  
530 here.

531 This congregation needs to solve these programmatic difficulties.

532 Historically, religious institutions, over the long haul, have done that by  
533 relocating. That's not an option here.

534 And, so we turn to, again, the residential solely to provide the economic engine.  
535 I've referred to it before. People don't like it but I think it's a viable concept, the  
536 economic engine to assist in providing the means necessary for the new community  
537 house and to solve the accessibility problems and nothing else.

Shelly Friedman, Attorney for Congregation]

538 I mean the money, as you'll see, is totally eaten up in the replacement of the  
539 community house and in overcoming the accessibility issue.

540 There is no other programmatic purpose for these funds other than to replace the  
541 aging facilities that we have now.

542 And so, from that standpoint, I'm not sure there is any case directly on point that  
543 we could bring to you because there have been other cases where you may have had to  
544 consider grand schemes.

545 But this one is relatively simple. Because of the Landmarks status of this building,  
546 we can't change this building. We don't want to change this building.

547 If it wasn't landmarked, the stewardship of this synagogue is such they wouldn't  
548 change the building.

549 But, the fact of the matter is that for all of the floor area on this zoning lot, we are  
550 sequestered from using all but a very small percentage of the footprint and even that has  
551 to give rise to the fact that the community house has to cover the lower portions of that  
552 footprint.

553 That boxes into, we believe, a justifiable recognized hardship and we need to  
554 present that to you financially and we're prepared to do that today or hear your comments  
555 on that and come back and prove it to you and convince you in further submissions.

556 But, we can't say that - - we're not here to say that the Commission, the Board  
557 should be granting us a hardship simply because we want to make a profit.

558 We're saying that we can't overcome the specific hardships being requested here  
559 without a mixed use building which is as-of-right, which does not use floor area from any  
560 site.

beyond this level. OBJ 6 In addition to these administrative spaces, the creation of a suitable multipurpose room for larger ceremonies, meetings, life cycle ceremonies, lectures, etc and the addition of classrooms will address significant shortfalls in CSI's ability to serve both its members and the community.

Finally, 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. The proposed residential floor area uses only 16 percent of the zoning lot's available zoning floor area, and represents 53.3 percent of proposed New Building zoning floor area, 40.7 percent of the New Building's gross floor area and 32.4 percent of the proposed zoning floor area (based on the entire zoning lot). When completed with the New Building, more than seventy percent of the development rights on the zoning lot (101,548.97 sf) will remain unused. The development rights used for the New Building have been native to the zoning lot for almost three-quarters of a century and have not been acquired from an adjacent lot for development purposes. The utilization of such unused floor area by a community facility for residential purposes is not uncommon, with several precedents in Community Board 7 alone, *e.g.*, Trinity School, Lincoln Center and current proposals by Fordham University and West-Park Presbyterian Church. (See Finding A for discussion on DOB Objections relevant to the above).

### **THE OBJECTIONS**

The following objections were received from the Department of Buildings (the "DOB") on August 28, 2007:

1. Proposed lot coverage for the interior portions of R8B & R10A exceeds the maximum allowed. This is contrary to Section 24-11/77-24. Proposed interior portion lot coverage is .80.

Revised 10/25/2007

million restoration of the Synagogue, raised entirely from within the Congregation. That work continues, under such strict (and self-imposed) preservation guidelines that it has been the subject of glowing reviews by such local entities as the Landmarks Conservancy and such foreign interested parties as the Vatican, which has sent a delegation to observe the work.

Having begun the work to preserve this sacred site with a world-class restoration, CSI must now address with equal conviction the gap between what its facilities can provide and its programmatic goals. The gap is presently wide, but through careful analysis a plan has emerged that leaves the Synagogue untouched but requires that CSI utilize 42,961.53 sf (or 35 percent) of the 116,751.76 sf of unused floor area available to it on its zoning lot to redress these deficiencies. The successful deployment of that floor area resolves a complex matrix of

Synagogue circulation issues, educational issues and administrative issues. Successful deployment includes the construction of 22,907.49 sf of new residential space, a small fraction of the available floor area intended to subsidize the endeavor. This successful deployment cannot occur without the approval of this Application.

On the basis of the foregoing statements, the Applicant respectfully requests that the Board make the requisite findings and grant the requested variances.

Respectfully submitted,

Shelly S. Friedman, Esq.  
FRIEDMAN & GOTBAUM, LLP

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#0 OF STANDARDS & APPEALS

Dated: New York, New York  
October 25, 2007

Revised 10/25/2007

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Transcript of the Public Hearing  
before the  
LANDMARKS PRESERVATION COMMISSION  
on Tuesday, November 26, 2002  
at  
One Centre Street, 9th floor  
New York, New York

**ORIGINAL**

AR-TI RECORDING COMPANY, INC.	
305 Madison Avenue	142 Willis Avenue
Suite 449	P.O. Box 347
New York, N.Y. 10165	Mineola, N.Y. 11501
(212) 349-9692	(516) 741-5235

Shelly Friedman, Attorney for Congregation]

5

1 odds with Jewish tradition as there is no hierarchy  
2 among its houses of worship as with other religions.  
3 Yet, for what it represents, both in the  
4 congregation's historic role as the pre  
5 Revolutionary War birthplace of the American Jewish  
6 experience and its equally historic role of the  
7 centuries old migration of the Jewish people into  
8 the New World, the building at 70th and Central Park  
9 West was already an international landmark long  
10 before its designation by the Commission in the  
11 1970s.

12 Each succeeding generation of congregants  
13 has taken it as a matter of pride that they are the  
14 stewards of the world-renowned physical icon of  
15 faith, liberty, perseverance and history. The  
16 continuing preservation of the synagogue for what it  
17 represents to its past and its future is to this  
18 congregation already an article of faith.

19 With that in mind, the congregants come  
20 before you today fully supportive of your mission  
21 and view it as identical to their own.

22 This generation of congregants needs your  
23 assistance. Not once in its 350-year history on  
24 Manhattan has it asked for such assistance from the  
25 City of New York. It needs to produce a modest

Shelly Friedman, Attorney for Congregation]

6

1 economic engine, 10 or 11 apartments, to further its  
2 preservation program for the landmark; to restore  
3 adjacent parsonage, which is, in fact, one of the  
4 true remaining single-family, built as a home on  
5 Central Park West; and to replace a dysfunctional  
6 and utterly unattractive community house located in  
7 the historic district.

8 We are requesting a Certificate of  
9 Appropriateness and for a report one exception  
10 74-711 special permit is essential to these needs.  
11 Our presentation today will hopefully demonstrate to  
12 you the care with which the congregants have  
13 approached this request. The formal presentation  
14 will consist of remarks by Rabbi Marc Angel  
15 following myself. He will be followed by Peter  
16 Neustater, who is the president of the board of  
17 trustees. They will discuss the commitment to  
18 preservation purpose that the synagogue has long  
19 adhered to and is certainly willing to adhere to as  
20 we move forward through this process.

21 They will be followed by Steve Tilly.  
22 Steve Tilly has been a preservation architect since  
23 1999, has been working on the synagogue itself, and  
24 will talk to you about the steps which have already  
25 been taken to stabilize it, but for the important

Peter Neustater, President of the Congregation

19

1 for historic conservation and preservation. We  
2 asked them to design the minimum size building that  
3 could become the economic engine for us to finish  
4 the restoration, rebuild the community house and  
5 provide the endowment for continued maintenance of  
6 the landmark.

7 We feel our proposal is responsible, one  
8 that highlights and supports the landmark building,  
9 enhances the skyline of Central Park West, and  
10 complements the neighborhood. Many people have  
11 asked why don't we just raise the money from the  
12 congregation and finish the restoration and rebuild  
13 the community house? Before we submitted this  
14 application, I met with our budget finance and  
15 campaign committee, the main supporters of the  
16 congregation. In today's world where there is such  
17 great demand on every dollar, both here in New York  
18 and abroad, I can tell you definitively that it

19 would be impossible to raise the sum of money  
20 required from the congregation. There is no chance  
21 that the congregation will be able to finish the  
22 restoration of the landmark, continue the  
23 maintenance of the landmark, and rebuild the  
24 community house without the economic engine that  
25 this process provides.

[Steven Tilly, Architect for Congregation]

26

1 exterior.

2 At the end of our master plan, we return  
3 to issues of, as I said, there were circulation  
4 issues, there also were the substandard issues in  
5 the community house itself. So that we turned to  
6 the notion of the new building on the community  
7 house site for those three reasons, in order to  
8 replace the substandard facilities in a building  
9 that was, again, beyond the end of its useful life,  
10 to solve the interior circulation problems, and also  
11 to act as an economic engine for the rest of the  
12 preservation program that we have mapped out.

13 Now I think Elise will talk about the  
14 concept of the new building.

15 Thank you.

16 CHAIRMAN PAULSEN: Stephen, do you have  
17 a full scope of work regarding the preservation that  
18 you are proposing for the historic building?

19 MR. TILLY: Yes.

20 MS. QUASEBARTH: Good afternoon,  
21 Commissioners. My name is Elise Quasebarth,  
22 preservation consultant for this project.

23 We have worked with the team to take a  
24 look --

25 AUDIENCE: Can you speak up, please.

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THE NEW YORK CITY  
LANDMARKS PRESERVATION COMMISSION

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PUBLIC HEARING

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Municipal Building  
1 Centre Street, North  
New York, New York

February 11, 2003

The above-entitled hearing commenced  
at 9:30 a.m.

ORIGINAL

AR-TI RECORDING COMPANY, INC.	
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[Shelly Friedman, Attorney for Congregation]

1           Its interests in preserving the landmark  
2           itself are well documented by its efforts virtually  
3           since the construction of the building, and its  
4           preservation is taken as an article of faith by the  
5           Congregation itself. We're not here to ask for  
6           your help in preserving the building. That will

7           continue. What we are here to do is to ask you for  
8           your assistance in helping us to produce a modest  
9           **economic engine**, ten or eleven apartments, which  
10          will be used to support the fulfillment of the  
11          completion of the preservation program of the  
12          landmark itself, to permit the restoration of the  
13          parsonage immediately adjacent to the landmark,  
14          which is in the historic district, and to permit  
15          the replacement of a dysfunctional and commonly  
16          viewed unattractive community house which is behind  
17          the designated landmark but also within the  
18          historic district.

19          Our presentation this morning will  
20          consist of five speakers. I will be followed by  
21          Rabbi Mark Angel, to discuss the program of  
22          Synagogue, immediately followed by Peter Neustadter  
23          to describe the history, in brief, of the  
24          Congregation and the relevance of that history to  
25          the application before you.

[Peter Neustadter, President of Congregation]

1 work that remains undone on the exterior of the  
2 landmark and parsonage.

3 In addition, the community house next to  
4 the landmark on 70th Street was in terrible  
5 condition and should be torn down and rebuilt.

6 The trustees of the congregation have  
7 decided not to proceed with the developer for this  
8 application. We wanted to take control over this  
9 process. We are the ones that are going to be here  
10 after the developer has left.

11 The goal of a developer would not  
12 necessarily coincide with the needs of the landmark  
13 or the community. To achieve this, we interviewed  
14 and hired architects and consultants who have a

15 reputation for historic conservation and  
16 preservation. We asked them to design the  
17 minimum-sized building that could become the  
18 **economic engine** for us to finish the restoration,  
19 rebuild the community house and provide the  
20 endowment for continued maintenance of the  
21 landmark.

22 We feel our proposal is a responsible  
23 one that highlights and supports the landmark  
24 building, enhances the skyline of Central Park West  
25 and compliments the neighborhood.

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COMMUNITY BOARD 7 LAND USE  
COMMITTEE PUBLIC MEETING

TIME: 7:00 P.M.

LOCATION: Congregation Rodeph Sholom  
7 West 83rd Street  
New York, New York

DATE: October 17, 2007

RICHARD ASCHE: Chairperson

1           continue the debate on this now, but to  
2           raise the point so that you can  
3           anticipate that it will be raised in the  
4           future, and that is, there's the concept  
5           and the language of relief in that  
6           minimum variance and relief is not from  
7           a financial hardship --what's this other  
8           relief.

9                         MR. FRIEDMAN:  It's the re --

10                        MR. HOROWITZ:  That wasn't a

11                        [Richard Asche, CB7 Committee Chair]

12                        THE CHAIRPERSON:  It's  
13           rhetorical, but I'm going to ask it.

14                        MR. FRIEDMAN:  Great.

15                        THE CHAIRPERSON:  And I'm  
16           going to try to put, we're, you know,  
17           several of us have tried to focus on  
18           this E finding, Shelly, and either it's  
19           late or we're not as sharp as we should  
20           be or you haven't thought it through or  
21           what you have thought through, doesn't  
22           answer it, but we haven't gotten an

[Richard Asche, CB7 Committee Chair]

1 answer.

2 So let me just focus you on  
3 what you wrote in the application, the  
4 statement of support. 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.

15 In every category the demand  
16 for the demand elements are increased  
17 and CSI considers it essential to  
18 provide the services. That's the  
19 standard you set for yourself.

20 That is how you told BSA you  
21 intended to meet this finding. Now the  
22 five floors of condos do not provide

[Richard Asche, CB7 Committee Chair]

1 classrooms, offices, specialized  
2 facilities for, have anything to do  
3 directly with your religious,  
4 educational and cultural emissions,  
5 correct?

6 MR. FRIEDMAN: Incorrect,  
7 Mr. Chairman, with all due respect.

8 THE CHAIRPERSON: You're not  
9 going to be teaching, they're not going  
10 to have banquet facility there, right?

11 MR. FRIEDMAN: You and I will  
12 disagree on what direct means. We  
13 believe the five units are directly  
14 related to achieving --

15 THE CHAIRPERSON: There's no  
16 program going on in those condos,  
17 correct?

18 MR. FRIEDMAN: No --

19 THE CHAIRPERSON: Shelly,  
20 please, you can't filibuster. It's  
21 9:30. We're going to stay here until we  
22 make some progress. All right.

[Richard Asche, CB7 Committee Chair]

131

1           Programmatically, they are not being  
2           used for any of the purposes listed in  
3           this paragraph.

4                         So your argument has to be  
5           that they are necessary to finance those  
6           programs, correct?

7                         MR. FRIEDMAN: Necessary to  
8           finance, it's the structure of the  
9           housing -- correct?

10                        THE CHAIRPERSON: So it's not  
11           essentially, but solely an economic  
12           issue. It's got nothing to do with  
13           symmetry because if the building doesn't  
14           stick up over the synagogue, there is no  
15           issue of symmetry and, therefore, it is  
16           purely a question of economics and the  
17           question that we raise and I don't mean  
18           to imply that I have an answer, but I  
19           really wish you would focus with us on  
20           this.

21                        We have been told recently in  
22           connection with the Jewish Home and

[Richard Asche, CB7 Committee Chair]

132

1 Hospital, that BSA does not consider  
2 variances in the context of a charitable  
3 organization selling off some of its  
4 property for private enterprise. And,  
5 therefore, they needed a, they needed  
6 zoning relief, not a variance, but  
7 zoning relief.

8 We weren't sure you were  
9 right, but things being what they are,  
10 we reached a compromise. Here, you are,  
11 your argument stands to fall uniquely on  
12 the proposition that a variance is  
13 appropriate in order to permit a charity  
14 to, or religious institution to build  
15 something that has a program associated  
16 with this mission.

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

[Richard Asche, CB7 Committee Chair]

133

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.

11                         And I don't know how you prove  
12          that you certainly don't prove it by the  
13          analysis in the application, which has  
14          to do with something, has to do with  
15          some hypothetical rate of return which  
16          you and I agree are irrelevant. And --

17                         MR. FRIEDMAN: I do not agree.

18                         THE CHAIRPERSON: The other  
19          conundrum, again, I don't have an answer  
20          myself, but does the fact that if it's  
21          true or members of Forbes Fortune 400,  
22          500 on your board as are on our

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THE NEW YORK CITY  
LANDMARKS PRESERVATION COMMISSION

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PUBLIC HEARING

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Municipal Building  
1 Centre Street, North  
New York, New York

February 11, 2003

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Elise Quaseberth, Preservation Consultant for Congregation ]

23

1 discuss the architectural.

2 As have been described, the existing  
3 side is a 64-by-100-foot site behind the synagogue  
4 at the corner of Central Park West and West 70th  
5 Street. The parsonage is to the south. The  
6 existing is occupied by a four-story community  
7 house and a vacant lot. The proposal is to remove  
8 the community house and to build, along the sides  
9 of the community house and the vacant lot, a  
10 14-story building which would have complete block  
11 coverage at the first floor and then at floors 2  
12 through 4 would have a 20-foot rear yard and floors  
13 5 through 14 would have a 30-foot rear yard. I can  
14 show you this section. The space is below grade.

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. Then floors 2, 3  
19 and 4 would be the community facility, offices and  
20 schools, back with a 20-foot rear yard. Floors 5  
21 through 14 would have a 30-foot yard. They would  
22 be occupied by apartments.

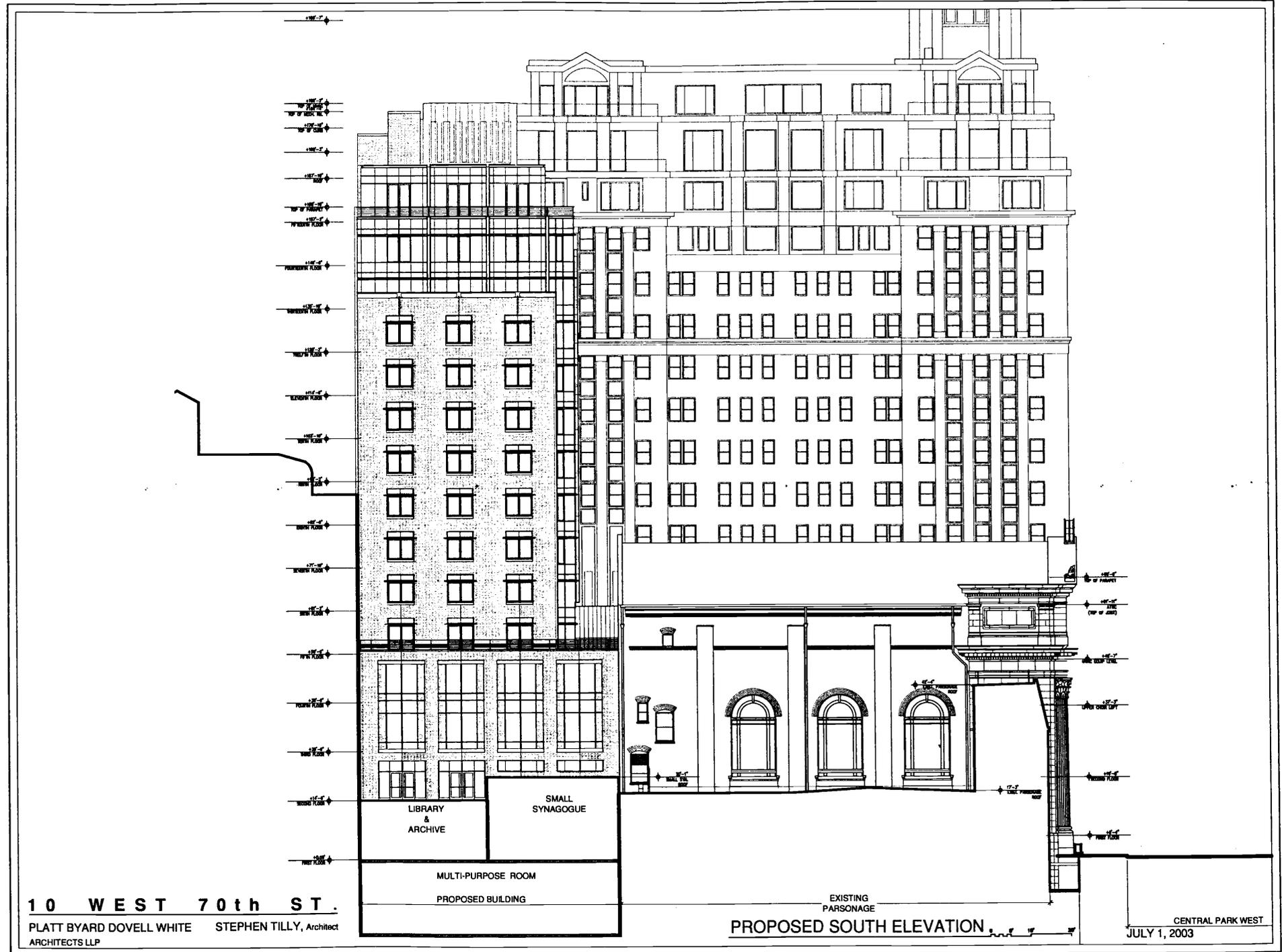
23 A section cut the other way looking  
24 south, parallel to 70th Street, shows that at the  
25 5th floor the building is set back ten feet from

[Steven Tilly, Architect for Congregation]

1 replacement, this inappropriate railing, which also  
2 interferes with the egress. The bronze gates have  
3 to be modified for appropriate egress, and there's  
4 a whole set of area ways and railings which move  
5 around the building on 70th Street which also have  
6 not been addressed and need to in the near future.  
7 So, that program, again, compacted, is the program  
8 which led us back -- as we looked at the master  
9 plan, to the need to maintain the building, to  
10 complete the preservation program in a first-class  
11 manner, which led us back to the notion of the new  
12 building.

13 In addition, obviously, as my associate  
14 architects have described, the existing community  
15 house is not an appropriate partner for the  
16 sanctuary. And there are major circulation  
17 problems that the current arrangement imposes on  
18 the ongoing life in the sense of sustainability of  
19 the landmark; that is, traffic circulates

20 inappropriately through one space and another. 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.



10 WEST 70th ST.

PLATT BYARD DOVELL WHITE    STEPHEN TILLY, Architect  
ARCHITECTS LLP

LIBRARY & ARCHIVE  
SMALL SYNAGOGUE  
MULTI-PURPOSE ROOM  
PROPOSED BUILDING

EXISTING PARSONAGE  
PROPOSED SOUTH ELEVATION

CENTRAL PARK WEST  
JULY 1, 2003

1 Central Park West and moved my way in,  
2 as I said they're interrelated part of  
3 this is to share our individual comments  
4 that we have concerns. Business, it's  
5 going to guide finance, use, setback,  
6 light and air and environment, so I got  
7 some answers. Luckily I could think  
8 about it again and I'm going to come  
9 back and ask more questions later.

10 MR. FRIEDMAN: In an attempt  
11 to respond to that questions, those of  
12 you who do know the synagogue, the  
13 footprint we're talking about is the  
14 site of the little synagogue, which is  
15 perhaps one of the most important  
16 chambers in the entire array of  
17 buildings.

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, it's an issue

1 of faith, that synagogue is not going to  
2 be touched as part of this renovation  
3 project.

4 MS. COWLEY: Good answer.

5 Thank you.

6 MR. HOROWITZ: I need  
7 clarification or a response to the  
8 linkage between the refined B finding  
9 and E finding. The B finding modified  
10 so that we don't need a demonstration of  
11 a reasonable rate of return, and then  
12 the E finding which is the minimum  
13 variance required for relief.

14 And if I understand what  
15 you're saying, there's no requirement  
16 for financial relief, but you have to  
17 show you need it anyhow. Let me finish  
18 the train of thought. And if that is  
19 not required basis on that finding, is  
20 there any other argument you're putting  
21 forth or is it solely reliant upon the  
22 economic issue?

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21 They will be followed by Steve Tilly.  
22 Steve Tilly has been a preservation architect since  
23 1999, has been working on the synagogue itself, and  
24 will talk to you about the steps which have already  
25 been taken to stabilize it, but for the important

[Steven Tilly, Architect for Congregation]

21

1 of problems that had to be dealt with immediately.  
2 With the object lesson of Central Synagogue firmly  
3 in mind, we saw a set of baseline improvements that  
4 needed to be started to make it possible for us to  
5 then continue with the restoration process safely.

6 Those problems were problems with the  
7 infrastructure, problems with the building envelope,  
8 water was pouring in through the structure, problems  
9 with the decorative finishes that resulted from the  
10 water migrating through the building, and also  
11 problems with the basic circulation on the site.

12 Shearith Israel actually consists of  
13 three -- it appears to be three independent  
14 buildings: The parsonage, the synagogue and the  
15 sanctuary, which faces Central Park West. Those are  
16 the original composition from 1897 of Arnold  
17 Brunner. And then the community house, which is  
18 actually a couple of brownstones which had a facade  
19 pasted on them in the 1950s. But, in fact, it is an  
20 interconnected whole -- a single complex that's  
21 interconnected on several levels so that the  
22 mechanical systems and all of the circulation is  
23 really of a piece.

24 Our work in phase one -- our master  
25 planning dealt with this entire property, but our

[Steven Tilly, Architect for Congregation]

22

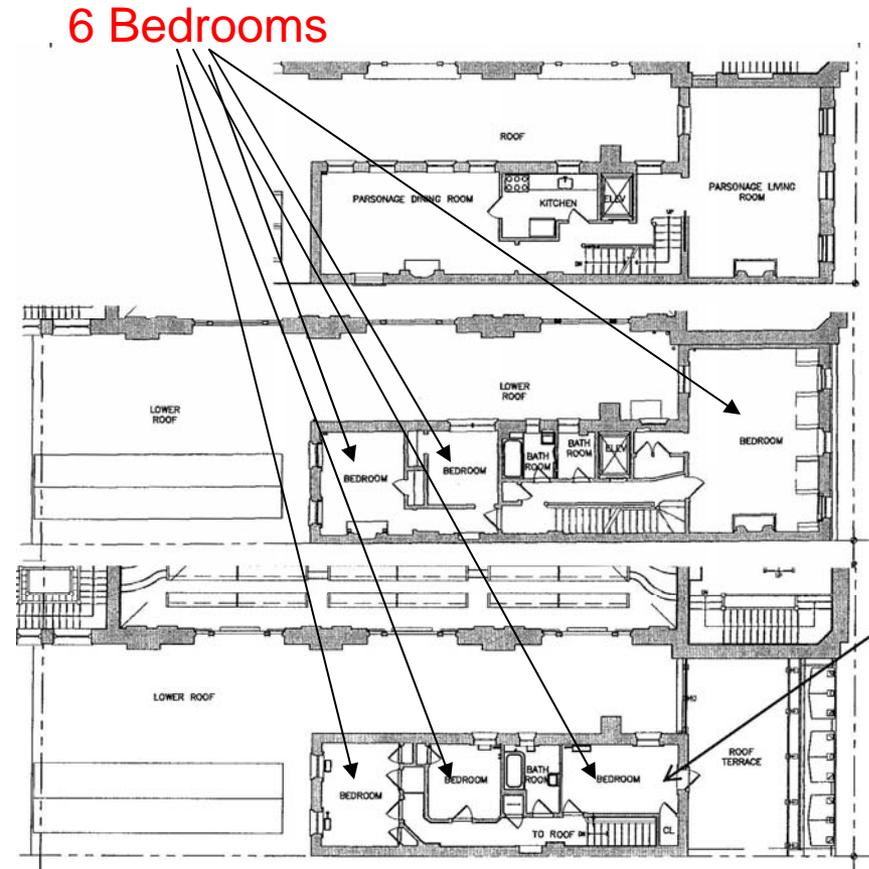
1 work in phase one is really concentrated on the  
2 individual landmark, the sanctuary. And that is  
3 really the masterpiece of the site. We have done an  
4 ambitious phase one. We have arrested the water  
5 migrating from the building, we have dealt with a  
6 lot of the basic building systems and we have laid  
7 the foundation for the future, but there is a lot of  
8 work remaining to be done on the structure.

9 The magenta, if you see that, gives you  
10 an idea of the quantity of work on the exterior that  
11 you see in the plan and in the elevations. This is  
12 the elevation, obviously, facing Central Park West,  
13 70th Street, the community house; the south  
14 elevation with the parsonage blocking part of it;  
15 and then looking from the west at the back of the  
16 parsonage.

17 You can see, if you think of the three  
18 buildings or the three portions, having dealt with  
19 the synagogue we have not dealt with this rare  
20 commodity, the townhouse on Central Park west. That  
21 really is lingering, it needs immediate work. There  
22 are a lot of issues to be addressed in that  
23 structure, and, of course, we haven't dealt with the  
24 community house.

25 CHAIRMAN PAULSEN: Before you go on, the

# CPW Parsonage: 6 br, terrace, living room, dining room



1           that it can be completed before the  
2           final hearings of the BSA.

3                         And we will cooperate with the  
4           board to the extent necessary to assure  
5           that because we value this opportunity  
6           to define the application for you and  
7           seek your support.

8                         MR. FINE: Thank you.

9                         MS. COWLEY: My question is in  
10          three parts because they work their way  
11          in Central Park West, I asked my  
12          colleagues in parks and preservation one  
13          question. Is the parsonage part of the  
14          individually designated landmark or is  
15          it within a historical district?

16                         MR. FRIEDMAN: It is not part  
17          of the individual landmark, but it is a  
18          historical district.

19                         MS. COWLEY: That leads to my  
20          second question to which has to do with  
21          the as of right proposals you developed  
22          and I guess it follows on from the

1           that you can make as to why you did not  
2           engage the parsonage as part of the  
3           study at large.

4                       MR. FRIEDMAN: Well, if that's  
5           not in the form of a question, let's put  
6           a future date and we'll respond.

7                       MS. COWLEY: Unless you can  
8           tell us why you didn't engage the  
9           parsonage in any of the design studies.

10                      MR. FRIEDMAN: There are two  
11           and I think the architect is better to  
12           answer it, but the parsonage has several  
13           problems as potential facility space  
14           dealing with its construction, with per  
15           se its ability to provide egress  
16           necessary for community facility uses.

17                      There are serious code  
18           requirements regarding the elevator and  
19           while it's the elevator can serve  
20           residential purposes it cannot serve  
21           community facility purposes and,  
22           therefore, would have to be most likely

[Shelly Friedman, Attorney for Congregation]

119

1 in place.

2 It was poor overall for  
3 accepting any of programmatic uses the  
4 synagogue required. That's why in days  
5 of old, as many of you know, it was used  
6 as a homeless shelter. That was its  
7 only potential use to the synagogue  
8 then, and nothing really changed since.

9 It did renovate it, it did  
10 imply landmarks for facade work and the  
11 like, and has again rented it out and,  
12 at market rate to a tenant who has a  
13 family there and can use the building in  
14 which it was built for the purposes it  
15 was built as a residential unit. How

16 that might have been different  
17 architecturally beyond that tied into  
18 the new construction, I'll ask my  
19 colleague.

20 MR. DOVELL: There is one part  
21 of that which you should be aware of  
22 there is an historical skylight in the

1 this.

2 MS. NORMAN: I want to talk to  
3 you about the parsonage. At any rate,  
4 are there air rights that remain over  
5 that parsonage?

6 MR. FRIEDMAN: Absolutely.

7 MS. NORMAN: Would it be  
8 possible then the synagogue would come  
9 back at a later date and suggest that  
10 they need to use those air rights to  
11 build above the parsonage.

12 MR. FRIEDMAN: Anything is  
13 possible. The application take the same  
14 trip down --

15 MS. NORMAN: I realize that,  
16 but we weren't as effective in the  
17 Landmarks Commission as I hoped we would  
18 be.

19 MR. FRIEDMAN: That's what the  
20 74-711 was all about. It just didn't  
21 happen.

22 MS. NORMAN: The other thing I

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Transcript of the Public Hearing  
before the  
LANDMARKS PRESERVATION COMMISSION  
on Tuesday, November 26, 2002  
at  
One Centre Street, 9th floor  
New York, New York

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1 maintenance agreement?

2 Those are the main issues before us. We  
3 look forward to your comments. We are going to  
4 alternating, we will be calling five people for,  
5 five people against. I am willing to sit here as  
6 long as possible, but I would again stress that you  
7 will have many, many opportunities to comment and  
8 that we have received I think almost 80 to 90  
9 letters regarding this project, either by snail  
10 mail, e-mail, and all varieties. So we are very

11 [Jack Rudin, Trustee of Synagogue]

12 I will first call Jack Rudin, and then  
13 Leon Levy, and then Dr. Michael Feldberg.

14 MR. RUDIN: Good evening, ladies and  
15 gentlemen of the Commission.

16 I come as a lifetime neighbor in the  
17 upper west side between 86th Street, Central Park  
18 West and 84th Street where I live now. I come as a  
19 thirty-plus year member of the board of trustees of  
20 the synagogue. I come as somebody who found this  
21 building in its earliest stages, many years ago, not  
22 to my liking, it was too high. I come as somebody  
23 who sees a need to develop architecturally and  
24 economically this building to support the synagogue,  
25 to support the void in the neighborhood

[Jack Rudin, Trustee of Synagogue]

51

1 architecturally.

2 I urge the Commission to take a favorable  
3 look because of the sensitivity of the architects  
4 and the congregation. This synagogue, somebody  
5 alluded to the fact that 30 years ago the  
6 neighborhoods were changing. My father and I  
7 prevailed upon the leadership of the synagogue not  
8 to sell and move to the east side, that the west  
9 side was the future of this city. So it is with  
10 strong feelings that I urge that you approve this  
11 design.

12 I am not the developer of this property,  
13 of this building, but I represent a family that has  
14 ten apartment houses between 67th Street and 86th  
15 Street on the west side. We have great faith in  
16 these properties as rental real estate, as rental  
17 property that is needed, and we have not gone into  
18 condo or cooperatives because there is a need for  
19 less expensive -- in the long run, less expensive  
20 rental property.

21 I think the architects have produced an  
22 example of sensitivity and good taste that  
23 complements the historic synagogue, that does not  
24 demean in any way the neighbors, the properties of  
25 the neighborhood, and I hope that you will look upon

# YESHIVA UNIVERSITY



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## Former YU Chairman of the Board Ronald P. Stanton Announces \$100 Million Gift to YU -- Largest Single Gift in N. America to Jewish Education



YU President Richard M. Joel (left) and Chairman of the Board Emeritus Ronald P. Stanton.

**Sep 26, 2006** -- Former YU chairman of the board and New York City industrialist Ronald P. Stanton has announced a gift of \$100 million to Yeshiva University. The largest single gift ever in North America in support of Jewish education and Jewish life, Mr. Stanton's contribution affirms his commitment to Yeshiva University's distinctive mission and his endorsement of the strategic direction set by the University's president, Richard M. Joel.

The contribution creates the Ronald P. Stanton Legacy, an innovative philanthropic fund to help realize the University's bold strategic directions to enhance undergraduate and Jewish education. This "revolving" fund will provide the means to expeditiously pursue projects, acquisitions, and programs identified by the University President. The Ronald P. Stanton Legacy will benefit the University's growth initiatives in facilities acquisition and renovation, the recruitment and retention of top quality faculty across the various disciplines, faculty research and scholarship, and undergraduate and Jewish education. Assets drawn from the fund will be replenished as named gifts for these initiatives are received from other benefactors.



Ronald P. Stanton

Mr. Stanton is chairman of Transammonia, Inc., a private company that trades, distributes and transports fertilizer materials, liquefied petroleum gases, petrochemicals, and crude oil. Established by Mr. Stanton in 1965, Transammonia is listed by Forbes magazine as one of the nation's 100 largest private corporations.

Born in 1928 in Wiesbaden, Germany, Mr. Stanton immigrated to the United States in 1937. His involvement with Yeshiva University began soon after, when he was offered a scholarship by Congregation Shearith Israel, the Spanish and Portuguese Synagogue in New York, to study at the institution and prepare for a career in the rabbinate. He preferred a career in business, and chose to study economics at City College of New York, from which he graduated in 1950. However, he formed a long-standing personal and philanthropic relationship with the University. In 1976, he was elected to Yeshiva University's Board of Trustees; in 1992, he was named a Vice Chairman and 10 years later was elected the seventh Chairman of the Board. He continues to serve as the longest serving member of the University's board. As Chairman of the University's successful \$400 million capital campaign, launched in 2000, he guided the campaign to its goal in just three years. For that campaign, he established a \$10 million capital fund.

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- Stem Cell Research Boost
- Macs Rewarded for Play



YU President Richard M. Joel and Chairman of the Board Emeritus Ronald P. Stanton addressing Yeshiva University's Board of Trustees.

"We are extremely grateful to Ron for his historic beneficence, as well as his steadfast confidence in Yeshiva University's mission," said President Richard M. Joel. "Indeed, Ron is ensuring that Yeshiva University solidifies its position as one of America's 'top-tier' research universities, while also maintaining its unique identity in academia – a place where excellence in liberal arts and sciences is pursued hand-in-hand with the timeless teachings of the Jewish story, and where wisdom is brought to life through a value-centered education that fosters a heightened sense of advocacy and responsibility to the betterment of humanity."

"The people who created Yeshiva University expressed a boldness of purpose and imagination as well as the dedication and willingness to give of themselves in order to achieve where we

are today," said Mr. Stanton. "I have confidence in President Joel's far-reaching vision of where the University should be tomorrow, and am thankful to be able to give my own contribution to help him achieve it."

A previous gift from Mr. Stanton endowed the Hedi Steinberg Library at Stern College for Women, the University's undergraduate college of arts and sciences for women, named for Mr. Stanton's mother. She was an inspiring life force for Mr. Stanton through her deep and abiding commitment to Jewish causes. This commitment was magnificently manifested in her efforts on behalf of Yeshiva University and other Jewish organizations.

Mr. Stanton was awarded an honorary Doctor of Humane Letters degree from the University in 1982.

In addition to his involvement with the University, Mr. Stanton is an honorary trustee of Congregation Shearith Israel, and a member of the boards of New York-Presbyterian Hospital and Lincoln Center.

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**MESSAGE FROM RABBI MARC D. ANGEL**

What an incredible privilege it is for us to be able to commemorate the 350th anniversary of Congregation Shearith Israel, The Spanish and Portuguese Synagogue in the City of New York! Since our beginnings in 1654, each generation of our congregation has played a vital role in the unfolding of our history. Our congregants laid the foundations for American-Jewish life, and many such as the poet Emma Lazarus and Supreme Court Justice Benjamin N. Cardozo contributed creatively and courageously to all aspects of the development of our city and country.

Very few congregations in the world can point to such a long and distinguished historical record of faith, dedication and perseverance. Our generation continues in the traditions of our forebears.

We have recently restored our magnificent landmark synagogue building. It is a source of tremendous pride and satisfaction to us, and will serve the needs of our congregation for generations. But Shearith Israel is far more than a synagogue building. It is a living and vibrant community. It is a place of prayer; a place of study; a place of communal activity. Shearith Israel is a bastion of idealism and inspiration.

The new 350th Anniversary Campaign is focused on the spiritual, educational and cultural life of our community – the very soul of Shearith Israel. Our historic mission is not only to maintain our high standards of communal worship and our unique heritage, but also expand services to our congregants, young and old.

We thank the Almighty for having sustained our congregation for these 350 years and granted us the special privilege of reaching this historic milestone. May the Almighty inspire each of us to play a significant role in ensuring the vitality of Shearith Israel for our generation and generations to come.

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**MESSAGE FROM NORMAN S. BENZAQUEN, CAMPAIGN CHAIRMAN**

In May 1999 we launched our first campaign. We all participated in this first effort of our community to invest in our historic Sanctuary. Donations came from congregants and friends alike. The campaign was successful and the funds were put to excellent use as we all witnessed with pride at the rededication of our Synagogue. As we went through the process of restoration, and in some cases salvation of essential elements of our building, we found that essentially all the funds raised were needed for that purpose.

The 350th Anniversary Campaign, with a \$10 million target, is devoted to maintaining and expanding the spiritual and communal work of Shearith Israel. For the Congregation to thrive in the coming years, we must have a strong endowment fund that will support our religious services, educational and cultural programs, youth work, outreach, synagogue archives, historic cemeteries and other services to our congregation and community. As for most religious institutions, the cost of our ongoing services and our expanding

programs exceeds the funds generated by our regular income. It is therefore essential that our endowment fund be substantial enough to assure the ongoing vitality of Shearith Israel.

As you will see from the Dedication and Recognition page, we have established a program acknowledging and recognizing each contribution. Dedicating a Sefer Torah is a wonderful recognition of a loved one while participation as an Archives Founder is a great tribute to our history. Please consider this entire program as you decide on the level of your commitment and its purpose. For those of you who have already made a pledge, our sincere thanks. From all others we ask and hope that each one will respond with a generous investment in our future.

-----

## DEDICATION AND RECOGNITION

*The 350th Anniversary Campaign provides us the opportunity to celebrate the history and traditions of Shearith Israel, and to contribute towards the future growth of this historic congregation established by our forefathers in 1654.*

All donors will be listed in a souvenir journal, in the appropriate category, at the conclusion of the Campaign. Contributions are being solicited in the following categories:

\$350,350 and above: **Champion Sponsors**. Will be listed on a dedication page of our forthcoming pictorial history of Shearith Israel; will receive a leather-bound, autographed copy of the book; and will be listed on a special 350th anniversary plaque. They will also be entitled to a name dedication of a Torah scroll.

\$250,350- 350,349: **Dedication Sponsors**. Will receive a leather-bound, autographed copy of our forthcoming pictorial history of Shearith Israel; will be listed on a special 350th anniversary plaque; and will be entitled to a name dedication of a Torah scroll.

\$150,350-250,349: **Underwriters**. Will receive a leather-bound copy of our forthcoming pictorial history of Shearith Israel, with an autographed appreciation on parchment; and will be listed on a special 350th anniversary plaque.

\$100,350-150,349: **Archives Patrons**. Will receive a leather-bound copy of our forthcoming pictorial history of Shearith Israel, with an autographed appreciation on parchment; and will be listed on a plaque of Archives Patrons in our future Archives Room.

\$50,350-100,349: **Leadership Benefactors**. Will receive a leather-bound copy of our forthcoming pictorial history of Shearith Israel, with an autographed appreciation on parchment; and will be listed in a Scroll of Benefactors.

\$25,350-50,349: **Benefactors**. Will receive a leather-bound copy of our forthcoming pictorial history of Shearith Israel, with an autographed appreciation on parchment; and will be listed in a Scroll of Benefactors.

\$18,350-25,349: **Sponsors**. Will receive a leather-bound copy of our

forthcoming pictorial history of Shearith Israel, with an autographed appreciation on parchment.

\$10,350-18,349: **Supporters**. Will receive an autographed leather-bound copy of our forthcoming pictorial history of Shearith Israel.

\$5,350-10,349: **Contributors**. Will receive an autographed copy of our forthcoming pictorial history of Shearith Israel.

Up to \$5,349: **Donors**. Will be listed in the Souvenir Journal.

For pledges, contributions or further information, please contact:

**Angelo S. Abdela, Campaign Manager**  
**Shearith Israel- 350th Year Campaign**  
**8 West 70th Street,**  
**New York, NY 10023**  
**Fax: 212-724-6165**  
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## HISTORY

### Overview

Established in 1986, the not-for-profit Eldridge Street Project is restoring the landmark Eldridge Street Synagogue as a dynamic cultural and educational center on the Lower East


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Side. Tours, exhibits and discovery programs tell the story of Jewish immigrant life at the turn of the last century, explore architecture and historic preservation, inspire reflection on cultural continuity, and foster inter-group exchange.

The Eldridge Street Synagogue is the first great house of worship built on the Lower East Side by Eastern European Jews. From its opening in 1887, the building has been a symbol of the religious freedom and economic opportunity sought by so many immigrants to America. It is the most significant remaining marker of the huge Jewish community that flourished on New York's Lower East Side from the 1850's to the 1940's. Today, it is an inspiration to visitors of all cultural backgrounds from around the city, nation and globe. In recognition of the building's architectural magnificence and its role in the American immigrant experience, Eldridge Street was designated a National Historic Landmark in 1996.

### Glory Years

When completed in 1887, the grand synagogue was "reviewed" in the local press. Writers marveled at the imposing Moorish-style building, with its 70-foot-high vaulted ceiling, magnificent stained-glass rose windows, elaborate brass fixtures and hand-stenciled walls.

Thousands participated in religious services in the building's heyday, from its opening through the 1920s. On the High Holidays, police were stationed in the street to control the crowds. The diverse membership included artists Ben Shahn and William Gropper, performers Eddie Cantor, Paul Muni and Edward G. Robinson, and scientist Jonas Salk. Throughout these decades the Synagogue functioned not only as a house of worship but as an agency for acculturation, a place to welcome new Americans. Before the settlement houses were established and long afterward, poor people could come here to be fed, secure a loan, learn about job and housing opportunities, and make arrangements to care for the sick and the dying. The

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Synagogue was, in this sense, a mutual aid society.

To learn more about what was going on in the late 19th century at the time the Eldridge Street synagogue was founded, please click [here](#).

[▲\\_Top](#)

### Years of Struggle

Membership began to dwindle as members moved to other parts of New York City and America, immigration quotas limited the number of new arrivals, and the Great Depression affected the congregants' fortunes. The exquisite main sanctuary was used less and less from the 1930s on. By the 1950s, with the rain leaking in and inner stairs unsound, the congregants cordoned off the area.

Without the resources needed to heat and maintain the main sanctuary, they chose to worship in a smaller chapel in the building's downstairs level. The upstairs sanctuary remained empty for twenty-five years, from approximately 1955 to 1980.

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### The Rescue

In the late 1970s the building was in serious jeopardy. Then it came to the attention of NYU professor Gerard Wolfe, who led walking tours of the neighborhood and who was working on a book about Lower East Side synagogues. He rallied together a volunteer organization, the Friends of the Eldridge Street Synagogue, to rescue the historic house of worship. This dedicated group recognized the building's architectural distinction and its historic significance.

At this point the building was in a dire state of deterioration. The roof was virtually useless, the foundation had suffered severe structural damage, plaster and paint fell steadily, and one of two sets of interior stairs had collapsed. The Friends secured emergency funds from public and private sources. They began the process to secure landmark designations, and organized the emergency stabilization of the building's exterior, which was completed in 1984.

Once it became clear that the restoration would be a complex, protracted and multi-million-dollar endeavor, the not-for-profit, non-sectarian Eldridge Street Project was established to see it through.

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### Restoration & Renewal

By the end of 1987, the Synagogue's 100th anniversary, the Eldridge Street Project had raised funds to begin the first phase of construction. Work commenced in 1989.

During the 1990s the building's foundation was excavated, reinforced and stabilized; the slate



roof was restored and a skylight system was opened and refurbished; all of the windows were sealed with protective Lexan; the exterior was repointed and made watertight; rotted and insect-infested structural members were removed and replaced; one staircase was rebuilt; six major stained glass windows were restored and reinstalled; one of seven rooftop finials was fabricated; and the building was

pre-wired for the installation of modern systems.

The Eldridge Street Synagogue is now a New York City Landmark, is listed on the National Register of Historic Places and, in 1996, was honored by the Federal government with National Historic Landmark designation, confirming that the Synagogue is a national treasure with meaning for all Americans.

To date approximately \$14 million of a \$16 million capital campaign has been raised and applied to building improvements. Current work includes the restoration of the building's beautiful paint finishes, stained-glass windows, and Victorian lighting fixtures. The Eldridge Street Project anticipates completing the Synagogue restoration by December 2007, the 120th anniversary of the building's 1887 opening.

Alongside this major restoration effort, the Eldridge Street Project offers tours, lectures, concerts, readings, festivals, family events, and other special programs that interpret the history of the landmark Synagogue and its immigrant neighborhood. More than 20,000 people of diverse cultural and religious backgrounds visit the building each year. They learn about architecture, about American-Jewish history, their own roots on the Lower East Side and the common bond of immigration that links so many Americans.

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Extending beyond New York, his **contributions** also include work as chairman of ... Sanford I. Weill, chairman emeritus of Citigroup, Inc.; **Jack Rudin** and the ...

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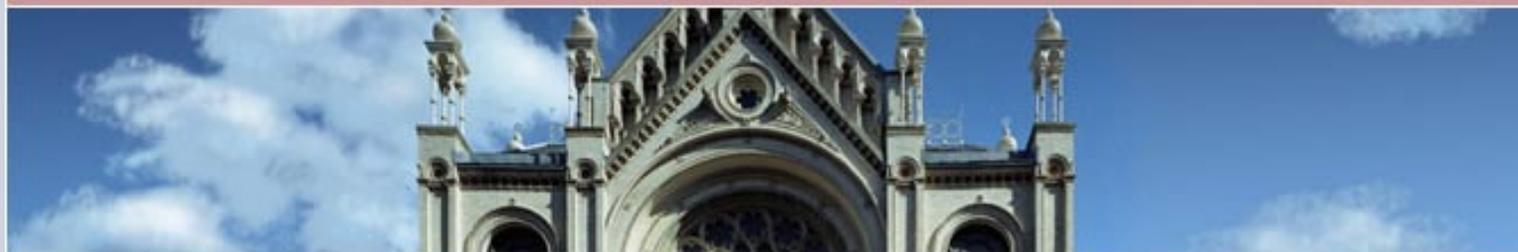
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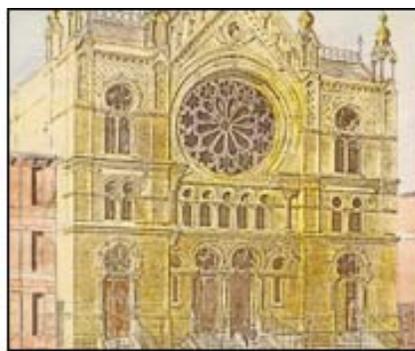
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## HISTORY

### Overview

Established in 1986, the not-for-profit Eldridge Street Project is restoring the landmark Eldridge Street Synagogue as a dynamic cultural and educational center on the Lower East


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Side. Tours, exhibits and discovery programs tell the story of Jewish immigrant life at the turn of the last century, explore architecture and historic preservation, inspire reflection on cultural continuity, and foster inter-group exchange.

The Eldridge Street Synagogue is the first great house of worship built on the Lower East Side by Eastern European Jews. From its opening in 1887, the building has been a symbol of the religious freedom and economic opportunity sought by so many immigrants to America. It is the most significant remaining marker of the huge Jewish community that flourished on New York's Lower East Side from the 1850's to the 1940's. Today, it is an inspiration to visitors of all cultural backgrounds from around the city, nation and globe. In recognition of the building's architectural magnificence and its role in the American immigrant experience, Eldridge Street was designated a National Historic Landmark in 1996.

### Glory Years

When completed in 1887, the grand synagogue was "reviewed" in the local press. Writers marveled at the imposing Moorish-style building, with its 70-foot-high vaulted ceiling, magnificent stained-glass rose windows, elaborate brass fixtures and hand-stenciled walls.

Thousands participated in religious services in the building's heyday, from its opening through the 1920s. On the High Holidays, police were stationed in the street to control the crowds. The diverse membership included artists Ben Shahn and William Gropper, performers Eddie Cantor, Paul Muni and Edward G. Robinson, and scientist Jonas Salk. Throughout these decades the Synagogue functioned not only as a house of worship but as an agency for acculturation, a place to welcome new Americans. Before the settlement houses were established and long afterward, poor people could come here to be fed, secure a loan, learn about job and housing opportunities, and make arrangements to care for the sick and the dying. The

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Synagogue was, in this sense, a mutual aid society.

To learn more about what was going on in the late 19th century at the time the Eldridge Street synagogue was founded, please click [here](#).

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### Years of Struggle

Membership began to dwindle as members moved to other parts of New York City and America, immigration quotas limited the number of new arrivals, and the Great Depression affected the congregants' fortunes. The exquisite main sanctuary was used less and less from the 1930s on. By the 1950s, with the rain leaking in and inner stairs unsound, the congregants cordoned off the area.

Without the resources needed to heat and maintain the main sanctuary, they chose to worship in a smaller chapel in the building's downstairs level. The upstairs sanctuary remained empty for twenty-five years, from approximately 1955 to 1980.

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### The Rescue

In the late 1970s the building was in serious jeopardy. Then it came to the attention of NYU professor Gerard Wolfe, who led walking tours of the neighborhood and who was working on a book about Lower East Side synagogues. He rallied together a volunteer organization, the Friends of the Eldridge Street Synagogue, to rescue the historic house of worship. This dedicated group recognized the building's architectural distinction and its historic significance.

At this point the building was in a dire state of deterioration. The roof was virtually useless, the foundation had suffered severe structural damage, plaster and paint fell steadily, and one of two sets of interior stairs had collapsed. The Friends secured emergency funds from public and private sources. They began the process to secure landmark designations, and organized the emergency stabilization of the building's exterior, which was completed in 1984.

Once it became clear that the restoration would be a complex, protracted and multi-million-dollar endeavor, the not-for-profit, non-sectarian Eldridge Street Project was established to see it through.

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### Restoration & Renewal

By the end of 1987, the Synagogue's 100th anniversary, the Eldridge Street Project had raised funds to begin the first phase of construction. Work commenced in 1989.

During the 1990s the building's foundation was excavated, reinforced and stabilized; the slate



roof was restored and a skylight system was opened and refurbished; all of the windows were sealed with protective Lexan; the exterior was repointed and made watertight; rotted and insect-infested structural members were removed and replaced; one staircase was rebuilt; six major stained glass windows were restored and reinstalled; one of seven rooftop finials was fabricated; and the building was

pre-wired for the installation of modern systems.

The Eldridge Street Synagogue is now a New York City Landmark, is listed on the National Register of Historic Places and, in 1996, was honored by the Federal government with National Historic Landmark designation, confirming that the Synagogue is a national treasure with meaning for all Americans.

To date approximately \$14 million of a \$16 million capital campaign has been raised and applied to building improvements. Current work includes the restoration of the building's beautiful paint finishes, stained-glass windows, and Victorian lighting fixtures. The Eldridge Street Project anticipates completing the Synagogue restoration by December 2007, the 120th anniversary of the building's 1887 opening.

Alongside this major restoration effort, the Eldridge Street Project offers tours, lectures, concerts, readings, festivals, family events, and other special programs that interpret the history of the landmark Synagogue and its immigrant neighborhood. More than 20,000 people of diverse cultural and religious backgrounds visit the building each year. They learn about architecture, about American-Jewish history, their own roots on the Lower East Side and the common bond of immigration that links so many Americans.

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## The Journey Continues ... A Legacy to the Community

### A home for the community is built... from the ground up

The JCC journey began in 1990 when a small group envisioned a communal Jewish home that would serve as a model of inclusiveness and diversity—one that would offer access to Jewish and community life for affiliated, unaffiliated and interfaith alike. These community members and staff came to the project with open hearts and minds. They were not driven to impose a prefabricated idea of what "community" should be or how the "communal home" should be structured. Instead, they would take its cue from the community itself. Each voice, each dream would be valued along the way. The JCC believes in building community from the ground up.

In only thirteen years, the JCC has evolved from this vision into a vibrant center of communal life. The JCC opened the doors of its beautiful, 11-story, state-of-the-art building in January 2002 and today serves as a home away from home for more than 12,000 members and thousands of other program participants. Every day the JCC is alive with children, families, adults and seniors, all seeking the many cultural, educational, recreational and Jewish Life programs that have been carefully designed to meet their needs.

### Where we are today...

Thousands of people walk through our doors every day, and most are unaware that we have not yet completed the fund raising for the construction of the JCC building. Over the past decade, during Phase I of our Capital Campaign, our founding donors, city and state governments, and other contributors generously provided over \$60 million of the \$85 million needed towards the overall cost of the JCC building. Financing allowed us to move forward with construction and to open the JCC to our community.

Now we ask the entire community to help us raise the \$22 million needed to complete the Campaign. This will allow our annual operating budget to sustain and enhance programs, while we also grow an endowment to ensure the JCC's future.

Our goal of \$22 million will enable us to fulfill our financial obligations and provide opportunities for larger numbers of JCC members and friends in the community to share ownership and responsibility for this wonderful new building and community resource. We invite you to join us on the next part of our collective journey.

[Click here](#) for a list of naming opportunities.

If you have any questions or would like more information, please contact [Shirley Kohn](#), Associate Executive Director of Development, 646.505.5711.

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# New York and Region



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## NEIGHBORHOOD REPORT: UPPER WEST SIDE; Mixed Feelings Over Jewish Community Center

By ROBIN POGREBIN  
Published: June 18, 1995

The Jewish Community Centers Association of North America has its headquarters on East 26th Street, but until four years ago, none of the 200 centers it runs across the nation was in the city. Then, a J.C.C. opened on the second floor of a residential building on West 80th Street.

From there, it offers educational and recreational programs -- a crash course in basic Judaism, water aerobics for older adults -- in larger, borrowed spaces like synagogues and schools. Now the J.C.C. is planning a home of its own -- a plan that has drawn both support and concern among the area's 90,000 Jews and at least 20 synagogues.

With money donated by board members and community residents, the J.C.C. intends to build a seven-and-a-half-story, \$36 million complex on Amsterdam Avenue at 76th Street over the next five years. The approximately \$5 million needed to buy the site from Exxon has already been pledged by board members.

But some questions have been raised about the new center that range from the minor to the Talmudic. Will its sizeable membership fees -- to be determined -- drain local synagogues of their much-needed financial contributions? Will its programs draw people from those already in the neighborhood? Will it be open on Saturdays for those who do not observe the Sabbath?

Congregation Shearith Israel, an Orthodox synagogue on West 70th Street, has withdrawn its support for the new center on the ground that programs for homosexuals -- like those that help same-sex couples plan Jewish commitment ceremonies -- violate Jewish law. "The Orthodox community cannot possibly buy into that," said Marc D. Angel, the synagogue's rabbi. "If the J.C.C. were to offer cooking classes in ham and eggs, I would oppose it also because it's against Jewish law."

The chairman of J.C.C.'s local board, Harold R. Handler, acknowledged that there has been some tension. "Whenever there is a new person in town, people always view it to some extent with suspicion," he said, adding that the center has taken pains to work closely with local religious and community service groups.

Indeed, many residents seem enthusiastic about the prospect of a West Side equivalent to the 92d Street Y on Lexington Avenue. "People still search for a community," said Judith Stern Peck, a therapist who has been active in the formation of the J.C.C. "I don't care how sophisticated they are."

And given high rates of intermarriage, low synagogue attendance and an aging

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generation of Jews with direct knowledge of the Holocaust, Debby Hirshman, the center's executive director, said it could be essential to strengthening Jewish continuity. "Something is going to have to be the presence to help people realize there is an aspect of their identity that is of value to them," Ms. Hirshman said. "There has to be a non religious environment that gives them the opportunity to explore it." R.P.

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and the Adult Education Program. The current deficiencies of the spaces in which these three programs are forced to exist are detailed below (see page 12).

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. If the groundfloor 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 groundfloor, is entirely unavailable for educational purposes because the Synagogue must "take" all of the groundfloor and portions of floors 2 – 4 for an elevator and landing as well for its own remedial purposes. There are no reasonable alternatives to dedicating nearly the entire first floor of the New Building to Synagogue use because (1) both the CSI community and the Landmarks Commission agree that the Synagogue envelope cannot and should not be compromised to provide new necessary space for Synagogue purposes and (2) the Synagogue's continued use as a house of worship can no longer be compromised by accessibility issues which can only be addressed by "taking" the full footprint on the New Building's first floor.

Thus the question becomes: Can the 15 classrooms and necessary ancillary space required to meet CSI's programmatic needs and mission objectives be accommodated within a bulk envelope that is essentially the allowable footprint above the first floor, which is 64 ft wide by 70.5 ft deep, minus approximately 100 sf from each floor "taken" by the Synagogue for its elevator shaft on each floor?

The answer is no. When taking into account that each floor must provide for adequate circulation and two egress points to stairs, separate lavatories and an adequate total number of offices, it becomes impossible to provide the required classrooms at a standard size within a 64 ft by 70ft footprint, times 3. When one adds the individual bathrooms that must be directly accessed from within each of the six Toddler classrooms, the impossibility becomes even more evident. While a wider site might permit the classrooms to be shifted 90 degrees so that their length could run parallel to the front and rear property lines, the narrowness of the site requires that the classrooms be stacked with their length running north and south, thus generating the noncomplying rear yard condition on floors 2 – 4.

The opponents have suggested that the hardship could be overcome by building another floor to accommodate the two or three classrooms that could not be made to fit on three floors, but the otherwise unnecessary high costs associated with extending the core and mechanicals to another floor to remedy a 640 sf zoning deficiency which exists only in plan (there being sufficient zoning floor area) is a hardship unto itself. Since in this case the hardship has been created solely by the unique conditions of the site, it is clear that an application for these four variances to overcome CSI's programmatic and mission difficulties is appropriate and should be forthcoming.

alter the Synagogue to be a violation of that obligation and antithetical to its mission. Thus, this Application, while tracking the hopes of most preservationists by (1) transferring available floor area from the Synagogue footprint for use elsewhere on the zoning lot, (2) refraining from any form of construction or alteration above, within or below the Synagogue that might affect its

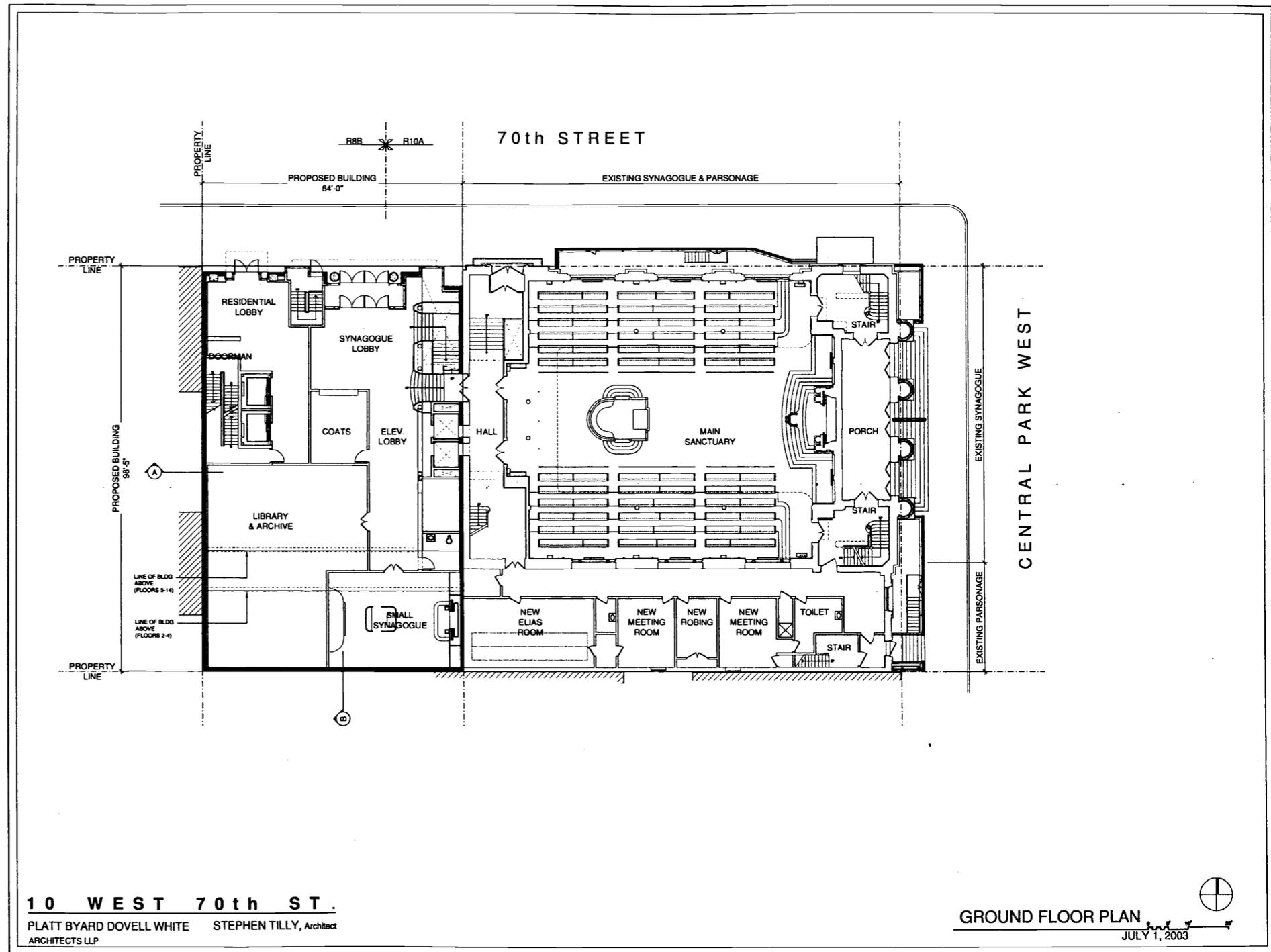
integrity, and (3) dedicating itself to the continued archival restoration and maintenance of the landmarked Synagogue through capital fundraising that includes a one-time monetization of zoning floor area through developing a moderate amount of residential space, is otherwise driven by CSI's own core values as trustees of the Synagogue and its contents for the benefit of generations to come. All of the requests for relief presented in this Application are directed

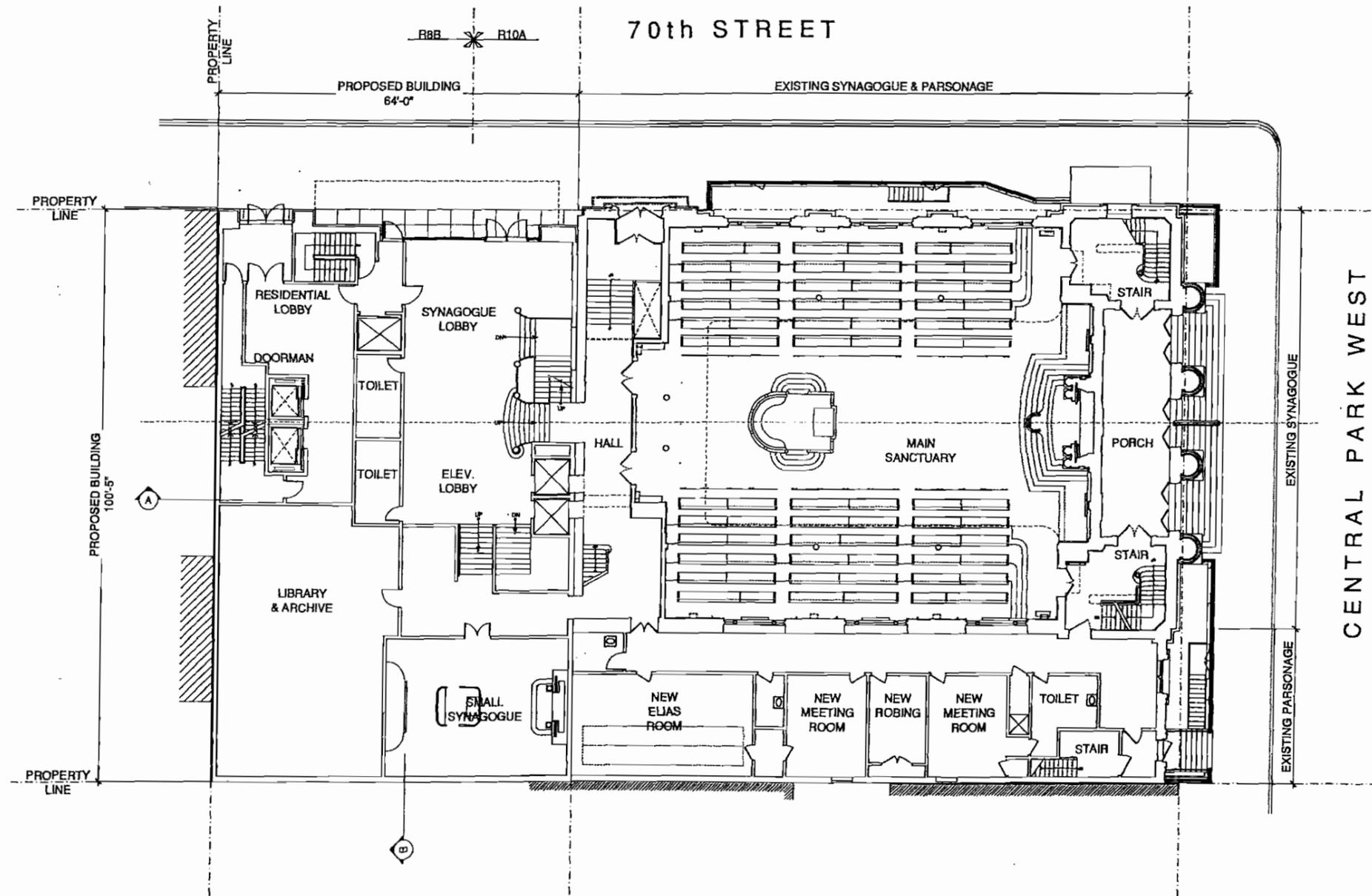
toward alleviating the hardships caused to that mission by the literal application of the cited provisions of the Zoning Resolution.

#### **CURRENT USES AND CONDITIONS**

As noted above, the Synagogue itself remains in constant use as a house of worship. In addition to its sanctuaries, the Synagogue contains the executive director's office, several administrative offices, the multifunction Levy Auditorium, and a kitchen and coat room within its cellar level. Although the Synagogue has a formal monumental entrance on Central Park West, it is almost never used. It is perhaps the most glaring design flaw of the Synagogue. Because according to Jewish Law a synagogue must be designed so worshippers face east when praying toward the altar, the altar is located along the east wall of the Synagogue. Thus, the monumental entrance is anything but monumental as once it is entered, without vestibule or foyer, it is reduced to small interior doors backstage of the altar and narrow passages to circumnavigate it. The daily route for entering and leaving the Synagogue is through its side

Revised 09/07/2007





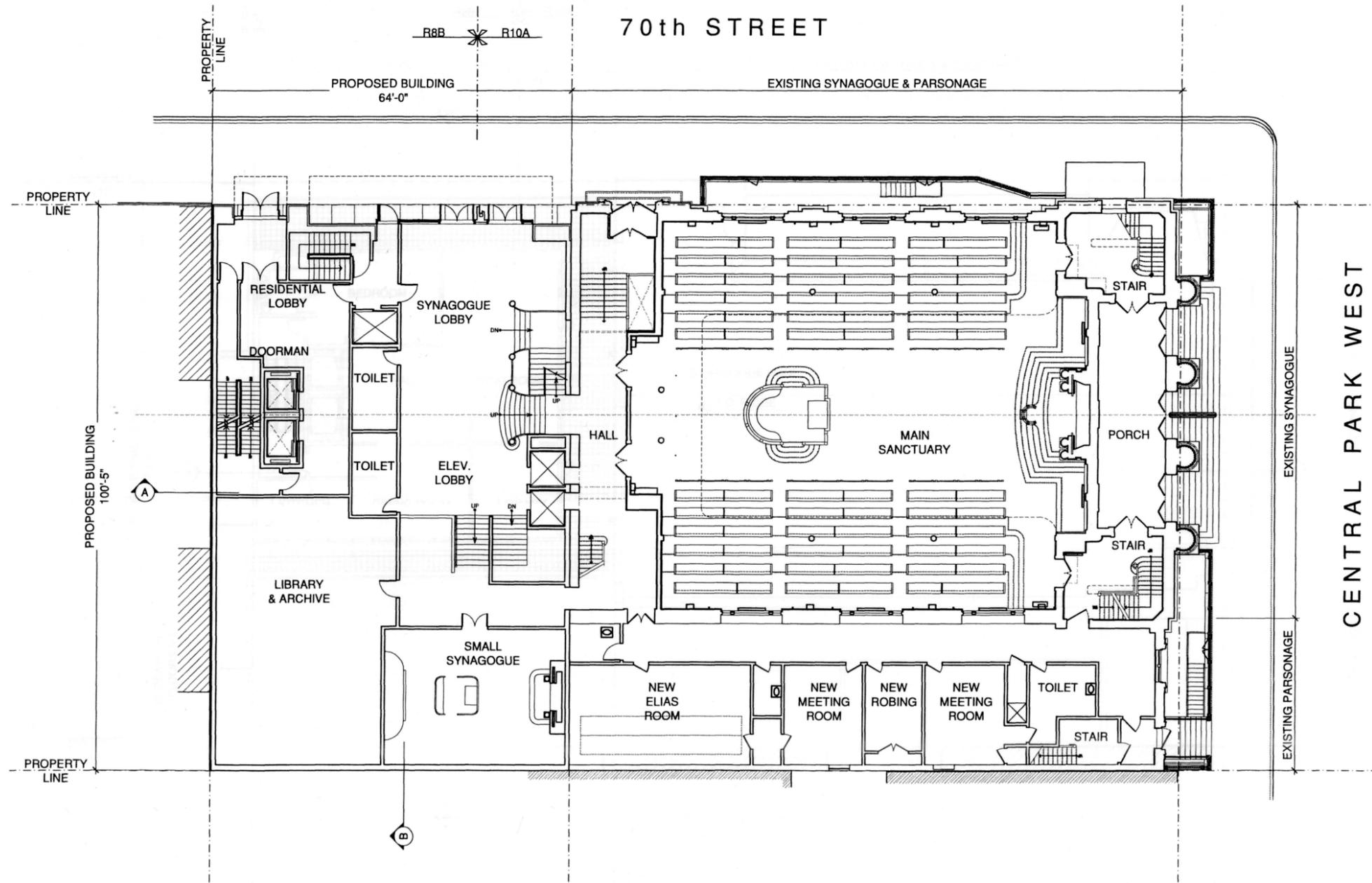
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10 WEST 70th ST.

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PROPOSED GROUND FLOOR PLAN

AUGUST 15, 2005



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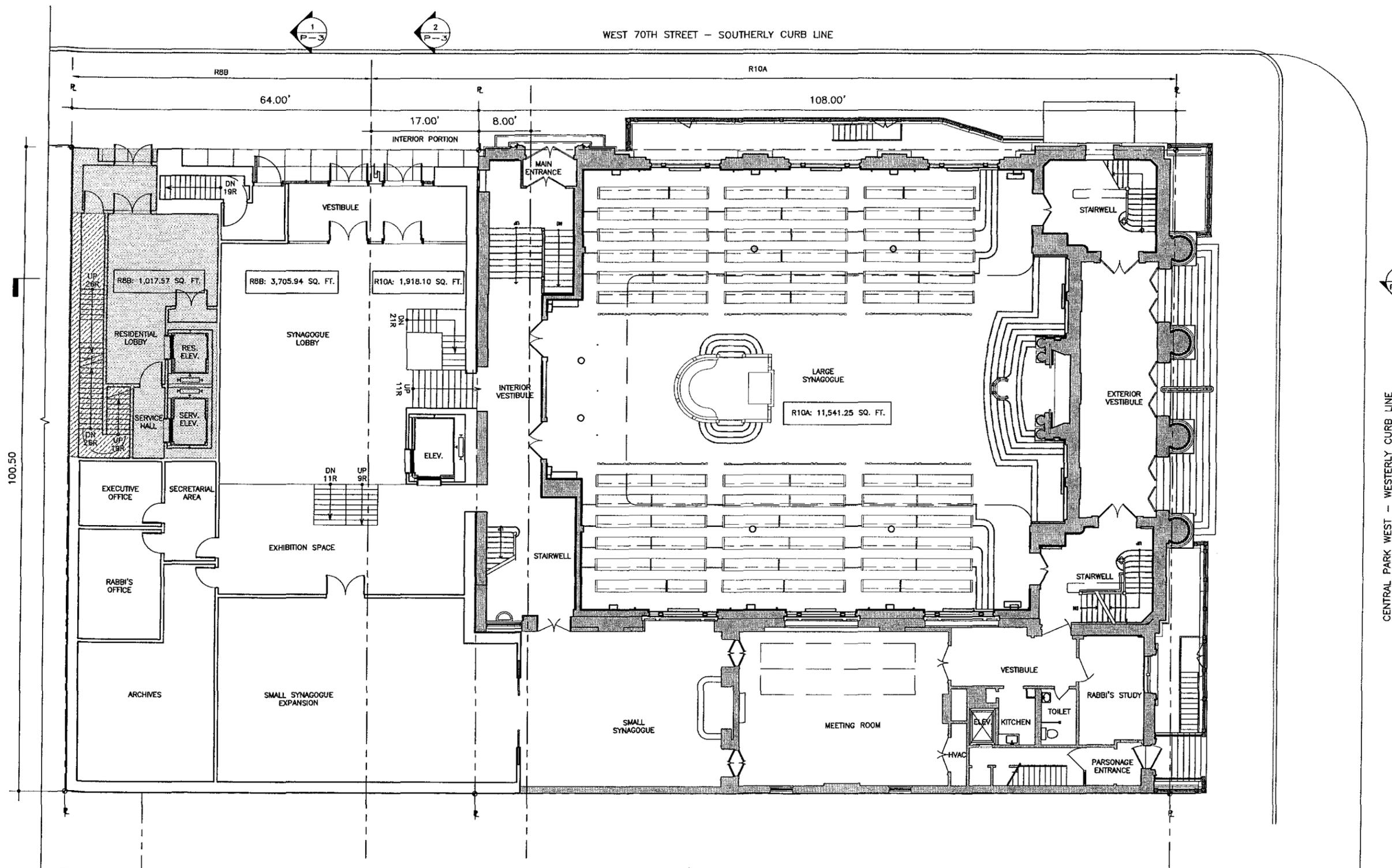


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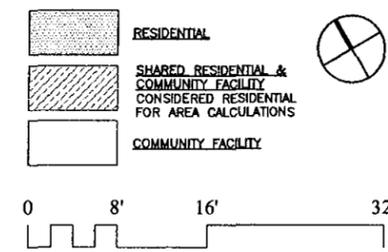
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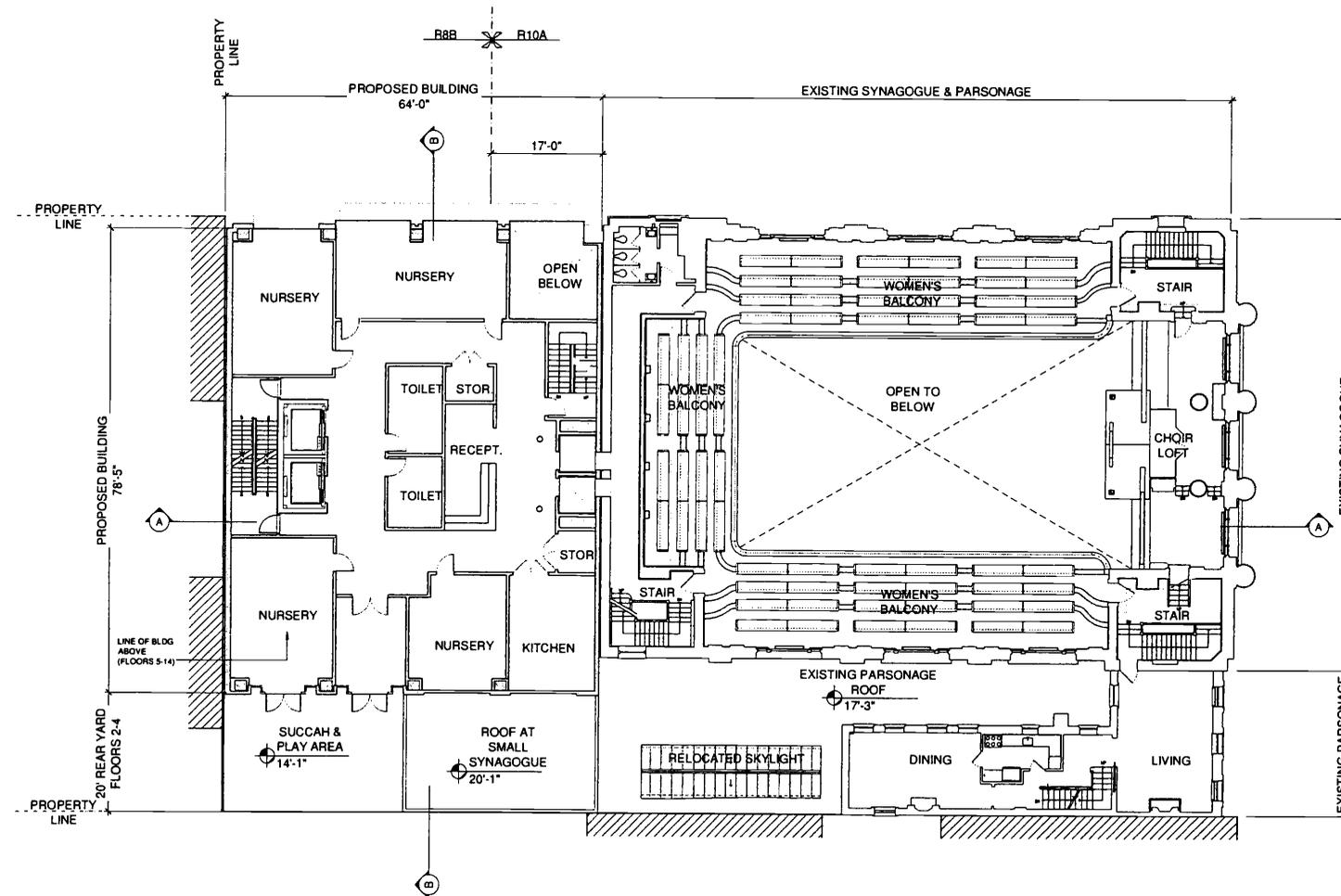
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FIRST FLOOR  
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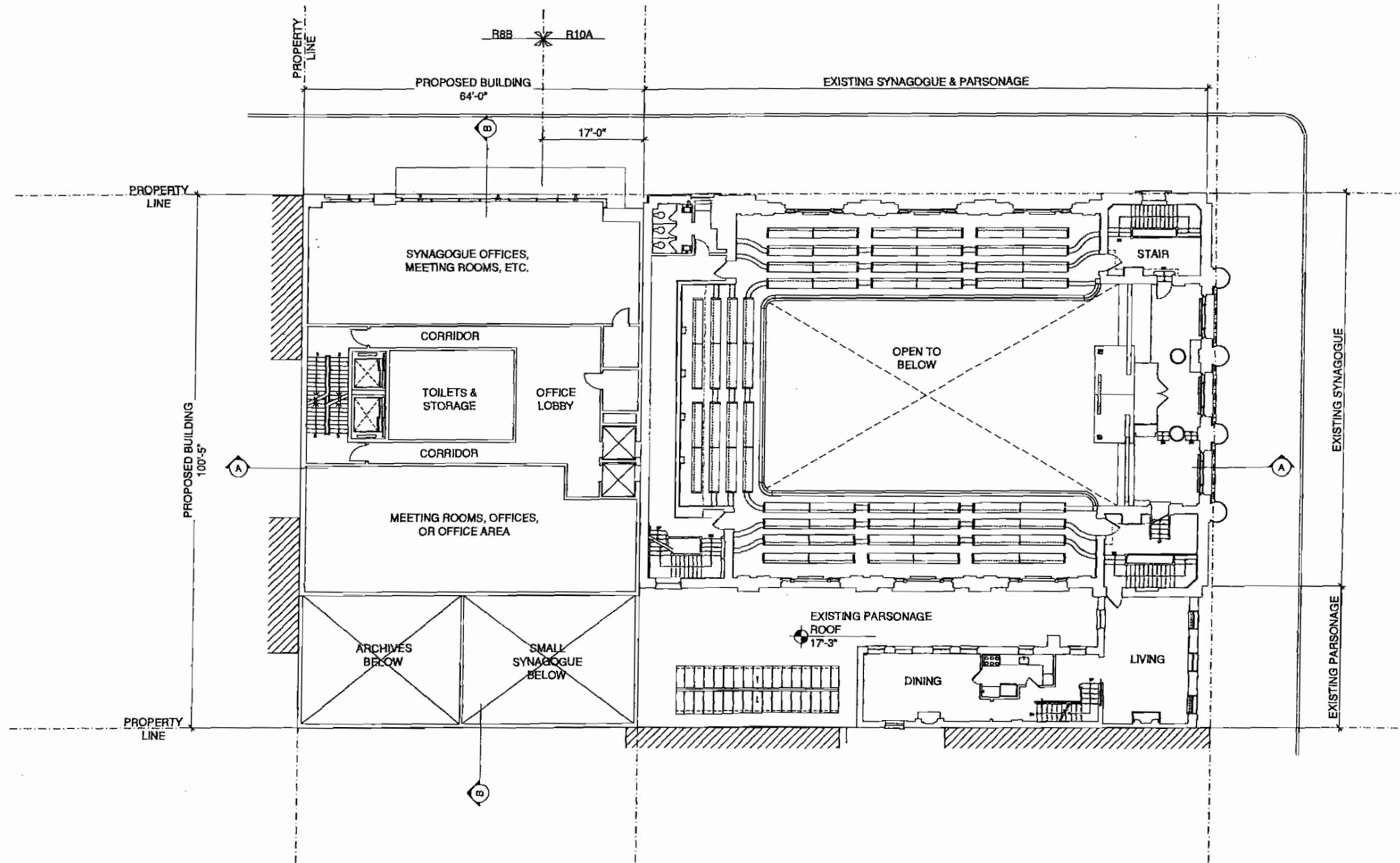
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SECOND FLOOR PLAN  
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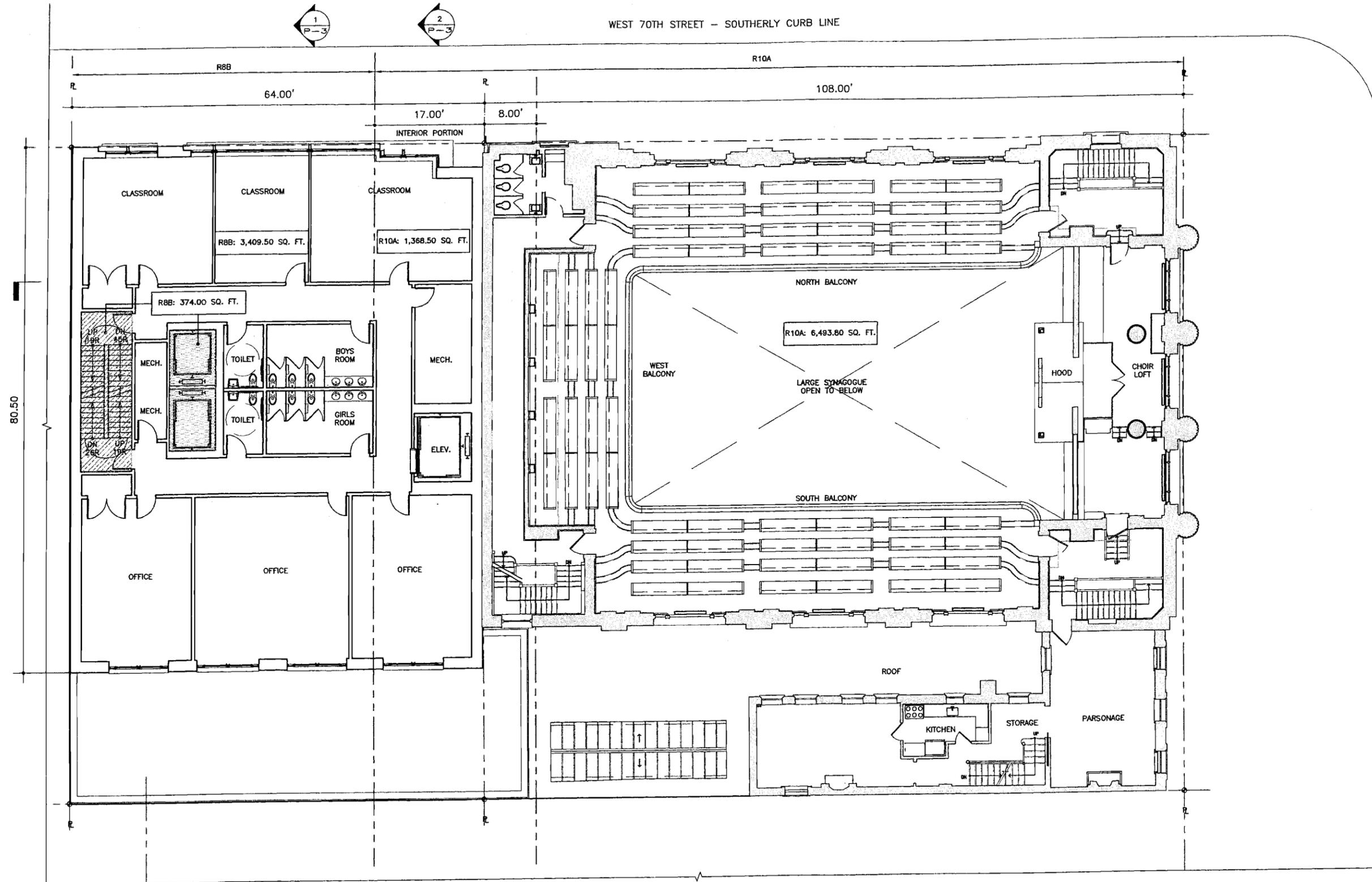
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PROPOSED SECOND FLOOR PLAN

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WEST 70TH STREET - SOUTHERLY CURB LINE



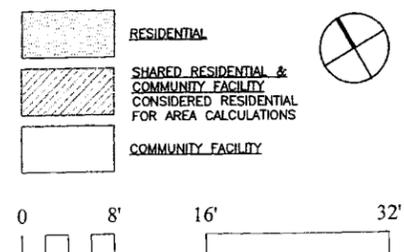
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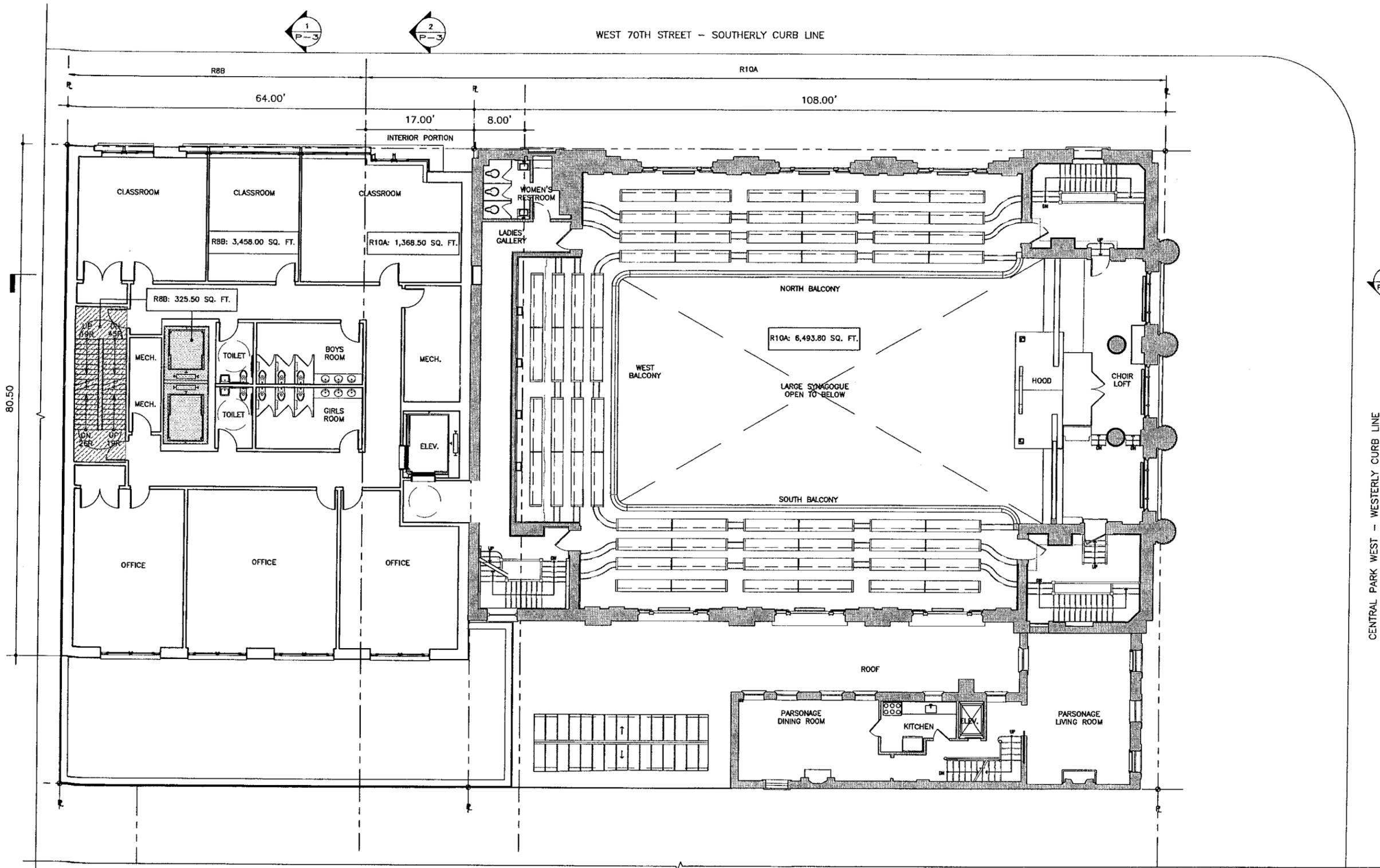
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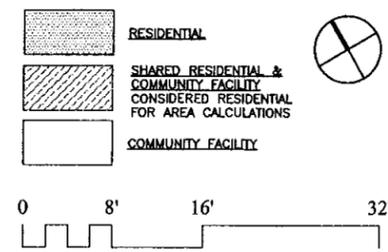
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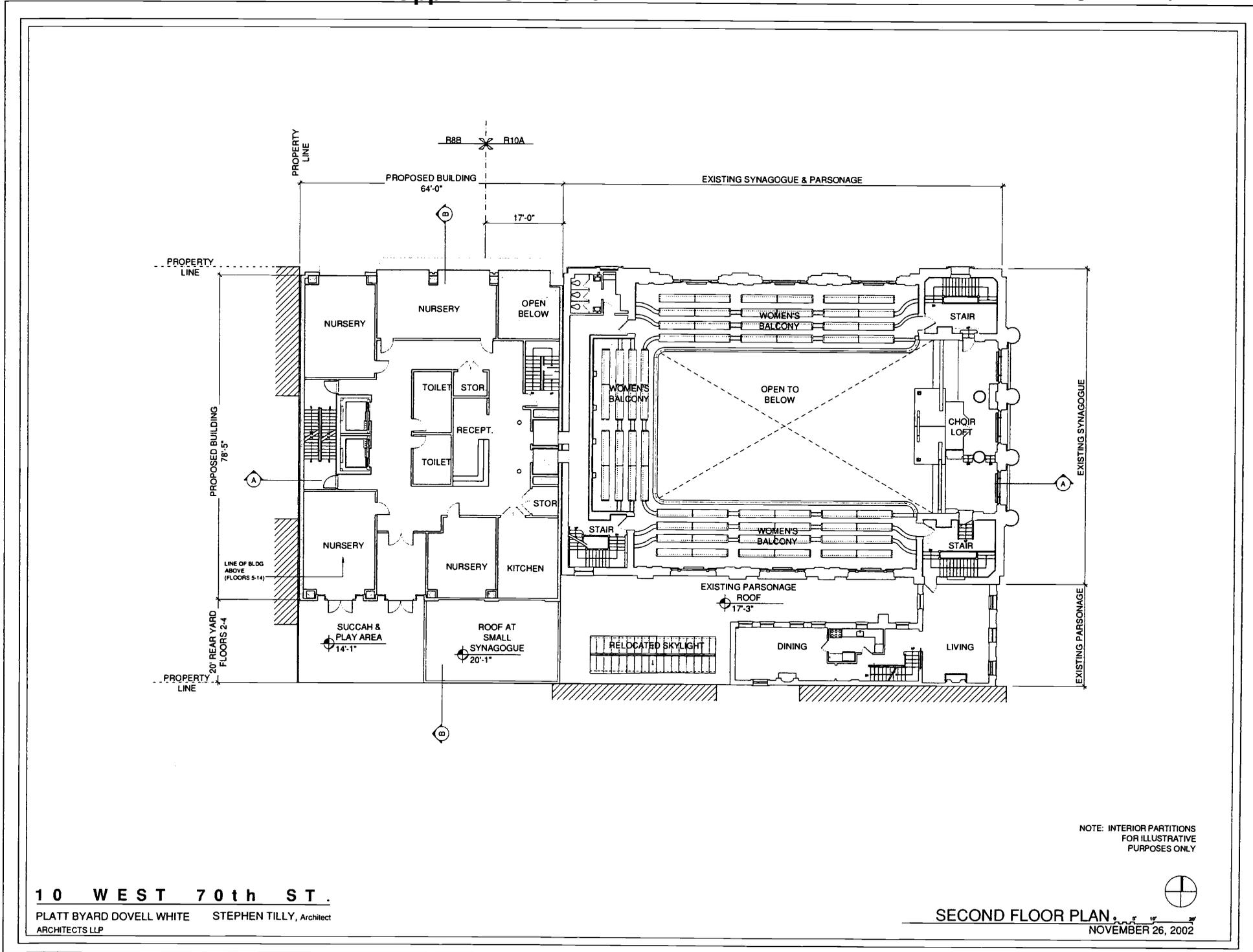
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SECOND FLOOR SCALE: 1/16" = 1'-0"

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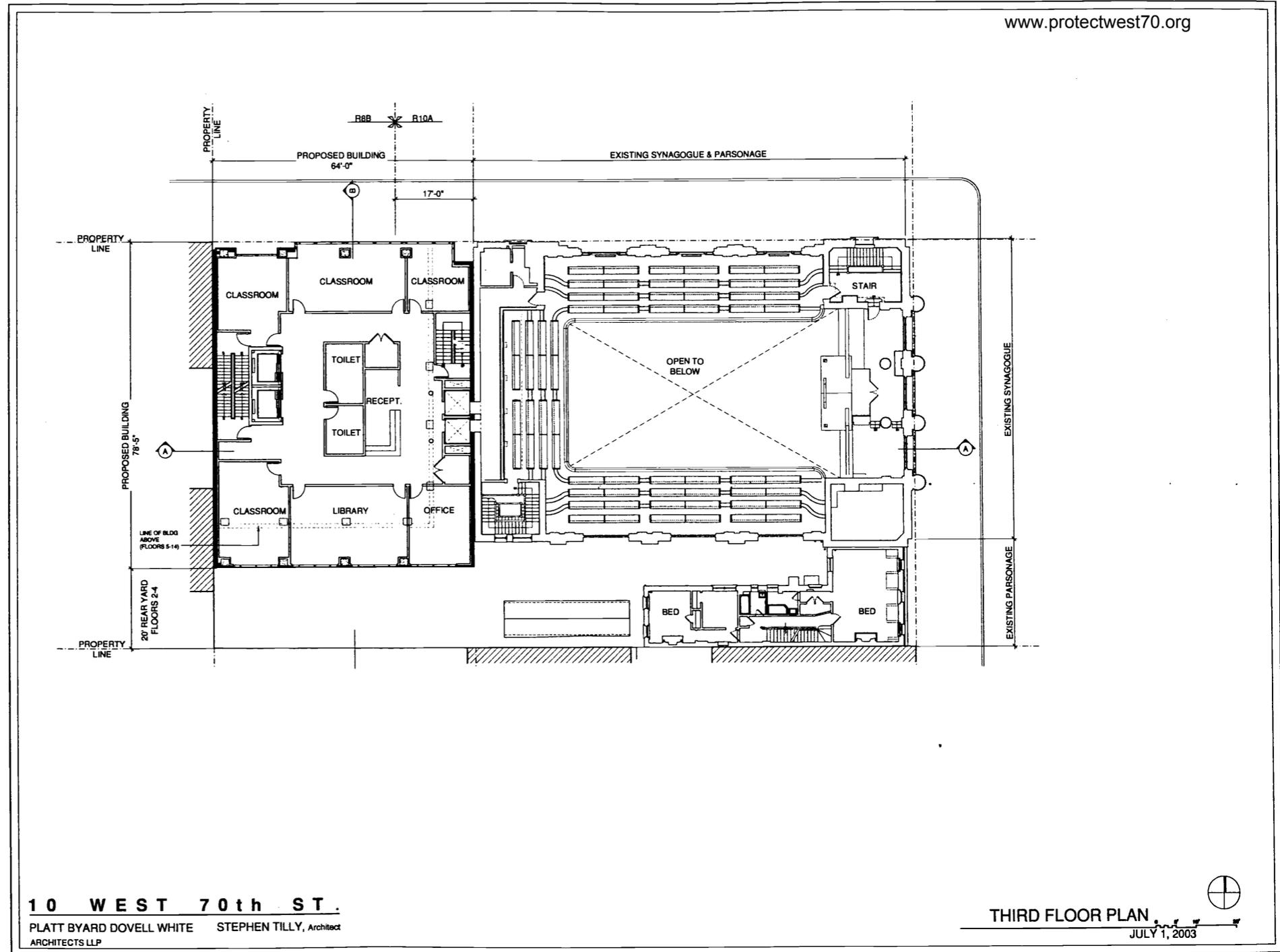
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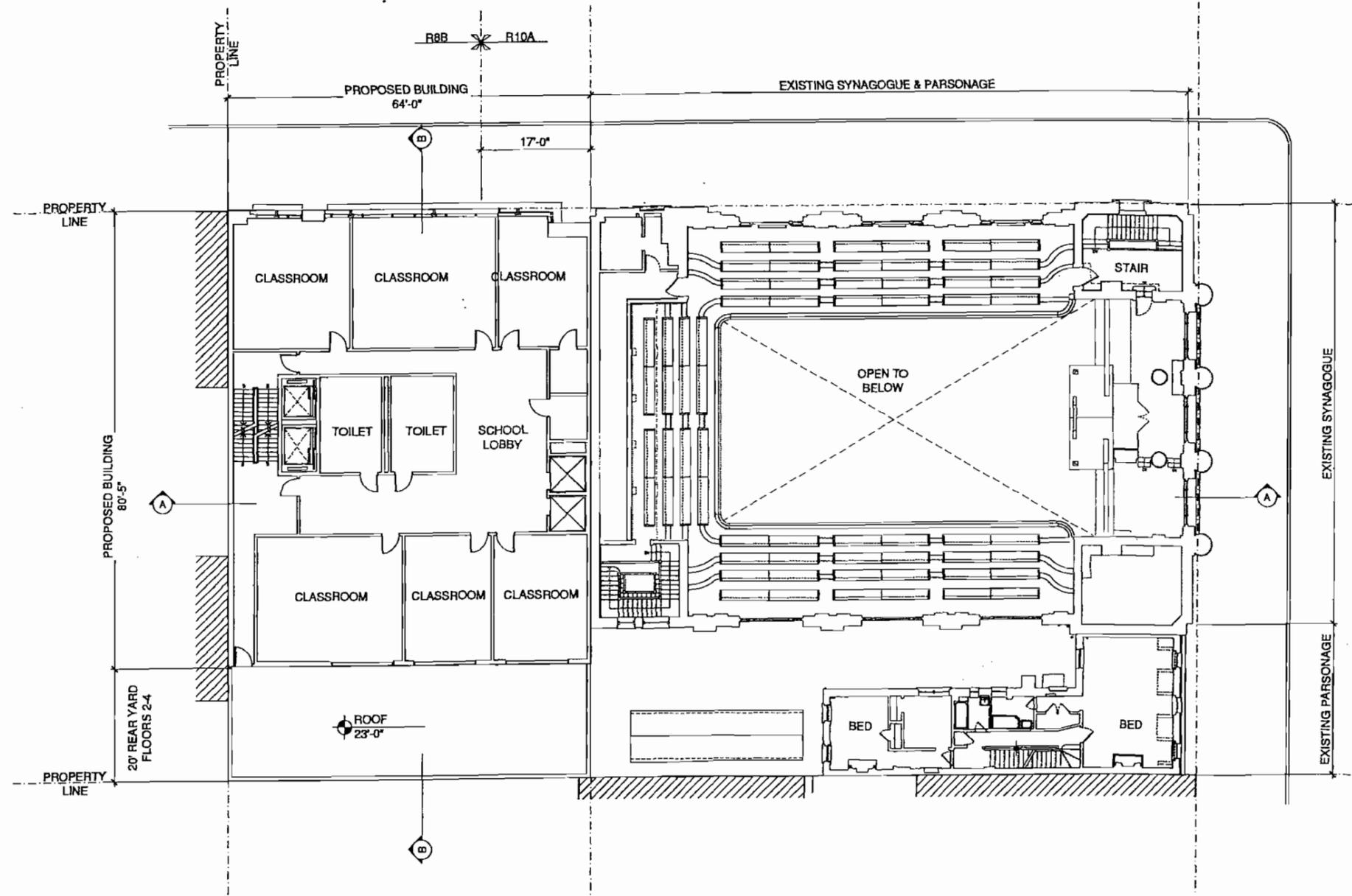
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THIRD FLOOR PLAN  
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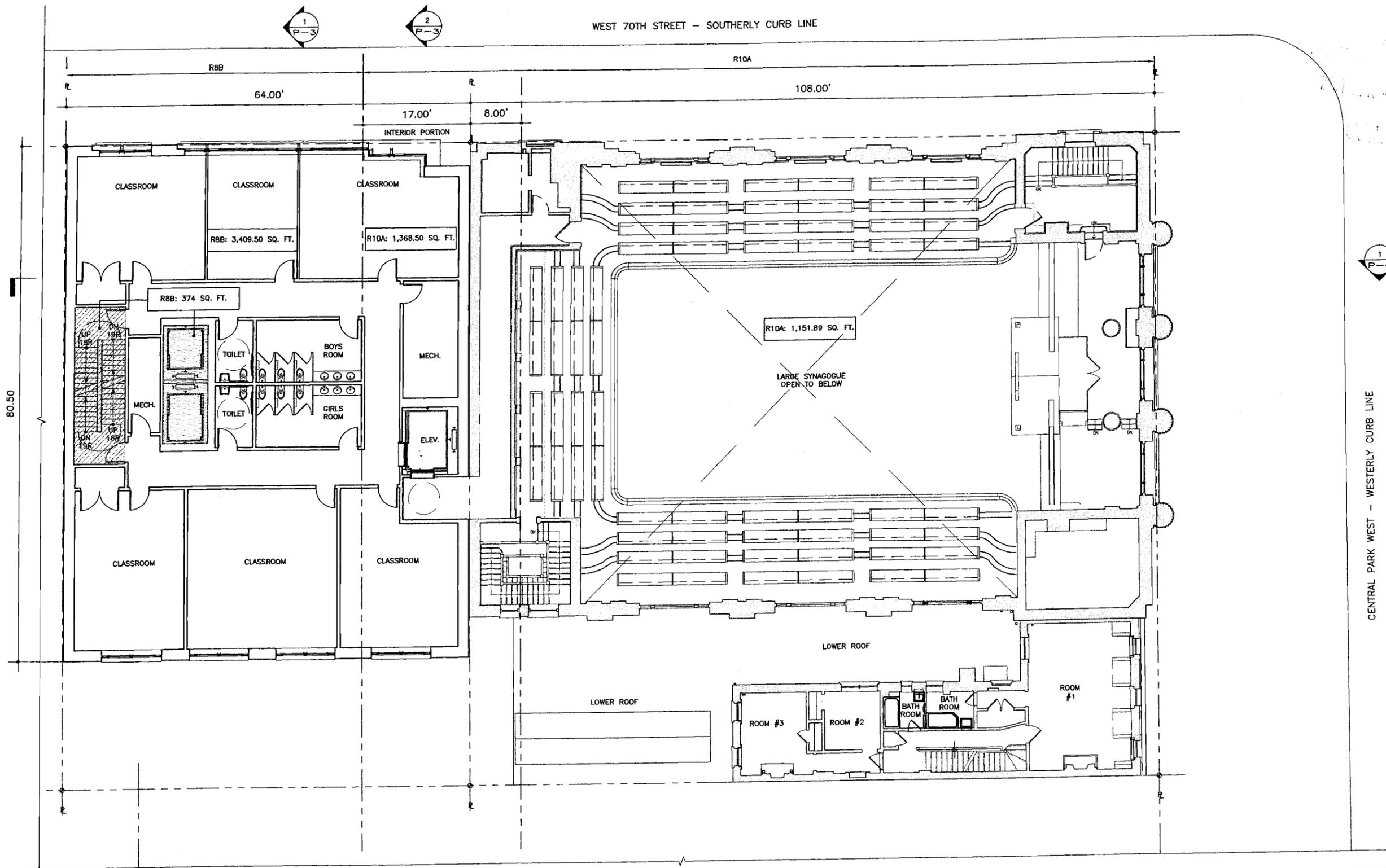
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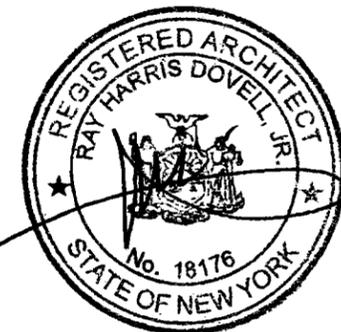
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STEPHEN TILLY, Architect

PROPOSED THIRD FLOOR PLAN

AUGUST 15, 2005



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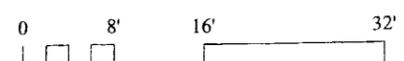


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THIRD FLOOR      SCALE: 1/16" = 1'-0"

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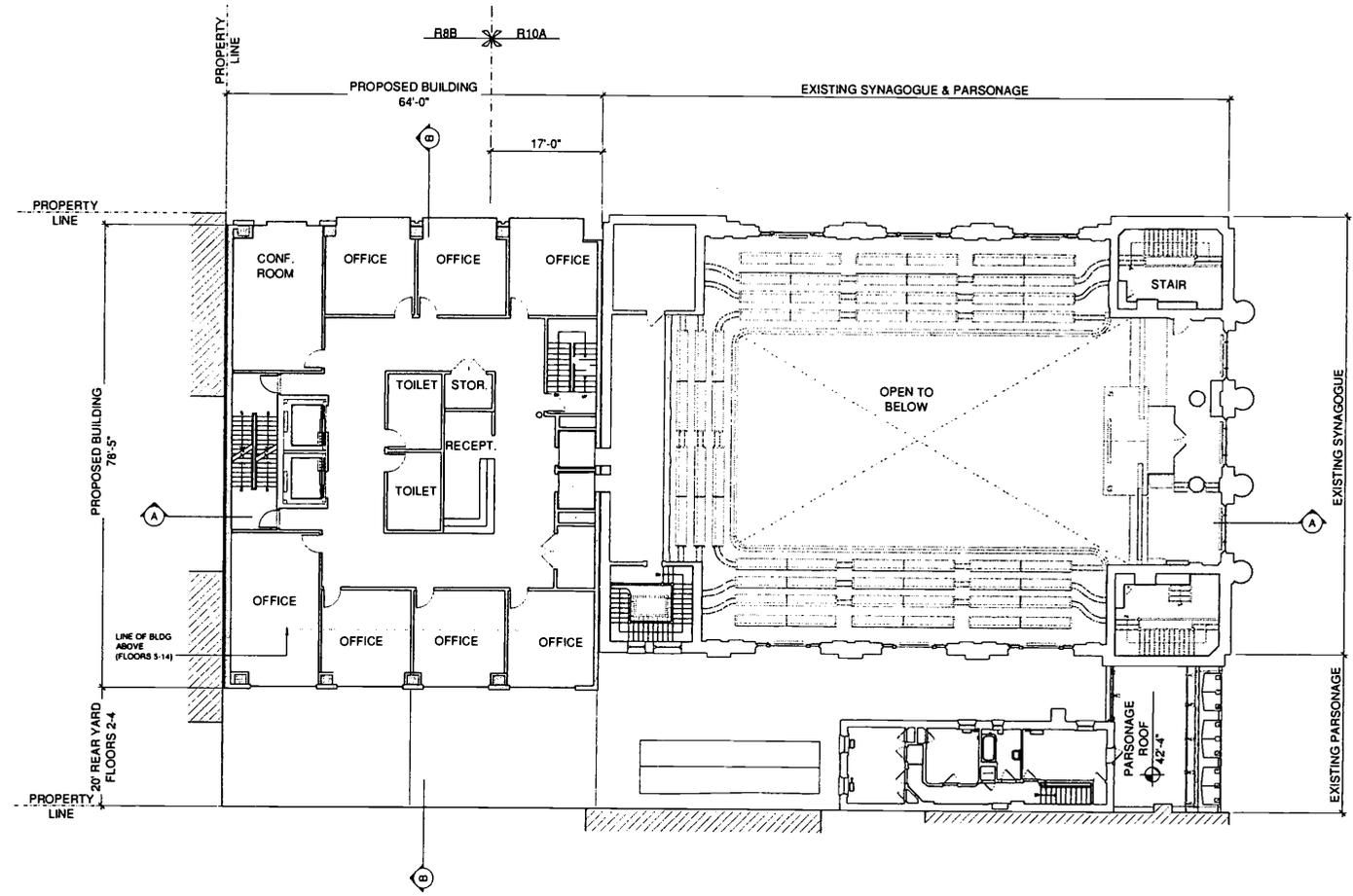
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- COMMUNITY FACILITY



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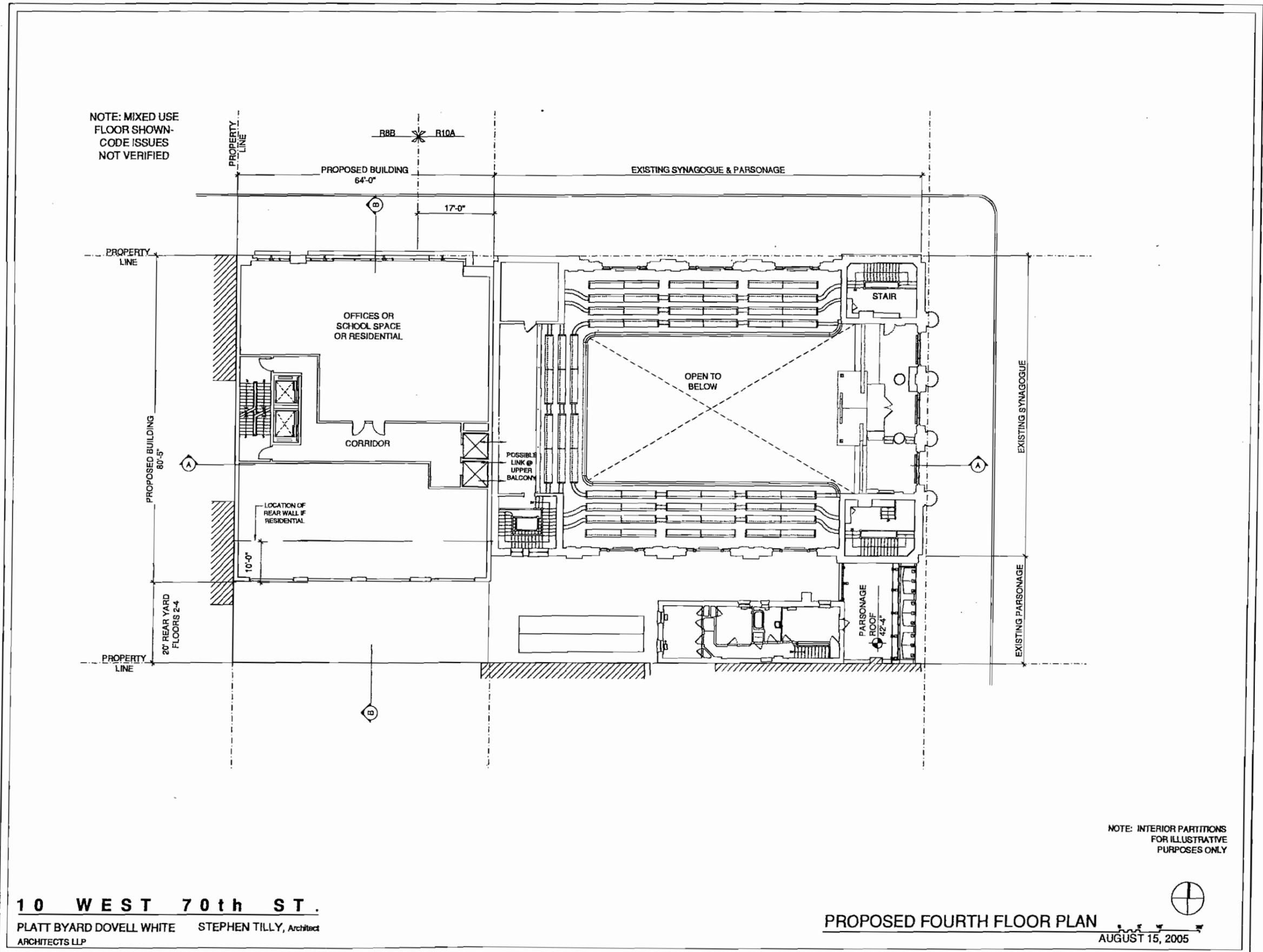
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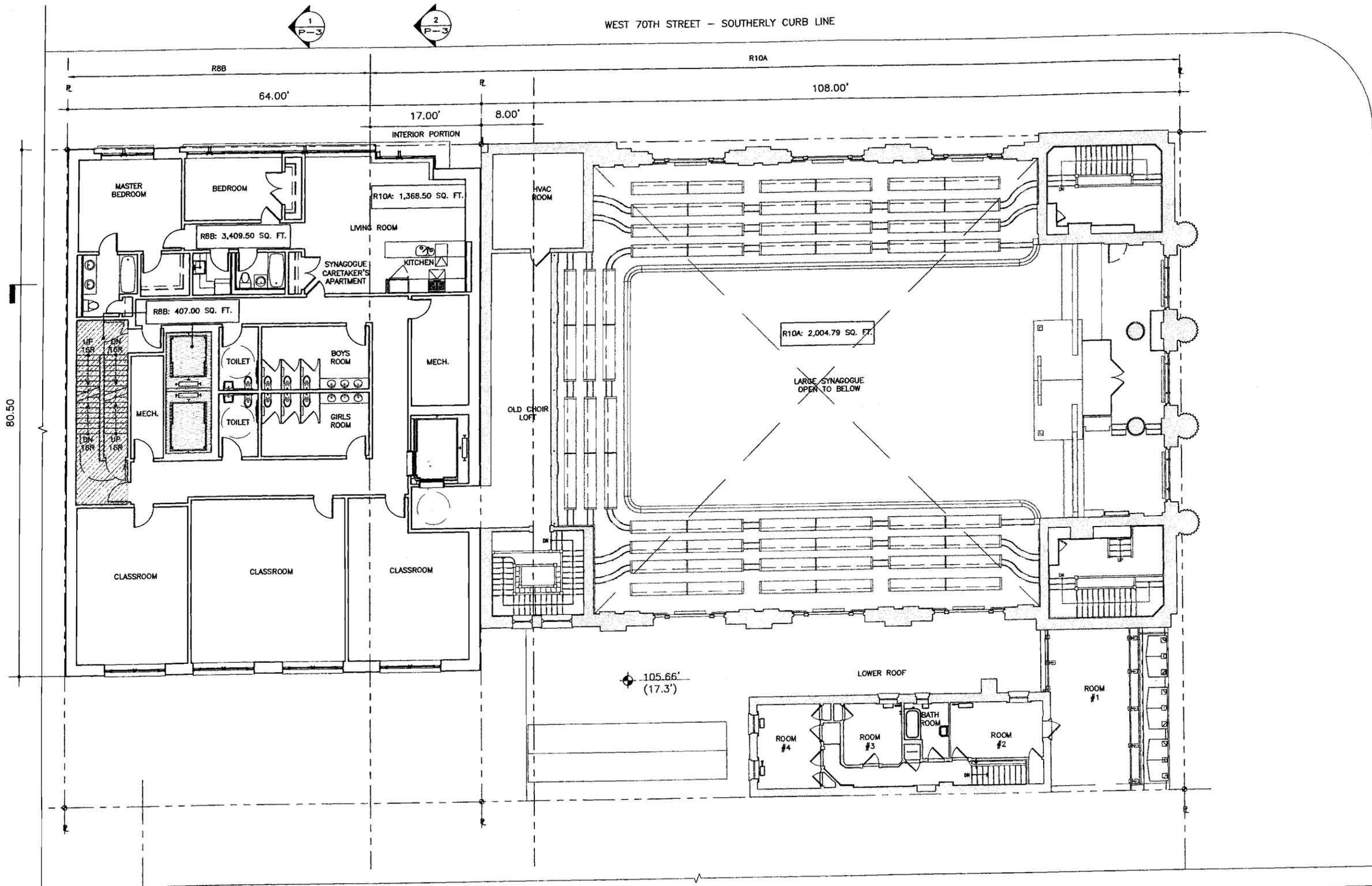


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FOURTH FLOOR PLAN  
NOVEMBER 26, 2002





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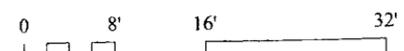


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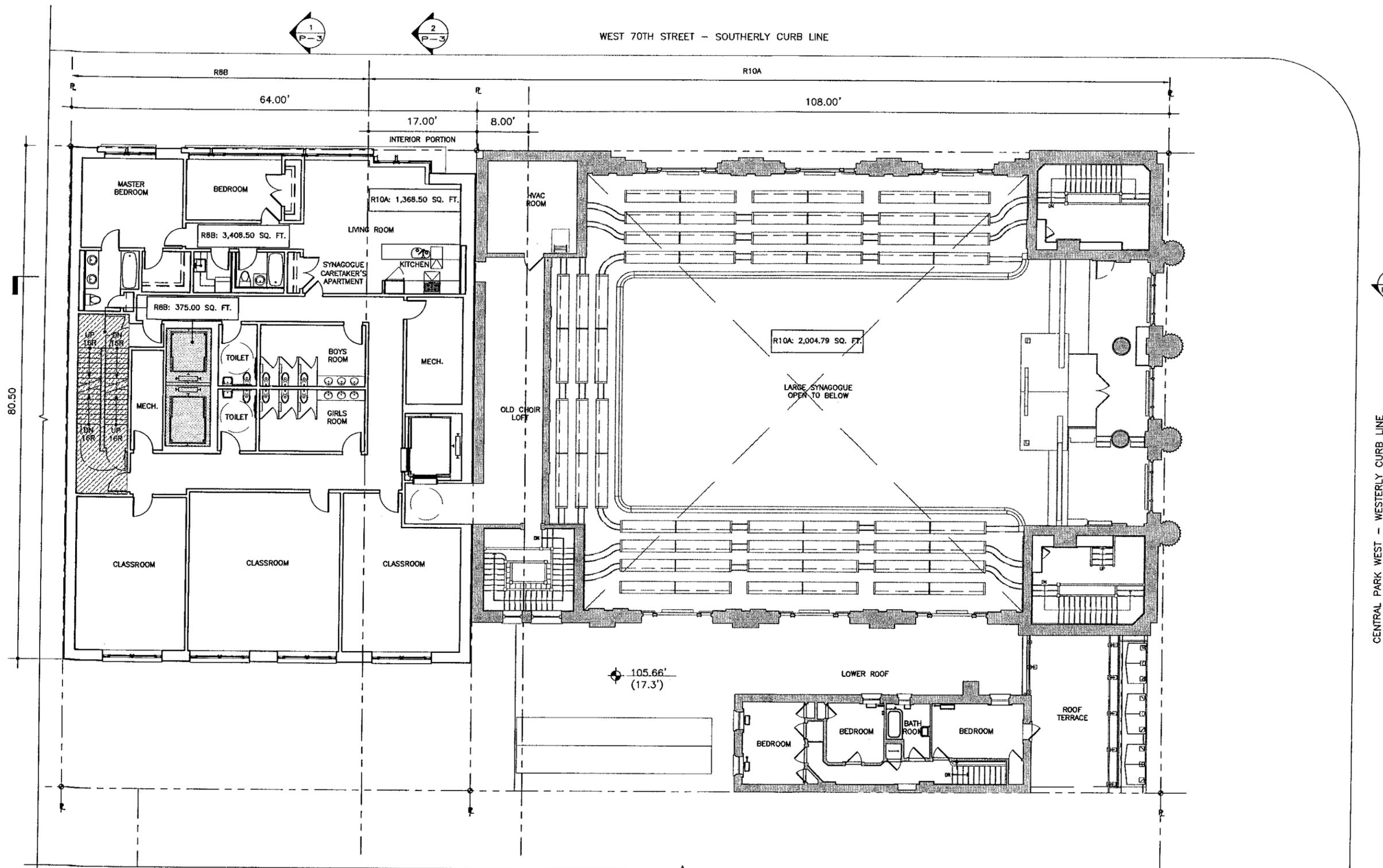
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- COMMUNITY FACILITY



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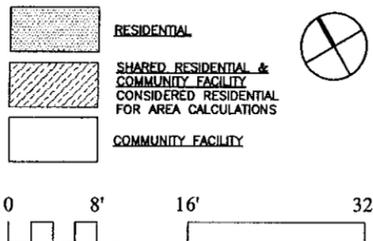
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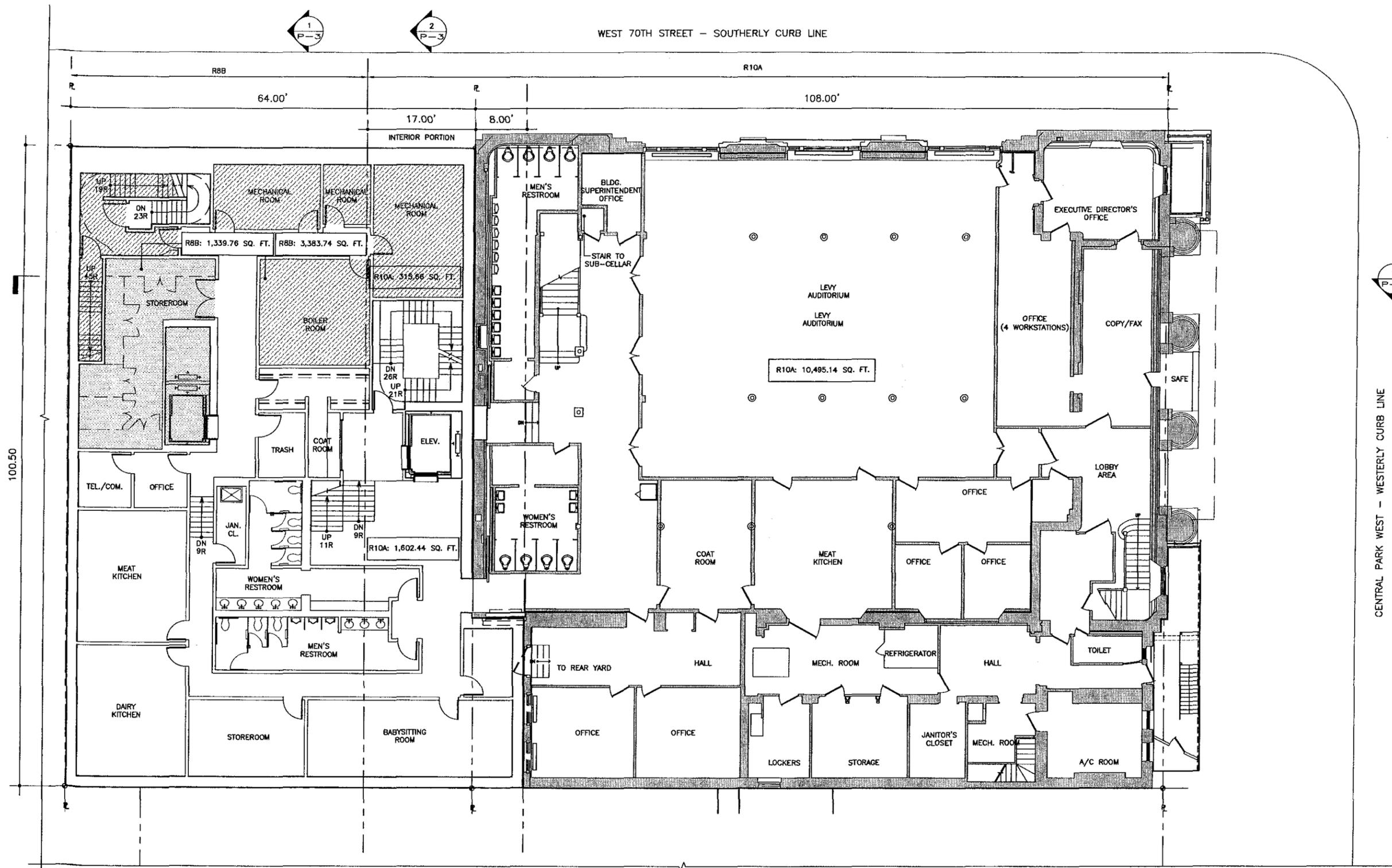
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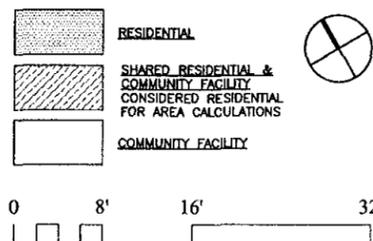


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1 PLAN  
CELLAR

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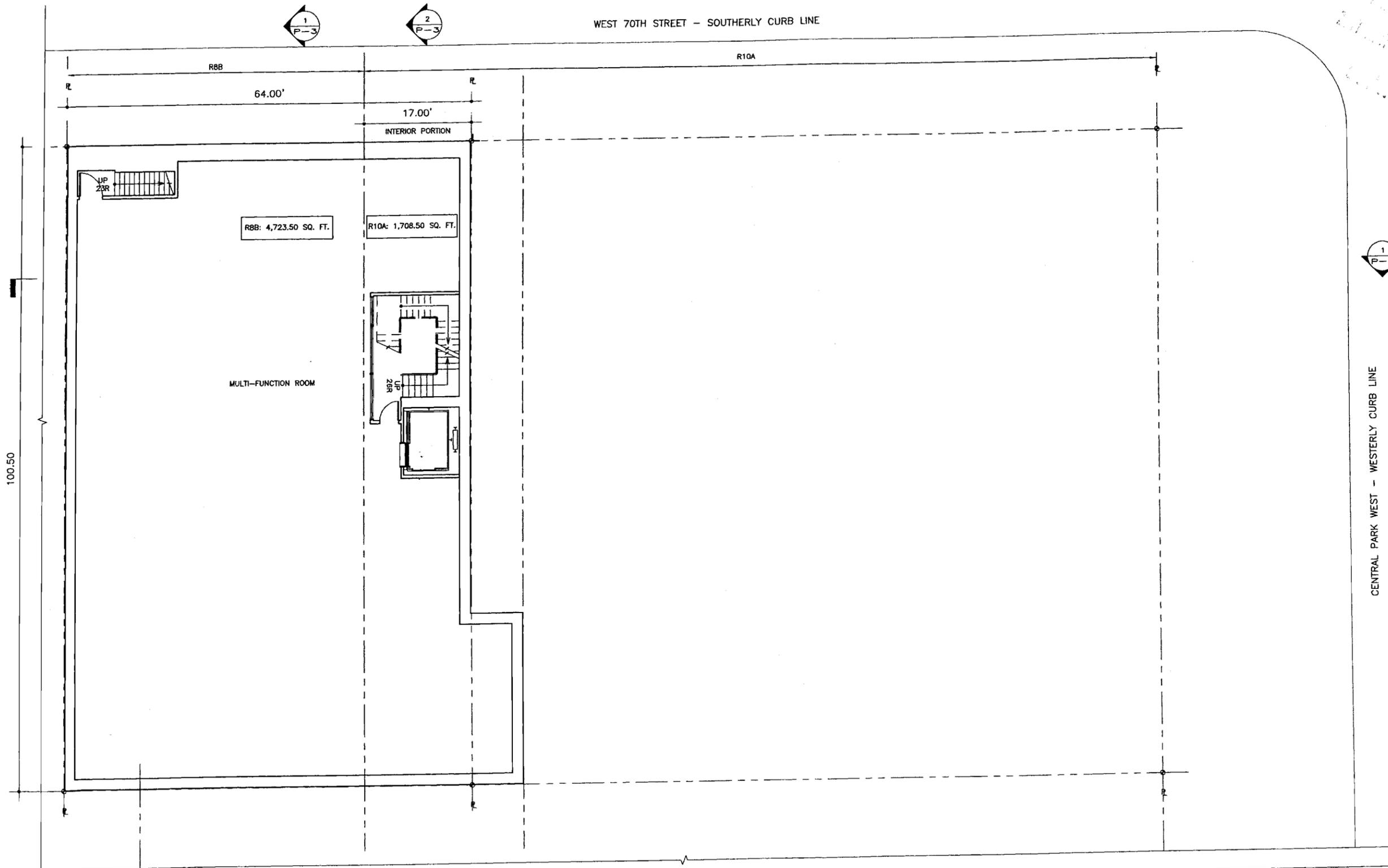
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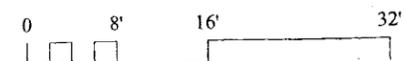
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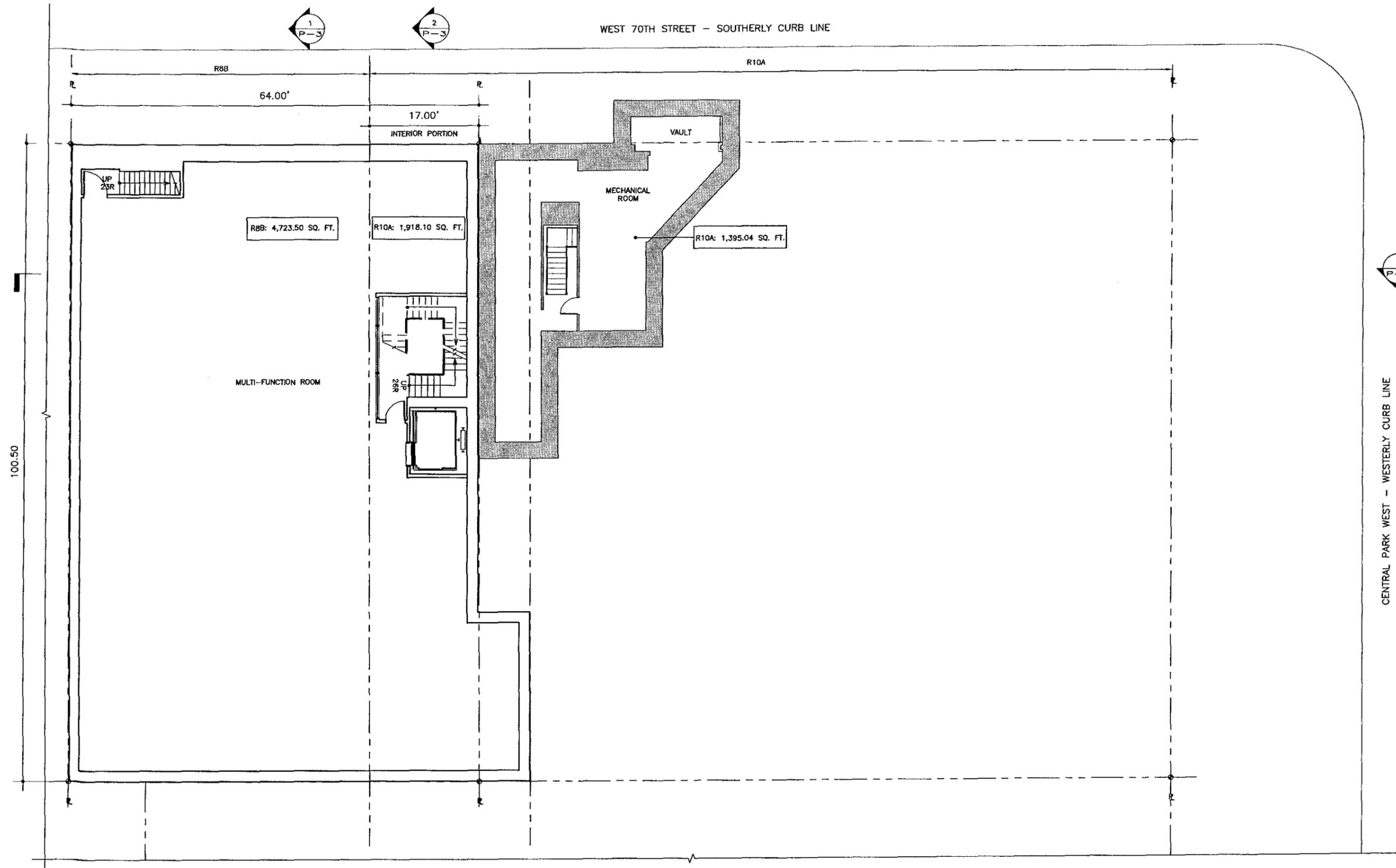
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SUB CELLAR SCALE: 1/16" = 1'-0"

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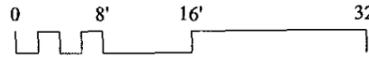
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CAL. NO. 74-07-BZ

1 PLAN  
SUB CELLAR  
SCALE: 1/16" = 1'-0"

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Shelly Friedman, Attorney for Congregation]

1 community. Hebrew school tends to be  
2 after school and have weekend function,  
3 and that is the primary purpose of the  
4 space in the community house.

5 And it's the primary purpose  
6 of the expanded space with the new  
7 classrooms we'll be seeking. Those  
8 classrooms lie dormant during the  
9 regular school day when children are in  
10 other schools in their regular  
11 education.

12 The synagogue has arranged a  
13 relationship with a day, scheduled day  
14 school to use those spaces that are  
15 already there. So it's not so the  
16 priority there and the zone of the space  
17 is not as a rental facility, and oh, by  
18 the way, this is not as a Hebrew school,  
19 the synagogue has the Hebrew school and  
20 have been recently able to find a tenant  
21 to be able to use all that space during  
22 the daytime.

1 component, not the driving force, but a  
2 component of the school's overall  
3 programmatic needs. The same way that  
4 the Rose building was an important  
5 building perpetuation of the center and  
6 other institutions are moving forward in  
7 a similar fashion within a stone's throw  
8 of West 70th Street.

9 So from that standpoint --

10 MS. COHEN: We have problems  
11 with other complications.

12 This one is less egregious,  
13 less burdensome.

14 MR. FRIEDMAN: We're talking  
15 about five units. We're not talking  
16 about the Rose building, but I can't  
17 separate the fact that this has been a  
18 legitimate pursuit of nonprofit for a  
19 very long time. Has not been in  
20 invented by Shearith Israel, not created  
21 by nonprofit 21-century as some new  
22 device for achieving programmatic of



**ABOUT BEIT RABBAN**

**ACADEMICS**

**OUR COMMUNITY**

**ADMISSIONS**

Application Process

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**FREQUENTLY ASKED QUESTIONS**



Opp Ex. Cumulative Page 000096

What is the length of the school day?

What is the tuition for a Beit Rabban education?

What are the transportation options to and from school?

How many children are in the school and in each class, and how many teachers in each class?

Can I speak with current Beit Rabban parent to hear about their experience of the school?

Where is Beit Rabban located?

How can I get an information/application packet?

---

#### What is the length of the school day?

Children in the Gan at Beit Rabban attend school five days per week. The regular school day is immediately followed by an optional Enrichment Program which provides additional active learning engagement for those children who are developmentally ready for a longer and more intensive day.

**Gan regular hours:** 9:00 am to 12:30pm

**Gan Enrichment Program:** 12:30pm to 2:00pm (1:30 on Fridays)

Early drop off available at 8:30am

Children in the elementary school have varying hours depending on age as follows. Optional after-school activities are offered at additional charge by the Parents Association.

**Garinim** (Kindergarten/1st grade) and **Shtillim** (2/3rd):  
8:30 am to 3:30 pm (1:30 on Fridays)

**Nitzanim** (4th/5th):  
8:30 am to 4:30 pm (Mon, Tues, Wed)  
8:30 am to 3:30 pm (Thurs)  
8:30 am to 1:30 pm (Friday)

[Back to Top](#)

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What is the tuition for a Beit Rabban education?

For the 2007-2008 school year, tuition costs are as follows:

Gan at Beit Rabban (12:30pm dismissal): \$12,800

Gan with Enrichment Program (2:00pm dismissal): \$13,950

Elementary school (K - 5): \$19,950

Financial aid is available.

Tuition costs are subject to change on an annual basis.

[Back to Top](#)

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#### **What are the transportation options to and from school?**

Three school buses run every day to and from Beit Rabban, from the following neighborhoods: The Upper West Side (Manhattan), the Lower East Side (Manhattan), Riverdale (Bronx).

Buses are available to children in the elementary school (K and up) only. Afternoon buses are available for all dismissal times. Parents of children in the Gan at Beit Rabban must arrange their own transportation to and from school. Please call us if you have questions or concerns about transportation.

[Back to Top](#)

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#### **How many children are in the school and in each class, and how many teachers in each class?**

In the 2007-2008 school-year, The Gan at Beit Rabban will have three classes with 8-9 children in the two younger Gan classes, and 12-14 children in the older Gan class. Each of these three classes has two full-time teachers.

In the 2007-2008 school-year, the elementary school will have two Garinim (kindergarten/1st grade) classes with 15-18 children in each, two Shtillim (2/3rd grades) classes with 15-18 children in each, and one Nitzanim (4th/5th grades) class with 15 children. Each of these classes has two full time teachers, and the Garinim classes each have one Teaching Assistant as well.

We are dedicated to keeping a low teacher/student ratio and to having classes that are large enough to provide a variety of personalities and interests and diverse social possibilities for the children, while remaining small enough that all participants in the community, children and teachers alike, know each other well and are comfortable in their environment.

Opp Ex. Cumulative Page 000098

[Back to Top](#)

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#### **Can I speak with current Beit Rabban parent to hear about their experience of the school?**

Yes! We are happy to connect you to a current parent from the Beit Rabban community. This is one of the best ways to learn about the liveliness of Beit Rabban learning and the school community.

[Back to Top](#)

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#### **Where is Beit Rabban located?**

We are located in the community building of Congregation Shearith Israel, The Spanish Portuguese Synagogue, at **8 West 70th Street**, just off of Central Park West. Though we are not affiliated with the synagogue, we are grateful to be housed on their historic, beautiful site. Please click on "Contact Us" for a map.

[Back to Top](#)

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#### **How can I get an information/application packet?**

Please call our office at 212.595.1386 or email our Director of Admissions, Molly Weingrod, at [admissions@beitrabban.org](mailto:admissions@beitrabban.org) specifying your child's name and age with exact birth-date, and your address and telephone number so that we can get in contact with you. We will be happy to send you an information/application packet.

[Back to Top](#)

various meetings and as a play space for a day school which leases the space to run its programs. Approximately 694 sf of offices and 2,818 sf of classrooms are located above the multipurpose room/auditorium. The entire CSI administration is housed in these quarters and all of CSI's programming for religious services and community services, which are open to public, emanates from the two small second floor office spaces. CSI's community services programming is extremely active, with a number of affiliate organizations, such as the longstanding Sisterhood providing community outreach to congregants and non-congregants, Hebra Hased Va-Amet, the City's oldest Jewish philanthropic organization, which provides dignified burials for indigents and the 1654 Society dedicated to preserving CSI's historical treasures, including the preservation of its two landmarked cemeteries in Manhattan and fostering a historical awareness of the Jewish American colonial experience. CSI has a rich and detailed history of championing the plight of the poor, homeless and hungry, both globally and within the West Side community. All of those efforts are administered by staff and volunteers from within the Community House.

In addition, the Community House needs to provide space for CSI's Hebrew School of approximately 40 students and its tenant day-school, Beit Rabbin, which enrolls 125 children between the ages of five and seventeen in full time attendance. Beit Rabbin is a licensed private school that has been a tenant since 1994. In addition to leasing during the day CSI's lower level auditorium as a general purpose room, Beit Rabbin also leases three small classrooms on each of the 2<sup>nd</sup> and 3<sup>rd</sup> floors (the smallest of which measures only 13 ft by 19 ft), and a fourth classroom on the 4<sup>th</sup> floor which are not used for CSI's own educational purposes at all times during the school weekday. CSI anticipates that Beit Rabbin will lease comparable space in the New Building. The square footage of the existing 7 classes totals approximately 2,818 sf. Recently the Landmarks Preservation Commission approved the addition of a temporary trailer

Revised 10/25/2007

in the vacant portion of Lot 37 to permit these educators to alleviate the severe overcrowding in the Community House. Beit Rabbin is not affiliated with CSI other than as its tenant and membership in CSI is not a prerequisite for admissions. The relationship between the two organizations was borne of the fact that like all other ancillary religious schools, CSI's classrooms are vacant during the hours of the regular school day. An important factor of Beit Rabbin's tenancy is that it shares CSI's missions and goals and thus was chosen as a suitable candidate to utilize CSI's classrooms and sanctuary for its program. While income is generated which supports CSI's own mission, Beit Rabbin has become a welcomed feeder for Synagogue growth and the adjacency to the Synagogue has been an important attribute to the educational and cultural teaching within the tenant school.

CSI offers a wide range of youth activities such as monthly Shabbat dinners, "toddler Shabbat" and informal Saturday religious classes, which also take place within the Community House. During holidays, the students participate in traditional holiday community service programs which include delivery of food packages throughout the City. For adult congregants, the Community House provides space for educational studies in Mishneh Torah (basic principles in Jewish philosophy, ethics and law); Ladino (Judeo-Spanish language studies); Shabbat; and basic Judaism. These classes have been embraced by Jews throughout the metropolitan region seeking to reach a deeper connection with their heritage.

In addition, the lack of adequate storage space and offices has forced CSI since 1995 to relocate its seminal historical archives to an off-site storage facility in Newark, New Jersey at great expense and significant compromise to its mission. This move was also necessitated due to climate control requirements and to provide for a required additional office in the previously occupied archive area. Books, records, correspondence, sculpture and other religious artifacts

Revised 10/25/2007

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or half day programs essential for small children; and (4) bathroom facilities for boys and girls would be located in the classrooms.

#### **IV. Neighborhood Impacts**

##### **A. Traffic**

Although the proposed plans would theoretically allow for larger events in the New Building multi-function room (up to a maximum occupancy of 360), attendance numbers will not create an adverse situation. CSI's Application makes it clear that it considers its inability to serve as the site for its Congregant's (and no others') significant ceremonies and events a hardship in fulfilling its mission as a house of worship. However, neither the events it hosts nor the addition of the five residential units comprise circumstances requiring mitigation as neither generates impacts under the CEQR methodology.

Adverse conditions are further unlikely to occur because as the Board notes few houses of worship are so well suited to be accessed by mass transit. There are numerous subway and bus lines within CSI's vicinity. The entrance to the Subway Station serving the B and C trains is located adjacent to the Synagogue at the corner of Central Park West and West 70<sup>th</sup> Street and mere yards from its entrance. The Nos. 1, 2 and 3 trains stop at Broadway and West 72<sup>nd</sup> Street. Bus service on Central Park West, West 72<sup>nd</sup> Street, Amsterdam and Columbus Avenues, and Broadway provide additional access to mass transit. The occasional horse and buggy is also available in this unique transit cornucopia. Car and/or taxi drop-offs occur both along Central Park West in front of the Synagogue and along West 70<sup>th</sup> Street in front of the existing Community House. The Orthodox proscription against driving to worship on Sabbath and the significant holidays assures traffic congestion will be all but non-existent for the most consistently high-volume days.

##### **B. Trash Removal**

CSI is sensitive to concerns raised regarding trash removal following the larger weddings and life cycle events at the Synagogue. Two alternatives for trash removal are being considered by CSI: (1) garbage bags will be "cold-stored" in the New Building's enlarged cellar level trash room; and/or (2) CSI will contract with a private carter for morning removal of garbage following each event. These alternatives will enable CSI to manage the post-function environment in a manner that provides the least disruption, physically and visually, along the West 70<sup>th</sup> Street block front.

##### **C. Precedents – The Other Alleged Development Sites**

The Chair requested that we research the prevalence of other sites owned by nonprofits as sites for similar expansions and, if located, distinguish those sites from the Application. We have identified those sites relevant to the Chair's request to be those fronting on Central Park West that are within or partially within the R10A district

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COMMUNITY BOARD 7 LAND USE  
COMMITTEE PUBLIC MEETING

TIME: 7:11 P.M.

LOCATION: American Museum of Natural History  
77th Street and Central Park West  
New York, New York 10024

DATE: November 19, 2007

RICHARD ASCHE: Chairperson  
PAGE COWLEY: Co-Chairperson

APPEARANCES:  
SHELLY FRIEDMAN  
RAY DOVELL  
JACK FREEMAN

BOARD MEMBERS:  
HOPE COHEN  
SHELDON FINE  
KLARI NEUWELT  
LENORE NORMAN  
HELEN ROSENTHAL  
JEFFREY SIEGEL  
CHARLES SIMON  
ELIZABETH STARKEY  
HOMAS VITULLO-MARTIN

1                   MR. FRIEDMAN:  If we're going  
2                   to keep talking about the catering hall,  
3                   so I can get into the issues.

4                   THE COURT:  Well, you wouldn't  
5                   need a kosher kitchen if you're going to  
6                   have a movie theater.

7                   MR. FRIEDMAN:  That's true.  
8                   That's not the issue, either.  Let me  
9                   say as a zoning issue, the catering hall  
10                  is not permitted.

11                  MR. ASCHE:  I'm not talking  
12                  about zoning.

13                  MR. FRIEDMAN:  I understand it  
14                  is not a catering hall.  We don't  
15                  consider it a catering hall and we don't  
16                  believe the committee should.  You say  
17                  it's a catering hall, it is.  We say  
18                  it's not.

19                  If this is about what people  
20                  think is going to be a profit center,  
21                  then one has to understand anybody can  
22                  test this out tomorrow morning, if they

1 wish. They should call the synagogue  
2 and ask them, you know, we'd like to  
3 hold a major function here and hear what  
4 the response really is because it will  
5 not be about renting out the facility  
6 for profit.

7 If a person wants to call up  
8 the synagogue who's outside the  
9 synagogue community and say, "We'd like  
10 to have a function in this building,"  
11 first of all, they won't be permitted --

12 MR. ASCHE: Shelly this is not  
13 the issue anyone is raising. The issue  
14 is, first of all, the lady asked what  
15 the capacity of the hall was. And we're  
16 not going to get through tonight unless  
17 you answer the questions.

18 You'll have a chance to say  
19 whatever you want later, but you really  
20 need to answer her question.

21 MR. FRIEDMAN: The hall really  
22 would not be able to function with more

1           than, do we have a number for that?

2                   A VOICE:   440.

3                   MR. FRIEDMAN:   440.

4                   A VOICE:   What was the exact  
5           distance between the proposed building  
6           and the building to the west?

7                   MS. ROSENTHAL:   Shelly, can  
8           you repeat the question on the mike.

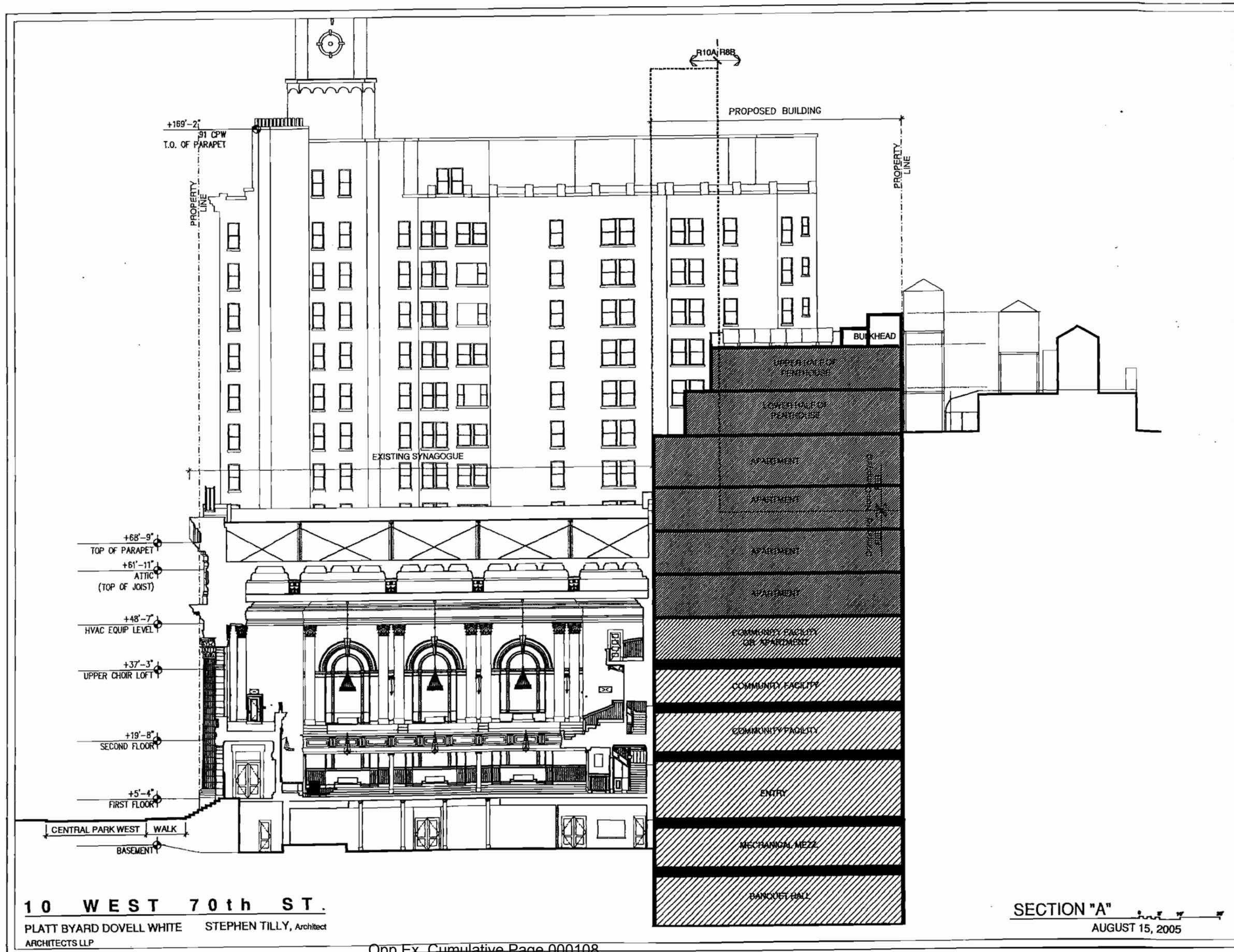
9                   MR. FRIEDMAN:   The question  
10          is, what is the distance?

11                   A VOICE:   The flattened into  
12          bricks.

13                   MR. FRIEDMAN:   18 West, I  
14          assume you're asking about is on the  
15          lobby, so is this building and so is  
16          every building on the block.

17                   MR. ASCHE:   Yes?

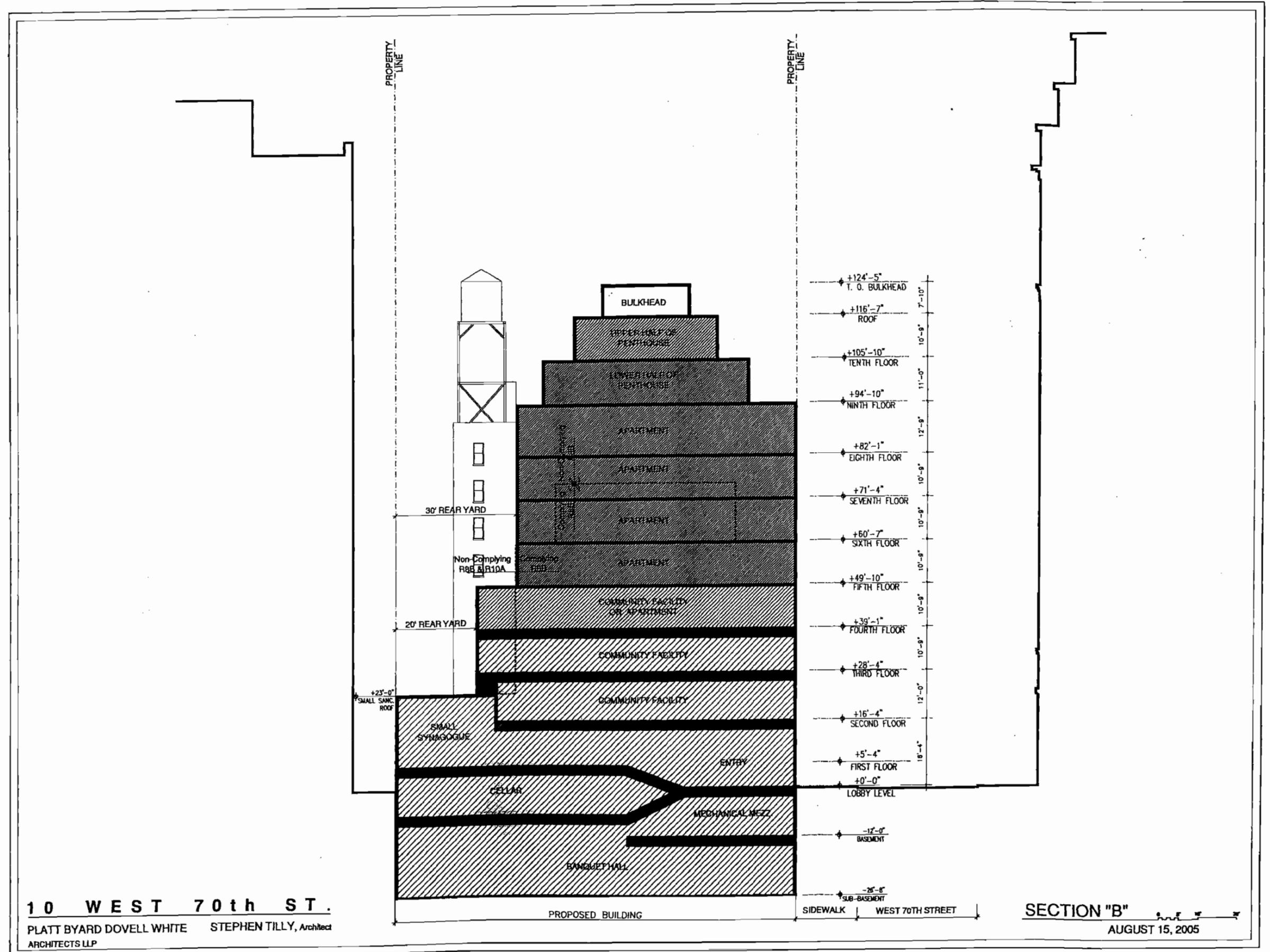
18                   A VOICE:   I'm wondering,  
19          you're showing the elevator is going in  
20          there, is there a service elevator for  
21          the residential building? How are they  
22          going to move their furniture in,



10 WEST 70th ST.

PLATT BYARD DOVELL WHITE ARCHITECTS LLP  
STEPHEN TILLY, Architect

SECTION "A"  
AUGUST 15, 2005

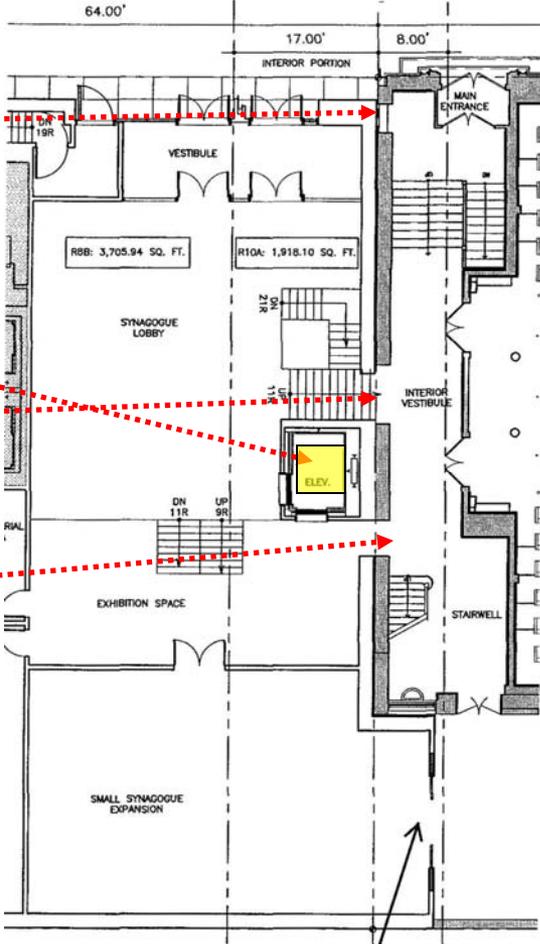
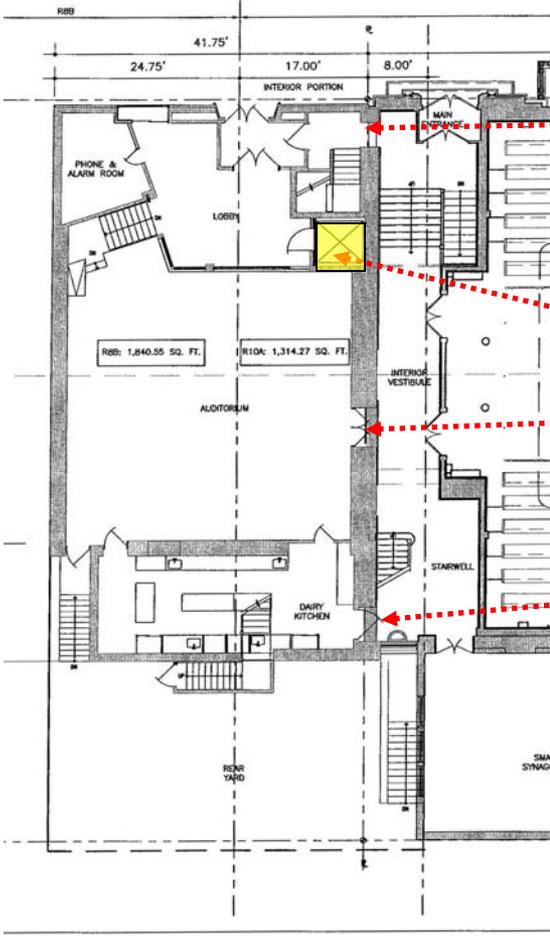


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# First Floor Access

Opp. Ex. M - 1 of 4

 Elevators

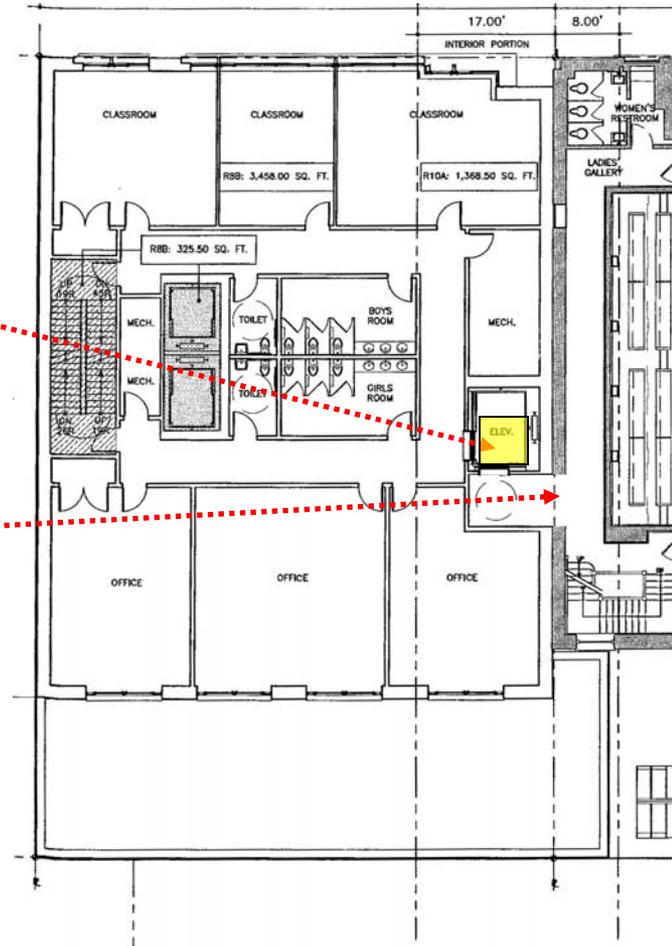
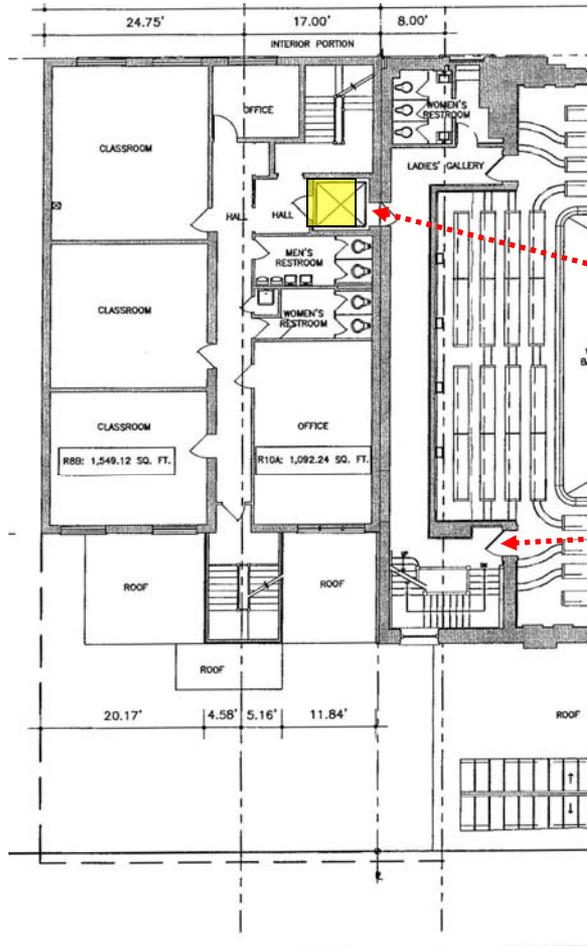


10/17/2007 Existing 1st floor

Opp Ex. Cumulative Page 000111 Proposed 1st floor

# Second Floor

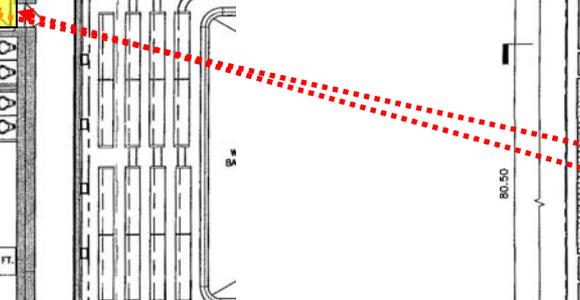
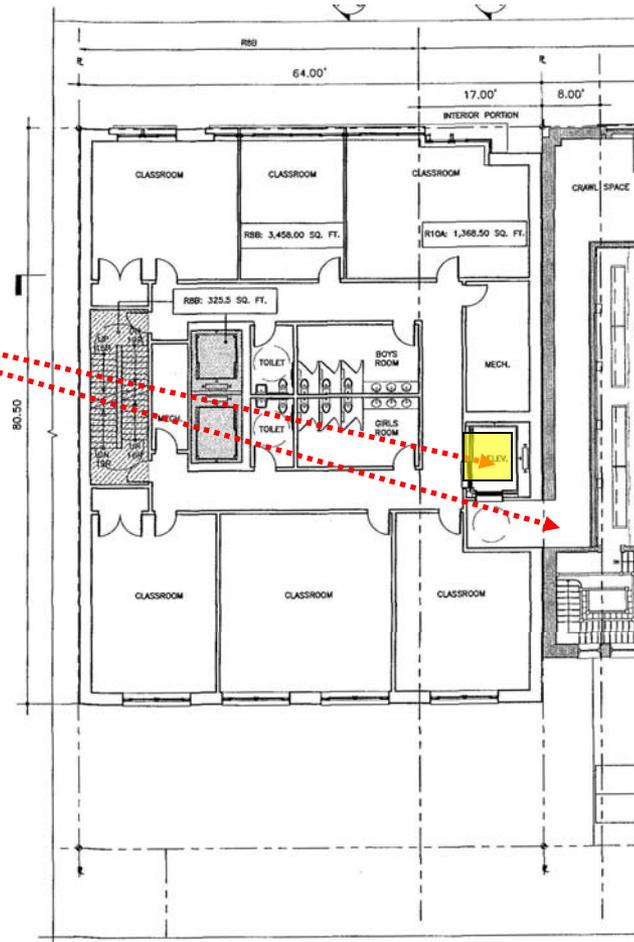
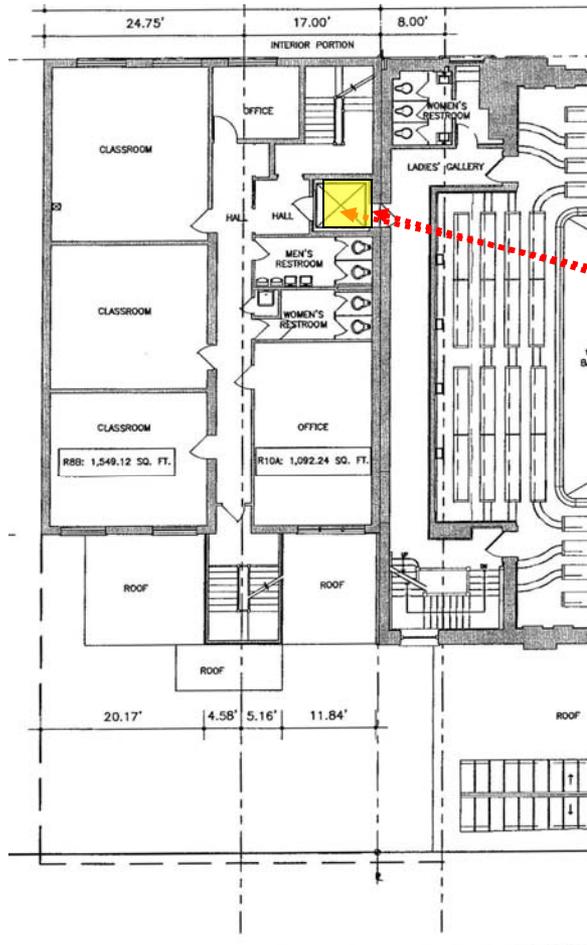
 Elevators



10/17/2007 Existing 2<sup>nd</sup> floor Opp Ex. Cumulative Page 000112 Proposed 2nd floor

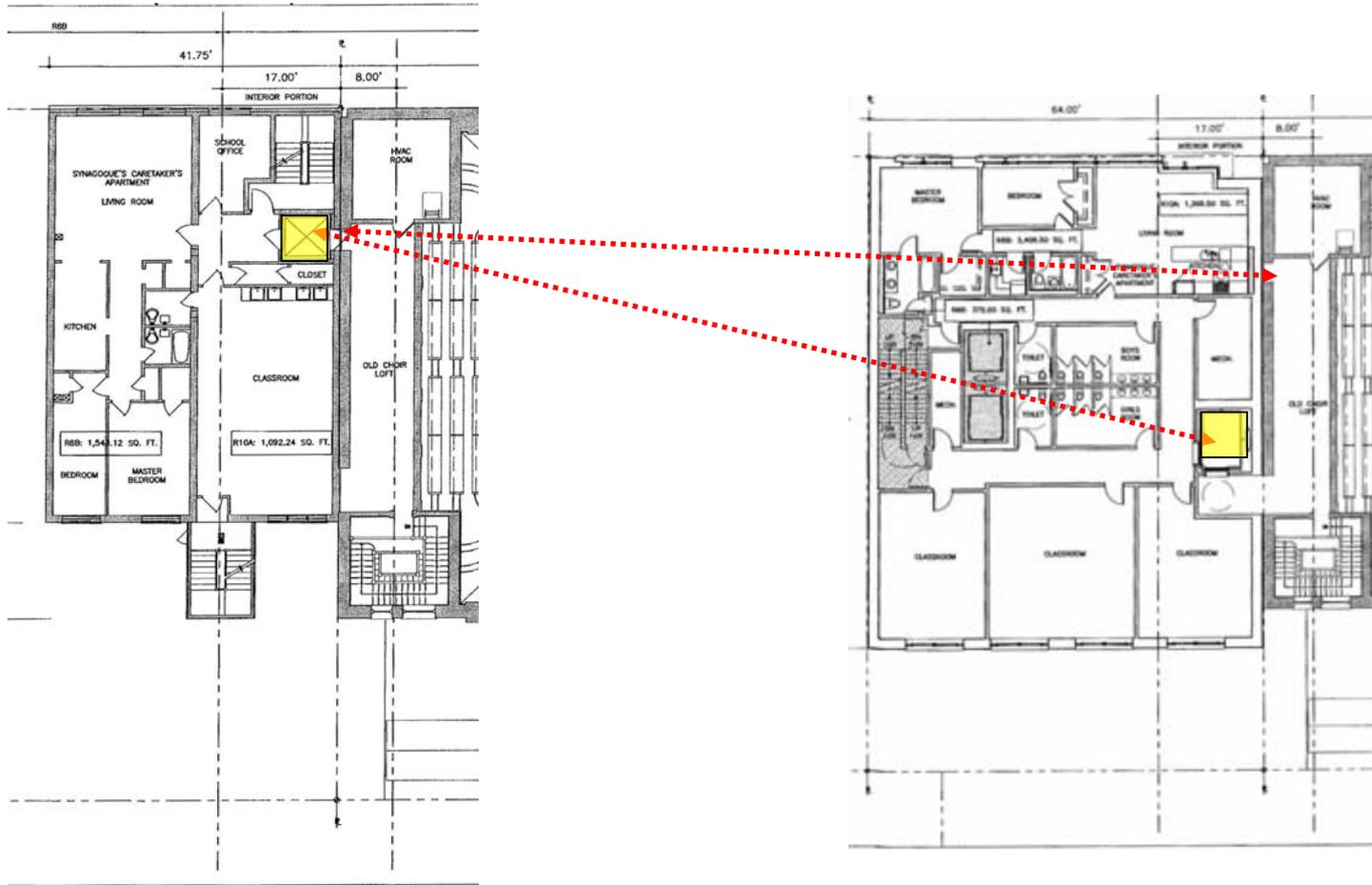
# Third Floor Access

 Elevators



# Fourth Floor Access

 Elevators



10/17/2007 Existing 4<sup>th</sup> floor

Opp Ex. Cumulative Page 000114

Proposed 4th floor

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COMMUNITY BOARD 7 LAND USE  
COMMITTEE PUBLIC MEETING

TIME: 7:00 P.M.

LOCATION: Congregation Rodeph Sholom  
7 West 83rd Street  
New York, New York

DATE: October 17, 2007

RICHARD ASCHE: Chairperson

Shelly Friedman, Attorney for Congregation]

7

1 articulated debate about preservation  
2 issues and Landmark issues.

3 Tonight we appear before you  
4 with the full imprimatur of the  
5 Landmarks Commission, which is approved  
6 on behalf of the Bloomberg  
7 administration, everything you see here  
8 tonight.

9 At this point, I think it's  
10 fair to say that that in and of itself  
11 is a big change. We are no longer  
12 simply an applicant. We have a design  
13 approved by and supported by the  
14 Bloomberg administration, the Landmarks  
15 Commission and we think that's a  
16 significant difference that appeared  
17 before you last time.

18 While you can take a look or  
19 you can certainly disagree with how the  
20 commission came out of when it comes to  
21 the case before the BSA, the commission,  
22 the commission's voice, its certificate

Shelly Friedman, Attorney for Congregation]

8

1 of appropriateness, which is part of our  
2 application which is in front of you and  
3 which we have additional copies for you  
4 tonight is a pretty clear indication  
5 that the issues regarding preservation  
6 issues, the issues regarding scale and  
7 appropriateness and historical district  
8 are now, as far as the State of New York  
9 is concerned, the voice of the Landmarks  
10 Commission has been heard.

11 As you know, this was the  
12 building you're going to see was  
13 unanimously approved by the Landmarks  
14 Commission and that is, and that is an  
15 important element of any application to  
16 the Board of Standard and Appeals with  
17 regard to the required findings.

18 In addition to the imprimatur  
19 of the Bloomberg administration, we have  
20 a monitor of the community board in  
21 several respect.

22 We have your resolution which

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It attracted dozens of dignitaries, including Mayor Michael **Bloomberg**, ... Chairman **Jack Rudin** cited the **contributions** made by five generations of Rudins. ...

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Foundation, **Bloomberg**, The Robert. Bowne Foundation and Verizon that. make it completely free for students. ....  
Technology\* • Susan & **Jack Rudin** • Time ...  
[www.highfivetix.org/pdf/HF1101.06\\_S06\\_F2.pdf](http://www.highfivetix.org/pdf/HF1101.06_S06_F2.pdf) - [Similar pages](#)

### [FOR IMMEDIATE RELEASE April 4, 2002 PR-074-02 www.nyc.gov MAYOR ...](#)

Mayor Michael R. **Bloomberg** was joined by City Council Speaker Gifford Miller, ... Lew **Rudin** and his brother, **Jack**, followed their parents into the family ...

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will examine the **contribution** of university-produced knowledge to ... **Jack Rudin**, orthopedic surgeon and director of the Nicholas Institute of Sports ...

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Mayor Michael R. **Bloomberg** has endorsed the recommendations, ... Before adjourning, Mr. **Rudin** suggested that the New York Clearing House Association be ...

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As incumbents usually do, Mr. Dinkins has received more **contributions** than his ... Obama's Surge Deflates Forum and Talk of a **Bloomberg** Run ...

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**Jack Rudin** '41, is a major real estate developer. ... Mayor Michael R. **Bloomberg** congratulated 13 City College students and their faculty advisor, ...

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Indeed, of the \$1392725 in **contributions** that Vallone's campaign reported, ... mega firm Tishman Speyer, developer Peter Kalikow, and **Jack** and Susan **Rudin**. ...

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United Hospital Fund to Honor Three Voluntary Leaders for **Contributions** to Improving Health Care (09/23/1999) **Jack** and Lewis **Rudin**, Co-Chairmen, ...

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Mr. **Rudin** and his brother, **Jack**, presided over a family empire of 40 buildings ..... Jonathan D. Greenspun, commissioner of Mayor Michael R. **Bloomberg's** ...

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Peter Neustater, President of the Congregation

1                   Many people have asked why don't we just  
2                   raise the money from the congregation and finish  
3                   the restoration and rebuild the community house?  
4                   Before we submitted the application, I met it with  
5                   our Budget, Finance and Campaign Committees and  
6                   main supporters of the congregation. In today's  
7                   world, where there is such a great demand on every  
8                   charitable dollar both here in New York and abroad,  
9                   I can tell you definitely that it would be  
10                  impossible to raise the sum of money required from

11                  the congregation. There is no chance that the  
12                  congregation will be able to finish the restoration  
13                  of the landmark, continue the maintenance of the  
14                  landmark and rebuild the community house without  
15                  this **economic engine** that this project would  
16                  provide.

17                  We hope that future generations will  
18                  thank this generation of congregants, this  
19                  generation of New Yorkers, and especially this  
20                  landmark board for providing us the ability to pass  
21                  this precious heritage to them in a condition that  
22                  would make us all proud.

23                  Elise Quaseberth, Preservation Consultant for Congregation ]

24                  MS. QUASEBARTH:        Good morning,  
25                  commissioners. My name is Elise Quasebarth. With

Elise Quaseberth, Preservation Consultant for Congregation ]

1 the historic preservation consultants for the  
2 project, we worked very closely with the team to  
3 look at the context that this proposal is being  
4 made and to better understand it and to propose a  
5 building that would be appropriate both to the  
6 individual landmark, Central Park West, and to  
7 West 70th Street.

8 Just to give you some views of the  
9 existing condition, this is the synagogue building  
10 here looking south on Central Park West. The  
11 rectory building is immediately to the south of it.  
12 Here's another view. This is looking down West  
13 70th Street, and this is a closer view showing the  
14 synagogue and the community house, closer to the  
15 community house and the adjacent lot to the west,  
16 which is an empty lot today. This constitutes the  
17 site for redevelopment.

18 This building was actually a refacing of  
19 an earlier building -- two buildings that were  
20 acquired by the synagogue in the 1940's. They had  
21 considered building a new building and actually  
22 filed with the Department of Buildings to do that,  
23 did not execute that plan, and in 1954, what they  
24 did was demolish the facade -- the facades of the  
25 two buildings that were there. Here's a 1940

1 photograph showing that. They took off the top  
2 story and built this facade. This is 1954 and the  
3 architects were Cole & Leiberman.

4 Our historical images show the changes  
5 of the neighborhood over time, and one of the  
6 things that's really quite interesting is that the  
7 synagogue building which was built in 1897 had a  
8 context, at that time, of buildings which were much  
9 smaller row houses completely along West 70th  
10 Street and smaller apartment buildings along  
11 Central Park West. This photo from 1928 actually  
12 shows the site of this building here that you see  
13 in this photo. This is a nine-story apartment  
14 building that was replaced by the current apartment  
15 buildings which exist today. That is 15 stories  
16 plus a penthouse. It also shows this apartment  
17 building in 1928 which was replaced the following  
18 year by the existing 17-, 18-story apartment  
19 building to the north. So, it's very interesting  
20 to see that as the synagogue was built, that the  
21 city built up around it.

22 If you look at the immediate context, we  
23 also looked at the buildings along Central Park  
24 West, which I'm going to show first. To recall  
25 that our institution here at 70th Street is in a

412 CP 178

THIS AGREEMENT made this 22nd day  
of August, 1941, between

THE TRUSTEES OF THE CONGREGATION SHEARITH  
MISRAH IN THE CITY OF NEW YORK, a religious corporation of  
2 West 70th Street, Borough of Manhattan, City, County and  
State of New York, party of the first part,

and

BLANCHE S. AMES, residing at 575 Park  
Avenue, Borough of Manhattan, City, County and State of New  
York, STEPHEN K. AMES (and PAUL S. AMES, both residing at 6431  
Allison Road, Miami Beach, Florida, as Trustees under the Last  
Will and Testament of Mayer S. Ames, deceased, parties of the  
second part,

WITNESSETH:

WHEREAS, the parties of the second part  
are the owners of the following described property:

ALL that certain lot, piece or  
parcel of land with the building thereon  
erected, situate, lying and being in  
the Borough of Manhattan, City, County  
and State of New York, bounded and  
described as follows:

BEGINNING at a point in the  
southerly side of 70th Street, distant  
One hundred twenty-nine feet westerly  
from the corner formed by the inter-  
section of the southerly side of 70th  
Street and the westerly side of Central  
Park West; thence southerly parallel  
with Central Park West and part of the  
way through a party wall One hundred  
feet five inches to the middle line of  
the block; thence westerly along the  
said line twenty-one feet; thence  
northerly parallel with Central Park  
West One hundred feet five inches to  
the southerly side of 70th Street;  
thence easterly along the southerly  
side of 70th Street twenty-one feet  
to the point or place of beginning.

Said premises being known as and  
by the street number 8 West 70th Street.

1941 Restrictive Covenant Restricting Height of Building on Community House Site and Referring to 1897 Covenants

and

WHEREAS, the aforesaid property is affected by and is subject to certain restrictive covenants recorded in the office of the Register of the County of New York in Liber 53, section 4 of conveyances at page 313, between The Trustees of the Congregation Shearith Israel, a religious corporation, party thereto of the first part, and Peter Wagner and Robert Wallace, parties thereto of the second part; and

C3909

WHEREAS, said restrictive covenants read as follows:

" The parties of the second part covenant for themselves, their heirs or assigns, to and with the party of the first part, its successors, or assigns, that so long as the building or buildings now or hereafter to be erected on premises immediately adjoining the above described premises on the east, being now the property of the party of the first part, are used for religious purposes, no building or structure shall be constructed or permitted on premises above described and hereby intended to be conveyed, except first class private dwellings to be used and occupied as such, each for one family only, and for no other purpose whatsoever.

The parties of the second part further covenant for themselves, their heirs or assigns, to and with the party of the first part, its successors or assigns, that so long as the building or buildings now or hereafter erected on the premises immediately adjoining the above described premises on the east are used for religious purposes, the space of 5 feet in width by 30 feet in depth, colored red on diagram below and just opposite the open space now at the southwest corner of the premises next immediately east of the premises herein described and intended to be conveyed, shall forever be kept open and unbuilt upon, free of any building, structure or erection whatsoever except a fence of a height not exceeding five feet and a retaining wall not exceeding three feet in height.

1941 Restrictive Covenant Restricting Height of Building on Community House Site and Referring to 1897 Covenants

180

It is further agreed by and between the parties hereto that the restrictions above mentioned as to the character of the buildings to be erected on the premises hereby intended to be conveyed and the use of same and as to the open air space at rear and the covenants with regard to the same are to run with the land and be binding on all future owners of the same.

And it is further understood and agreed that the party of the first part hereto its successors or assigns, shall have the right to restrain any person corporation or association, by suit or proceeding at law or in equity from violating said restrictions and also to recover damages for any violations of the same."

and

WHEREAS, said restrictive covenants affect and restrict not only the above described property owned by the parties of the second part but also affect and restrict the property immediately adjoining said property on the east known as and by the street number 6 West 70th Street, Borough of Manhattan, City, County and State of New York; and

WHEREAS, the party of the first part has continuously since the year 1897 owned and occupied and now owns and occupies the property immediately adjoining the property known as and by the street number 6 West 70th Street, Borough of Manhattan, City, County and State of New York on the east, and has continuously since the year 1897 used and is now using its said property and the building thereon for religious purposes; and

WHEREAS, the property now owned by the parties of the second part and the property known as and by street number 6 West 70th Street, Borough of Manhattan, City, County and State of New York, were both originally owned by

1941 Restrictive Covenant Restricting Height of Building on Community House Site and Referring to 1897 Covenants

the party of the first part and were conveyed by it to a common owner subject to the restrictive covenants aforesaid and

WHEREAS, it is desired to modify the aforesaid restrictive covenants ONLY in so far as the same relate to and affect the property owned by the parties of the second part, to wit, 8 West 70th Street, Borough of Manhattan, City, County and State of New York, without in any way affecting or limiting said restrictive covenants in so far as the same relate to the property known as and by the street number 6 West 70th Street, Borough of Manhattan, City, County and State of New York; and

(300)

WHEREAS, the parties of the second part desire a modification of said restrictive covenants only so as to permit the one family dwelling now erected upon the above described property owned by them, to be altered, or a new building upon said property to be erected, for use and occupancy as a dwelling for more than one family; and

WHEREAS, the party of the first part is willing to consent to such limited modification of the aforesaid restrictive covenants in so far as the same relate to the property known as and by the street number 8 West 70th Street, Borough of Manhattan, City, County and State of New York, on condition that the parties of the second part agree herein not to alter or change the present building on said property except as hereinafter provided, or to erect a new building on said property except as hereinafter provided,

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter contained,

1941 Restrictive Covenant Restricting Height of Building on Community House Site and Referring to 1897 Covenants

and in further consideration of the sum of One thousand dollars (\$1,000) paid by the parties of the second part to the party of the first part simultaneously with the execution and delivery of this agreement, the receipt of which payment is hereby acknowledged by the party of the first part,

IT IS HEREBY AGREED, that the above mentioned restrictive covenants, only in so far as the same relate to and affect the above-described property owned by the parties of the second part and known as and by the street number 8 West 70th Street, Borough of Manhattan, City, County and State of New York, are changed and modified in the following respects:

1. The parties of the second part covenant and agree for themselves, their successors, grantees and assigns, to and with the party of the first part, its successors, grantees and assigns, that so long as the building or buildings now erected, or hereafter to be erected, on the property immediately adjoining premises known as and by the street number 6 West 70th Street, Borough of Manhattan, City, County and State of New York, on the east, being now the property of the party of the first part, are used for religious purposes, no building or structure shall be constructed or permitted on the property owned by the parties of the second part, known as and by the street number 8 West 70th Street, Borough of Manhattan, City, County and State of New York, except the present building, which may, however, be altered for use and occupancy as a dwelling for more than one family, and any new building constructed for use and occupancy as a dwelling for one family or for more than one family, which said present building and new building however, shall comply with the provisions of paragraph numbered "2" hereof.

1941 Restrictive Covenant Restricting Height of Building on Community House Site and Referring to 1897 Covenants

2. The party of the first part agrees for itself, its successors, grantees and assigns, that the parties of the second part, their successors, grantees and assigns, may alter the building now on the property owned by the parties of the second part hereinabove described and known as and by the street number 8 West 70th Street, Borough of Manhattan, City, County and State of New York, and may erect any new building on said property, which present building may be altered, and which new building may be erected, for use and occupancy as a dwelling for one or more families, and that such altered building and any such new building may be used and occupied for such purpose, but not for any other purpose, provided, however, that such altered building and any such new building shall comply with the following requirements:

COPY

(a) Neither such altered building nor any such new building shall have a height, measured to the roof, greater than the greatest present height, measured to the roof, of the present building on said property, nor shall such altered building nor any such new building have any cornice, parapet wall, chimney, vent pipe, or skylight having a height greater than the greatest present height of any cornice, parapet wall, chimney, vent pipe, or skylight of the present building on said property, except that there may be erected upon the roof of such present building or of any such new building a bulkhead or any other superstructure as may be required by law, ordinance, rule or regulation, Federal, State or Municipal, for a building of a character permitted by this agreement, but such bulkhead or other superstructure shall not exceed the minimum height permitted by such law, ordinance, rule or regulation. It is hereby agreed that the

1941 Restrictive Covenant Restricting Height of Building on Community House Site and Referring to 1897 Covenants

greatest height, measured to the roof, of the present building is 61 feet 6 1/2 inches, and that the greatest height of any cornice, parapet wall, chimney, vent pipe or skylight of the present building is 62 feet 10 1/2 inches in the case of a cornice, 63 feet 6 inches in the case of a parapet wall, 67 feet 11 inches in the case of a chimney, 65 feet 10 inches in the case of a vent pipe, and 64 feet 7 inches in the case of a skylight; all of such measurements being above a horizontal plane passing through the top of the now existent curb opposite the westerly line of the lot.

(b) Neither such altered building nor any such new building shall have a depth, measured from the front line of the property, greater than the greatest present depth of the present building on said property, to wit, seventy-six feet and one-half inch; but this requirement shall not be construed to prevent such altered building or any such new building from being built for the full width of the property to a depth not greater than the greatest depth of the present building, to wit, seventy-six feet and one-half inch.

3. The parties hereto further covenant and agree for themselves, their successors, grantees and assigns, that the restrictions above mentioned as to character, alteration, height, depth and use of the present building and of any new building on the property owned by the parties of the second part and known as and by the street number 8 West 70th Street, Borough of Manhattan, City, County and State of New York, are to run with the land and be binding on all future owners of the same, and the party of the first part, its

1941 Restrictive Covenant Restricting Height of Building on  
Community House Site and Referring to 1897 Covenants

successors, grantees and assigns, shall have the right to restrain any person, partnership, corporation or association, by suit or proceeding at law or in equity, from violating said restrictions.

4. The parties hereto further covenant and agree for themselves, their successors, grantees and assigns, that the party of the first part, its successors, grantees and assigns shall have the right to recover damages for any violation of said restrictions from any person, partnership, corporation or association, including the parties of the second part, who or which may be the owner of the property at the time said violations are committed, but neither the parties of the second part nor any of their successors, grantees or assigns shall be liable for damages for any violation committed at a time while such parties of the second part or such successor, grantee or assign is not the owner of the property. For the purpose of this covenant, the parties of the second part shall be deemed to be the owners of the property if the property is owned by a person, partnership, corporation or association directly or indirectly controlled by the parties of the second part, and each successor, grantee or assign of the parties of the second part shall be deemed to be the owner of the property if the property is owned by a person, partnership, corporation or association directly or indirectly controlled by such successor, grantee or assign.

5. Nothing herein contained shall be deemed in any way to impair, modify, cancel or annul the restrictive covenants contained in the instrument recorded in the office of the Register of the County of New York in Liber

1941 Restrictive Covenant Restricting Height of Building on Community House Site and Referring to 1897 Covenants

section 4 of Conveyances at page 313, except as herein provided, and all rights and remedies of the party of the first part under said instrument except as herein modified are hereby expressly reserved.

6. This agreement shall not in any way inure to the benefit of the property known as and by the street number 6 West 70th Street, Borough of Manhattan, City, County and State of New York, or to any present or future owner of said property, or in any way impair any of the rights of the party of the first part, its successors, grantees, or assigns under the restrictive covenants hereinabove mentioned and recorded in the office of the Register of the County of New York, in Liber 53, section 4 of Conveyances at page 313, all of which rights are expressly reserved, against the property known as and by the street number 6 West 70th Street, Borough of Manhattan, City, County and State of New York, and against any and all present and future owners thereof.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this agreement the day and year first above written.

THE TRUSTEES OF THE CONGREGATION SHEARITH ISRAEL IN THE CITY OF NEW YORK



By [Signature] Pres

Stephen Ames (LS)

Blanche S. Ames (LS)

Paul S. Ames (LS)

as Trustees under the Last Will and Testament of Mayer S. Ames, deceased.

1941 Restrictive Covenant Restricting Height of Building on Community House Site and Referring to 1897 Covenants

(N.Y.)

California, Id and for said County, do hereby certify that

\_\_\_\_\_ whose name is subscribed to the attached certificate

was at the time of taking said acknowledgment, proof or affidavit, a Notary Public in and for said County, duly commissioned, and sworn and residing in said County, and was, as such, an officer authorized by law to take and certify the same, as well as to take and certify the proof and acknowledgment in writing to be recorded in said State, and that full faith and credit are and shall be given to the same, and that the official seal of the Notary Public is not required by law to be filed in the office of the Recorder of Deeds, and that the signature to the attached instrument is subscribed and acknowledged according to the laws of the State of California.

I, \_\_\_\_\_, Notary Public, do hereby certify that the above and foregoing is a true and correct copy of the original instrument as the same appears from the records of said Superior Court.

\_\_\_\_\_ day of \_\_\_\_\_ 1941

L. K. HAMPTON,  
County Clerk of the Superior Court of the State of California, County of Los Angeles  
Deputy

STATE OF New York  
COUNTY OF New York  
CITY OF New York

SS:

On this 16 day of May 1941, before me personally came PAUL S. AMES, to me known and known to me to be one of the individuals described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

*David M. Perkins*

CERTIFICATE FILED  
REGISTERED OFFICE  
NEW YORK COUNTY

DAVID M. PERKINS, Notary Public  
Roughs Chk. No. 14, Reg. No. 2095  
N. Y. Chk. No. 54, Reg. No. 2840  
Commission expires March 30, 1946

SERIAL NO. C 3909 FEES PAID \$ 11.05  
 Indurned to be indexed against Block 1122 on Land Map of the  
 County of New York, Lot 38. Requested preceding at  
 request of SKETCH, MEYER & BURTON, 70 Pine St. N.Y.C.  
 on June 23, 1941 at 12:02 P.M. MARTHA BYRNE, Register.

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Table listing various businesses and their contact information, including M & T Bank, M Young Communications Inc, M Z Berger & Co, etc.

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WHITE PAGES

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Nizam Peter Kettaneh  
15 West 70 Street  
New York, NY 10023

June 26, 2007

Jeff Mulligan  
Executive Director  
Board of Standards and Appeals of the City of New York  
40 Rector Street - 9th Floor  
New York, New York 10006

Re: BSA 74-07-BZ  
Congregation Shearith Israel  
6-10 West 70th Street/99 Central Park West  
Block 1122 Lots 36, 37 - Manhattan

Dear Mr. Mulligan:

The purpose of this letter is to ask that the developer of the proposed project above be required to provide complete shadow studies showing the impact of its proposed building on the sunlight on my building and the remainder of West 70<sup>th</sup> Street, to prepare sight lines for the building, and to explain in detail its proposed use of the 6000 square foot banquet room.

I am the owner of a brownstone townhouse located across the street from the mixed use building proposed by the Congregation Shearith Israel. I purchased the building in 2005 and am restoring and converting the home to single family use. I understand that my building was designed by the architects Thom & Wilson and was constructed in 1893-94, just prior to the construction of the Congregation Shearith Israel's Synagogue in 1896-97. I understand that the Trustees of the Congregation in 1896 and 1897 took care that a large tall building would not be built at 8 West 70<sup>th</sup> Street, and placed restrictive covenants on that property.

Thus for generations, this has been a residential street characterized by low-rise building. Now, I understand that the Congregation has asked the Board of Standards and Appeals for a waiver of the zoning laws so as to construct a building taller than the Synagogue and taller than that permitted by the zoning laws.

I have been able to review some of the information on this project and note the absence of any shadow studies on the North Side of West 70<sup>th</sup> Street, including the impact on my building. I understand that prior to issuing a variance, the Board must make a finding that the project will not "substantially impair the appropriate use or development of adjacent property." It is clear to me that my property will be adversely affected by any waiver of height limitations. I have carefully observed the sun patterns from September through April, and clearly, the extra height will have a substantial impact on the light

falling on my building and adjacent buildings. I do not know how the Board can make such a finding if it does not have before it the documentation showing the impact, in this case shadow impact, on these buildings.

I also note that sight lines comparing the as of right and proposed building have not been submitted to the Board – I find this exceptional as well.

I ask that the Board carefully review the proposed banquet hall and expanded school that will be located in the new building. I am all too aware of the clogged streets and mounds of garbage bags that accompany any event in the current assembly hall. I believe that the Congregation will all too easily succumb to the lure of banquet hall rentals, as it all too easily succumbed to the lure of rental of its building to a third party school.

Finally, I oppose the granting of a waiver. Were I to convert my building to non-profit use, would the Board of Standards and Appeals allow me to add several floors to my building to support my non-profit? This is a bad precedent.

Thank you very much.

Sincerely,



Nizam Peter Kettaneh

cc:

Hon. Betsy Gotbaum, Public Advocate of the City of New York  
Hon. Gale Brewer, New York City Council Member  
Hon. Scott Stringer Manhattan Borough President  
Hon. Richard N. Gottfried, State Assembly Member, District 64  
Hon. Thomas K. Duane, State Senator, District 29  
Hon. Sheldon J. Fine, Chair, Manhattan Community Board 7  
Jed Weiss, Senior Examiner, BSA  
Alan Gieger, Department of City Planning

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**BARNACLE  
PLANNING  
STUDIO**

224 centre street, 5th floor  
 new york, new york 10013  
 tel.917.548.3682  
 fax.801.217.6505  
 bertrang@barnaclestudio.com

**SEPTEMBER 26, 2007**

**TO: KATE WOOD**

**FROM: SIMON BERTRANG**

**RE: CONGREGATION SHEARITH ISRAEL'S SEPTEMBER 2007 BSA APPLICATION**

I have reviewed the September 10, 2007 response by Congregation Shearith Israel (CSI) to BSA's June 15 Notice of Objections. Several of CSI's responses are inadequate - they are either incomplete or fail to address the questions raised by BSA in its various objections. I provide detailed analysis of each inadequate response below:

**OBJECTION #1. INCOMPLETE RESPONSE**

BSA Objection: "(Page 1) Following the first paragraph, please provide a section summarizing salient aspects of the proposed development for Congregation Shearith Israel (CSI) (FAR, square footage, height, number of stories, uses proposed). Follow this information with a summation of underlying zoning and the waivers requested. [Italics added for emphasis]"

Friedman and Gotbaum's letter directs the BSA to Page 1, Paragraph 2 for CSI's response to Objection #1. The response is actually on Page 2, Paragraph 2 through the end of Page 3. There is also an error in CSI's response to the request for salient aspects of the proposed development:

1. They have not mentioned the number of stories, nine, in their summary - BSA had requested this information.

They have also made two errors in their summary of the waivers requested:

1. First, they state that they have a noncompliance because of "rear yard exceedances for the third and fourth floors." This should read "rear yard exceedances for the second, third and fourth floors." The architect's sections on drawing P-3 shows that the second floor also obstructs the Required Rear Yard - although the diagrams do - in another error - leave out a small section of non-complying 2nd floor. (See attached P-3 with mark-up).
2. Second, they state that they have a noncompliance because of "R10A and R8B base and building height exceedances." This should read "R8B base and building height exceedances." Their Proposed Building does not exceed either the maximum base height or maximum height regulations for R10A. Their variance is required for only the R8B portion of the building - as clearly shown on the architect's section on drawing P-4 - although this drawing also makes another error in that it fails to show the "Non-Complying Building Base Height" above 60' in the R8B zone. (See attached P-4 with mark-up).

**OBJECTION #4 INCOMPLETE RESPONSE**

BSA Objection: "(Page 9) Provided that the proposed scenario calls for an approximate increase in classrooms from 5 to 12, please precisely explain the nature of the "tenant school" and its relationship to CSI and its programmatic needs (please note that the EAS states that the overall number of students will remain the same under the proposed scenario). Specifically state where the tenant school is located today and where it will be located in the proposed building."

CSI states that "the school now occupies the 2nd, 3rd and one-half of the fourth floor and it is anticipated that it will retain *a comparable space* in the New Building [italics added for emphasis]."

BSA called out their estimation of the number of classrooms in their objection and asked CSI to “specifically” state where the tenant school will be located. CSI’s application needs to be more specific about the school’s location, identifying classrooms on every floor of the existing and proposed buildings that will be used by the tenant school. In addition, CSI needs to differentiate clearly between space needed for their own Hebrew School and space dedicated solely to the tenant school. CSI should also identify office and other space dedicated to the tenant school. Their response should leave no confusion as to the total square footage dedicated to the tenant school now and if the proposed building were constructed.

#### **OBJECTION #5. INCOMPLETE RESPONSE**

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

CSI does NOT provide more detail on the alleged nexus of their programmatic needs and the proposed waivers requested - i.e. how the variances are connected to the fulfillment of its programmatic needs. They do provide a series of arguments as to why their programmatic needs require them to construct a new building, but they never address the key issue: **HOW DOES THE FULFILLMENT OF THEIR PROGRAMMATIC NEEDS REQUIRE ANY OF THE WAIVERS REQUESTED FROM BSA.** Without a serious answer to this question, their application remains severely deficient. CSI repeatedly references how a “New Building” will allow critical programmatic improvements, but they fail to explain why that “New Building” could not be one of the As-of-Right versions. The As-of-Right (Version A and B) and the Proposed Drawings show identical plans for the Sub-Cellar, Cellar and Ground Floor. The only difference in the Second, Third and Fourth Floor plans is that in the As-or-Right versions the rear classrooms and offices are smaller. One interpretation of these drawings (provided as part of their application), is that none of the variances requested would allow CSI to meet its programmatic needs in a manner superior to any of the As-of-Right Buildings. CSI does nothing to disabuse this interpretation. The proposed exceedance of Maximum Height and Maximum Base Height in the R8B zone and the failure to provide required Front and Rear Setbacks in the same (Variances 4-7) do nothing to help satisfy the programmatic needs of the Congregation. These programmatic needs are met in an **IDENTICAL FASHION** in the As-of-Right Buildings Versions A and B - buildings which do not include these particular variances. The Rear Yard and Lot Coverage exceedances (Variances 1-3) do allow larger classrooms and offices in the rear of the new Community House. However CSI never directly addresses why these larger classrooms are necessary and why they cannot be provided on an additional floor (i.e. convert the 5th floor from residential to community facility use). **IN SUMMARY, CSI NEVER ADDRESSES THE CONNECTION BETWEEN THE PARTICULAR VARIANCES REQUESTED AND SPECIFIC PROGRAMMATIC NEEDS.**

#### **OBJECTION #8. INCOMPLETE RESPONSE**

BSA Objection: “(Page 10) Within the second full paragraph, it is stated that “...the demolition and replacement of the Community House will permit excavation to provide two cellar levels for programming where none exist today.” Please clarify that no sub-cellar exists today; the existing plans indicate an existing cellar level.”

The new Drawing EC-5A (note: this should have been EX-5A) reveals the existence of an existing sub-cellar. While this drawing therefore clarifies the existing condition for the BSA, the narrative in the Statement remains unclear on this issue. The existence of a sub-cellar needs to be added to the Statement on Page 21, first full paragraph. Where it now says “While the Synagogue provides a full cellar level, the demolition and replacement of the Community House will permit excavation to provide both a subcellar and cellar level for programming where none exists today” it should read

something like “While the Synagogue provides a full cellar level and a small sub-cellar, the demolition and replacement of the Community House will permit excavation under Lot 37 to provide both a subcellar and cellar level for the new Community House.”

#### **OBJECTION #10. INCOMPLETE RESPONSE**

BSA Objection: “(Page 17). Please compare the existing CSI program with the proposed scenario by providing a floor-by-floor square footage table for each element of the program.”

CSI provides a table on Page 23 that details their floor-by-floor program for Lot 37. This table is inadequate in three ways:

1. CSI needs to provide a comprehensive program for the ENTIRE zoning lot (i.e. Tax Lots 36 and 37), not just the portion on Tax Lot 37. BSA has asked for a comparison of the CSI program in both scenarios, not just a portion of that program. Office needs for CSI staff for instance are met in both the cellar of the Synagogue and on the various floors of the new Community Houses. Understanding the CSI’s administrative/office program is therefore impossible without seeing the square footage across the whole site.
2. CSI should provide a TOTAL row - providing total square footage for each program element. In the interests of clarity, they should also provide separate SUBTOTALS for program elements in the Community House, Synagogue and Parsonage.
3. CSI should also provide separate columns for the Existing and Proposed numbers for each program element - the table as formatted now does not present the comparison of the two programs clearly

#### **OBJECTION #12. INCOMPLETE RESPONSE**

BSA Objection: “(Page 18) Within the second full paragraph, new “administrative” space is described. Please precisely describe the programmatic need for an approximate increase in office space from 4 to 13. To this end, please state the number and type of full-time on-site employees and whether CSI anticipates employee growth.”

CSI addresses this objection in a footnote on Page 23: “Staff is increased from approximately 12 to 16 persons.” This is not enough detail - it states the number but does not describe either the type nor whether they are full-time and on-site. CSI needs to provide a more precise accounting of its anticipated staff needs. They also do nothing to precisely describe the programmatic need for an increase in office space. Without an accurate accounting the number and square footage of office spaces in the existing buildings, including the Synagogue and Parsonage (11 rooms labeled office are shown on the Existing drawings) and in the proposed and as-of-right buildings (13 rooms labeled office are shown on the Proposed and As-of-Right Drawings Versions A and B - although the square footage devoted to office space is clearly larger), BSA cannot assess the need for additional office space and whether that need supports CSI’s request for any of the variances.

#### **OBJECTION #13. INCOMPLETE RESPONSE**

BSA Objection: “(Page 18) The final sentence of the second paragraph states that “... residential floor area uses only 16 percent of the zoning lot’s available zoning floor area.” Please follow this sentence by stating the percentage of the proposed zoning floor area (based on the entire zoning lot) that is residential.

CSI’s response is inaccurate. Its drawings identify several bedrooms in the Parsonage (although the application does not provide any details). The Parsonage clearly includes some kind of residential use. CSI needs to clarify these uses, include the square footage in the chart required by BSA Objection #10 and then provide an updated (accurate) calculation of the percentage of the zoning lot’s available floor area that is residential.

**OBJECTION #14. INCOMPLETE RESPONSE**

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

CSI argues that the necessity of aligning the building to the western wall of the Synagogue means that it must seek a variance for Rear Yard and Lot Coverage exceedances: "Because the new building must align itself with the west elevation of the Synagogue for its entire width in order to make the necessary programmatic connections, the resulting width of Tax Lot 37 is too narrow to provide compliant lot coverage (in fact the Synagogue already exceeds its permitted lot coverage, making it even more difficult for the New Building to comply) and compliant rear yard conditions." This statement is nonsensical and is not supported by the drawings submitted. All "programmatic connections" between both the As-Of-Right Buildings and the Proposed Buildings are provided well within 70.5' of the front lot line (i.e. well within the area developable as-of-right if the required 30' Rear Yard were provided). The 10' Rear Yard exceedance requested on Floors 2 through 4 (which is also the source of the lot coverage exceedance) does not relate to any additional programmatic connection between the existing Synagogue building and the new Community House. To state it another way, the connections between the Synagogue and the Community House are not substantially different in the Proposed or As-of-Right scenarios. **THE ONLY DIFFERENCE BETWEEN THE AS-OF-RIGHT BUILDINGS VERSION A AND B AND THE PROPOSED BUILDINGS THAT IS CREATED BY THE REQUESTED VARIANCES 1-3, IS THAT THE REAR CLASSROOMS AND OFFICES IN THE PROPOSED BUILDING ARE SLIGHTLY LARGER.** CSI has not explained why the sites dimensions hamper CSI's programmatic needs - they have merely restated that they do without adequate explanation - and their drawings contradict their assertion.

**OBJECTION #18. INCOMPLETE RESPONSE**

BSA Objection: "(Page 23) Within the second paragraph, please clarify the following statement: "[b]ecause the ground floor of the New Building is built full to the rear property line, an objection was issued." Rather, please clarify that the portion of the building above sixty (60) feet in height violates this section (ZR § 23-663(b))."

CSI still has several errors in their "Rear Setback" Section, related to their initial misunderstanding about the nature of the rear setback objection:

1. In the first sentence, the phrase "rear lot line" should be changed to "rear yard line."
2. CSI states that "This 3.5 ft setback differential resulted in the issuance of DOB objection #7." This is not accurate and should be changed to : "The 34.8 ft exceedance of the maximum base height of 60 ft combined with the 3.5 ft setback differential when a setback is provided at 94.8 ft resulted in the issuance of DOB violation #7." or a similar sentence.
3. The ground floor issue raised in the final sentence has absolutely nothing to do with the issue at hand and the sentence should be removed in the interest of clarity - the full ground floor build-out of a single community facility story up to 23' tall is allowable as-of-right and does not need to be included in the discussion of the rear setback variance.

**OBJECTIONS #20, 21 & 25. NOT APPLICABLE** - Note: The Department of Buildings removed its initial objection that the Proposed Building did not provide the Standard Minimum Distance Between Buildings as required by ZR § 23-711. It is unclear why DOB "reconsidered" its initial determination and removed this objection.

**OBJECTION #23. INCOMPLETE RESPONSE**

BSA Objection: "(Page 25) Within the suggested "(c) finding," please discuss the context along the subject blockfronts of West 70th Street and the alleged appropriateness of the proposed building in terms of neighborhood character. Please reference drawing P-17."

CSI provided a partial context for only one of the West 70th Street blockfronts - both in its narrative response and on drawing P-17. Blockfronts (plural) mean the frontage of both blocks fronting on West 70th Street, and should therefore include the entire frontage of both sides of the street, not just a selected portion of a single blockfront.

**OBJECTION #28. RESPONSE INCLUDES ERROR**

BSA Objection: "(P-3 & P-4) Please correct the title of the drawings by replacing "street wall sections" with "Areas of Non-Compliance."

There are some errors in the Proposed Areas of Non-Compliance Drawings on drawings P-3 and P-4. See attached diagram showing error in the areas identified as "Non-Complying Rear Yard Setback" and "Non-Complying Building Base Height/Non-Complying Setback Above Base." (See attached P-3 and P-4 with mark-up).

**OBJECTIONS #30 & 31. RESPONSE INCLUDES CONFUSING LABELS AND ERROR**

BSA Objection: "Please provide a full plan set of lesser-variance drawings that show compliant height and setback (objections for ZR § 23-633 and ZR § 23-663 are removed) that seeks to accommodate CST's programmatic needs and excludes the proposed tenant school space; the remaining floor area shall be used for residential use."

BSA Objection: "Please provide a full plan set for a complying, 4.0 FAR residential building on Lot 36 that includes a BSA waiver for ZR § 23-711 (Standard Minimum Distance Between Buildings)."

CSI uses AOR-1 and up as the identifying code for three separate sets of "As-of-Right" drawings. This is unnecessarily confusing. Each drawing should have its own unique identifier to avoid confusion when referring to it. There are THREE separate AOR-1 drawings! Also there is a small error in the As-of-Right Drawings Versions A and B drawings AOR-3. In the sections provided, the second floor is shown as extending into the Required Rear Yard. ZR § 24-33(b) is clear that only a single story of Community Facility Use is an allowable obstruction. This single story may be up to 23' tall. The plans for the Second Floor appear to be correct - allowing the full 30' Rear Yard, but these sections show an incorrect dimension and would require a variance if the Second Floor were to extend into the 30' Rear Yard (See attached AOR-3 with mark-up).

**OBJECTION #34. INCOMPLETE RESPONSE**

BSA Objection: "Please provide evidence that the DOB issued their current objections based on the current proposal before the BSA."

The Department of Buildings' Notice of Objections is dated 8/24/07 but the Application's drawings are dated 8/28/07 - suggesting that a different set of drawings was used by DOB to prepare its Notice of Objections. This impression is reinforced by the fact that DOB's Notice references a building height of 113.70' feet instead of the 105.80' shown on the Proposed Drawings. Because of these two discrepancies, the DOB Notice of Objections therefore seems to reference a different proposal. And since DOB has restricted access to CSI's Applications, there is no way to confirm that the Proposed Drawing package is identical to the one submitted to the DOB.

## **ADDITIONAL ERRORS AND EXAGGERATIONS IN BSA APPLICATION**

I also want to note two outstanding errors and exaggerations that remain in CSI's September 2007 BSA Application. These two issues were not addressed by BSA in its Letter of Objection, but, in the interests of clarity, CSI should modify its application to respond to these issues.

**PENTHOUSE:** The CSI application calls the 9th floor of its Proposed Scheme a "penthouse." For the purposes of the Zoning Resolution and the Building Code it is a real 9th floor and it is counted in the total building height. New York City Building Code clearly states in 27-306 that appurtenant structures like roof tanks, bulkheads, four foot parapet walls and penthouses do not count towards height limits "unless the aggregate area of such structures exceeds thirty-three and one-third percent of the area of the roof." The proposed 9th floor is well above 1/3 of the total roof area and therefore counts towards the maximum building height. Commissioner Gratz of the Landmarks Preservation Commission pointed out this same misstatement of the number of stories in her March 14, 2006 statement in opposition to the proposed building. Since there is no actual benefit to incorrectly identifying the top story as a penthouse, I think the only advantage is in perception: CSI can refer to an 8-story building instead of a 9-story building in its Landmarks and BSA applications and at the Community Board. This error should however be corrected in the interests of clarity and truthfulness.

**EXISTING NON-COMPLIANCE:** CSI's references to the problems created by the non-complying nature of the existing synagogue on Page 5 and 18 of their September 2007 Application are exaggerations. It is true that the rear yard requirement and lot coverage of the interior lot portion of Lot 36 are not met by the current Synagogue building, but what this actually means is that 8' out of the 108' lot depth has a 25' rear yard instead of a 30' rear yard and 75% lot coverage instead of 70% lot coverage... or to put it another way, only 7.4% of tax lot 36 (and 4.7% of the proposed zoning lot) has a non-compliant rear yard and lot coverage, hardly a major non-compliance. CSI uses this non-compliance to bolster its "unique physical conditions" argument and to imply that the existing lot coverage and rear yard non-compliance requires an extension of these noncompliances to Lot 37. In fact CSI is proposing to increase the existing non-compliance found on the western sliver of Lot 36 - creating a 20' rear yard and 80% lot coverage (instead of the 30' and 70% required by the Zoning Resolution) on all of Lot 37... or to put it another way, 41.9% of the combined zoning lot would then have a non-compliant rear yard and lot coverage under the Proposed Building scenario.

Opposition Exhibit S

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Opposition Exhibit S

# STROOCK

By Hand

November 5, 2007

Ross F. Moskowitz  
Direct Dial 212-806-5550  
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Meenakshi Srinivasan, A.I.C.P.  
Chairperson  
New York City Board of Standards and Appeals  
40 Rector Street  
New York, NY 10022

Re: 121/125 East 85th Street  
Block 1514, Lots 10 & 13  
Borough of Manhattan  
BSA Cal. No. 172-07-BZ

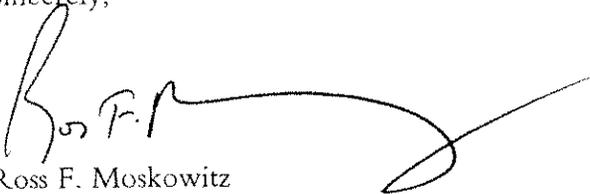
Dear Chairperson Srinivasan:

On behalf of 111 East 85th Street Owners, Inc., enclosed please find the following in regards to the above-referenced variance application:

- (1) Statement in Opposition; and
- (2) Financial Analysis by Metropolitan Valuation Services, Inc., dated October 24, 2007 (attached as Exhibit A to the Statement in Opposition).

Please note that we will be submitting separately an independent noise study analyzing the impacts of the proposed development on the neighborhood. Please also note that a copy of this submission and attachment is being sent to the applicant's counsel.

Sincerely,



Ross F. Moskowitz

NY 71042838v3

Meenakshi Srinivasan, A.I.C.P.

November 5, 2007

Page 2

CC: Honorable Scott M. Stringer, Borough President  
Daniel R. Garodnick, City Council Member  
Ray Gastil, Director, Department of City Planning,  
Alan Geiger, Department of City Planning,  
David G. Liston, Chair, Community Board 8  
Elizabeth McKee, District Manager, Community Board 8  
111 East 85th Street Owners, Inc.  
Shelly Friedman, Esq., Friedman & Gotbaum, LLP

Enclosures

NY 71042838v3

**STATEMENT IN OPPOSITION  
TO VARIANCE APPLICATION  
OF CONGREGATION KEHILATH JESHURUN  
AND THE RAMAZ SCHOOL**

(November 5, 2007)

Affected Premises:

121/125 East 85th Street  
Block 1514, Lots 10 & 13

Stroock & Stroock & Lavan LLP

180 Maiden Lane

New York, NY 10038

(212) 806-5400

Ross F. Moskowitz, Esq.

NEW YORK CITY  
BOARD OF STANDARDS AND APPEALS

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**Application:** 172-07-BZ

**Affected:** 121/125 East 85th Street  
**Premise** Block 1514/Lots 10 & 13  
Manhattan

STATEMENT IN OPPOSITION

**Applicant:** Ramaz School &  
Congregation Kehilath Jeshurun Synagogue  
121 & 125 East 85th Street  
New York, NY 10028

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This statement in opposition to the variance application filed by the Trustees of Congregation Kehilath Jeshurun (“KJ”) is submitted by Stroock & Stroock & Lavan LLP on behalf of 111 East 85th Street Owners, Inc., the immediately adjacent neighbor to the east of the proposed residential development.

As is explained in greater detail below, KJ’s request for waivers and variances lacks merit as all of KJ’s programmatic needs as presented can be met without the requested variances; KJ fails to demonstrate that its application satisfies the five findings required for approval of variances under the Zoning Resolution of the City of New York (“ZRCNY”). ZRCNY §72-21. Accordingly, the Board of Standards and Appeals must deny KJ’s request for certain waivers and variances because variances for a non-profit institution should not be used to finance a for-profit real estate development project. There is no precedent that would allow the use of the variance process by a non-profit institution like KJ to profit \$28 million through the sale of its

development rights, and generate a \$60.9 million profit to the project developer.<sup>1</sup> Such use of the variance process is grossly inappropriate as it is an abuse of the variance process and against the intent and purpose of the Zoning Resolution of the City of New York.

#### D) SUMMARY OF CONGREGATION KEHILATH JESHURUN'S PROPOSAL

The Trustees of Congregation Kehilath Jeshurun propose to demolish an existing school facility, and to construct a 28-story building that will house a new school, certain religious services, and approximately 53 residential apartment units in its place. In addition, KJ proposes certain alterations and additions to the existing synagogue. The project site, consisting of Lot 10 and Lot 13 of Block 1514, is located mid-block on the north side of East 85th Street, between Lexington Avenue and Park Avenue.<sup>2</sup> Lot 10 is zoned R-10 and most of Lot 13 is C5-1A, but a small western portion of Lot 13 is zoned R-10. The proposed new building, which will be developed on the eastern side of the project site, will be approximately 96 feet wide at the widest point, approximately 102 feet deep, and rise approximately 355 feet to the top of the screen wall. This new building will be built to the front, rear, and the easterly side property lines, and also abut the synagogue to the west for the first 4 floors, while cantilevering over this synagogue starting on the fifth floor. The first 10 floors of the building, including the cellars and sub-cellars, will house the new Ramaz School and several synagogue components. Floors 11 through 28 will be developed as residential apartments. The synagogue, located to the west of the new building, will undergo additions and alterations to provide a rooftop playground (“playroof”) for the school children, and this playroof will also be used for religious ceremonies, other social and

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<sup>1</sup> Metropolitan Valuation Services, Inc., Financial Analysis, 6, October 24, 2007 (hereinafter “MVS Report”) (attached as EXHIBIT A to this statement).

<sup>2</sup> The existing synagogue is located within Lot 10 and the existing Ramaz School is located mostly within Lot 13.

recreational uses, and to house a Sukkah.<sup>3</sup> This modification will increase the height of the synagogue by approximately 8 feet 4 inches.

## II) THE VARIANCE APPLICATION

Section 72-21 of the Zoning Resolution of the City of New York authorizes variance applications; however, an applicant must demonstrate compliance with five requisite findings described therein in order to secure an approval from the Board of Standards and Appeals (“BSA”). This requires that each of the five requisite findings be supported by substantial evidence. ZRCNY §72-21; *Albert v. Board of Estimate of the City of New York, et al.*, 101A.D.2d 836, 837 (1984). The following five findings are required for grant of a variance: a) there are unique conditions that present a practical difficulty or unnecessary hardship; b) because of the practical difficulties, strict conformance with the zoning resolution will not bring a reasonable return; c) that the requested variances, if granted, will not alter the essential character of the neighborhood or substantially impair use of adjacent properties; d) the practical difficulties were not created by the owner or the predecessor in title, and; e) the requested variance is the minimum necessary. ZRCNY §72-21. Failure to provide substantial evidence to support these five findings shall result in denial of any variance applications.<sup>4</sup>

Because KJ’s proposal is beyond what is permitted on an “as-of-right” basis, its proposal requires approval of numerous waivers and variances. However, KJ’s request must be denied because KJ has failed to provide substantial evidence to warrant each of the five required

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<sup>3</sup> Sukkah is a structure that is used during religious festivities.

<sup>4</sup> Notwithstanding that the applicant is a non-profit institution, all five findings must still be met as the applicant is seeking a variance for a for-profit venture. Indicative of all five findings being required is KJ’s own submission of a financial feasibility analysis. Though woefully inadequate, this economic analysis demonstrates KJ’s understanding that each finding of §72-21 must be met.

findings. The evidence presented by KJ is insufficient to support a finding that they have a unique condition, which has resulted in practical difficulties in complying with the zoning resolution. Additionally, KJ has failed to demonstrate that its programmatic needs cannot be met and that a reasonable return cannot be realized without the grant of its requested waivers and variances. In fact, as noted in the attached independent economic analysis for an “as-of-right” development, KJ would receive approximately \$13.7 million for the development rights above the proposed community facility, and the project developer would receive roughly \$24.7 million as profit. MVS Report, 6. Furthermore, KJ’s proposed 28-story building will have substantially adverse impacts on the use and development of adjacent properties. Most importantly and most egregiously, KJ’s requested variances are not the minimum necessary to afford relief.

KJ’s variance requests are primarily for the new building with only **one** waiver being related to the alteration of the existing synagogue. The requested variances are as follows:

**A) Requested Waivers for the New Building**

1) Lot Coverage in R10 District – Under ZRCNY §24-11, lot coverage of interior lots in R10 zones must not exceed 70 percent. **KJ is requesting a lot coverage variance to cover approximately 94 percent of the site** with existing and new structures.

2) Maximum Base Height in R10 District – ZRCNY §23-663(b) provides that no structures developed under the Quality Housing Program exceeding 125 feet in base height be located within 10 feet of the rear yard line. **KJ requests a 194-foot maximum base height variance** to construct a structure 319-foot tall (355 feet to the top of the screen wall) within 10 feet of the rear yard line.

3) Rear Yard Obstructions in R10 District – ZRCNY §24-36 requires a minimum rear yard of 30 feet. However, §24-33(b) permits structures to be located in the rear yard if that structure is a community facility, but limits height of such structures to either one story or 23 feet above grade,

whichever is lower. **KJ is requesting a 19-foot 8-inch height variance** in order to construct a school facility, which will be 42 feet 8 inches high at the rear property line.

4) Base Height for Quality Housing Development in R10 District – ZRCNY §23-633 provides that maximum base height along street frontage cannot exceed 125 feet. KJ proposes a base height of 136 feet 8 inches, and is therefore **requesting an 11-foot 8-inch base height variance**.

5) Building Height in R10 District – Pursuant to ZRCNY §23-633, no building structure shall exceed a maximum permitted height of 185 feet. The new building as proposed by KJ will be 319 feet tall, which is more than 70 percent taller than that which the R10 district permits. **KJ requests a 134-foot maximum height variance**.

6) Street Wall Setback in C5-1A District – ZRCNY §35-24(c) requires a minimum street wall setback of 15 feet from East 85th Street, a narrow street. The new building as proposed by KJ would be setback 10 feet instead of the 15-foot setback as required. **KJ is requesting a 5-foot setback variance**.

7) Maximum Building Height in C5-1A District – The maximum building height permitted under ZRCNY §35-24 is 210 feet. The proposed building is 319 feet high (not including the mechanical bulkhead and the screen wall). **KJ is requesting a 109-foot building height variance**.

8) Street Wall Continuity in C5-1A District – ZRCNY §35-24(b)(3) requires that street wall be located along the street line and extend along the entire street frontage. KJ's new building will have a 10-foot recess at the residential entrance for a length of 20 feet 2 inches. **KJ is requesting a 10-foot street wall continuity variance at this location**.

9) Mechanical Bulkhead and The Screen Wall – ZRCNY §23-62(d) requires that aggregate width of mechanical bulkheads not exceed 30 feet. It further requires that the product of the aggregate width and the average height not exceed a figure equal to four times the width of the street walls of the building. The aggregate width of the mechanical bulkhead and the screen wall is 62 feet 10 inches and the combined height of the mechanical bulkhead with the screen wall is 36 feet. **KJ is requesting a 32-foot 10-inch aggregate width variance and a 1,654-square foot wall area variance**.

10) Quality Housing Recreation Space – ZRCNY §28-31 requires that at least 2.8 percent of the residential floor area be dedicated as recreation space, which must be provided entirely as indoor recreational space or outdoor recreational space. The regulations do not permit combining indoor and outdoor recreational space to meet the recreational space needs. KJ proposes to provide 1,725 SF of outdoor recreational space and 911 SF of indoor recreational space, which does not comply with the Quality Housing Recreation Space requirements. KJ must provide a minimum of 2,601 SF of recreational space, all of which must be either indoors or outdoors. **Accordingly, KJ seeks a variance to allow the use of both indoor and outdoor recreational space to meet the recreational space requirements.**

**B) Variances Relating to Renovation/Alteration of the Existing Synagogue**

11) Increase in Building Height Nonconformity – ZRCNY §54-31 provides that a nonconforming building may be enlarged provided that nonconformity is not increased or new nonconformities are not created. The existing synagogue is nonconforming with respect to rear yard requirements. KJ proposes to construct a playground on the roof. The existing roof will be raised 8-foot 4-inches in order to accomplish this modification. **KJ requests a variance to increase the height nonconformity of the existing synagogue by 8 foot 4 inches.**

For the above requested waivers and variances, KJ has failed to demonstrate through substantial evidence that its application satisfies all of the required findings under ZRCNY §72-21. Hence, the BSA must deny KJ's variance application.

**III) THE APPLICANT DOES NOT SATISFY THE REQUIREMENTS OF ZRCNY §72-21.**

**A) There Are No Unique Physical Conditions Giving Rise to Practical Difficulties.**

The first requisite finding under ZRCNY §72-21 is the presence of unique physical conditions, which must create practical difficulties. It is further required that the difficulties are not created from the strict application of the zoning resolution in the neighborhood. In order for physical conditions to be unique, they may not be ones generally applicable throughout the

district. *Douglaston Civic Ass'n, Inc. v. Klein*, 51 N.Y.2d 963, 965 (1980). This means that if the condition that is causing the practical difficulties is generally prevalent in the area such that when a variance is granted to relieve the practical difficulties it results in a material change of the district, then that condition is not unique. *Id.* The grant of a zoning variance is conditioned on the unique physical conditions of the lot and not on one's particular spatial needs. *9 White Street Corp., et al. v. Board of Standards and Appeals of the City of New York*, 122 A.D.2d 742, 744 (1st Dep't 1986). A unique condition must be one that is "peculiar to and inherent in the particular zoning lot." ZRCNY §72-21(a). The need for additional space does not "make the existing physical conditions unique and does not create a hardship or practical difficulty within the meaning of the zoning resolution." *9 White Street Corp.*, 122 A.D.2d at 744. Personal inconvenience arising from need for additional space does not provide substantial evidence to support the §72-21(a) finding. *Galin v. Board of Estimate of City of New York*, 72 A.D.2d 114, 117-18 (1st Dep't 1980). Practical difficulties arise when a property or a structure on a property cannot be used without conflicting with certain provisions of the zoning resolution. *Bienstock v. Zoning Bd. Of Appeals of Town of East Hampton*, 187 A.D.2d 578, 580 (2d Dep't 1992). Without a showing of practical difficulties, a variance application must be denied. ZRCNY §71-21(a).

Despite numerous claims by KJ that they have many unique physical conditions, the site does not contain any unique physical conditions that give rise to practical difficulties as required under ZRCNY §72-21(a). KJ states that the existing synagogue building is a "unique and irreplaceable non-complying specialized building ... [which] prevents and precludes any further development of its footprint." STATEMENT IN SUPPORT, 20. KJ proposes to add a playroof to the roof of the existing synagogue building, which they plan to use as playground for the

school children and for the religious, ceremonial, social and recreational purposes of the congregation. The fact that this synagogue is a 105-year old building may be a unique condition, however KJ has failed to demonstrate why it would create practical difficulties to add a playroof in conformance with the Zoning Resolution. Though still objectionable due to increase in noise and activities (due to the proximity of the new playroof to the easterly side of 111 East 85th Street), an addition of a playroof without increasing the nonconformity of this nonconforming synagogue building appears to be possible by not building within the required rearyard setback area.

In addition, KJ cites a number of deficiencies with the existing synagogue, including its lack of handicap accessibility, expansion incapability, access difficulties, and lack of space. STATEMENT IN SUPPORT, 7-9. Despite these claims, KJ has not provided any evidence to substantiate the alleged deficiencies, other than a mere assertion that accessibility problems are prevalent between the synagogue and the existing Ramaz School. KJ's comment that the elevator does not reach the third floor is misleading as the existing floor plans show elevator stops on the third floor. A review of the existing floor plans and the proposed floor plans demonstrates that KJ's alleged deficiencies relating to handicap accessibility problems on the third floor mezzanine of the synagogue can be resolved without any of the requested variances. To resolve this alleged deficiency, KJ would only have to remove a portion of the eastern wall on the third floor of the synagogue and add a wider door with deeper and wider landings, as shown on the proposed third floor plan. Additionally, it is unclear from KJ's construction plans how new elevators in the proposed building will provide handicap accessibility to the third floor mezzanine of the synagogue since the construction plans show a set of stairs between the new elevator and the third floor mezzanine of the synagogue. Even assuming that these deficiencies

do exist, KJ has failed to show how practical difficulties will arise from compliance with the zoning resolution. The synagogue is rectangular in shape and the redevelopment site,<sup>5</sup> where the existing Ramaz School is currently located, (Lot 13 and a small portion of Lot 10) is also rectangular. KJ has not demonstrated how construction of a new building to house the Ramaz School and other religious services that would mitigate these deficiencies with the existing synagogue, while complying with the ZRCNY, would create practical difficulties within the meaning of the ZRCNY. The existence of such deficiencies, if true, may demonstrate only the desire for a renovation of an existing building or a construction of a new building, but it does not demonstrate the need for the requested variances.

KJ also proposes to demolish an existing building, consisting of two interconnected structures, and to build a 28-story building, which will rise approximately 355 feet to the top of the screen wall. KJ claims a number of deficiencies with this existing building, including: 1) undersized gymnasium; 2) lack of storage; 3) structural incompatibility for the kindergarten and nursery school children relating to steep stairs and lack of restroom facilities; 4) lack of administrative space; 5) inefficient circulation; 6) need for ancillary religious and social space; 7) need to expand the Early Childhood Center and the Lower School; 8) small classroom sizes; and 9) lack of specialized learning spaces. First, these deficiencies are not physical conditions inherent in the lot. These merely stem from a desire for additional space, which does not “make the existing physical conditions unique and does not create a hardship or practical difficulty ... “

9 *White Street Corp.*, 122 A.D.2d at 744. These alleged deficiencies merely demonstrate that KJ desires a larger and more efficient building to accommodate its religious and educational programs, but it does not show that KJ has any practical difficulties in complying with the

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<sup>5</sup> The portion of the zoning lot that will be redeveloped with the proposed mixed-use building.

zoning resolution since the size of the redevelopment site should allow construction of a new building that will be able to accommodate KJ's religious and educational programs within the zoning restrictions. Again, KJ has failed to demonstrate how these deficiencies lead to practical difficulties in complying with the ZRCNY.

KJ asserts that the incapability of the development site to utilize the zoning floor area attributable to the zoning lot is a unique condition. STATEMENT IN SUPPORT, 20. The remaining redevelopment site, consisting of Lot 13 and a small portion of Lot 10, is rectangular in shape and has over 8,000 square feet of lot area. This development site is one that is easily developable and the fact that KJ cannot use all of its allowed floor area on the development site is neither a unique condition nor a practical difficulty. There is no requirement that a property owner utilize all of its allowed floor area for the site. KJ's desire to construct a 28 story mixed-use building that consists of 18 floors of residential apartments is entirely economically driven as stated in its application. STATEMENT IN SUPPORT, 14 (*"[T]he inclusion of the residential uses ... represents an appropriate and common "monetization" of an existing resource ... which has as its sole purpose the correction of the programmatic deficiencies giving rise to this application."*). KJ's desire to construct a large mixed-use building is "one of a personal nature," which does not constitute practical difficulties. *Bienstock*, 187 A.D.2d at 580. There are no unique physical conditions associated with this lot. Hence, there are no practical difficulties associated with complying with the ZRCNY.

KJ also states that the need to align the new building to the existing synagogue is a unique condition. However, as the architectural plans show, the existing synagogue is also rectangular in shape and covers almost all of Lot 10. At the ground level, the two buildings will be interconnected by a lobby and five double-hung doors that will connect the new cafeteria to

the meeting room of the synagogue. On the second floor, the two buildings will be interconnected by two doors. One door will connect the third floor of the two buildings. The fourth floor will not have a connection and the fifth floor of the new building will open up to the proposed playroom. These are challenges that are typically found in construction of a new building that connects to an existing building, and such cannot qualify as a unique condition or a practical difficulty.

Furthermore, KJ asserts that the fact that Lot 13 is within two different underlying zoning districts, one residential (R-10) and the other commercial (C5-1A), is a unique physical condition that creates practical difficulties. This split zoning is the basis for five variance requests, including lot coverage, front and rear base height, rear yard obstructions, and building height. If the entirety of Lot 13 were within a commercial zone, some of these variances might not be necessary. However, KJ has failed to provide substantial evidence to demonstrate that this split zoning leads to practical difficulties as it appears to be entirely possible to design and construct a building, which at a minimum, would meet the base height, maximum building height, and rear yard obstruction requirements. Such building, built in compliance with the ZRCNY, should be able to provide all of KJ's programmatic needs and also provide space for some residential apartments as well. KJ's desire to build a 355-foot tall, 28-story mixed-use building with 18 floors dedicated to residential use is purely economically driven. STATEMENT IN SUPPORT, 18.

Lastly, KJ maintains that in order to provide contemporary educational floorplans, it is impossible to provide yards, setbacks and building streetwalls as required by the zoning resolution. However, KJ has not provided any information on why it would not be possible to provide a contemporary educational floorplan without the requested variances. The preliminary

construction plans show that the biggest room to be constructed in the new building is the assembly hall at roughly 3,600 square feet in area. The development site is over 8,000 square feet in size. Such development site would easily be able to accommodate a combination of assembly hall, gymnasium, classrooms, and other educational facilities without the need for variances. As the construction plans show, it appears that the need for one of the variances arises from KJ's desire to construct an assembly hall with double height ceilings. If the assembly hall were constructed to be single height or located to another floor or portion of the proposed building, at least one variance would not be necessary. The need to provide a contemporary educational floorplan is not a unique physical condition on site and therefore, cannot be a practical difficulty.

For the reasons above, KJ has entirely failed to provide substantial evidence to demonstrate that it has unique physical conditions on site, which are inherent to the site, that would cause them practical difficulties in complying with the ZRCNY. As discussed above, KJ's alleged unique conditions are false, and KJ will not suffer any practical difficulties in strictly complying with the ZRCNY. Redevelopment to construct a new building and the addition of a playroom on the existing synagogue are possible without the requested variances, which leads to the conclusion that there are no practical difficulties arising out of unique physical conditions. The need for additional space or personal inconvenience does not qualify as a unique condition and it certainly does not create practical difficulties. The alleged difficulties are created because KJ wishes to construct a 355-foot tall building that satisfies all of its spatial needs that also generates a large profit.

**B) KJ Can Realize a Reasonable Return and Its Programmatic Needs Can Be Satisfied Without the Requested Variances.**

A variance application must be supported by substantial evidence to show that the property will not yield a reasonable return without the variance. ZRCNY §72-21(b). Although “churches and schools occupy a different status from mere commercial enterprises,” which warrant special considerations, *Diocese of Rochester v. Planning Bd. Of Town of Brighton*, 1 N.Y.2d 508,523 (1956), such considerations are not given if they engage in activities that are non-religious, non-educational, or otherwise for-profit in nature. Hence, even a religious organization must provide substantial evidence to support this finding when it is engaged in profit-making activities.

KJ is a religious institution that has traditionally been engaged in educational services. If KJ had elected to offer only religious and educational services within the new building, KJ would not have to demonstrate conformance with ZRCNY §72-21(b). However, KJ’s proposed 28-story building will contain 18 floors of residential apartments; other residential features will also be included within the first 10 floors of this proposed building. Requesting variances in order to finance a project is an inappropriate use of the variance process. Hence, KJ is required to demonstrate that without the requested variances, the property will not yield a reasonable return. However as the following discussion shows, KJ has completely failed to provide substantial evidence to support this finding.

To calculate the reasonable rate of return, the focus “must be on whether any conforming use will yield a reasonable return. *Soho Alliance v. New York City Board of Standards and Appeals*, 264 A.D.2d 59, 64 (1st Dep’t 2000) (*affirmed*, 741 N.E.2d 106). This requires a showing that “there is no reasonable possibility that development of the zoning lot in strict conformity with the Zoning Resolution would bring a reasonable return.” *West Village Houses Tenants’ Association, et al. v. New York City Board of Standards and Appeals, et al.*, 302

A.D.2d 230. 231 (1st Dep't 2003). While this does not require a dollar and cents analysis for every permissible use, an analysis must be sufficient to demonstrate that the property cannot yield a reasonable return without a variance. *Red Hook/Gowanus Chamber of Commerce v. New York City Board of Standards and Appeals*, 12 Misc.3d 1165(A), 8 (Kings Co. 2006). The applicable standard is whether a reasonable return can be realized without the variance and not whether a higher rate of return is possible with the grant of the variance. *Bath Beach Health Spa of Park Slope, Inc. v. Bennett*, 176 A.D.2d 874, 875 (2nd Dep't 1991). A mere showing that one use is more profitable than another does not justify a variance. *Greenbaum v. Board of Estimate of the City of New York*, 148 A.D.2d 92, 97 (1st Dep't 1989).

As a variance applicant, KJ must provide substantial evidence to show that the property cannot yield a reasonable return without the variance. To support the contention that a variance is required in order for the property to yield a reasonable return, KJ submitted an economic analysis by Robert B. Pauls, LLC. However, this analysis contains many analytical errors, misstatements, and incorrect conclusions. An independent economic analysis, completed by Metropolitan Valuation Services, shows that the property is able to yield a reasonable return within the confines of the zoning restrictions placed on site. MVS Report, 1. This analysis was prepared in conformity with and subject to the Code of Professional Ethics and Standards of Professional Appraisal Practice, and contains methods and techniques recognized by the Appraisal Standards Board of the Appraisal Foundation. The MVS Report shows four fundamental flaws in Pauls' analysis:

i) The analysis assigns the same value to the cost of development rights to calculate return for both the "as-of-right" development and the proposed development, ignoring the fact that development rights are calculated on a per square foot basis;

ii) Comparable sales data underestimates the true value of the proposed apartments because the comparables used do not reflect the fact that the proposed apartments will be new and on higher floors;

iii) The price per square foot must be adjusted for inflation to reflect market conditions at the time the apartments will be ready for sale and occupancy; and

iv) Certain costs in the development cost summary are not actual costs. MVS Report, 2-5.

The MVS report corrected the errors contained in Pauls' analysis, and concluded that even development "as-of-right" would be able to achieve a profit of approximately \$24.7 million or a 56% return on a \$42.2 million investment, while providing for a payment of roughly \$13.7 million to KJ for the development rights. MVS Report, 6. This greatly exceeds the 6.3% rate of return identified to be "sufficient for consideration as an investment opportunity. STATEMENT IN SUPPORT, 29. In arriving at this conclusion, MVS determined that the comparables used by Pauls were not appropriate and found other more suitable comparables, which actually were similar to the proposed project in terms of age, location, view, size, and other relevant factors, as opposed to the ones used by Pauls. Based on these comparables, MVS was able to arrive at a sales price of \$2,000 per square foot for the proposed apartments, after price adjustments for relevant factors and time were made, as compared to the price per square foot of \$1,134 to \$1,285 used by Pauls. Also, the cost for the development rights in the "as-of-right" development was reduced to reflect the true value of development rights, which is a product of the total amount of buildable square feet on a given site and the value of that one buildable square foot for a given property.<sup>6</sup> Hence, the cost for development rights for the "as-of-right" scenario was adjusted to \$13.7 million, rather than the \$27.9 million as contained in Pauls' analysis.

Furthermore, development costs were changed to show the decrease in land cost, which also

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<sup>6</sup> In this case, Pauls' analysis assigns the same price of \$27,959,793 for both 61,366 square feet of development rights (proposed development) and 30,106 square foot of development rights ("as-of-right" development) to arrive at a conclusion that "as-of-right" development cannot be profitable. MVS Report, 5.

lowered loan costs. Finally, transfer tax was taken out from the construction cost analysis since buyers generally pay those taxes. MVS Report, 5. By using accurate appraisal methods and using reliable data, the MVS report shows that construction of apartments, even in the “as-of-right” scenario can achieve a large profit. If developed “as-of-right,” KJ would receive approximately \$13.7 million for its sale of development rights and the project developer would be able to achieve a 56% return on investment or a profit of \$24.7 million.<sup>7</sup> This rate of return far exceeds the 6.3% rate of return, which is stated by KJ to be minimally sufficient, and all reasonable minds would agree that such figures represent a reasonable return. KJ has failed to demonstrate through substantial evidence that variances are necessary to achieve reasonable returns. KJ is seeking the requested waivers and variances because KJ’s proposed development would generate an enormous profit of \$60.9 million or a 77% return on a \$79.1 million investment. MVS Report, 6.

**C) The Grant of Variance will Alter the Essential Character of the Neighborhood and Substantially Impair the Appropriate Use and Development of Adjacent Properties.**

The grant of the requested variances will adversely impact the neighborhood and adjacent properties. It is acknowledged that religious and educational facilities “occupy a different status from mere commercial enterprises, and when the church enters the picture, different considerations apply.” *Westchester Reform Temple v. Brown*, 239 N.E.2d 891, 894 (1968). Factors such as character of residential area, effect on property values, loss of tax revenues, and traffic hazards are inadequate to preclude construction of a religious facility. *Id.* However, these factors are controlling in a commercial structure. *Id.* Even religious and educational portions of

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<sup>7</sup> An “as-of-right” development of apartments would cost \$43,968,140, including the purchase of development rights. Sales of these residential apartments would generate a revenue of \$68,674,000. Even an “as-of-right” development would generate a healthy profit of \$24.7 million or a 56% return on equity. MVS Report, 6.

the new building must “accommodate factors directly relevant to public health, safety or welfare...” *Cornell Univ. v. Bagnardi*, 68 N.Y.2d 583, 595 (1986).

KJ is a non-profit entity that provides both religious and educational services. Normally, KJ would be afforded greater flexibility in its plans to replace or expand its facilities, however because a major portion of its new building will contain for-profit residential uses, special considerations given to churches and schools do not apply in this case. KJ proposes a 355-foot tall building with 53 units of new apartments on the site that will have an average unit size of approximately 1,320 square feet. There are numerous negative impacts associated with this residential development such as: traffic impacts; shadow impacts, neighborhood character impacts; noise impacts; and construction impacts. In addition, the proposed building will have an impact on the synagogue itself, which has some potential historical significance (as acknowledged by KJ in its application). Interestingly, and perhaps telling of KJ’s attitude toward this process, the environmental review barely mentions this potential impact and is devoid of any substantive analysis on these points.

KJ’s proposal will add 53 new households or 213 new residents to East 85th Street and increase the number of workers by 11 workers and the number of students by approximately 48 students. This equates to approximately 272 additional residents, workers and students. The addition of 272 people to a narrow and already crowded street like East 85th, which is a through street used to cross Central Park to the west side, will significantly impair the use of adjacent properties. KJ’s proposal will directly contribute to a significant growth in both pedestrian and vehicular traffic and demand for services, such as open space, and also increase noise, odor, dust, and garbage in the neighborhood, however KJ has failed to submit a single proposal to mitigate

any of these negative impacts.<sup>8</sup> Additionally, the building as proposed will be one of the tallest in the immediate vicinity, which would create shadow impacts to the surrounding properties, thereby significantly reducing the availability of sunlight to numerous properties in the vicinity. Again, KJ's environmental review makes only passing references to these impacts. As is discussed previously and herein, noise impacts during and after construction will also be great. Furthermore, KJ proposes a playroof for the new Ramaz School on top of the Synagogue, which will abut the residential building to the east and be in close proximity to other residential buildings in the neighborhood. Noise from this playroof will negatively affect the residents during the day as children gather on the playroof and during other various hours as the playroof is used for social, recreational and religious purposes. Given the playroof's proximity to its immediate easterly neighbor, it is disingenuous to suggest that noise, odor and dust from activities atop the playroof will not impair the use of adjacent properties. Once again, KJ's environmental review ignores these impacts.

KJ also asserts that its synagogue has potential historic significance as a building that is over a century old, however its environmental assessment fails to analyze the impacts that a new and modern 28-story tower will have on this potentially historic structure. The new building will cantilever over this 4-story synagogue starting from the fifth floor. It is doubtful that such a large structure that encroaches upon the air space of a century-old building with potential historic significance will not have any negative visual and design impacts.

Courts have noted that even religious and educational uses must be accommodating to the public health and welfare. In this instance, there is a mix of residential, educational, and

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<sup>8</sup> KJ's proposal does not include a provision for vehicular parking. Environmental Assessment Statement, 5.

religious uses that will have a significant impact on the surrounding area. KJ's proposal fails to demonstrate consistency with the required finding that the grant of variances will not alter the essential character of the neighborhood or substantially impair use of adjacent properties.

**D) The Requested Variances are Not the Minimum Necessary as Required by ZRCNY §72-21(e).**

The variances requested by KJ are not the minimum necessary as required by ZRCNY §72-21(e). KJ does not present any evidence on whether the variances requested are the minimum necessary. There is no indication that any other use requiring a lesser or no variance has been explored. *Greenbaum*, 148 A.D.2d at 94. KJ alleges that there are a number of unique physical conditions on site, which present practical difficulties. As discussed previously, there are no unique conditions on site that present practical difficulties in complying with the zoning resolution. Rather, the difficulties are self-created by the desire to construct new religious and educational facilities, along with 53 new apartment units, and to profit from such development. The use of the variance process by a non-profit institution to finance the development of a for-profit building is extremely troubling and presents significant long-term implications for future project developments in Manhattan. The grant of variances requested by KJ would be precedent setting in nature and would result in an avalanche of similar requests from other not-profit institutions.

Furthermore, there is no nexus between the difficulties cited in the application to the variances requested. The requested variances must cure the difficulties cited in the application. *9 White Street Corp*, 122 A.D.2d at 744 (an addition of a penthouse to serve as living quarters is unlikely to cure the problem of a narrow and dark building). However, many of the variances requested by KJ do not provide relief for the alleged difficulties that they claim to have. The

requested variances are unrelated to the educational programs at the new Ramaz School or the synagogue as the requested variances are mostly to allow the construction of luxury, high-rise apartments, which do not directly relieve the alleged hardships relating to KJ's programmatic needs. The residential apartments do not have a functional relationship to the school or the synagogue. Thus, granting variances to permit the construction of residential apartments cannot relieve the hardships relating to the programmatic needs of the school and the synagogue, as alleged by KJ. Although KJ maintains that the need for the streetwall variance is driven by contemporary educational standards, STATEMENT IN SUPPORT, 21, it is clear that the streetwall continuity variance has no connection to the educational portions of the new building, as it is clearly a way to delineate the residential lobby from remainder of the building. STATEMENT IN SUPPORT, 25. Even the rear yard obstruction variance that KJ seeks in order to construct a school assembly hall is not driven by educational standards, but by KJ's desire for other uses, such as its faculty dining area on the second floor and more so for the residential apartments on floors 11 through 28.

KJ does not provide any connection between the difficulty and the relief requested other than the assertion that the development site is incapable of utilizing the zoning floor area attributable to the entire property in requesting variances to construct a residential tower. However, this fails the nexus requirement, as it would be possible to utilize the entire floor area on the site without the grant of variances. Lastly, there is no requirement that a landowner utilize all of the floor area that he has available for a given piece of property; therefore it cannot be a difficulty. KJ's desire to fully utilize the allowed floor area for a given site is driven by a desire to maximize profits, and requesting variances in order to finance a project is grossly inappropriate, constituting an abuse of the variance application process. Because KJ's variance

requests are against the spirit and purpose of the Zoning Resolution of the City of New York, the Board of Standards and Appeals must deny KJ's application.

#### IV) CONCLUSION

The New York State Court of Appeals has cautioned against piecemeal variances, such as the ones requested by KJ, which ultimately alter the nature of the neighborhood and may cause "far greater hardships than that which a variance may alleviate." *Village Board of Fayetteville*, 53 N.Y.2d at 259-60; quoting *Matter of Otto v. Steinhilber*, 282 N.Y. 71, 77-8 (1939). Unjustified variances may destroy or diminish the value of nearby properties and adversely affect those who obtained residences in reliance upon the design of zoning ordinance. *Village of Fayetteville*, 53 N.Y.2d at 260. Granting the variances requested by KJ would destroy property values and have adverse effects on neighboring properties, which would ultimately lead to "greater hardships than that which a variance may alleviate."

KJ has failed to provide substantial evidence to support each of the required findings in ZRCNY § 72-21. There are no unique conditions on site that create practical difficulties. Any difficulties that KJ encounters arise from its own profit motive. KJ can realize a reasonable return and also fulfill its programmatic needs without the grant of the requested variances. Granting the variances will have adverse effects on the neighboring properties and the district. Lastly, KJ is requesting variances that are not the minimum necessary, which do not have any nexus to the alleged hardships. Because KJ has failed to provide substantial evidence as required, its variance application must be denied.

# EXHIBIT A

# **METROPOLITAN VALUATION SERVICES**

REAL ESTATE CONSULTING AND APPRAISAL

October 24, 2007

Stroock & Stroock & Lavan, LLP  
180 Maiden Lane  
New York, NY 10038

re: 121 -125 East 85<sup>th</sup> Street  
(Block 1514, Lots 10 and 13)  
New York, NY - the "CKJ/Ramaz Site"

Greetings:

Pursuant to your authorization, Metropolitan Valuation Services, Inc. ("MVS") has reviewed the "Feasibility Study" prepared by Robert B. Pauls, LLC (undated) and the "Statement in Support of Certain Variances" prepared by Friedman & Gotbaum LLP dated June 20, 2007 analyzing potential mixed-use development on the CKJ/Ramaz Site. This study has been presented within a Restricted Format report. The report has been prepared in conformity with and subject to the Code of Professional Ethics and Standards of Professional Appraisal Practice (USPAP) as promulgated by the Appraisal Standards Board of the Appraisal Foundation. The report contains recognized methods and techniques that materially contribute to a proper evaluation of the real estate problem under consideration. The report has been prepared subject to the attached Basic Assumptions and Limiting Conditions. The depth of discussion contained in this presentation is specific to the immediate needs of the client and can only be relied upon by a reader familiar with the subject property and similar-type properties. We are not responsible for any unauthorized use of this restricted format report. This reporting format is in compliance with the specific guidelines of Standard 2-2 of USPAP. This report should not be construed to represent an appraisal of the premises, as we were not engaged to appraise the CKJ/Ramaz site, but rather to review the Feasibility Study and its conclusions. We have not addressed any issues concerning market-rate rent for the community space at the proposed property as raised in the New York City Board of Standards and Appeals Notice of Objections dated September 27, 2007 as the Feasibility Study did not include such.

*Based upon our review of The Robert B. Pauls Feasibility Study, we have concluded that it is critically flawed by poor judgment and erroneous mathematical technique. Accordingly, its conclusions cannot be relied upon. Further, we have concluded that the development of the CKJ/Ramaz Site with an "as of right" building is economically feasible and could result in a payment to CKJ/Ramaz of as much as \$28,000,000 for development rights above the proposed community use facility envisioned to be constructed on the site while at the same time providing for a \$24,700,000 profit to the project developer. The following report details the reasoning supporting these conclusions.*

**METROPOLITAN VALUATION SERVICES, INC.**  
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**Phone (212) 213-8650 Fax (212) 213-8621**

*Stroock & Stroock & Lavan, LLP*  
*October 24, 2007*  
*Page 2*

### **Overview**

The Trustees of Congregation Kehilath Jeshurun ("KJ") have applied for a zoning variance from the City of New York that will enable the construction of a new 28-story mixed-use building comprised of 18 floors of multifamily residential space atop 10 floors of community facility space containing a total zoning area of 186,241 square feet. The "as of right" development of the existing site would permit construction of a mixed-use building that is 16 floors in height comprised of the same 10 floors of community facility space but only 6 residential floors. The total net residential area "as of right" is reported in the Feasibility Study to be 34,337 square feet. The zoning variance would increase the residential component by 18 floors and total 69,991 square feet of net residential area.

In support of the zoning variance application, KJ has relied upon the Feasibility Study prepared by Robert B. Pauls to demonstrate that "Because of the physical conditions there is no reasonable possibility that the development of the zoning lot in strict conformity with the provisions of this resolution will bring a reasonable return, and that the grant of a variance is therefore necessary to enable the owner to realize a reasonable return from such zoning lot." (page 28, Friedman & Gotbaum).

The purpose of this assignment is to review the accuracy and reliability of the Feasibility Study to determine if its conclusions can be relied upon as the basis for the zoning variance. We will present our findings in this report in the order in which they are presented in the Feasibility Study.

### **Site Description**

The site description appears to be accurate.

### **Zoning and Development Options**

The net residential building area in the "as of right" scenario is reported to be 34,337 square feet and 69,991 square feet with the variance scenario. These sizes are not consistent with the zoning FAR and are assumed to be based upon calculations prepared by FXFOWLE Architects P.C. for KJ.

### **Site Valuation – "As Is"**

The inclusion of 1655 Madison Avenue as a sale comparable is ill-advised. It is a narrow townhouse style lot not capable of supporting the type of construction envisioned for the subject property or any of the other comparables.

As the Feasibility Study reviewed by us is not dated, we have concluded from the adjustment grid on page 5 that it was produced sometime around mid-2006, as no time adjustments are applied for sales around that date. As we are reviewing data pertinent to October, 2007, we believe that a further upward time adjustment for improved market conditions is warranted.

The CKJ/Ramaz site occupies a prime Upper East Side location, midblock between Park and Lexington Avenues, south of 86<sup>th</sup> Street. In our opinion, there should be greater upward location adjustments for Sales No. 1, 2 and 4.

*Stroock & Stroock & Lavan, LLP*  
*October 24, 2007*  
*Page 3*

The concluded value of \$455.62 per square foot of zoning floor area (FAR) is the mathematical average of the four adjusted sales. Concluding a value to the exact average is generally considered to be poor appraisal practice. Further, given that little if no reliance should be placed on Sale No. 4, use of the average renders the unit value conclusion of \$455.62 per square foot of FAR highly suspect.

On page 6 of the Feasibility Study Mr. Pauls relies upon a ratio of 60.6% to determine that there is 61,366 square feet of zoning area attributable to the residential component of the proposed development. The source of this ratio is not documented and is somewhat inconsistent with the net rentable area 69,991 square feet utilized elsewhere in his report.

### ***Comparable Leases and Sales***

The Feasibility Study contains no comparable leases. There are however, five comparable sales presented on page 7 in Exhibit 3. All are noted to be in the same neighborhood as is the subject property. These sales are utilized as the basis for determining that the average sales price of the "as of right" condominiums that could be constructed on the CJ site would be \$1,134 per square foot and \$1,285 per square foot for the larger, variance granted building. We have reviewed the sales and the buildings in which these apartments are located and have concluded that reliance upon these sales is fully unreliable unless substantial upwards adjustments based on the observations presented in the following paragraph are applied.

All the sales cited are re-sales in older buildings. Sale No. 1, Evans Tower, was constructed in 1986; Sale No. 2, Le Trianon, was built in 1984; Sale No. 3, The Ventura, was built in 1986 and converted to a condominium in 2002; Sale No. 4, the Richmond, was built in 1937 as a warehouse and converted to a condominium in 1994; and Sale No. 5 was built in 1999 as a rental and converted to condominium ownership in 2005. The adjustment table illustrates no upward adjustment for age and building condition, which should be considerable (probably in the range of 20% to 30%) as the proposed subject property will be generally 25 years newer than these properties when it is introduced to the market. Further, although the typical unit size for the proposed CJ condominium is stated to be between 1,310 and 1,431 square feet, only Sale No. 2 (1,335 square feet average) has units averaging anywhere near this size. Sale No. 1 has an average unit size of 997 square feet; Sale No. 3, 827 square feet; Sale No. 4, 1,949 square feet; and Sale No. 5, 884 square feet. The size adjustment applied is both inconsistent and irrelevant. Finally, no recognition was made for the fact that the proposed subject property will begin on the eleventh floor and afford generally superior views and exposures than the comparables given the higher average floor height. A large upward adjustment would be expected for this factor.

Overall, these sales are not considered to be comparable and the values concluded therefrom are fully unreliable. The appropriate comparable set would be comprised of sales activity in newly constructed buildings in the neighborhood presently marketing units. We have performed this survey, which is summarized as follows:

The Lucida, located at 151 East 85<sup>th</sup> Street (located a few steps away on the east side of Lexington Avenue) is an 18-story mixed-use project containing 110 condominium apartments, 24 rental apartments, and a 96,585 square foot multilevel retail component. The retail component will have space at grade level, the second level, and 2 cellar levels of the project. The 24 rental

*Stroock & Stroock & Lavan, LLP*  
*October 24, 2007*  
*Page 4*

apartments are located on the 3<sup>rd</sup> through 5<sup>th</sup> floors, while the 110 condominium apartments are located on the 6<sup>th</sup> through 18<sup>th</sup> floors. Occupancy is scheduled to be completed in January, 2009. According to confidential information received by us, there are more than 71 units already sold, at an average sale price of \$1,826 per square foot, and another 27 units out for contract at an average sale price of \$1,956 per square foot. Unit sizes average 2,387 square feet.

The Brompton, located at 151 East 85<sup>th</sup> Street, is a 22-story condominium under construction with completion anticipated in late 2008. This 22-story building, located at the corner of Third Avenue, contains a total of 191 units above ground floor retail. Marketing began in Spring 2007, and according to confidential information received by us, 77 units already sold at an average sale price of \$1,633 per square foot. Unit sizes average 1,334 square feet.

300 East 79<sup>th</sup> Street, located at the corner of Second Avenue, is a 42-unit building under construction with Spring, 2008 occupancy anticipated. Marketing began in the Summer of 2007 and according to confidential information received by us, 35 units area already sold or under contract at an average sale price of slightly more than \$1,600 per square foot. Unit sizes average 1,369 square feet.

170 East End Avenue, occupying the entire blockfront between East 87<sup>th</sup> and 88<sup>th</sup> Streets, is a 2-tower 19-story development containing a total of 106 units. Occupancy reportedly began a few months ago and only 6 units remain unsold. Average sales prices are approximately \$1,868 per square foot. Unit sizes average about 2,300 square feet.

985 Park Avenue is a 15-story, 7-unit condominium that was recently completed. Located between East 87<sup>th</sup> and 88<sup>th</sup> Streets, this property features duplex and triplex units. This property is fully sold out at an average price of \$2,235 per square foot. Unit sizes average 2,654 square feet.

A 21-story 57-unit condominium is planned for 305 East 85<sup>th</sup> Street, at the corner of Second Avenue. According to the offering plan to be submitted to the New York State Attorney General, prices will average \$1,865 per square foot. Unit sizes average 1,865 square feet.

Based upon our review of the current sales data of similarly new buildings in the neighborhood, it is quite reasonable to assume that a new condominium at the CKJ/Ramaz site, constructed to a market standard with respect to unit finishes and amenities, located atop a building base that would rise the equivalent of at least 15 stories (assuming that the community use facility below has typical institutional ceiling heights), could achieve prices equal to or greater than most of these cited properties. Given that it would take probably at least 2 years before a condominium on the subject property could be at the point of marketing, we have concluded that an average sale price of about \$2,000 per square foot can be expected. The Feasibility Study's conclusion of prices of \$1,135 to \$1,285 per square foot is completely without merit.

### **Cost Analysis**

The Feasibility Study relies upon construction cost estimates prepared by McQuillkin Associates, Inc. In the absence of any supporting documentation, we have accepted these cost estimates for purposes of our review and analysis.

*Stroock & Stroock & Lavan, LLP*  
*October 24, 2007*  
*Page 5*

### ***Pro Forma Analysis***

The Feasibility Study makes reference on page 10 to lease rates and vacancy rates. Since the property is to be sold as condominiums, the reference to lease and vacancy rates is puzzling.

A critical flaw in the Feasibility Study is noted on Exhibit 7 (page 12). In estimating the estimated project profit, both the "as of right" and proposed development scenarios "charge" the developer \$27,959,793 for the site. Classification of the site value evidently refers to the value of the acquired development rights above the proposed community use facility. By charging the developer the same price for 61,366 square feet of FAR or 30,106 square feet of FAR, Mr. Pauls has effectively increased the price per square foot of FAR in the "as of right" scenario to a whopping \$928.72 per square foot (\$27,959,793 divided by 30,106 square feet). It is no wonder there is a negative return when the cost of the development site is 72% of the aggregate sales prices of the finished condominium units. Correctly, Exhibit 7 should have used an apportioned land value based upon the ratio of 49.06% (34,337 square feet of net residential area under the as of right scenario versus 69,991 square feet as proposed), or \$13,716,841.

Exhibit 7 on page 12 also portrays the total return as an "Annual Return As % of Cost." This is incorrect, as it is simply the total return on cost, and is not annualized.

### ***Development Cost Summary***

Exhibit 8 on page 13 of the Feasibility Study contains a table summarizing the development costs. This table contains several inaccuracies and inconsistencies. The first cost category is labeled "Land & Bldg Value." As this line item refers to the site cost, there is no building value.

The estimated construction loan amount for both development scenarios is calculated by Mr. Pauls to be 85% of the total land and building costs. For the "as of right" scenario, the estimated construction loan is \$58,178,006, and interest on that loan is charged accordingly. However, as previously illustrated, the "land value" in these calculations should be \$13,716,841 for the "as of right" scenario, reducing the estimated construction loan to \$29,433,046 ( $(\$13,716,841 + \$20,910,272) \times 85\%$ ).

There is an expense line item for "Transfer Tax." This is calculated at 1.75% of aggregate residential sales revenues and assumes that it is paid for by the condominium developer. For the last 20 years virtually every new condominium built in Manhattan has charged the buyer for this expense. We see no reason why the proposed condominium at the subject property should be any different.

The "Con. Loan Int. Loan Rate" line expense, meaning construction loan interest loan rate, was previously cited on pages 10 and 11 to be 9.0%, yet 8.75% appears to be employed here.

### ***Conclusions***

The principal subjective variable in the Feasibility Study is the price per square foot of the finished condominium units proposed for the subject property. We believe we have demonstrated that the values employed by Mr. Pauls are unsupportable and wrong. Rather, a value of \$2,000 per square foot is more realistic.

**METROPOLITAN VALUATION SERVICES**  
 REAL ESTATE CONSULTING AND APPRAISAL

Stroock & Stroock & Lavan, LLP  
 October 24, 2007  
 Page 6

There is a critical flaw in the methodology employed in the Feasibility Study. Charging the developer for almost twice as much developable square footage in the "as of right" scenario is an egregious error.

To address the various errors in the Feasibility Study we have prepared the following tables to illustrate the correct application of Mr. Pauls' "Pro Forma Analysis Summary." In our calculations, we have revised the "as of right" site value by eliminating the "Transfer Tax" charge, adjusting the construction loan interest to reflect the reduced "as of right" loan amount, and adjusting the "Residential Brokerage" line item to reflect higher sales revenues.

As illustrated on MVS Exhibits A and B, we have presented a comparative analysis of the Robert B. Pauls Feasibility Study with the following presentation:

- Robert B. Pauls "as of right" – this column restates the numbers contained exactly in the Feasibility Study.
- Robert B. Pauls "as of right" REVISED – this column restates the numbers contained exactly in the Feasibility Study with revisions to accurately reflect the lower apportioned land value and accordingly adjusts the construction loan and consequently the construction loan interest and lender. Further, no transfer tax has been debited.
- MVS "as of right" – this column is the same as the Robert B. Pauls "as of right" REVISED but employed a more accurate market value of \$2,000 per square foot for the condominium units. Residential brokerage fees were adjusted accordingly.
- Robert B. Pauls "as proposed" – this column restates the numbers contained exactly in the Feasibility Study.
- MVS as Proposed with Variance – the column utilizes the same assumptions as the MVS "as of right" but utilizes a saleable area of 69,991 square feet.

**MVS EXHIBIT A**  
**PRO FORMA ANALYSIS SUMMARY – COMPARATIVE ANALYSIS**

	Robert B. Pauls "as of right"	Robert B. Pauls "as of right" REVISED	MVS "as of right"	Robert B. Pauls as Proposed with Variance	MVS as proposed with Variance
<b>Building Area (sq.ft.)</b>					
Residential Area (sq.ft.) (1)	34,337	34,337	34,337	69,991	69,991
Price per Square Foot	\$1,135	\$1,135	\$2,000	\$1,285	\$2,000
Residential Apartment Sales	\$38,960,535	\$38,960,535	\$68,674,000	\$89,986,955	\$139,982,000
<b>Capital Investment Summary</b>					
Site Value	\$27,959,793	\$13,716,841	\$13,716,841	\$27,959,793	\$27,959,793
Base Construction Costs (1)	20,910,272	20,910,272	20,910,272	32,773,397	32,773,397
Estimated Soft Costs	9,307,941	7,558,219	9,341,027	16,935,235	18,360,166
Special Costs	0	0	0	0	0
Estimated Total Development Costs	\$58,178,006	\$42,185,332	\$43,968,140	\$77,668,425	\$79,093,356
<b>Return on Investment</b>					
Project Development Cost	\$58,178,006	\$42,185,332	\$43,968,140	\$77,668,425	\$79,093,356
Less: Residential Apartment Sales	(38,960,535)	(38,960,535)	(68,674,000)	(89,986,955)	(139,982,000)
<b>Estimated Project Profit</b>	<b>(\$19,217,471)</b>	<b>(\$3,224,797)</b>	<b>\$24,705,860</b>	<b>\$12,318,530</b>	<b>\$60,888,644</b>

(1) As per Robert B. Pauls, LLC Feasibility Study  
 Source: Robert B. Pauls, LLC, computations by MVS

Stroock & Stroock & Lavan, LLP  
 October 24, 2007  
 Page 7

MVS EXHIBIT B  
 DEVELOPMENT COST SUMMARY

	Robert B. Pauls "as of right"	Robert B. Pauls "as of right" REVISED	MVS "as of right"	Robert B. Pauls as Proposed with Variance	MVS as proposed with Variance
Gross Sales Revenues (per square foot)	\$38,960,535 \$1,135	\$38,960,535 \$1,135	\$38,960,535 \$2,000	\$89,986,955 \$1,285	\$68,674,000 \$2,000
Land Value	\$27,959,793	\$13,716,841	\$13,716,841	\$27,959,793	\$27,959,793
Base Construction Cost	20,910,272	20,910,272	20,910,272	32,773,397	32,773,397
Estimated Soft Costs	9,307,941	7,558,219	9,341,027	16,935,235	18,360,166
Special Costs	0	0	0	0	0
<b>Estimated Total Development Costs</b>	<b>\$58,178,006</b>	<b>\$42,185,332</b>	<b>\$43,968,140</b>	<b>\$77,668,425</b>	<b>\$79,093,356</b>
Estimated Construction Loan Amount	\$41,539,555	\$29,433,046	29,433,046	\$51,623,211	\$51,623,211
<b>Estimated Soft Costs</b>					
Architectural & Engineering Fees	\$1,045,514	\$1,045,514	1,045,514	\$1,638,670	\$1,638,670
Construction Management	627,308	627,308	627,308	983,202	983,202
Inspections, Borings & Surveys	25,000	25,000	25,000	25,000	25,000
Developer's Legal Fees	100,000	100,000	100,000	75,000	75,000
Permits & Approvals	20,000	20,000	20,000	50,000	50,000
Accounting	10,000	10,000	10,000	10,000	10,000
Real Property Tax	0	0	0	0	0
Insurance	418,205	418,205	418,205	655,468	655,468
Appraisal Fees	30,000	30,000	30,000	30,000	30,000
Title Insurance	95,063	95,063	95,063	95,063	95,063
Transfer Tax	681,809	0	0	1,574,772	0
Construction Loan Interest	3,427,013	2,428,226	2,428,226	5,807,611	5,807,611
Construction Lender's Fees	415,396	346,271	346,271	516,232	516,232
Construction Lender's Legal Fees	50,000	50,000	50,000	50,000	50,000
Bank Inspector's Engineer	25,000	25,000	25,000	25,000	25,000
Residential Brokerage	2,337,632	2,337,632	4,120,440	5,399,217	8,398,920
<b>Total Estimated Soft Costs</b>	<b>\$9,307,940</b>	<b>\$7,558,219</b>	<b>\$9,341,027</b>	<b>\$16,935,235</b>	<b>\$18,360,166</b>

(1) Note: All estimated soft costs are as per Robert B. Pauls, LLC Feasibility Study except as noted  
 Source: Robert B. Pauls, LLC, computations by MVS

The Feasibility Study reported that the "as of right" development would result in a loss of \$19,217,471 to the project developer, rendering it economically infeasible. Correcting Mr. Pauls' erroneous excess charge of \$14,242,952 for development rights that are not be transferred and eliminating the transfer tax results in a loss of \$3,224,797 as illustrated in the revised schedule. Recognizing that the sales revenues are woefully understated, the project profit jumps to a positive \$24,705,860 when an appropriate average sales price of \$2,000 per square foot for the condominium units is considered. This is illustrated in the MVS "as of right" calculations. Mr. Pauls' reports a project profit of \$16,935,235 for the "as Proposed with Variance" scenario in the Feasibility Study. Correcting and revising those numbers results in a project profit of \$60,888,644.

*Stroock & Stroock & Lavan, LLP*  
*October 24, 2007*  
*Page 8*

Based upon of review and revision of the Feasibility Study we have reached the following conclusions regarding the feasibility of development on the CKJ/Ramaz Site and the report itself.

- The Robert B. Pauls Feasibility Study is critically flawed by poor judgment and erroneous mathematical technique. Accordingly, its conclusions cannot be relied upon.
- Appropriate revision of the Feasibility Study reveals that development of the "as of right" building on the CKJ/Ramaz Site results in a project profit of \$24,705,806. This profit margin equals 36% of the condominium sell-out value of \$68,674,000.
- The land value ascribed by Mr. Pauls may be far lower than what could be achieved in the open market. On page 29 in the Statement in Support, Friedman & Gottbaum, LLP, attorneys for KJ, state that "a 6.3 percent rate of return, which the Feasibility Study determines to be minimally sufficient for consideration as an investment opportunity." Applying a more generous 15.0% return would yield the project developer a profit of \$10,300,000 as per our calculations. The difference between the \$24,705,806 we calculated as project profit and a 15.0% project profit of \$10,300,000 is \$14,405,806. Applying this differential to the CKJ/Ramaz Site value results in a value to CJ of \$28,122,647 (\$13,706,841 plus \$14,405,806).
- Based upon our analysis of the Robert B. Pauls Feasibility Study, we have concluded that the development of the CKJ/Ramaz Site with an "as of right" building is economically feasible and could result in a payment to CJ of as much as \$28,000,000 for development rights above the proposed community use facility envisioned to be constructed on the site while at the same time providing for a \$24,700,000 profit to the project developer.

It has been a pleasure to be of service to you. Please do not hesitate to call with any questions you may have regarding our assumptions, observations or conclusions.

Very truly yours,

**METROPOLITAN VALUATION SERVICES, INC.**



By: Martin B. Levine, MAI  
Chairman  
NY Certification 46000003834

**METROPOLITAN VALUATION SERVICES**  
REAL ESTATE CONSULTING AND APPRAISAL

### **ASSUMPTIONS AND LIMITING CONDITIONS**

This report has been prepared under the following general assumptions and limiting conditions:

1. No opinion is intended to be expressed and no responsibility is assumed for the legal description or for any matters which are legal in nature or require legal expertise or specialized knowledge beyond that of a real estate appraiser.
2. Title to the property is assumed to be good and marketable and the property is assumed to be free and clear of all liens unless otherwise stated. All mortgages, liens and encumbrances have been disregarded unless so specified within this report.
3. The appraiser has made no legal survey nor have we commissioned one to be prepared. Therefore, reference to a sketch, plat, diagram or previous survey appearing in the report is only for the purpose of assisting the reader to visualize the property.
4. The subject property is analyzed as though under responsible ownership and competent management with adequate financial resources to operate the property within market parameters.
5. It is assumed in this analysis that there were no hidden or unapparent conditions of the property, subsoil, or structures, including hazardous waste conditions, which would render it more or less valuable. No responsibility is assumed for such conditions or for engineering which may be required to discover them.
6. Information furnished by others is believed to be reliable. However, no warranty is given for its accuracy. Some information contained within this report may have been provided by the owner of the property, or by persons in the employ of the owner. Neither the consultant nor Metropolitan Valuation Services, Inc. ("MVS") shall be responsible for the accuracy or completeness of such information. Should there be any material error in the information provided to or obtained by the consultant; the results of this report are subject to review and revision.
7. The consultant assumes that no hazardous wastes exist on or in the subject property unless otherwise stated in this report. The existence of hazardous material, which may or may not be present on the property, was not observed by the appraiser. The consultant has no knowledge of the existence of such materials on or in the subject property. The consultant however, is not qualified to detect such substances or detrimental environmental conditions. The consultant has inspected the subject property with the due diligence expected of a professional real estate appraiser. The consultant is not qualified to detect hazardous waste and/or toxic materials. Any comment by the consultants that might suggest the possibility of the presence of such substances should not be taken as confirmation of the presence of hazardous waste and/or toxic materials. Such determination would require investigation by a qualified expert in the field of environmental assessment. The value estimates rendered in this report are predicated upon the assumption that there is no such material on or affecting the property which would cause a diminution in value. No responsibility is assumed by the appraiser for any such conditions, or for any expertise or environmental engineering knowledge required to discover same. The client is urged to retain an expert in this field if so desired.
8. The consultants have inspected the exterior of the subject property with the due diligence expected of a professional real estate appraiser. MVS assumes no responsibility for the soundness the property's structural or mechanical systems and components. We accept no responsibility for considerations requiring expertise in other professional fields. Such considerations include, but are not limited to, soils and seismic stability, civil, mechanical, electrical, structural and other engineering and environmental matters.
9. It is assumed that there is full compliance with all applicable federal, state, and local land use laws and environmental regulations and unless non-compliance is noted, described, and considered herein.
10. The Americans with Disabilities Act (ADA) became effective January 26, 1992. The appraiser has not made a specific compliance survey and/or analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property together with a detailed analysis of the requirements of the ADA could reveal that the property is not in compliance with one or more elements of the ADA. If so, this fact could have a negative effect upon the value of the property. Since the appraiser has no direct evidence relating to this issue, the appraiser did not consider possible noncompliance with the requirements of the ADA in estimating the value of the subject property.
11. It is assumed that all required licenses, consents or other legislative or administrative authority from any local, state or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value estimates contained in this report is based.

*Stroock & Stroock & Lavan, LLP*

*October 24, 2007*

*Page 10*

12. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the consultant, or the firm with which the appraiser is connected) shall be disseminated to the public through advertising, public relations, news, sales, or other media without prior written consent and approval of the appraisers.
13. Unless prior arrangements have been made, the consultant, by reason of this report, is not required to give further consultation or testimony, or to be in attendance in court with reference to the property that is the subject of this report.
14. Unless otherwise noted, this report has not given any specific consideration to the contributory or separate value of any mineral and/or timber rights associated with the subject real estate.
15. Disclosure of the contents of this report is governed by the Bylaws and Regulations of the Appraisal Institute.
16. This report has been made subject to current market terms of financing. The opinions cited herein are valid only as of the date of report. Any changes that take place either within the property or the market subsequent to that date of value can have a significant impact on value.
17. Forecasted income and expenses that may be contained within this report may be based upon lease summaries and operating expense statements provided by the owner or third parties. MVS assumes no responsibility for the authenticity or completeness of such data.
18. This report is intended to be used in its entirety; if not presented in its entirety, the conclusions presented herein may be misleading.
19. This report has been prepared for the exclusive benefit of the addressee (the client), its successors and/or assigns. It may not be used or relied upon by any other party. Any other parties who use or rely upon any information in this report without our written consent do so at their own risk. Any person or entity not authorized by MVS in writing to use or rely this report, agrees to indemnify and hold MVS and its respective shareholders, directors, officers and employees, harmless from and against all damages, expenses, claims and costs, including attorneys fees, incurred in conjunction with defending any claim arising from or in any way connected to the use of, or reliance upon, the report by any such unauthorized person or entity.

#### ***Extraordinary Assumptions***

An extraordinary assumption is defined as an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal or economic characteristics of the subject property or about conditions external to the property, such as market conditions or trends, or the integrity of data used in an analysis.

This report employs no extraordinary assumptions.

#### ***Hypothetical Conditions***

A hypothetical condition is defined as .that which is contrary to what exists, but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property or about conditions external to the property, such as market conditions or trends, or the integrity of data used in an analysis.

This report employs no hypothetical conditions.

*Stroock & Stroock & Lavan, LLP*  
*October 24, 2007*  
*Page 11*

### **CERTIFICATE OF APPRAISAL**

I, Martin B. Levine, MAI certify that to the best of my knowledge and belief that:

The statements of fact contained in this report are true and correct.

The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, unbiased professional analyses, opinions and conclusions.

I have no present or prospective interest in the property that is the subject of this report, and we have no personal interest or bias with respect to the parties involved.

My compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.

My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice and the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.

This appraisal was not prepared in conjunction with a request for a specific value or a value within a given range or predicated upon loan approval.

Martin B. Levine, MAI has made a personal inspection of the exterior of the premises which is the subject of this appraisal. Martin B. Levine, MAI has extensive experience in the appraisal of similar properties.

The Appraisal Institute conducts a program of continuing professional education for its designated members. MAI and RM members who meet minimum standards of this program are awarded periodic education certification. I, Martin B. Levine, MAI am currently certified under the Appraisal Institute's continuing education program.

Martin B. Levine, MAI has been duly certified to transact business as a Real Estate General Appraiser (New York State certification #46000003834).

No one provided significant professional assistance to the person signing this report.

The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

**METROPOLITAN VALUATION SERVICES, INC.**



By: Martin B. Levine, MAI  
Chairman  
For the Firm

**METROPOLITAN VALUATION SERVICES**  
REAL ESTATE CONSULTING AND APPRAISAL

*Stroock & Stroock & Lavan, LLP*  
*October 24, 2007*  
*Page 12*

**MARTIN B. LEVINE, MAI**  
CHAIRMAN - METROPOLITAN VALUATION SERVICES

**MARTIN B. LEVINE** is a co-founder of Metropolitan Valuation Services, Inc. Mr. Levine is primarily responsible for the appraisal of commercial, non-multifamily properties, as well as for the company's quality control, reporting format, staff development and business relationships.

Mr. Levine has more than 32 years of experience in real estate appraisal. During his career Mr. Levine has appraised virtually every property type and performed a vast array of consulting assignments including feasibility and alternative use studies. Mr. Levine's clients include local, regional, national and foreign banks, Wall Street conduits, insurance companies, pension funds, private investors, government agencies and attorneys.

As a former executive vice president of a national valuation and due diligence firm for fourteen years, Mr. Levine oversaw one of the largest staff of professional appraisers in the Metropolitan New York area. Mr. Levine's responsibilities included marketing and professional oversight of five appraisal teams led by specialists in Metropolitan New York commercial and multifamily valuation, hospitality, retail, and New Jersey. Appraisal assignments included trophy office buildings, regional shopping centers, major industrial complexes, large-scale multifamily complexes and hotels. Properties appraised were concentrated in Metropolitan New York, but many clients utilized the firm for their national assignments, including multi-property portfolios.

Previous appraisal experience includes eleven years at The Chase Manhattan Bank, where Mr. Levine managed the largest institutional appraisal staff in New York City and oversaw all appraisals conducted for bank clients doing business in New York. Mr. Levine was also the Director of Real Estate Consulting for Planned Expansion Group, where he managed a small consulting group attached to an architectural and planning concern. Assignments included appraisals, land use and feasibility studies and economic forecasting.

Mr. Levine is a designated member of the Appraisal Institute (MAI) and is certified by the State of New York as a real estate General Appraiser. Mr. Levine received his Bachelor of Architecture and Master of City and Regional Planning degrees from Pratt Institute and has completed numerous courses in finance and real estate. He has served as Chairman of the Admissions Committee of the Metropolitan New York Chapter of the Appraisal Institute, and he has served on the Chapter's Board of Directors. Mr. Levine has been qualified and testified as an expert witness in New York, Brooklyn, Newark, Riverhead and Mineola courts.

**METROPOLITAN VALUATION SERVICES**  
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## community board 7 / manhattan

[MEET CB7](#)[AGENDAS](#)[COMMITTEES](#)[RESOURCES](#)[CONTACT US](#)[CB7 MAP](#)[SEARCH CB7](#)**December 2007 Resolutions****DECEMBER 2007 RESOLUTIONS****Community Board 7/Manhattan****Date: December 4, 2007****Committee of Origin: Land Use****Re: 6-10 West 70<sup>th</sup> Street (Central Park West.)**

The Trustees of Congregation Shearith Israel (CSI) have applied for a series of variances, pursuant to Section 72-21 of the Zoning Resolution, with respect to the construction of a proposed community facility/residential building at 6-10 West 70<sup>th</sup> Street. The proposed building is intended to replace an existing community house, to provide improved circulation for congregants, specifically disabled accessibility, entering and leaving the landmarked synagogue building immediately to the east, and to provide a catering facility capable of serving some 450 guests, space for the synagogue's archives, and five full-floor condominium units.

The proposed structure would not utilize all of the permitted floor area for the site, but would violate other provisions of the zoning resolution: (1) instead of a required setback at a height of 60 feet, the first setback from the street wall would be at 95 feet; (2) the front setbacks would be 12 feet deep rather than a minimum of 15 feet; (3) the rear setback would be 6.67 feet deep instead of a minimum of 10 feet deep; (4) the rear yard would be 20 feet of unbuilt space instead of a minimum of 30 feet; and (5) the height of the building would be 113.7 feet, instead of the 75 feet that is the maximum height under the zoning for most of the proposed building..

The proposed building has received a certificate of appropriateness from the Landmarks Commission, which considered non-zoning, esthetic issues associated with the site's proximity to the landmarked synagogue and its inclusion in the Central Park West Historic District.

Several community based groups, including Landmarks West! and a coalition of residents in nearby buildings have objected to the requested variances on multiple grounds. The Land Use Committee has held a public hearing continued over two sessions.

Section 72-21 requires that a variance application on behalf of a non-profit organization may be granted only upon the making of four findings [\[1\]](#):

1. **Required Finding A:** That there are unique physical conditions, peculiar to and inherent in the zoning lot; that as a result of such unique physical conditions, practical difficulties or unnecessary hardships arise in complying strictly with the zoning resolution; and that the practical difficulties or hardships are not created by strict application of such provisions in the neighborhood in which the zoning lot is located.

CSI does not claim that the zoning lot is irregular in shape. Rather, the A finding is claimed to be met by a combination of unique circumstances: a) the presence of a landmarked synagogue occupying two-thirds of the zoning lot, the alteration of which would assertedly undermine CSI's religious mission; 2) a development site on the remainder of the zoning lot, on which any proposed

structure must be aligned at the streetwall and east elevation with the synagogue building; and 3) dimensions of the zoning lot that preclude development of floor plans for community space required to meet CSI's on-site religious, educational and cultural programmatic needs. CSI also points out that the lot is split between two zoning designations (R10-A and R8-B) in such a way as to make full use of the as-of-right allotted FAR impracticable. CSI's rationale impacts each required variance differently:

- a. Lot coverage and rear yard setbacks: The landmarked synagogue building, which is part of the zoning lot is fully programmed, and not available for classroom and additional office use, nor can it be modified to allow for adequate handicap access and egress. The basement of that building, now used for banquets, is inadequate to the needs of the synagogue; zoning restrictions with respect to lot coverage and the rear yard requirements applicable to the portion of the lot zoned R8B limit the size of the floor plate that could be built on the site without a variance. The synagogue has represented that this limitation makes it impossible to construct adequately-sized and efficient classroom and office space, particularly on the southern portion of the site, and makes it difficult to construct adequate internal circulation in the lower portion of the building. The lot coverage and rear yard zoning restrictions therefore create practical difficulties for CSI in pursuing its programmatic goal.
- b. Height and setbacks: Height and setback variances are not necessary to permit CSI to meet its programmatic goal. While such variances would be necessary to allow CSI to achieve its allowable FAR for the entire zoning lot, this fact alone does not justify a finding of uniqueness of practical difficulties. It is not at all unusual for bulk and other restrictions to prevent full utilization of FAR.

2. Required Finding C: That the variance, if granted, will not alter the essential character of the neighborhood or district in which the zoning lot is located; will not substantially impair the appropriate uses or development of adjacent property; and will not be detrimental to the public welfare.

The proposed building would contain less than half of the permitted FAR for the entire lot. To its east is the synagogue. To its west is an apartment building 95 feet in height. That building was constructed as permitted under previous regulations. The R8-B zoning of the western portion of this site would permit the construction of a building 75 feet in height as of right.

Concerning the "lot coverage" portions of the requested variances, Community Board 7 does not believe that the reduction of the rear yard or rear setbacks or the increase in permitted lot coverage will seriously impact neighboring buildings or alter the character of the neighborhood.

Concerning the requested height and setback variances, the proposed variances would allow a building of 105 feet on the site, with non-conforming setbacks. The scope of the waiver of height and setback restrictions sought by CSI for the R8-B portion of the lot would have a negative visual impact on West 70<sup>th</sup> Street between Columbus Avenue and Central Park West. Such a building is out of character with the mid-block zoning of the historic brownstone block, would overwhelm nearby residences, and would alter the essential character of the neighborhood.

Most importantly, the proposed height and setback variances will substantially impair the use of a portion of the adjacent property. These variances, if granted, would allow a building to abut 18 West 70<sup>th</sup> Street in such a way as to block entirely seven lot line windows in that building. Moreover, the increase in building height from a permitted 75 feet to 105 feet will exacerbate the reduction in light and air enjoyed by residents whose windows face a courtyard on the east side of West 70<sup>th</sup> Street. Community Board 7 believes that it would be an abuse of the variance process to permit one landowner to exceed zoning restrictions at the expense of its neighbors. The blockage of lot line windows and, to a somewhat lesser extent, the reduction of light and air in the courtyard do not constitute mere inconveniences, but, in a very real sense, a taking of property in a way which the zoning resolution was designed to prevent.

3. Required Finding D: That the hardship has not been created by the applicant or its

predecessor.

We have heard no persuasive argument that this finding has not been met. With the benefit of hindsight, CSI might have made more appropriate use of the Central Park West townhouse building to the immediate south of the synagogue, but we do not believe that the failure to have done so constitutes a self-created hardship. Nor are we persuaded that CSI’s programmatic needs could have been adequately addressed in any other way than as proposed.

4. Required Finding E: That the variance requested is the minimum variance necessary to afford relief.

The applicant contends that the relief requested is the minimum needed to meet its programmatic requirements. As noted above, this position appears reasonable with respect to lot coverage and rear-yard variances, but makes little sense with respect to height and setback variances. All of CSI’s programmatic needs are proposed to be met on the lower four floors of the building, well within the permitted height and below the first required setback.

CSI contends that the sale of five residential stories above the community facility space is necessary in order to finance construction of the space it will occupy. We are aware of BSA decisions rejecting use variances where the applicant’s rationale is the need to finance its non-profit activities. CSI claims that these decisions do not apply to variances other than use variances, but we perceive no reasoned distinction.

CSI has chosen to support its economic argument by a series of calculations typically made in connection with the B finding (inability to make a reasonable rate of return), which have no applicability to non-profit organizations. These calculations are claimed to demonstrate that a hypothetical developer of an as-of-right project could not make a reasonable (6%) return. This conclusion holds, if at all, only if one assumes that the applicant is entitled to a reasonable return on the hypothetical value of its land (here claimed to be worth \$17+ million).

Disregarding the value of the land, which CSI already owns, by its own calculations, CSI could raise enough money to construct its community facility by building fewer residential units than it proposes. Thus, even if it were appropriate to finance the community facility space by the construction of residential units, this could be accomplished with a mixed use building far smaller than the proposed building. CSI’s desire to maximize the value of its real estate is an insufficient basis on which to grant a variance, however apt this analysis is for Finding B.

Moreover, in reviewing the economic projections provided by CSI, we note that there is no provision for prospective income from the use of two subgrade floors intended to house, among other things, an all purpose room capable of accommodating 450 people and full kitchen facilities. It is inconceivable that such a facility on the upper west side of Manhattan has zero economic value.

THEREFORE, BE IT RESOLVED THAT Community Board 7/Manhattan **disapproves** the proposal by Congregation Shearith Israel for variances, as follows:

<b>Building Height and Base Height:</b>	<b>38 In favor 0 Against 1 Abstention 0 Present</b>
<b>Front Set Back:</b>	<b>37 In favor 1 Against 1 Abstention 0 Present</b>
<b>Rear Set Back:</b>	<b>38 In favor 0 Against 1 Abstention 0 Present</b>
<b>Rear-yard Incursion in R8B and R10A and Lot Coverage:</b>	<b>21 In favor 13 Against 2 Abstentions 0 Present</b>

**Community Board 7/Manhattan**

**Date: December 4, 2007**

**Committee of Origin: Parks & Preservation**

**Re: 325 West End Avenue (West 76<sup>th</sup> – 77<sup>th</sup> Streets.)**

**Full Board Vote: 16 In favor 14 Against 1 Abstention 2 Present**

**The following facts and concerns were taken in to account in arriving at our conclusions.**

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426 We are anxious to build and to proceed to have this structure to give us this -- to  
427 take care of this problem and obviate it so in the future it will not be something we have  
428 to even discuss. Thank you. If there any questions?

429 CHAIR SRINIVASAN: Any questions? Thank you.

430 MR. NATHAN: Thank you.

431 MR. FRIEDMAN: Thank you, Madam Chair.

432 That really completes the pre-arranged part of our presentation, as we understood  
433 the Board was seeking.

434 I'm not sure if you want to begin the questions now or wait until you've heard  
435 from others, but we are at your service.

436 CHAIR SRINIVASAN: Well, I think there are some  
437 questions we want to discuss right now are issues.

438 I know you went into your presentation with this concept of monetizing air rights.

439 I think the Board is aware that there are institutions that sell their air rights and it  
440 provides a revenue stream.

441 The issue before the Board is whether that constitutes a hardship for a variance.

442 And, I think that we've seen other cases, which include, as you noted, in fact,  
443 where you have a religious institution, an educational institution and then you have a for-  
444 profit aspect to it and we've asked for a financial and we've asked them to be separated  
445 out.

446 So, one of the things that was discussed yesterday in terms of your application,  
447 that you need to make a different case for the residential portion in terms of the height

448 and setback and it's not enough to tell this Board that you need to provide as much  
449 residential as possible because that's going to help fund the congregation.

450 MR. FRIEDMAN: I understand. We can reformat, as you  
451 wish.

452 I think it might be useful to hear and to involve Mr. Freeman in this discussion  
453 since we are talking about financial information.

454 But, I do want to say that the point is not that we believe that needing to sell - -  
455 needing to create residential space in and of itself constitutes a hardship.

456 It's when all other options are foreclosed by unique site conditions and the result  
457 is such that there is only one place that such air rights can be used for residential. I mean,  
458 residential is an as-of-right use. There's no issue of the use involved here.

459 It's really, simply, a matter of being given a small box in which to build.

460 If we fill that space up with community facility space, we probably wouldn't be  
461 having this discussion.

462 But, the fact of the matter is that we hope to persuade the Board that the provision  
463 of a certain amount of income producing space is as integral to the synagogue's program;  
464 as integral to its site conditions and as integral to its ability to move through its problems  
465 with its site as any other aspect of this application.

466 One of the variances - - in addition to that, let me add that two of these variances  
467 had to do not so much with the layout of the residential but with the fact that the  
468 Landmark's Commission was seeking to have the mass centered over the apex of the  
469 synagogue when viewed from 5<sup>th</sup> Avenue.

470 And that massing could not be done in an as-of-right manner.

561 It's indigenous to the footprint of this site but simply runs afoul of the fact that  
562 while we get the floor area through 77-22 as an averaging, we don't get the height and  
563 setback that comes along with that additional floor area.

564 This site is zoned, as you know, split lot but the great percentage of it is R-8 (b),  
565 yet, its as-of-right allowable floor area is not 4 FAR. It's 8.38 FAR under 77-22. And,  
566 yet, we do not get the height and setback allowances that are concomitant with the zoning  
567 providing us as-of-right twice as much floor area as the R-8 (b) height and setback would  
568 ordinarily provide. That, also, can be considered, I think, by the Board a fair grounds - -  
569 fair grounds for a hardship.

570 CHAIR SRINIVASAN: Any questions or comments?

571 COMM. OTTLEY-BROWN: Just a comment back that  
572 it's my opinion that residential use to raise capital funds to correct programmatic  
573 deficiencies is not in and of itself a programmatic need. It may be a resolution to a  
574 problem or a way of financing a resolution to a programmatic need.

575 And, I think if we open the door, here, and allow that argument in, we're going to  
576 have a hard time turning down every other religious institution that wants to place  
577 residential in their backyard in order to finance expansion.

578 I think it's an easier case to make, a clearer case to make, if you draw a distinction  
579 between the issues that you have regarding your community facility and the need for  
580 those waivers and the issues that you have regarding the potential development square  
581 footage that you have for residential and the actual logistical problems of using that space  
582 on that portion of the lot that you're allowed, using the community facility argument only

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NEW YORK  
LAW SCHOOL

## 72-05-BZ &nbsp;



**New York City  
Board of Standards and Appeals**  
40 Rector Street, 9th Floor  
New York, NY 10006  
(212) 788-8500

### 72-05-BZ

APPLICANT – Harold Weinberg, P.E., for Cong. Shomlou by Rabbi Marton Ehrenreich, owner.

SUBJECT – Application March 23, 2005 – Under Z.R.§72-21 to permit the proposed erection of a synagogue and yeshiva, with accessory residences, Use Groups 2 and 4, located in an R6 zoning district, which does not comply with the zoning requirements for floor area ratio, lot coverage, rear yard and open space ratio, is contrary to Z.R. §§24-11, 23-142, 24-36 and 24-12.

PREMISES AFFECTED – 245 **Hooper Street**, north side, 205' east of Marcy Avenue, between Marcy and Harrison Avenues, Block 2201, Lot 61, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Harold Weinberg.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT–

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 17, 2006, acting on Department of Buildings Application No. 3301743344, reads, in pertinent part:

"[The proposed synagogue and yeshiva, with accessory quarters for a rabbi] proposes to provide a rear yard behind 30' and is contrary to Section 24-36 ZR [and] creates non-compliance with respect to lot coverage and is contrary to Sections 24-11 & 24-12 of the Zoning Resolution [and] contrary to Section 24-651, a minimum 20' rear yard is required to ventilate required windows"; and

WHEREAS, this is application for a variance under ZR § 72-21, to permit, on a site within an R6 zoning district, a proposed four story plus cellar synagogue and yeshiva, with an accessory dwelling unit for a rabbi, which does not comply with the applicable rear yard, minimum distance between windows and lot lines, and lot coverage provisions for community facilities, contrary to ZR §§ 24-36, 24-561, 24-11 and 24-12; and

WHEREAS, this application is being prosecuted on behalf of the Congregation Somlou, a non-profit religious entity (hereinafter, the "Synagogue"); and

WHEREAS, the applicant proposes to construct a 45 ft. high building, with a community facility Floor Area Ratio (FAR) of 3.44 (4.8 FAR is allowed), with Use Group ("UG") 4 synagogue space on the first and second floors and in the cellar, a UG 4 accessory rabbi's apartment on the third floor, and a UG 3 yeshiva on the fourth floor, all of which conforms and complies in the subject zoning district; and

WHEREAS, however, at certain heights, the rear yard of the proposed building will not comply with the required 30 ft. depth requirement; likewise, the proposed lot coverage is 89.1%, which exceeds the maximum permitted lot coverage of 65%; and

WHEREAS, additionally, because the rear yard is deficient at certain heights, non-compliance as to the minimum required distance between windows and rear lot line (20 ft. minimum) is also created; and

WHEREAS, the applicant initially proposed to construct a five-story, 4.1 FAR synagogue and yeshiva building, with

eight UG 2 residences, which would have required residential FAR, street wall height, and setback relief in addition to lot coverage and rear yard relief; and

WHEREAS, the Board expressed concern about this proposal, noting that there was no justification for waivers such as FAR and street wall height that arose solely because the application included market rate UG 2 residences; and

WHEREAS, the applicant then reduced the amount of residential units to four, and attempted to convince the Board that the residences could be construed as a UG 3 monastery use; and

WHEREAS, the Board asked the applicant to confirm this purported classification with the Department of Buildings, but the applicant was unable to provide the Board with satisfactory confirmation that DOB would accept such a Use Group designation for the proposed units; and

WHEREAS, the Board also does not find such a classification warranted; and

WHEREAS, thus, the Board encouraged the applicant to propose a reduced scale building, that would not require relief beyond rear yard and lot coverage, and which would include a modest amount of floor area devoted to a single UG 4 accessory unit for a rabbi; and

WHEREAS, the Board also asked the applicant to redesign the proposed building, eliminating an unnecessary courtyard within the building; and

WHEREAS, the applicant subsequently submitted the proposed version of the application, which the Board finds acceptable; and

WHEREAS, a public hearing was held on this application on November 1, 2005, after due notice by publication in *The City Record*, with continued hearings on December 13, 2005, January 31, 2006, and March 28, 2006, and then to decision on May 2, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin, and Commissioner Collins; and

WHEREAS, Community Board 1, Brooklyn, recommends disapproval of the original version of the application, on the basis that the applicant failed to establish unique hardship or institutional need; and

WHEREAS, the subject premises is located on the north side of **Hooper Street**, 205 feet east of Marcy Avenue, and is a vacant and irregular 3,605 sq. ft. interior lot, with 40 ft. of frontage; and

WHEREAS, the applicant states that the site as currently configured is the result of a lot merger between two 20 ft. wide lots, one of which was approximately 80 ft. deep and one of which was approximately 100 ft. deep; as a consequence of the merger, the site's rear lot line is irregular; and

WHEREAS, the applicant states that the approximately 80 ft. deep lot was previously occupied by a building, which was demolished in the 1990s due to its unsafe condition; and

WHEREAS, the applicant states that the lot merger was consummated in order to provide the Synagogue with sufficient lot width to meet its programmatic needs; and

WHEREAS, the configuration of the building will be as follows: the first floor will be fully built out to the rear lot line; the second floor will be built to a depth of 80 ft. (an approximately 10 ft. and approximately 30 ft. rear yard waiver is required); and the third and fourth floors will be built to a depth of 70 ft. (an approximately 10 ft. rear yard waiver is required); and

WHEREAS, the applicant states that the following are the programmatic needs of the Synagogue: (1) increased space to accommodate worship spaces, including separate spaces for men and women, and special events; (2) sufficient classroom and accessory space for the yeshiva; and (3) a rabbi's apartment with sufficient space for meetings and consultations; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the site is irregular in depth, with one portion of the site extending 80 ft. from the front lot line, and one portion extending 100 ft. from the front lot line; and (2) with the application of the thirty ft. rear yard requirement, the irregular depth would create a building with an irregular floor plate (50 ft. for a 20 ft. width, and then 70 ft. for another 20 ft. in width); and

WHEREAS, the applicant claims that the irregularity and the resulting floor plates compromises the ability of the Synagogue to develop the site with an efficient building that would accommodate the stated programmatic needs; and

WHEREAS, the applicant argues that the requested rear yard and window ventilation waivers would enable the Synagogue to develop the site with a building with a uniform rear wall line at a depth of 70 ft.; and

WHEREAS, the applicant states that in addition to facilitating a uniform floor plate that could better accommodate the programmatic needs, the waivers also allow the Synagogue to avoid the increased construction costs that would arise from compliance with the rear yard provision; and

WHEREAS, the Board notes that the lot coverage waiver is the result of the rear yard waiver, which allows an increased building footprint over the site in excess of what is permitted; and

WHEREAS, the Board observes that unlike the earlier proposals, the specific waivers requested in the current version have a nexus to the lot's unusual configuration and the needs of the Synagogue; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate and in conjunction with the programmatic needs of the Synagogue, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Synagogue is a not-for-profit organization and

the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the rear yard waivers will not affect the neighbor to the rear because that site has an approximately 100 ft. rear yard; and

WHEREAS, the applicant also states that the part of the building that will be constructed within the required rear yard will not be visible from the street; and

WHEREAS, the Board observes that aside from the rear yard waiver and related lot coverage waiver, the proposed bulk of the building and the uses therein are as of right; and

WHEREAS, the Board further observes that the Synagogue occupies the first two floors of the building, and that community facilities are allowed to build into the rear yard to height of 23 ft. so long as there is only one story; and

WHEREAS, since the proposed building will be 25 ft. high at the roof of the second floor, the rear yard waivers as to the second and third floors do not represent a significant deviation from a bulk form permitted as of right; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the lot merger does not represent a self-created hardship because the building on the 80 ft. deep lot was in an unsafe condition, and that even if the lots had not been merged, no development that would have met the programmatic needs of the Synagogue could have occurred on either of the two pre-existing narrow lots; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, after accepting guidance from the Board as to the design of the building, the uses therein, and the necessary waivers, the applicant amended the proposal to the current version, which the Board finds to be the minimum necessary to afford the Synagogue the relief needed to meet its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA109K, dated August 7, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R6 zoning district, a proposed four story plus cellar synagogue and yeshiva, with an accessory dwelling unit for a rabbi, which does not comply with the applicable rear yard and lot coverage provisions for community facilities, contrary to ZR §§ 24-36, 24-561, 24-11 and 24-12, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 25, 2006" -(4) sheets; and "Received March 31, 2006" -(1) sheet and *on further condition*:

THAT the third floor rabbi's apartment shall only be occupied by a rabbi of the congregation occupying this building;

THAT any change in ownership, control or ownership of the building shall require the prior approval of the Board;

THAT the third floor rabbi's apartment shall be the only space within the building with sleeping/living accommodations;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT the following shall be the parameters of the proposed building: four stories plus a cellar, a community facility and total FAR of 3.44; lot coverage of 89.1 percent; a street wall and total height of 45 ft; and rear yards as illustrated

on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/ other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/ configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 2, 2006.

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**290-05-BZ**

APPLICANT – Stuart A. Klein, for Yeshiva Imrei Chaim Viznitz, owner.

SUBJECT – Application September 19, 2005 and updated April 19, 2006 – Variance pursuant to Z.R. §72-21 to permit a catering hall (Use Group 9) accessory to a synagogue and yeshiva (Use Groups 4 and 3). The site is located in an R5 zoning district.

PREMISES AFFECTED – 1824 53<sup>rd</sup> Street, south side, 127.95' east of the intersection of 53<sup>rd</sup> and 18<sup>th</sup> Avenue, Block 5480, Lot 14, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

APPEARANCES –

For Applicant: Stuart A. Klein.

**ACTION OF THE BOARD** – Application denied.

THE VOTE TO GRANT –

Affirmative: .....0

Negative: Chair Srinivasan, Vice Chair Collins and Commissioner Ottley-Brown.....3

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 28, 2006, acting on Department of Buildings Application No. 301984342, reads in pertinent part:

"Proposed Catering Use (UG 9) is not permitted in an R5 Zone"; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an R5 zoning district, the use of the cellar of a three-story building for a Use Group ("UG") 9 catering establishment, which is contrary to ZR § 22-00; and

WHEREAS, the appeal was brought on behalf of Yeshiva Imrei Chaim Viznitz, a not for profit religious institution (hereinafter "Applicant"), the owner of the building at the subject premises; and

WHEREAS, a public hearing was held on this application on June 13, 2006 after due notice by publication in *The City Record*; and

WHEREAS, a continued hearing was held on August 15, 2006, on which date the hearing was closed and decision was set for September 19, 2006; and

WHEREAS, at the request of Applicant, the decision date was deferred to September 26, 2006; and

WHEREAS, the Board reopened the hearing on this date, but Applicant's counsel was unable to attend; and

WHEREAS, decision was deferred to October 24, 2006; and

WHEREAS, the matter was again reopened on October 24, and a continued hearing date was set for November 21, 2006; and

WHEREAS, a continued hearing was held on November 21, and a decision was set for January 9, 2007; and

WHEREAS, the site was inspected by a committee of the Board; and

WHEREAS, the Board also notes that at the request of Applicant, the Board's counsel and staff met with Applicant during the hearing process to provide suggestions on how to approach the application; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application, on condition that the catering use at the premises close by 1 am and that Applicant consult with elected officials and the Community Board to

address traffic concerns on the subject block; and  
WHEREAS, certain neighbors appeared and made submissions in opposition to this application; and  
WHEREAS, many members of the broader Vignitz community appeared in support of the application; and  
WHEREAS, in addition, Applicant provided letters from other individuals supporting the application; and  
WHEREAS, the Board notes that while Applicant claimed to have the support of certain elected officials, no elected official appeared at hearing and no letters of support from elected officials were submitted; and  
WHEREAS, the subject premises is located in an R5 residential zoning district on 53<sup>rd</sup> Street between 18<sup>th</sup> and 19<sup>th</sup> Avenues and is currently improved upon with a three-story with cellar building (the "Building"); and  
WHEREAS, the Building is across the street from and adjacent to numerous two-story semi-detached dwellings; and  
WHEREAS, Certificate of Occupancy No. 300131122, issued for the Building on May 26, 1999 (the "CO"), lists the following uses: (i) UG 4 assembly hall and kitchen and UG 9 catering use in the cellar; (ii) UG 4 synagogue and UG 3 classrooms on the first and second floors; and (iii) UG 3 classrooms on the third floor; and  
WHEREAS, this CO was the subject of a 2005 application by DOB, who sought to revoke or modify it pursuant to City Charter §§ 666.6(a) and 645(b)(3)(e), on the basis that the CO allows conditions at the referenced premises that are contrary to the Zoning Resolution and the Administrative Code; and  
WHEREAS, DOB argued that the catering use did not possess lawful non-conforming UG 9 status and was therefore illegal; and  
WHEREAS, specifically, DOB suggested that the prior UG 16 use on which the status of the UG 9 designation was predicated had been discontinued for more than two years and that the prior building housing this use had been demolished; DOB contended that this had not been revealed by the permit applicant; and  
WHEREAS, under either circumstance, DOB alleged that there is no legal basis for a UG 9 catering establishment designation on the CO for the cellar of the Building; and  
WHEREAS, a public hearing was held on DOB's application on May 17, 2005, but before the next continued hearing, Applicant obtained a court order, dated July 8, 2005, enjoining the Board from acting on the application and from conducting further proceedings on it; and  
WHEREAS, this court order also directs Applicant to file a variance application at the Board; and  
WHEREAS, months later, Applicant filed the instant variance application; and  
WHEREAS, Applicant also filed an appeal of a DOB determination that the UG 9 catering use in the cellar was not a UG 3 school or UG 4 synagogue accessory use, under BSA Cal. No. 60-06-A; and  
WHEREAS, since the two matters were filed at the same time and both concerned the use of the Building's cellar for commercial catering purposes, the Board, with the consent of all parties, heard the cases together and the record is the same; and  
WHEREAS, Applicant states that the Building currently contains a UG 3 religious school for approximately 625 boys (the "School"), a UG 4 synagogue space (the "Synagogue"), and a UG 9 catering establishment that serves the needs of the broader orthodox Jewish community in the vicinity of the site (the "Catering Establishment"); and  
WHEREAS, the Synagogue is located on parts of the first and second floor mezzanine; and  
WHEREAS, specifically, as illustrated on the plans for the first floor submitted by Applicant, stamped May 5, 2006, the first floor Synagogue space is for men, and adjoins a classroom with a removable partition; it is approximately 1,900 sq. ft.; and  
WHEREAS, the second floor Synagogue space is for women, and is 1,380 sq. ft.; and  
WHEREAS, Applicant states that the Synagogue is attended by approximately 300 people on the Sabbath, and approximately 100 people and approximately 400 students on weekdays; and  
WHEREAS, the remainder of the first and second floors, and the entirety of the third floor, appear to be occupied by the School's classrooms and other School-related spaces; and  
WHEREAS, Applicant claims that the School serves many economically disadvantaged children, and that 85 percent of the children receive government-sponsored school lunch money; and  
WHEREAS, both the School and Synagogue are permitted uses in the subject R5 zoning district; and  
WHEREAS, the Catering Establishment, which is not a permitted use in the subject R5 zoning district, was listed on the CO on the alleged basis that it is a lawful non-conforming use, as discussed above; and  
WHEREAS, the Catering Establishment is located in the cellar of the Building; the same cellar space is also apparently used for the School's cafeteria and assembly hall; and  
WHEREAS, the Catering Establishment occupies approximately 18,000 sq. ft. of floor space in the cellar, with a primary event space, two adjoining lobbies and bathroom areas (one for men and one for women), as well as two kitchens; and  
WHEREAS, the record indicates that the Catering Establishment has separate management and staff from the School and separate entrances with awnings reflecting the business name, that the food for events is made on the premises, that a guard is provided from 6 pm to 12 pm to assist with guest parking, and that waiters and busboys are hired on an "as needed" basis; and  
WHEREAS, Applicant alleges that most events are held from approximately 6 pm to 12 am, and that 90 percent of the guests leave the Building at 11:30 pm; and  
WHEREAS, Applicant states that ceremonies (held under Chuppahs, which look like canopies) related to the catered

events are often conducted outside; and

WHEREAS, Applicant alleges that attendance at each event ranges between 340 and 400 people, though evidence submitted by Applicant indicates that some events are scheduled to have at least 500 guests; and

WHEREAS, Applicant provided information revealing that 166 events were held in 2004, and 154 events were held in 2005; and

WHEREAS, Applicant states that the catered events are offered at reduced rates relative to other catering establishments, with weddings costing approximately 25 dollars per plate; and

WHEREAS, members of the broader Viznitz community stated that the reduced rates were attractive to members of the larger orthodox and Hasidic Jewish community in Brooklyn; and

WHEREAS, these same members stated that the Catering Establishment serves the needs of this community; and

WHEREAS, the Catering Establishment has a license from the Department of Consumer Affairs for a catering establishment; and

WHEREAS, the Board notes that the Catering Establishment advertises in the Verizon Yellow Pages (both on-line and in print) under the listing "Banquet Facilities" as "Ohr Hachaim Ladies" and "Ohr Hachaim Men", with the address and phone number listed; and

WHEREAS, Applicant does not address the Verizon Yellow Pages advertisement, but in its last submission alleges that it does not pay for similar advertising that apparently runs in the Borough Park Community Yellow Pages, does not desire this advertising, and has informed the publisher of the Borough Park Community Yellow Pages to stop running the advertisements; and

WHEREAS, the applicant, in sum and substance, represents that the finding set forth at ZR § 72-21(a) may be satisfied in the case of a applicant that is a non-profit religious entity solely with evidence that that the requested waiver is necessary because of a programmatic need of the religious entity; and

WHEREAS, ZR § 72-21(a) requires that the Board find that the applicant has submitted substantial evidence of unique physical conditions related to the site that create practical difficulties or unnecessary hardship in using the site in strict conformance with the applicable use regulation; and

WHEREAS, Applicant claims that the Catering Establishment satisfies a religious duty on the part of the broader Viznitz community and also provides a funding stream for the costs of operating the Synagogue and School that cannot be offset by tuition and donations alone; and

WHEREAS, Applicant claims that the Viznitz community totals about 6,500 members, but the Board notes that there is nothing in the record specifying where these 6,500 members reside; and

WHEREAS, moreover, the Board notes that there is nothing in the record to suggest that all 6,500 members of the Viznitz community cited by Applicant are regular members of the Synagogue or students or family members of students of the School; and

WHEREAS, in fact, the Board observes that the Synagogue attendance figures and School enrollment figures provided by Applicant would belie any such claim; and

WHEREAS, nevertheless, Applicant claims that there is a direct relationship based upon programmatic need between the School and the Synagogue and the Catering Establishment; and

WHEREAS, the Board recognizes that many variances it has granted in the past to religious or educational institutions have been predicated, in part, on the programmatic needs of the institution; and

WHEREAS, further, the Board does not question the sincerity of Applicant's belief that the provision of space for weddings, receptions, and other life events in general fulfills a religious need, nor the veracity of the contention that the revenue raised from the catering function is used in part for School and Synagogue purposes; and

WHEREAS, however, the Board does not consider either of the two alleged programmatic needs to be the equivalent of the type of programmatic need that can justify a use variance at this location; and

WHEREAS, first, as to the question of fulfillment of religious duty, while Applicant has claimed that in the Jewish faith there is a custom of incorporating wedding festivities as part of the marriage ritual, no explanation has been given as to how such a custom justifies the location of a UG 9 commercial catering establishment in a zoning district where it is not allowed; and

WHEREAS, the Board observes that Applicant has not made any credible claim that the lawful existence or operation of the School or the Synagogue depends on the existence of a UG 9 catering establishment within the Building; and

WHEREAS, the Board further observes that both the Synagogue and the School are as of right uses, and no claim is made that the Building's square footage is somehow incapable of accommodating the current congregation and enrollment absent the presence of the Catering Establishment; and

WHEREAS, the Board notes that Applicant has not claimed that the Synagogue is used during all catered events; and

WHEREAS, to the contrary, Applicant indicated during the hearing process that most of the celebrants prefer to have the ceremony outside in a Chuppah; and

WHEREAS, specifically, in its July 11, 2006 submission, Applicant notes that the usual schedule for a catered event features a Chuppah, which is held outdoors when possible; and

WHEREAS, further, Applicant has not provided any credible evidence that the School has any operational integration whatsoever with the Catering Establishment; and

WHEREAS, most importantly, the Board notes that it is not the School or Synagogue use that is generating the alleged programmatic need; rather, as conceded on multiple occasions by Applicant, the need appears to arise from

general demand for low-cost catered events from the broader Hasidic and orthodox Jewish community in Brooklyn, regardless of any connection to the School or Synagogue; and

WHEREAS, a letter from another caterer, submitted to the Board by Applicant, confirms that the alleged programmatic need has nothing to do with the School or the Synagogue; this letter specifically states "[i]f the [Catering Establishment] would cease to function, it would cause much hardship to the Boro Park Community"; and

WHEREAS, the Board has never granted a variance based on such a broad-based need that is non-specific to the religious institution making the application and occupying the site; instead, the Board looks for a clear nexus between the requested variance and the specific programmatic needs of the institution on the site; and

WHEREAS, the Board observes that none of the cases cited by Applicant in its submission require the Board to grant the requested variance; and

WHEREAS, nor do any of the Board's prior decisions cited by Applicant in its initial submission; and

WHEREAS, three of these prior decisions were for bulk variances, needed by congregations in order to create a building with sufficient square footage to accommodate increased attendance; none of them were commercial use variances for a catering establishment; and

WHEREAS, the record also contains mention of two other occasions on which the Board has considered an application for a commercial catering variance: (1) BSA Cal. No. 194-03-BZ, concerning 739 East New York Avenue, Brooklyn, decided on December 14, 2004; and (2) BSA Cal. No. 136-96-BZ, concerning 129 Elmwood Avenue, Brooklyn, decided on June 3, 1997; and

WHEREAS, first, the Board notes that generally prior variances are not viewed as precedent for future applications; and

WHEREAS, instead, because each variance is based upon special circumstances relating to the site for which it is proposed, the past grant or denial of variances for other properties in the area does not mandate similar action on the part of the Board; and

WHEREAS, second, even assuming that past grants do function as binding precedent, the Board finds that both of these matters are distinguishable from the instant matter, and support the Board's rejection of it; and

WHEREAS, in the East New York Avenue matter, the applicant, a religious school, originally attempted to argue that the variance could be predicated on the alleged programmatic need of creation of a revenue stream for the school; and

WHEREAS, however, the Board rejected this argument, and instructed the applicant to approach the case as if it were a for-profit applicant, since the proposed use was UG 9 commercial catering that would serve the larger community; and

WHEREAS, thus, the applicant was required to establish that the site presented a unique physical condition and to submit a feasibility study in order to establish hardship; and

WHEREAS, as reflected in the resolution for that matter, the applicant was able to meet these requirements and the variance was granted; and

WHEREAS, as conceded by Applicant at the August 15, 2006 hearing, there is no such uniqueness present at the subject site or as to the Building; and

WHEREAS, accordingly, Applicant did not even attempt to make a similar argument in this proceeding, but instead attempted to argue the application based solely on programmatic needs; and

WHEREAS, in the Elmwood Avenue matter, the applicant, another religious school, applied to the Board for multiple bulk waivers related to the proposed construction of a religious school on a site split by M1-1, R3-1 and R5 zoning district boundaries; and

WHEREAS, the applicant applied for a use variance for the school in the M1-1 zoning district, and also for various height, setback and rear yard requirements; and

WHEREAS, as initially argued by the applicant, the site suffered a hardship due to irregular shape, substandard depth, grade condition and adjacency to a railroad cut; and

WHEREAS, a catering hall was also proposed, though initially the applicant did not request a use variance for it; and

WHEREAS, instead, the catering hall was proposed to be located entirely within the M-1 zoning district, on an as of right basis; and

WHEREAS, however, during the course of the hearing process, the applicant revealed that the kitchen for the catering facility (which was also the kitchen for the school) was partially within the residential zone; and

WHEREAS, accordingly, a use variance for this small portion of the catering facility was required; and

WHEREAS, the Board asked that the applicant attempt to isolate the catering use to the M1-1 zoning district through the erection of a wall in the cellar; and

WHEREAS, the applicant explained that the site was split by a district boundary, and it was this unique physical condition that caused the need for the small use waiver for the catering establishment; and

WHEREAS, the Board observes that it was only the presence of the district boundary line that caused the need for a minor use variance for the kitchen; and

WHEREAS, the resolution for this matter also cites to the irregular shape and narrow depth of the site as the cause of the practical difficulties and unnecessary hardship; and

WHEREAS, as noted above, the subject site suffers no unique physical hardship, a fact conceded by Applicant; and

WHEREAS, in sum, neither of the two prior commercial catering variance applications require the Board to grant the

requested variance here, since they were predicated on the site's actual physical uniqueness; and

WHEREAS, in addition to the guidance that these two cases provide, the Board notes that when it grants applications from religious and educational institutions for variances based upon programmatic need, it routinely places conditions in said grants to prohibit commercial catering within the schools or places of worship; and

WHEREAS, the applicants in such cases accept this condition without question, and agree to make only accessory use of the spaces within the buildings; rarely if ever do applicants argue, as has Applicant here, that unrestricted UG 9 commercial catering is a programmatic need; and

WHEREAS, the second claimed programmatic need is that income from the Catering Establishment is purportedly used to support the School and Synagogue and that the School and Synagogue would close without this income; and

WHEREAS, the Board again disagrees that this is the type of programmatic need that can be properly considered sufficient justification for the requested use variance; and

WHEREAS, while the Board recognizes that the Applicant believes that the School and Synagogue are important to the broader Jewish community in Brooklyn, it is not required on this basis to grant a use variance for a commercial use on the same site as the School and Synagogue; and

WHEREAS, were it to adopt Applicant's position and accept income-generation as a legitimate programmatic need sufficient to sustain a variance, then any religious institution could ask the Board for a commercial use variance in order to fund its schools, worship spaces, or other legitimate accessory uses; and

WHEREAS, again, none of the case law or prior Board determinations cited by Applicant stand for this proposition; and

WHEREAS, the Board observes, in fact, that the East New York Avenue case is a repudiation of Applicant's unfounded contention; and

WHEREAS, further, the Board observes that such a theory, if accepted, would subvert the intent of the ZR's distinction between community facility uses, which are allowed in residential districts, from commercial uses, which are not; and

WHEREAS, the Board notes that UG 9 catering establishments are only permitted in commercial zoning districts, and, pursuant to ZR § 32-18, is the type of commercial use that provides "primarily . . . business and other services that (1) serve a large area and are, therefore, appropriate in secondary, major or central commercial shopping areas, and (2) are also appropriate in local service districts, since these are typically located on the periphery of major secondary centers"; and

WHEREAS, the Board further observes that the goals of the commercial regulations in the ZR include the protection of nearby residences against congestion that can result from commercial uses; and

WHEREAS, Appellant has offered no justification for its blanket assertion that a primary commercial use should be permitted in a residential district anytime a religious institution desires to generate revenue by engaging in commercial activity; and

WHEREAS, based on the above, the Board finds that Applicant has failed to establish that it has a programmatic need that requires the requested variance; and

WHEREAS, in a later submission, Applicant also argued that it was entitled to the proposed use variance based upon its good faith reliance on the DOB-issued permit that precipitated the issuance of the CO; and

WHEREAS, Applicant claims that it spent "millions" of dollars constructing the Building and then "hundreds of thousands" more subsequent to the issuance of the CO; and

WHEREAS, the record is devoid of any evidence of these expenditures or the precise amount, but even if such had been established, the Board notes that the Building includes the School and the Synagogue, as well as a cellar that can lawfully be used as the School's cafeteria and for other accessory uses; and

WHEREAS, thus, all such expenditures would not be wasted; and

WHEREAS, additionally, since Applicant has had the benefit of the Catering Establishment since the CO was issued, consideration of the cumulative financial gain over the last seven years would be a relevant consideration; Applicant did not engage in this analysis however; and

WHEREAS, even had expenditures been proven and discussed in any comprehensible manner by Applicant, the Board observes that the good faith reliance doctrine is not a categorical substitute for uniqueness or hardship; and

WHEREAS, rather, expenditure made in good faith reliance upon a permit is merely one of the factors that may be considered by the Board, and physical uniqueness is still relevant; and

WHEREAS, as noted above, Applicant concedes that the site and the Building present no unique physical features; instead, the site is regular in size and shape, and the Building is recently constructed and not obsolete as a school or synagogue building; and

WHEREAS, again, the site itself does not present any hardship; and

WHEREAS, additionally, Applicant made no attempt to establish that the purported reliance was made in good faith; and

WHEREAS, the Board notes that it is Applicant's responsibility to convince the Board that the permit and CO were obtained with all relevant facts being disclosed to DOB by the owner of the premises and the filing professional who obtains the permit; and

WHEREAS, here, the record contains no evidence that this responsibility was met; and

WHEREAS, in sum, the Board notes that Applicant failed to present any evidence as to alleged good faith reliance

that would allow it to fully determine this claim, notwithstanding the fact that the Board stood ready to consider such evidence; and

WHEREAS, finally, Applicant suggests that the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), a federal law, requires that the Board issue the requested variance; and

WHEREAS, RLUIPA provides that no government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution is in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest; and

WHEREAS, first, the Board observes that whether the Board grants the variance or not, the School and the Synagogue are permitted uses under the R5 zoning district regulations and may remain legally on the site; and

WHEREAS, further, as expressed in the resolution for the companion appeal, Applicant is free to hold, and charge money for, events in the cellar to the extent that they are accessory to the School or Synagogue; and

WHEREAS, there is no evidence that would support the conclusion that the Board, in denying this variance application, is imposing a substantial burden on or even interfering with the exercise of religious freedom or religious practices of the School or the Synagogue; and

WHEREAS, Applicant's contention that the School and the Synagogue would not be able to cover expenses without the on-site Catering Establishment, even if proved to be a fact, does not lead to a contrary conclusion; and

WHEREAS, additionally, it is difficult for the Board to understand why RLUIPA should function to support the granting of a commercial use variance in order to support a revenue stream for a religious entity that is unable to support its non-commercial uses through traditional means; and

WHEREAS, accordingly, the Board declines to apply RLUIPA in the novel way that Applicant suggests; and

WHEREAS, further, the Board notes that the court in Episcopal Student Foundation vs. City of Ann Arbor, 341 FSupp2d 691 (ED Michigan 2004) held that that zoning regulations that imposed financial burdens on a church do not constitute substantial burdens under RLUIPA; and

WHEREAS, thus, even if the Catering Establishment is required to be relocated at a cost, or if the activities conducted there are limited to events that are accessory, with a resulting decrease in revenue, this is not a substantial burden under RLUIPA; and

WHEREAS, in addition, the Episcopal Student Foundation court held that a zoning ordinance does not infringe on the free exercise of religion where religious activity can occur elsewhere in the municipality; and

WHEREAS, thus, even if the operation of the Catering Establishment can properly be characterized as religious in nature (despite its status under the ZR as a commercial use), since it is allowed in commercial zoning districts that are mapped liberally throughout the City, Applicant's alleged free exercise rights are not compromised; and

WHEREAS, in sum, the Board finds that all of Applicant's arguments as to why the finding set forth at ZR § 72-21(a) is met or why the request for the variance is otherwise justified are without merit; and

WHEREAS, because Applicant has failed to provide substantial evidence in support of this finding or persuade the Board as to why the finding should be overlooked, consideration of the remaining findings is unnecessary; and

WHEREAS, however, merely because this application was fundamentally flawed and poorly presented does not mean that the Board is blind to the concerns of Applicant; and

WHEREAS, the Board again observes that Applicant can use the cellar legally for accessory purposes; and

WHEREAS, further, if Applicant determines that it must engage in commercial catering activities, there is no reason why these activities may not occur on a site that is commercially zoned; the income that is generated can still be used to support the School and Synagogue; and

WHEREAS, the Board finds that these alternative measures will enable Applicant to pursue its proposed catering use in full compliance with the law without incurring excessive additional costs.

*Therefore it is Resolved* that the decision of the decision of the Brooklyn Borough Commissioner, dated February 28, 2006, acting on Department of Buildings Application No. 301984342 is upheld and this variance application is denied.

Adopted by the Board of Standards and Appeals, January 9, 2007.

[Back to top](#)

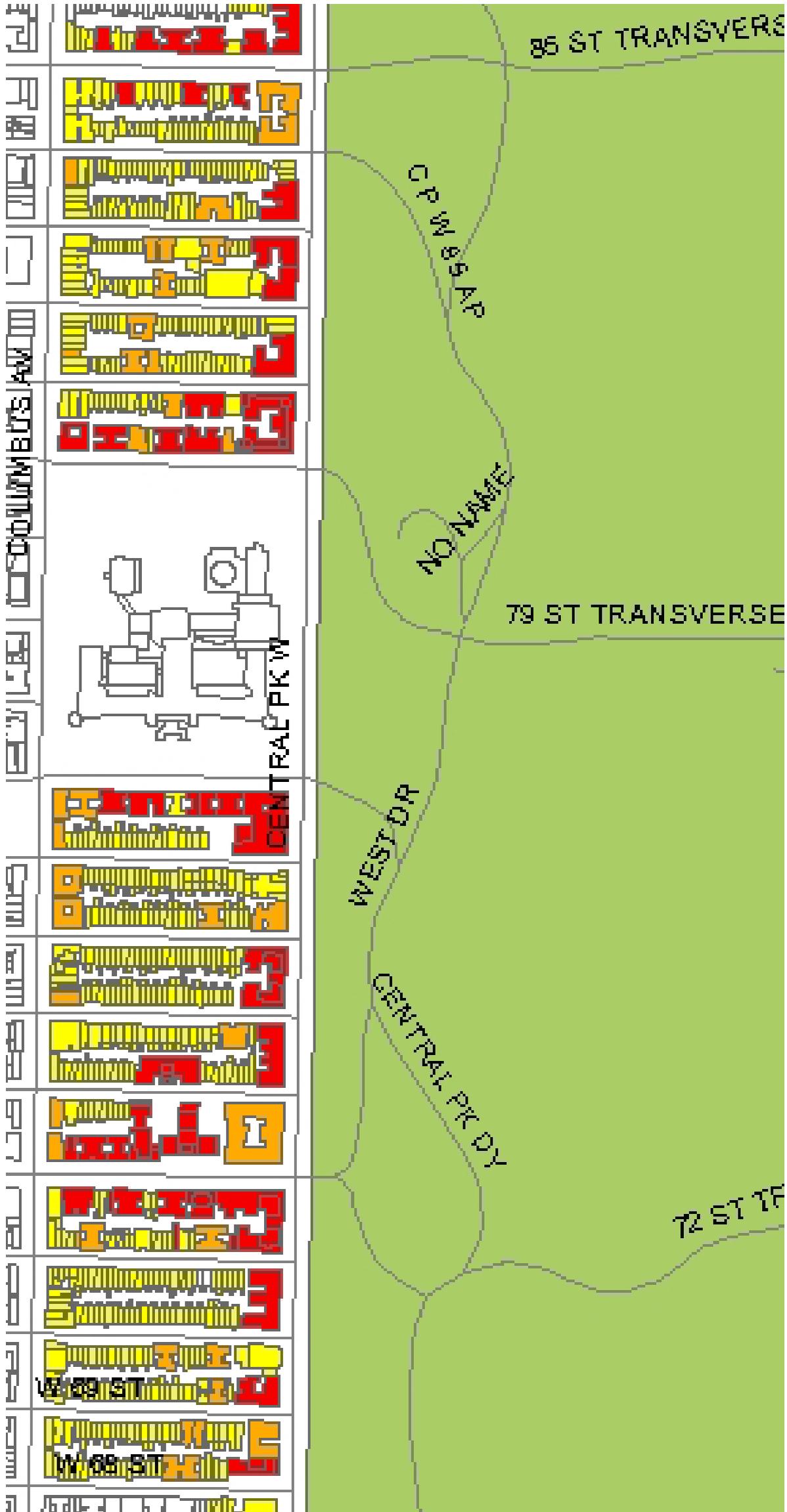
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### Map of Existing Building Bulk, W. 66<sup>th</sup> and 86<sup>th</sup> Streets

Yellow = 1 to 6 stories

Orange = 7 to 12 stories

Red = 13 to 36 stories



Opposition Exhibit Y

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Opposition Exhibit Y

Images of W. 70<sup>th</sup> Street between Central Park West and Columbus Avenue



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**Unanalyzed Impacts on West 70<sup>th</sup> Street**



**Shadows**

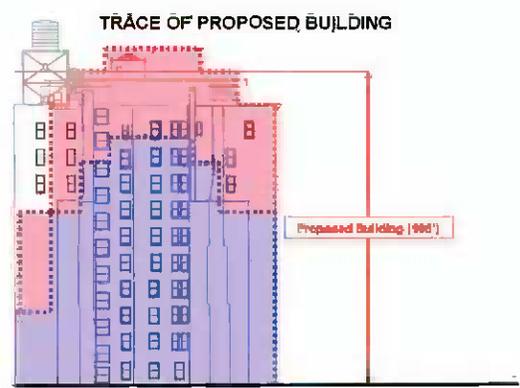
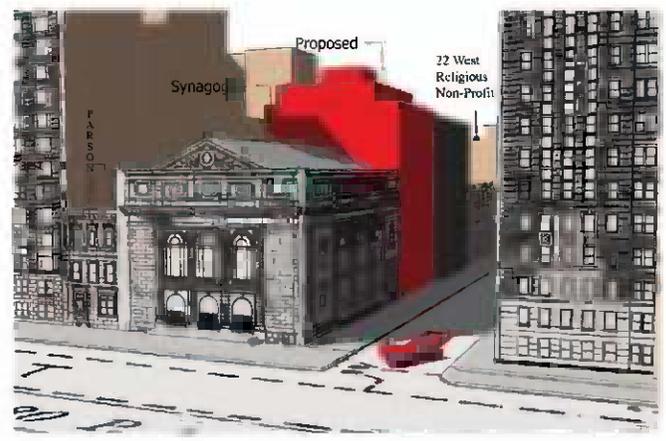
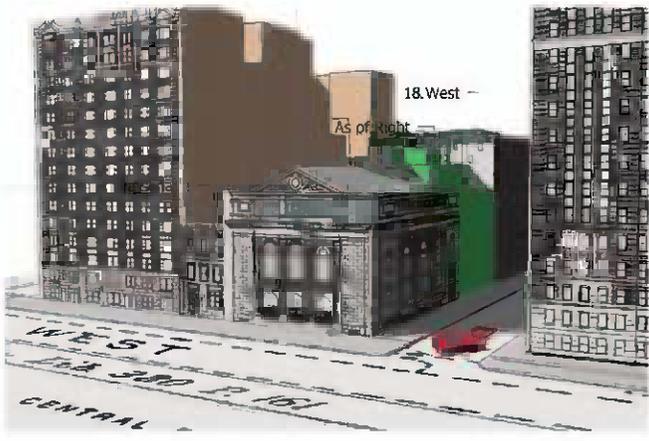
**Traffic Congestion**



**Garbage After  
Banquet Hall Events**

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JAMES A. GREER, II  
 25 CENTRAL PARK WEST, #4B  
 NEW YORK, NY 10023

January 28, 2008

The Honorable Meenakshi Srinivasan  
 Chair  
 NYC Board of Standards and Appeals  
 40 Rector Street - 9th Floor  
 New York, New York 10006

Re: Congregation Shearith Israel ("CSI")  
 6-10 West 70th Street/99 Central Park West  
74-07-BZ /CEOR No.: 07BSA071M

Dear Madam Chair:

I have prepared the attached calendar showing the combined weekly schedules for the CSI education program and the Beit Rabban classes. In preparing this document I relied on the following sources:

1. Letter from Friedman & Gotbaum LLP dated December 28, 2007 to The Honorable Meenakshi Srinivasan;
2. Drawings PROG P-9, PROG P-10, and PROG P-11, all prepared by Platt Byard Dovell White and dated 12.26.07 and submitted by CSI as part of Exhibit D to the Friedman & Gotbaum LLP letter dated December 28, 2007;
3. Extracts from the Beit Rabban School website [www.beitrabban.org](http://www.beitrabban.org), copies of which are also attached to this letter.
4. Extract from Friedman & Gotbaum LLP Statement IN SUPPORT OF CERTAIN VARIANCES FROM THE PROVISIONS OF THE NEW YORK CITY ZONING RESOLUTION CONGREGATION SHEARITH ISRAEL dated October 24, 2007 (page 11)
5. Letter dated January 28, 2008, from Craig Morrison, AIA, to Hon. Meenakshi Srinivasan, Chairperson New York City Board of Standards and Appeals ("Morrison Letter"), separately filed by LMW.

This calendar shows that each weekday the Beit Rabban School classes will likely occupy some, if not all, the six second floor classrooms, all six of the third floor classrooms and, possibly, some or all of the three fourth floor classrooms in any building CSI is permitted to construct, throughout the entire school day, except for the period from 3:30 PM to 6 PM on Thursdays, when CSI's Hebrew School meets. The Beit Rabban GAN (prekindergarten) class hours will overlap the meeting times of CSI's proposed expansion of its Toddler Program and will share the 2<sup>nd</sup> floor space in the proposed building. See note on Drawing PROG P-9. (Copy Attached) The Beit Rabban K-5<sup>th</sup> grade classes will occupy the 3<sup>rd</sup> floor of the proposed building but will not overlap any of CSI's educational uses of that space. See note on Drawing PROG P-10. (Copy Attached)

According to the Beit Rabban website, during its 2007-2008 school year the total number of Beit Rabban students is reportedly between 103 and 119. (According to CSI's counsel, the Beit Rabban School may have an enrollment of up to 125 students, for which CSI must provide classroom and office space. See Friedman &

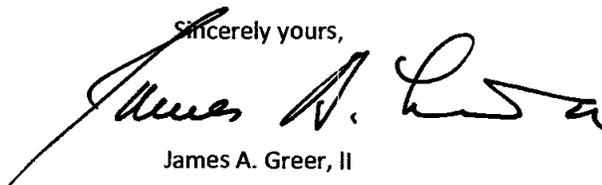
Gotbaum LLP Statement IN SUPPORT OF CERTAIN VARIANCES FROM THE PROVISIONS OF THE NEW YORK CITY ZONING RESOLUTION CONGREGATION SHEARITH ISRAEL dated October 24, 2007, at p. 11. )

From the foregoing it is clear that:

1. CSI's only significant need for additional classroom space relates to the proposed 60-child Toddler Program, the detailed plans for which were revealed for the first time in the letter from its Counsel dated December 28, 2007.
2. There is no evidence that the weekday Toddler Program described in the December 28, 2007, letter from CSI's Counsel has any connection with CSI's mission. However, if it does, that need could undoubtedly be satisfied by the six 2<sup>nd</sup> floor classrooms in an A-O-R Scheme A building.
3. Drawing PROG P-9, which shows the six 2<sup>nd</sup> floor classrooms in the Proposed, non-compliant building contains the following: "NOTE: BEIT RABBAN AND CSI WILL SHARE CLASSROOMS AS MUTUAL PROGRAMS REQUIRE".
4. Drawing PROG P-10, which shows the six 3<sup>rd</sup> floor classrooms in the Proposed, non-compliant building contains the following: "NOTE: BEIT RABBAN WILL OCCUPY CLASSROOMS, 8AM-5PM, MON-FRI (EXCEPT THURS AFTERNOON)".
5. Even assuming CSI can provide evidence that the expanded 60-child, five day per week Toddler Program is related to its mission. CSI's claimed need for additional classroom space is driven entirely by its need to accommodate the 117-125 students in the Beit Rabban School and is unrelated to its own program.
6. In any event, Craig Morrison, AIA, LMW's architectural expert, has opined that the 15 classrooms on the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> floors of an A-O-R Scheme A building "will accommodate 232 students at the code-mandated allotment of 20 square foot per occupant." Morrison Letter, paragraph 12.
7. The only CSI adult education program that meets on weekdays during school hours is a 20-person "Poetry Group" that meets from 3PM to 4 PM on Wednesdays. Even assuming that all 4<sup>th</sup> floor classrooms are occupied by BEIT Rabban during that hour, there is ample space elsewhere in CSI's property for that meeting. Morrison Letter, paragraph 11.
8. In light of the foregoing, all CSI's needs for classroom space can be met in an A-O-R Scheme A building.

I am submitting this letter and its attachments in support of the Statement in Opposition being filed by Landmark West in this case, which I support.

Sincerely yours,



James A. Greer, II

Atts: Google calendar; Beit Rabban School website extracts; Drawings PROG P-9, PROG P-10.

CALLER NAME P 142

Sun [redacted] - Wed [redacted]

Sunday

Monday

Tuesday

Wednesday

8:30am - CSI Toddler Program - Proposed (60 children)

11:30am - Beit Rabban-Mitzvah (4th/5th grades) 180s

8am	Jewish Law & Thought (40-80 As) 8:45am - 9:15am	Beit Rabban 8:30am - 9:00am	Beit Rabba... (preK)... childr... 8:30am - 9:00am	Beit Rabban-GAN (preK)(25-32 children) 8:30am - 12:00am	Beit Rabban 8:30am - 12:00am	Beit Rabban-GAN (preK)(25-32 children) 8:30am - 12:00am	Beit Rabban 8:30am - 12:00am
10am	Jewish Law & Thought (5-15 As) 9:45am - 10:15am	Hebrew School (35-80 Cs) 9:30am - 10:30am					
11am							
12pm			test 12pm				
1pm							
2pm							
3pm						Poetry Group (20 As) 3pm - 4pm	
4pm							
5pm							
5:30pm		Talmud (25As) 1/1month 5:30pm - 6pm					

# CALNDAR - P242

Thursday ~~Friday~~ Saturday

CSI Toddler Program - Proposed (40 ...)

9am	Bel. Rabban-Mitzan... grades) 15cs 8:30am - 9:30pm	Bel. Rabban-GAN (preK)(20-32 children) 8:30am - 12:30pm	Bel. Rabbat... grades) 15cs 8:30am - ...	Bel. Rabban... grade) 30-38cs/... grades-6... 25 8:30am - ...	Bel. Rabban... (preK)(20... children) 8:30am - ...	Youth Group (10-35 Cs) 8am - 12pm	CSI Toddler Program - current & proposed (20/30 children) 8am - 12pm
10am							
11am							
12pm							
1pm							
2pm							
3pm							
4pm	6 pm CSI Hebrew School (5-8 yrs) 3:30pm - 6pm					Bible Study (20-30 Cs) 3:30pm - 4:30pm	
5pm							
6pm							

Friedman &amp; Godman, LLC

12/28/07

Worship in the Jewish faith extends beyond the four walls of the sanctuaries in which services are performed. At CSI, most of these continuing rituals of faith can only occur in the sub-grade Levy Auditorium (2,726 sf), which shares all of the accessibility hardships attributed in the preceding paragraph to the Synagogues. The activities of faith and community include:

1. Kiddush: *Kiddush* festivities, which follow each Saturday and holiday service, provide both a social and religious forum for the congregants. Most, but not all, who attend the services attend *Kiddush*, where prayers and blessings are bestowed in accordance with Jewish ritual. The flow of congregants from the sanctuary to the location of the *Kiddush* is as important and custom-driven event as how one leaves a church. Under existing physical conditions, many who would like to attend *Kiddush* are unable to descend the existing stairs that link the two sanctuaries to the Levy Auditorium.
2. Life Cycle Events: Approximately two to three scheduled Bar or Bat Mitzvahs, baby namings and bris (circumcisions) per month are held in the Synagogue's Main Sanctuary. The ritual meal and communal gathering that follows each can only be held in the Levy Auditorium. Many of these events generate attendance in excess of the Levy Auditorium's limit of 150 occupants, causing CSI to turn away many of its own members for moments in life that should be centered on Synagogue life. The New Building's larger multi-function room will permit CSI to accommodate congregants (and potential future members) whose family members and guests exceed 150 persons for a particular life cycle event.
3. Weddings: Approximately eight to ten weddings per year are held in the Main Sanctuary but as many as an additional twelve to fifteen weddings are unable to take place due to CSI's occupancy and facility limitations, and schedule conflicts with the above life cycle events. The New Building's multi-function room will accommodate a modern the modern Orthodox wedding without the celebration party being forced to move offsite as now typically occurs.

Woven through all of these religious events is the traditional Jewish connection with food. The *Kiddush*, weddings and other life cycle events require the availability of working kitchens, in the Orthodox Jewish experience two working kitchens as meat and dairy must be kept separate. The facilities available adjacent to the Levy Auditorium are in such poor condition that approximately 95 percent of weddings and life cycle events are now catered with food brought in for warming rather than cooking because the existing dairy kitchen is only partially functional. The New Building's proposed meat and dairy kitchens will enable both the wedding ceremony and the post-ceremony gathering to be held at CSI.

The Proposed Multi-Function Room will minimally address the interferences with religious observance and custom. It will be located in the sub-cellar of the New Building. It will be easily and fully accessible from the sidewalk on in. Its size (6,432 sf) and new kitchens will enable a greater number of congregants and their families to more fully

partake in the Jewish traditions which are integral to their faith. The multi-function room will be the site of after-service components of Sabbath *Kiddush*, Bar and Bat Mitzvahs, baby namings and other Life Cycle events. As indicated in the October 25, 2007 submission to the Board, CSI will not lease the multi-function room to outside catering entities. CSI's bylaws specify that all ceremonies must be conducted under the auspices of CSI's rabbi and with CSI's Sephardic customs, all but assuring the celebrants are CSI congregants.

In addition to the additional religious and life cycle programming the new multi-function room will allow, there are two other communal/family programs which are currently severely compromised by the limitations in the Levy Auditorium (in addition to the accessibility limitations discussed elsewhere):

1. Family Education: The Congregation-wide program currently brings up to 50 children and 100 adults together. Due to the scheduling difficulties associated with the Levy Auditorium, the classes need to be arbitrarily subdivided into Saturday sessions from 12:30 to 2 PM following *Kiddush* and Sunday mornings. The New Building will enable CSI to schedule the entire Family Education Program on Saturday afternoons following services and *Kiddush* in the multi-function room.
2. Music, Film and Lecture Series: Approximately three to eight evening events are scheduled each month in the Levy Auditorium with attendance ranging from relatively few to 200 persons. The New Building will allow for fluidity: smaller events can take place in the adult fourth floor classrooms and larger events can take place in the multi-function room.

#### B. CSI Hebrew School

CSI's Hebrew School currently serves approximately 35 to 50 students between grades one and ten under significantly substandard learning conditions. Sunday classes are held in the existing Community House from 9:30AM to Noon in four 3<sup>rd</sup> floor classrooms and a single 4<sup>th</sup> floor classroom. Weekday classes are held from 3:30 to 6:00PM in these same classrooms.

Conflicts with the Hebrew School Program. Due to the age disparity among the children and age-specific learning requirements, classes need to be broken into seven separate learning groups. These groups exceed the number of available classrooms in the existing Community House. Older children cannot share rooms dedicated to younger students because the lower grade rooms have smaller tables and chairs which are unsuitable for the older students. Moving furniture from room to room has been tried but is counter-productive and disruptive to classes in session. Combining grade levels within a classroom or relocating to either existing auditorium has proven detrimental to classroom order and destroys the intimate learning environment every school seeks. These same classrooms are occupied by Beit Rabban most weekdays from approximately 8:00AM to 5PM. It must be noted that while men's and ladies' bathrooms are located on

the third floor, no facilities are located on the fourth floor and none are appropriate for the younger children.

Future Hebrew School Programming Needs. The New Building will provide appropriately sized and barrier-free classrooms will be dedicated to specific grade levels. The third floor provides individual classrooms for first through third grade children; fourth through fifth grade children; eighth grade children; and ninth through tenth grade children. Two classrooms for sixth through seventh grade children are also provided on this floor. In contrast to the current rationing of too few classrooms, flexible scheduling will permit the Adult Education Program, Hebrew School and private study sessions to co-exist in the three 4<sup>th</sup> floor classrooms as need arises and as the respective programs expand and grow. Programmatic and accessibility issues that face current and future students are resolved in the New Building: (1) all classrooms are accessible by elevator and/or stairs; (2) seven large, well-ventilated classrooms will allow for more focused learning and social interaction; and (3) bathroom facilities for boys and girls are located on both the third and fourth floor.

Ongoing Supplemental Tutoring for Children. Approximately 20 boys and girls now meet individually with the Cantor for private lessons in preparation for Bar and Bat Mitzvah. These learning sessions take place in the Cantor's study. The students also participate in ongoing supplemental tutoring and voice training, which is available on Sunday mornings, every afternoon and on weekends (daytime or evenings). Due to program deficiencies with respect to the availability of smaller, private study areas, one-on-one tutoring often occurs in shared settings, which compromises learning due to distractions and noise. The New Building's additional classrooms will provide the necessary facilities for one-on-one study.

### C. Adult Education

Adult education is a mainstay for any religious community and CSI's inability to provide an adult educational setting for congregants from ages 19 to 90 is an indisputable hardship. In line with CSI's mission, the Adult Education program also includes a social action component, which is dedicated to facilitating outreach and providing assistance to members and non-members alike. Under the umbrella of the Social Action Justice League, various CSI sub-groups pay visits and deliver food to homebound elderly, mourners and new mothers within the community. The social action programs are also hindered by the existing Community House deficiencies, to the detriment of the entire West Side community it serves.

Adult education currently takes place in the Synagogue's first floor Elias Meeting Room (the "Elias Room," approximately 775 sf) and serves as the only social and cultural activity for many of CSI's most senior members. To reach the Elias Room, one must enter the existing Community House, walk up a flight of stairs into the main Synagogue building and pass through the Small Synagogue, which is often also in use at the same time. This pathway is extremely challenging for some and impossible for others (seniors and non-seniors alike), denying participation in the adult education program

entirely due to the physical constraints of entering and passing through the two buildings. Currently, the following adult education classes occur in the Elias Room:

1. Sundays                      Courses in Jewish Thought & Law  
8:40-9:40AM; 40-50 adults  
9:45-11AM; 5-15 adults
2. Monday                      Courses in Jewish Law & Lore (Talmud)  
7:30-9:00PM; 17 adults (once/month)
3. Wednesday                Poetry Group  
3:00-4:00PM; 15-20 adults
4. Thursdays                Meditations  
11:00AM-Noon; 10-20 adults
5. Saturdays                  Bible Class (following Saturday service)  
1.25 hrs; 20-50 adults

Conflicts with Adult Education Programming. The Elias Room is also the only room available for meetings by CSI's Board of Trustees; CSI's Sisterhood Board of Trustees and other CSI-affiliated organizations. Cumulatively, difficulties arise because the Elias Room is the only appropriately sized and furnished setting for adult group activities other than worship, which results in overbooking and scheduling conflicts. At other times, it is inappropriate for a respective gathering's size (either too many or too few attendees), particularly with respect to the Adult Education Program and Social Action Justice League for which attendance is very high. On high capacity days (*i.e.*, Saturday and Sunday) when services/programs/classes occur simultaneously, shifting activities from the Elias Room to the existing Community House is not a viable option. The second floor classrooms have desks and chairs suitable for Early Childhood/Toddler events rather than adult programs and the Saturday Youth Group (see below) occupies the entire third floor on Saturdays with children divided by age into the four existing classrooms. The proposed New Building will permit relocation of the Adult Education Program to upper level classrooms while making the Elias Room more available for smaller meetings and conferences.

Future Adult Education Programming Needs. New and expanded adult programs are necessary, all of which project increased member participation based on the current size and demographics of the CSI congregation and community. CSI's Rabbi has indicated that he would like to offer concurrent adult education classes (*e.g.*, Beginners' Judaism, Hebrew Learning and Prayer, Jewish Law and Philosophy, Talmud and Bible). Current attendance, for example, has amounted to as many as 50 students participating in Jewish Thought and Law classes. Past reliance on the Elias Room as the focal point for adult education has basically allowed one class at a time to be scheduled there. Neither the Levy Auditorium nor the existing Community House Auditorium are appropriate spaces for smaller classes. With increased adult classroom availability and scheduling

flexibility, more adults will be able to participate, for example, in an expanded Jewish Thought and Law program, as well as avail themselves of private study sessions. While it is difficult to estimate the projected increase in member participation, the Rabbi has further indicated that the members will be polled to see which additional nights are preferable for specific study programs and classes will be scheduled accordingly in appropriately sized rooms within the New Building. The Social Action Justice League (and its sub-groups) will be able to schedule regular meetings in the New Building rather than gathering in private homes as is now required.

#### **D. The Toddler Program**

CSI's toddler program takes place in the existing Community House lower level auditorium, an open space serviced by stairs down from the door. The stairs are extremely difficult to negotiate for toddlers, most of whom have to be carried up and down by caregivers with other children in tow, limiting drop-off and pick-up to a narrow mezzanine-like foyer packed with strollers at the top of the stairs. There is no natural light or air in this sub-grade space. Storage space for the program is wherever there is unused space in the Synagogue's lobby. There are no adjacent bathrooms. The children must utilize an adult bathroom at the Synagogue's cellar level.

CSI's Toddler Program is open to all in the community and enjoys a diverse and multicultural membership. It currently operates three mornings each week (Monday, Wednesday and Saturday from 9:00AM to Noon) with 20 children, ages 2-4, in attendance. The program is over-subscribed.

Conflicts with the Toddler Program. The entranceway used for the Toddler Program is the main entrance used by all building visitors. Because it is crammed with baby strollers and at designated times those dropping off and picking up children, there is a considerable conflict in the immediate egress and entrance. There is also an inherent security conflict as the attention of staff and caregivers on the children negotiating the stairs means less attention is being given to other children in strollers immediately inside or outside the doors. All schools and daycare programs must provide a safe environment for entering and leaving their buildings, and at the moment the situation for the Toddlers is far from ideal. Finally, the Toddlers must use the Synagogue's lavatories, which bring them into contact with other visitors and users of the facilities.

Future Toddler Programming Needs. The proposed New Building's design would enable CSI to offer daycare to a greater number of families within the surrounding community, for more hours per day and more days per week. Approximately 60 toddlers (a 66% increase) would be able to attend on Mondays through Thursdays from 8AM to 6PM and on Fridays from 8AM to 4PM. Both the programmatic and accessibility issues that now face these very young children are resolved in the New Building: (1) the second floor toddler classes would be accessible by elevator (or stairs) with stroller storage located at designated storage area; 2) six large individual classrooms would allow the children to be grouped for age-appropriate play and more focused learning; (3) the smaller groupings would allow for a more conducive rest/nap period associated with full

or half day programs essential for small children; and (4) bathroom facilities for boys and girls would be located in the classrooms.

#### IV. Neighborhood Impacts

##### A. Traffic

Although the proposed plans would theoretically allow for larger events in the New Building multi-function room (up to a maximum occupancy of 360), attendance numbers will not create an adverse situation. CSI's Application makes it clear that it considers its inability to serve as the site for its Congregant's (and no others') significant ceremonies and events a hardship in fulfilling its mission as a house of worship. However, neither the events it hosts nor the addition of the five residential units comprise circumstances requiring mitigation as neither generates impacts under the CEQR methodology.

Adverse conditions are further unlikely to occur because as the Board notes few houses of worship are so well suited to be accessed by mass transit. There are numerous subway and bus lines within CSI's vicinity. The entrance to the Subway Station serving the B and C trains is located adjacent to the Synagogue at the corner of Central Park West and West 70<sup>th</sup> Street and mere yards from its entrance. The Nos. 1, 2 and 3 trains stop at Broadway and West 72<sup>nd</sup> Street. Bus service on Central Park West, West 72<sup>nd</sup> Street, Amsterdam and Columbus Avenues, and Broadway provide additional access to mass transit. The occasional horse and buggy is also available in this unique transit cornucopia. Car and/or taxi drop-offs occur both along Central Park West in front of the Synagogue and along West 70<sup>th</sup> Street in front of the existing Community House. The Orthodox proscription against driving to worship on Sabbath and the significant holidays assures traffic congestion will be all but non-existent for the most consistently high-volume days.

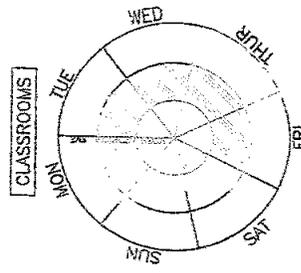
##### B. Trash Removal

CSI is sensitive to concerns raised regarding trash removal following the larger weddings and life cycle events at the Synagogue. Two alternatives for trash removal are being considered by CSI: (1) garbage bags will be "hold-stored" in the New Building's enlarged cellar level trash room; and/or (2) CSI will contract with a private carter for morning removal of garbage following each event. These alternatives will enable CSI to manage the post-function environment in a manner that provides the least disruption, physically and visually, along the West 70<sup>th</sup> Street block front.

##### C. Precedents - The Other Alleged Development Sites

The Chair requested that we research the prevalence of other sites owned by nonprofits as sites for similar expansions and, if located, distinguish these sites from the Application. We have identified those sites relevant to the Chair's request to be those fronting on Central Park West that are within or partially within the R10A district





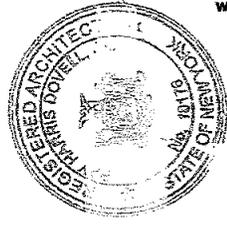
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CHECKED BY: J. WHITE

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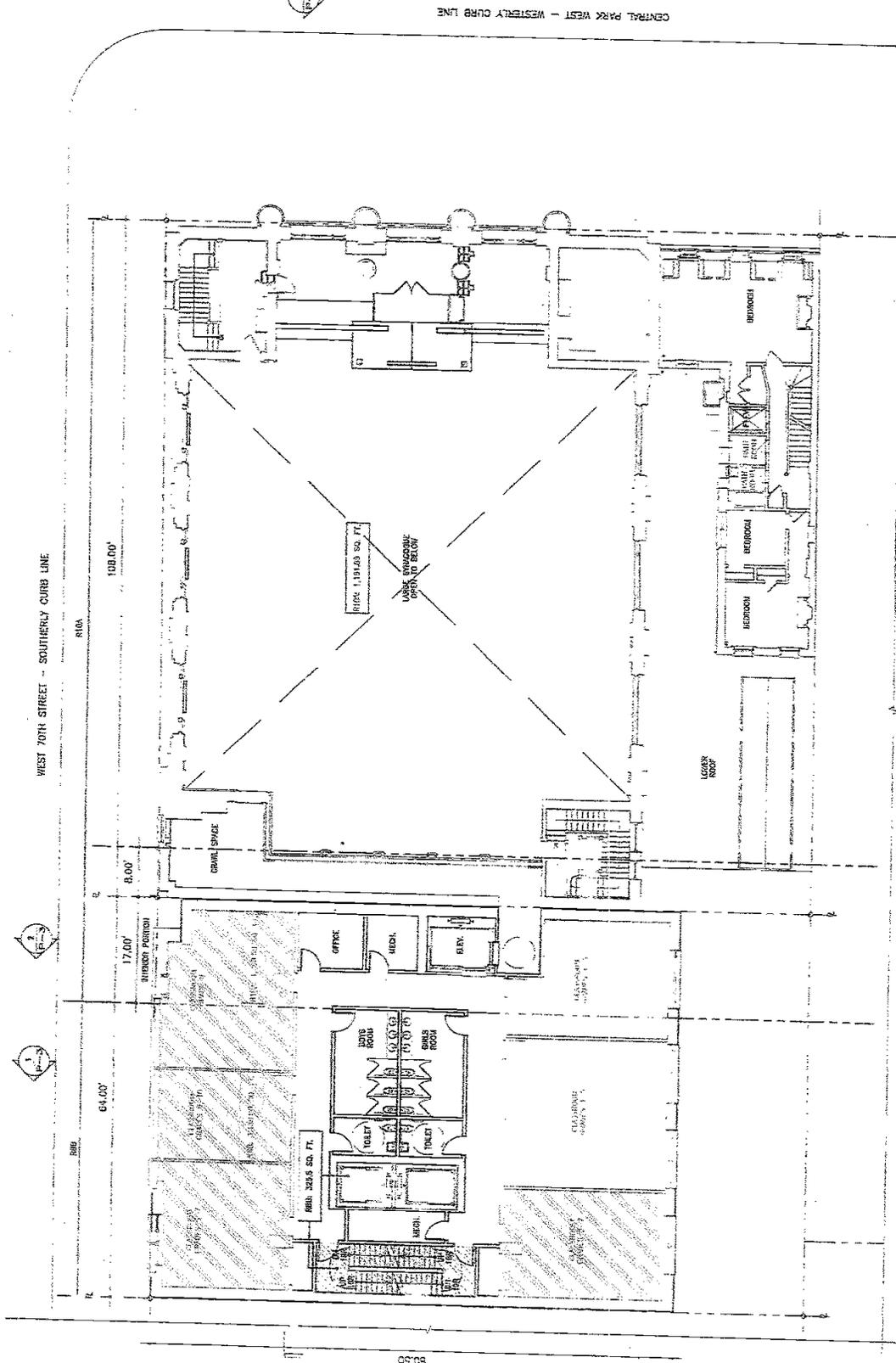
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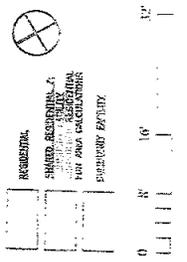


COMMUNITY FACILITY/RESIDENTIAL  
THIRD FLOOR  
PROPOSED

CONGREGATION  
SHEARITH ISRAEL

6 TO WEST 70TH STREET  
NEW YORK, NY

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1 PLAN  
THIRD FLOOR

SCALE: 1/8" = 1'-0"

ROOMS SHOWN AS SHADING ARE DISCONTINUOUSLY OCCUPIED WITH  
A 24 HOUR OCCUPANCY. THE SHADING IS INTENDED TO BE APPROXIMATE TO  
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IN THE MATTER OF:

LANDMARKS PRESERVATION COMMISSION HEARING

PUBLIC MEETING 8W 70<sup>th</sup> STREET

-----X

March 14, 2006

HELD AT: 1 Centre Street, 9th Floor  
New York, NY

TRANSCRIBER: SARITA VIALES

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## PROCEEDINGS

27

building that it's replacing will not  
[unintelligible] will not be a detriment to  
[inaudible].

MALE VOICE 1: At no point did I leave  
unaddressed the Roberta [inaudible]  
statement. Roberta is in Tokyo I believe.  
[Inaudible].

MALE VOICE 5: Yeah..

MALE VOICE 1: [Inaudible] 14 thousand  
odd miles away, wanted to have a statement  
read.

MALE VOICE 5: So, this is from Roberta  
Gratz [phonetic]. "This project has come a  
very long way from the time it would have so  
dramatically exceeded the height limits of  
the Historic District, calling, causing  
historic districts all over the city to be in  
jeopardy. I thank the synagogue and its  
architects for the responsiveness so far to  
the requests of the commission, and for  
exhibiting respect for the historic fabric of  
the neighborhood. Clearly, this is an  
enormous improvement, and will still add  
generously to the already generous space that

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## PROCEEDINGS

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the synagogue enjoys."

"Given the distance the project has come, I wish I, I wish I could enthusiastically endorse the current plan. In fact, I was looking forward to doing so for any number of reasons. Shearith Israel is such a significant landmark in the history of New York City, and in the history of Sephardic Jews in America. And I have a personal attachment to this synagogue, since both my daughters were barmitzvahed there years ago. But there is one remaining knotty problem to this proposal. The so called penthouse, even at one story is actually an extra floor with modest setbacks."

"According to the Buildings Department, a penthouse does count in the height of a building if it occupies less than a third of the floor area of the roof. This penthouse is 28/70 feet or 64% of the roof area of 44/80 square feet. Thus, the penthouse would need to be 14/93 feet to legally qualify as a penthouse. The question then is does the Landmarks Commission have a different

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## PROCEEDINGS

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definition for penthouse than the Buildings Department? If so, what is it? Is it the top floor of any building as long as it has setbacks? To date, there is a standing penthouse definition that this particular proposal does not meet."

"Should landmarks establish a new one for current and future use to be applied here first, I might be persuaded to accept that new definition and vote approval of the project as currently configured. Short of that occurrence, I regretfully vote no."

MALE VOICE 1: Okay. Counselor, as you know, the procedure here is, this is a public meeting. And no public testimony allowed.

MR. MARK LEBOW: I promise not to testify only to argue.

MALE VOICE 2: If the no argument [unintelligible].

MALE VOICE 1: The hearing is already open because the applicant—but if you could summar—if you would make an incredibly brief statement, I'm going to allow you to do that, I'm being advised [inaudible] not to. But

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RE: \_\_\_\_\_ DATE TAKEN: \_\_\_\_\_

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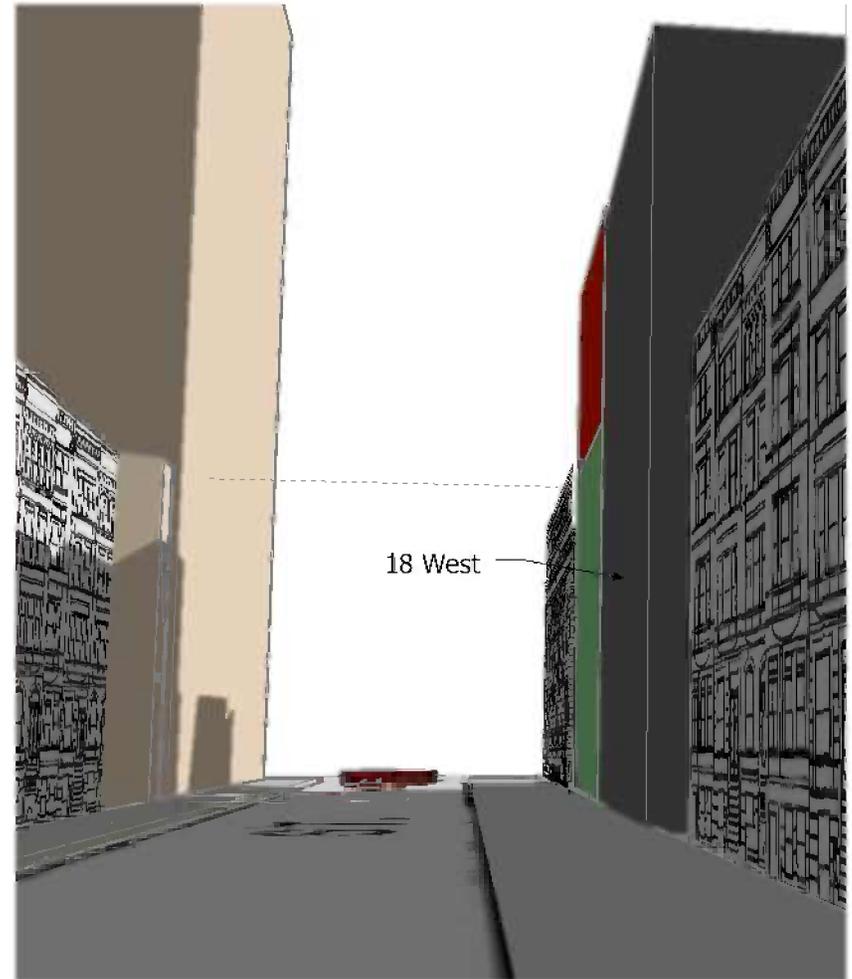
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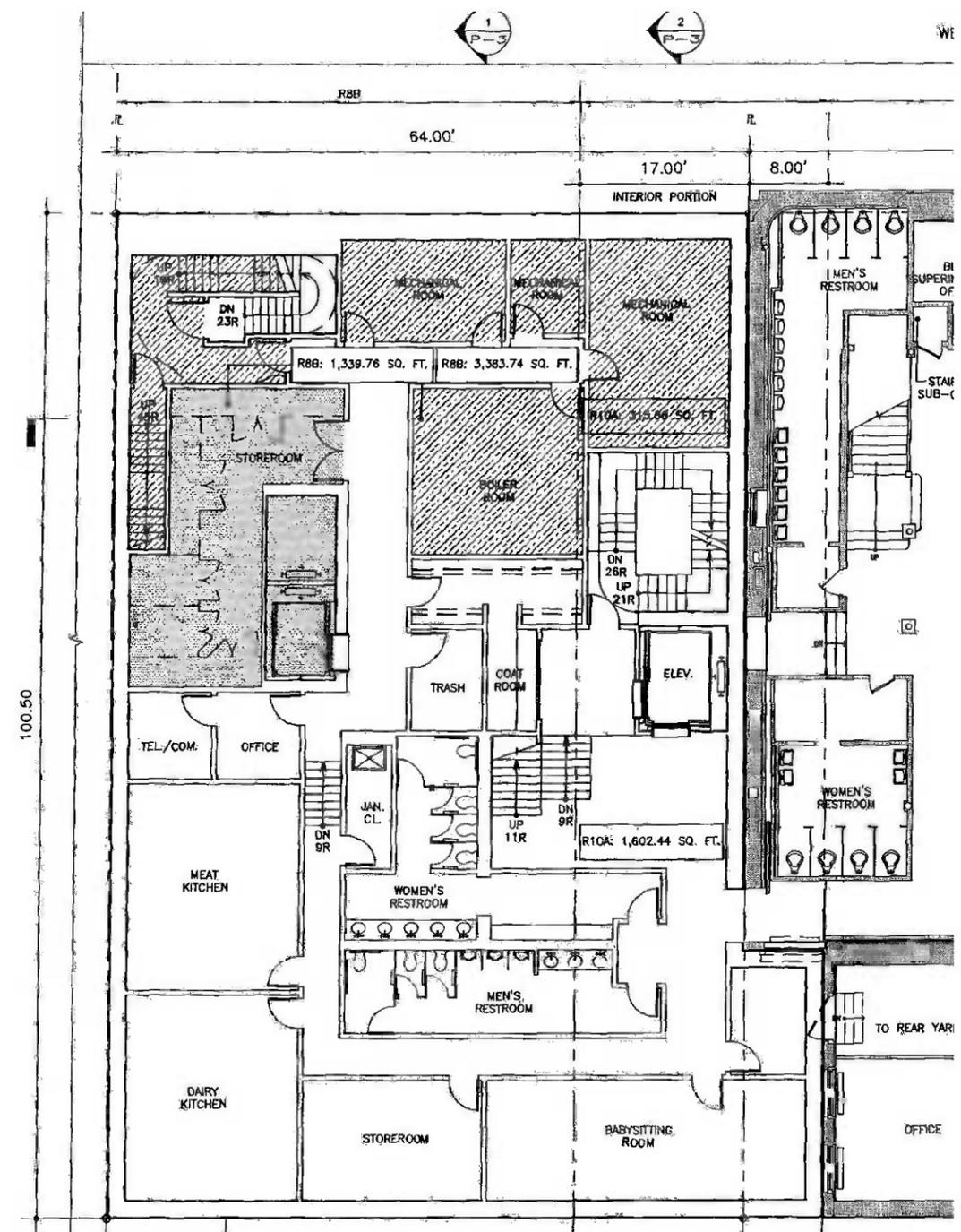
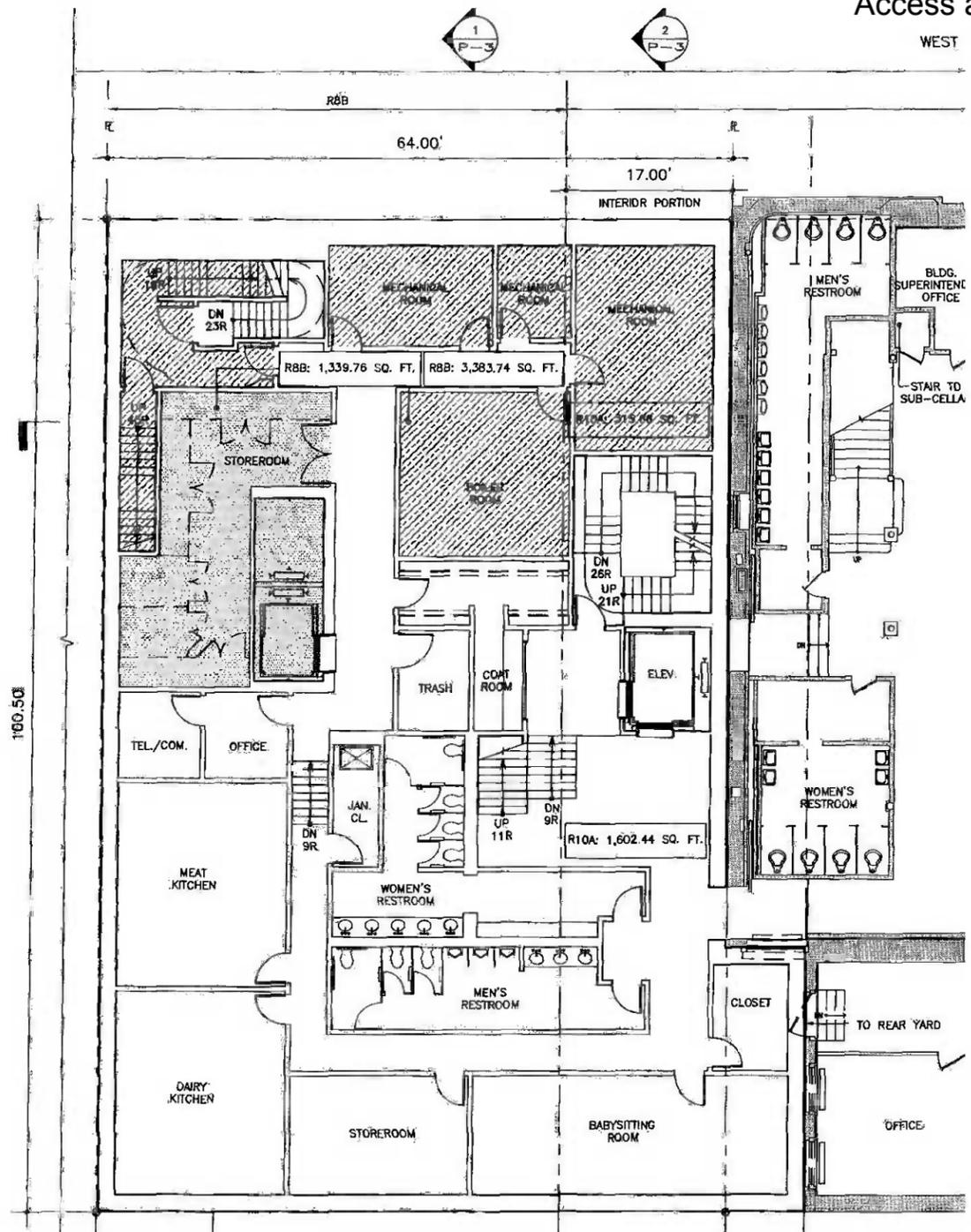
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Access and Circulation - No Differences

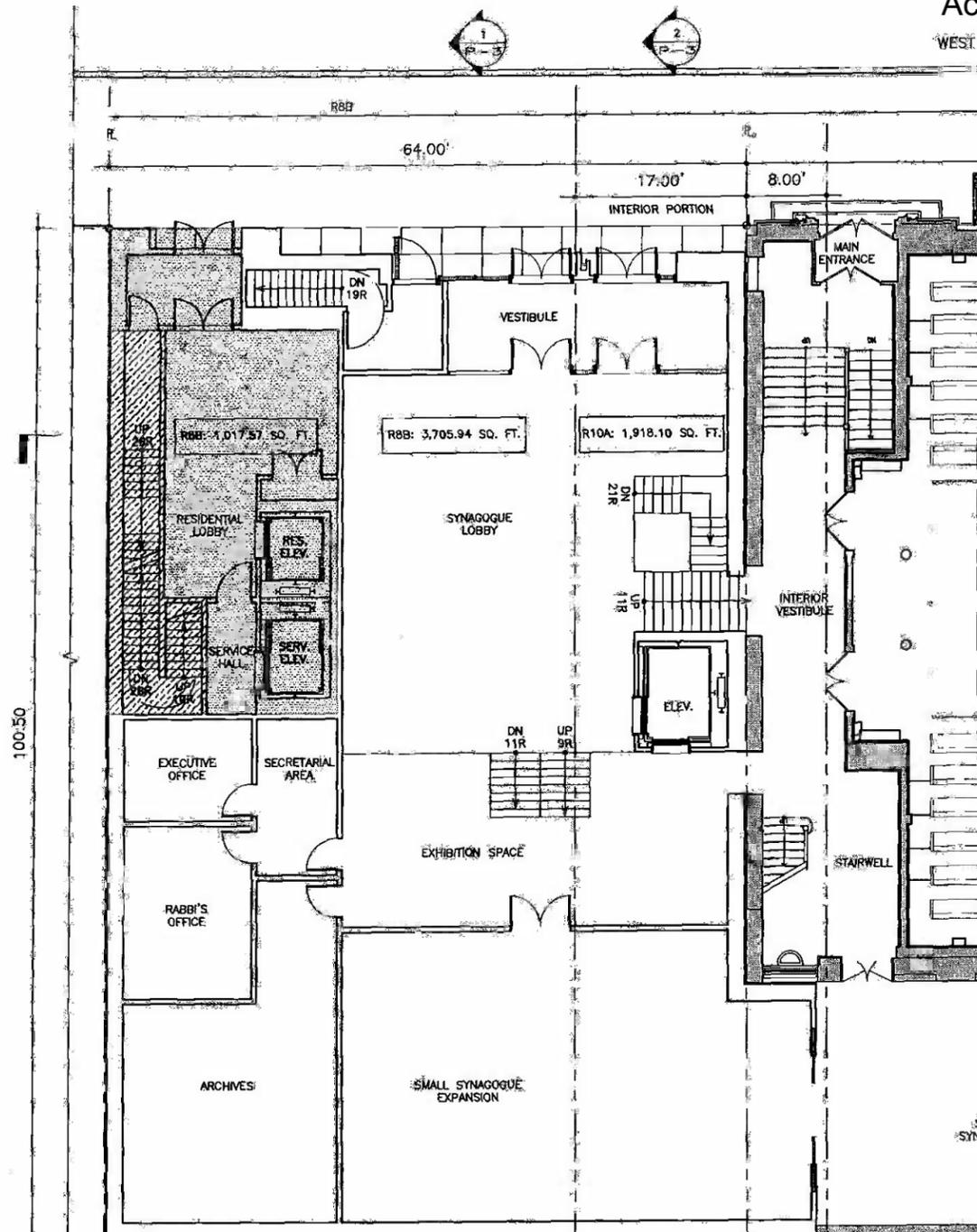


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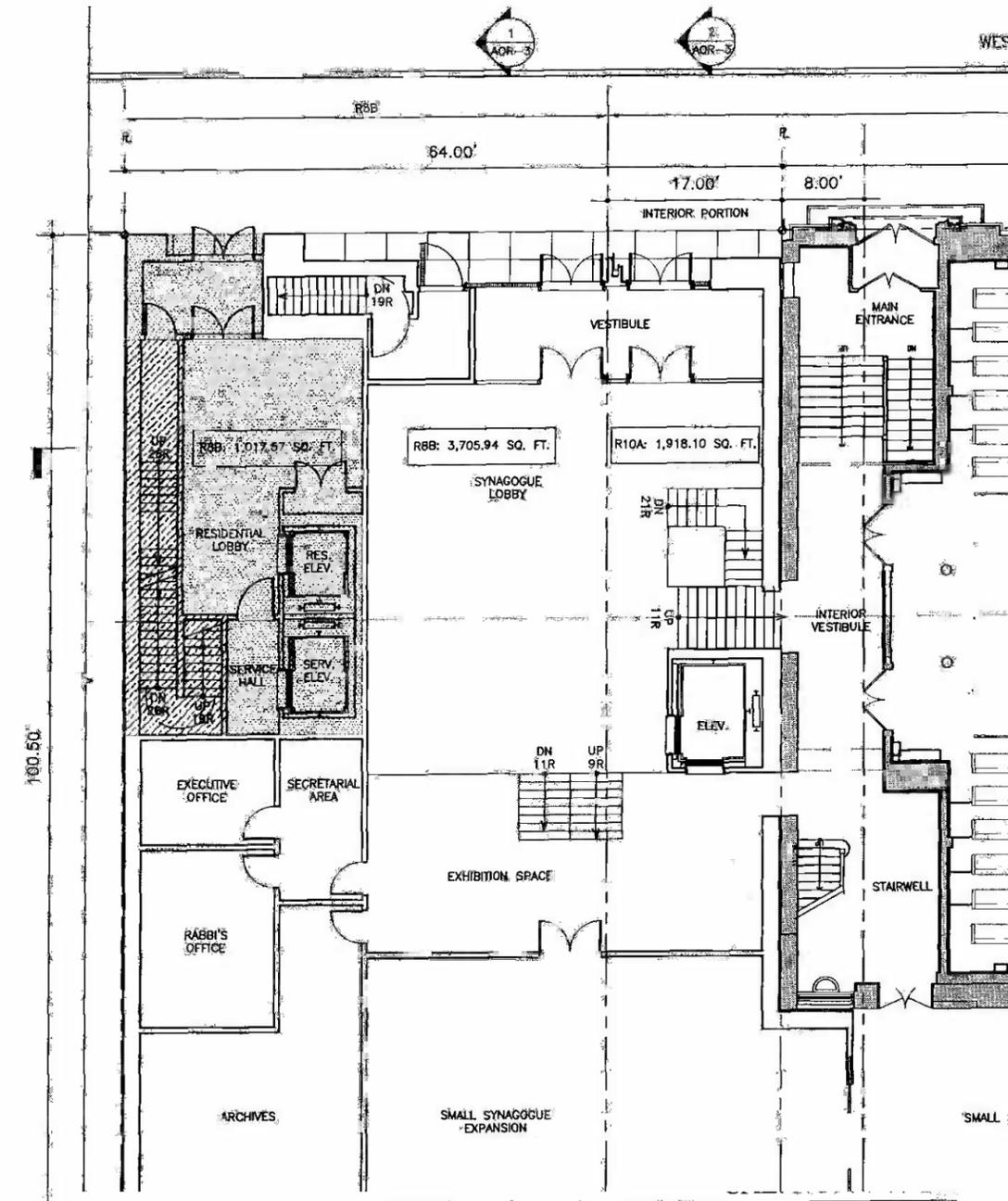


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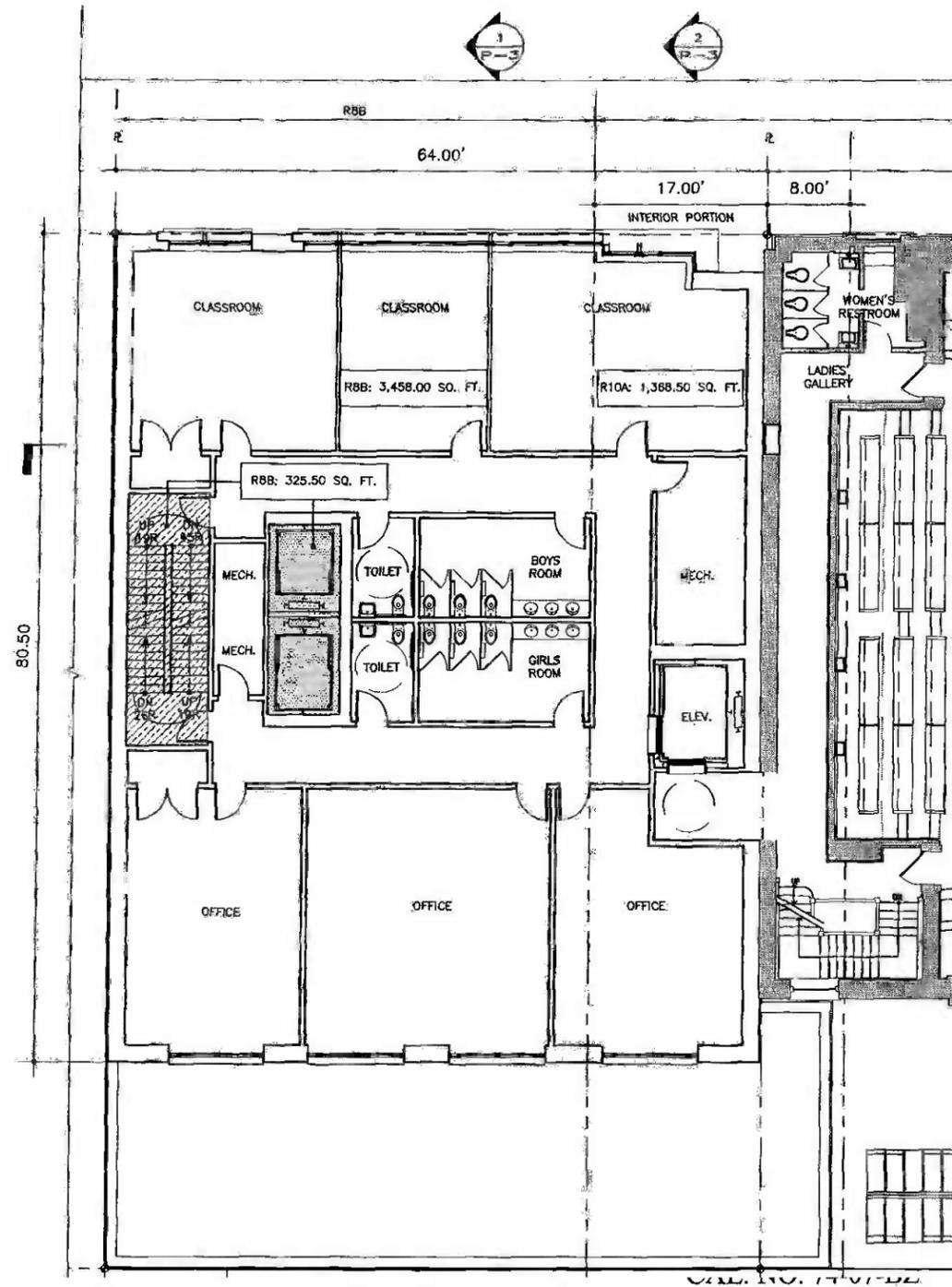
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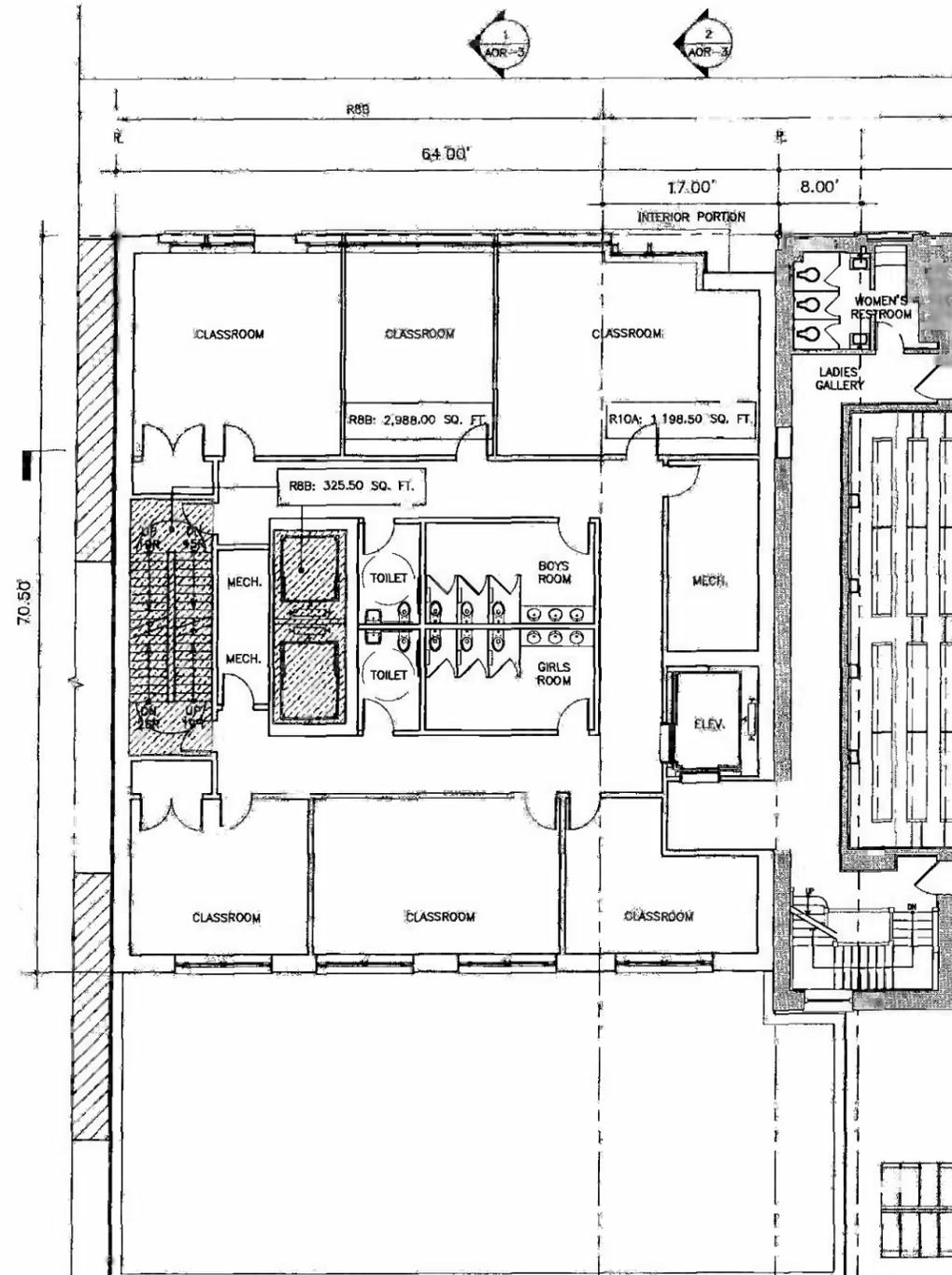
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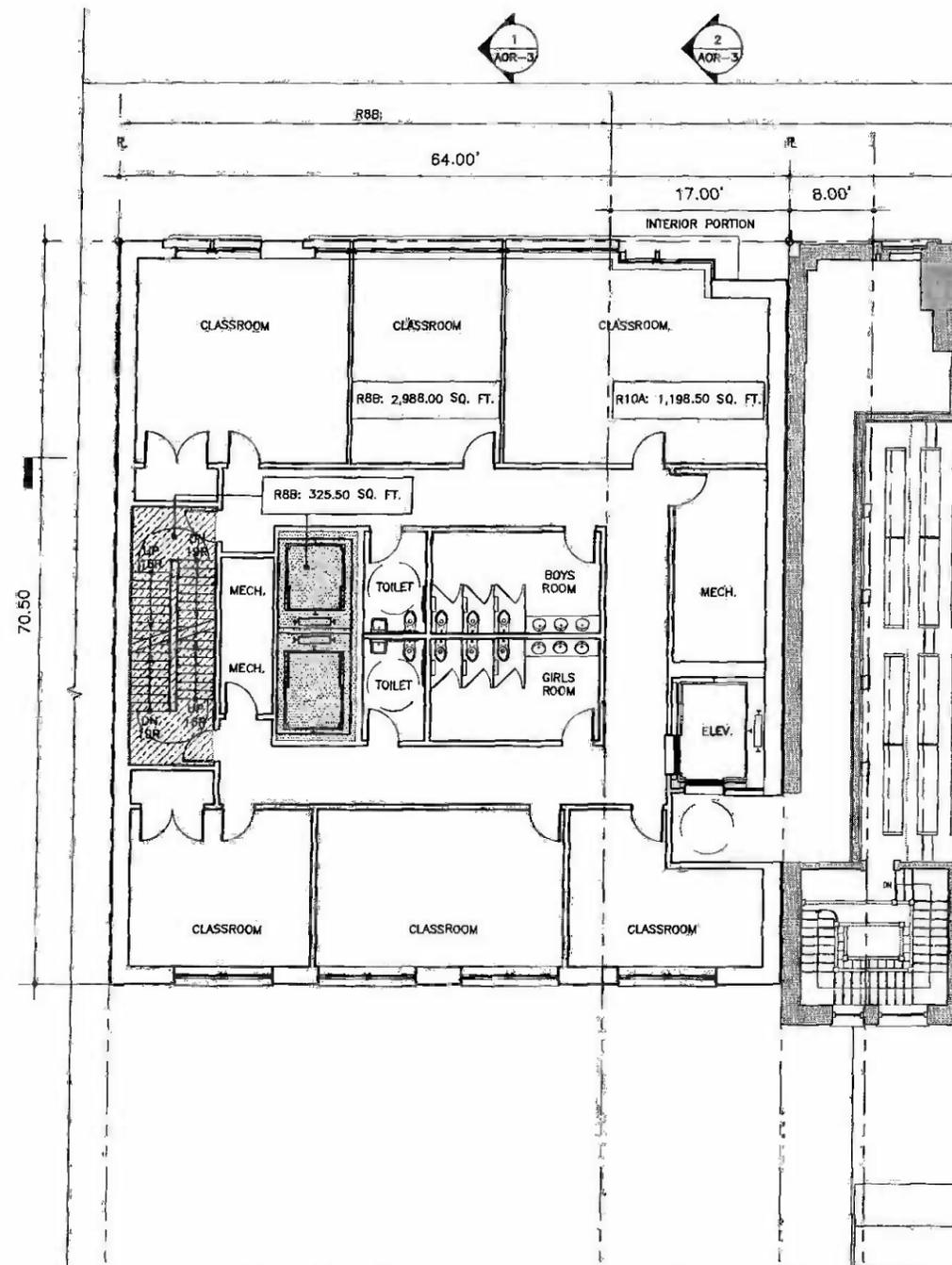
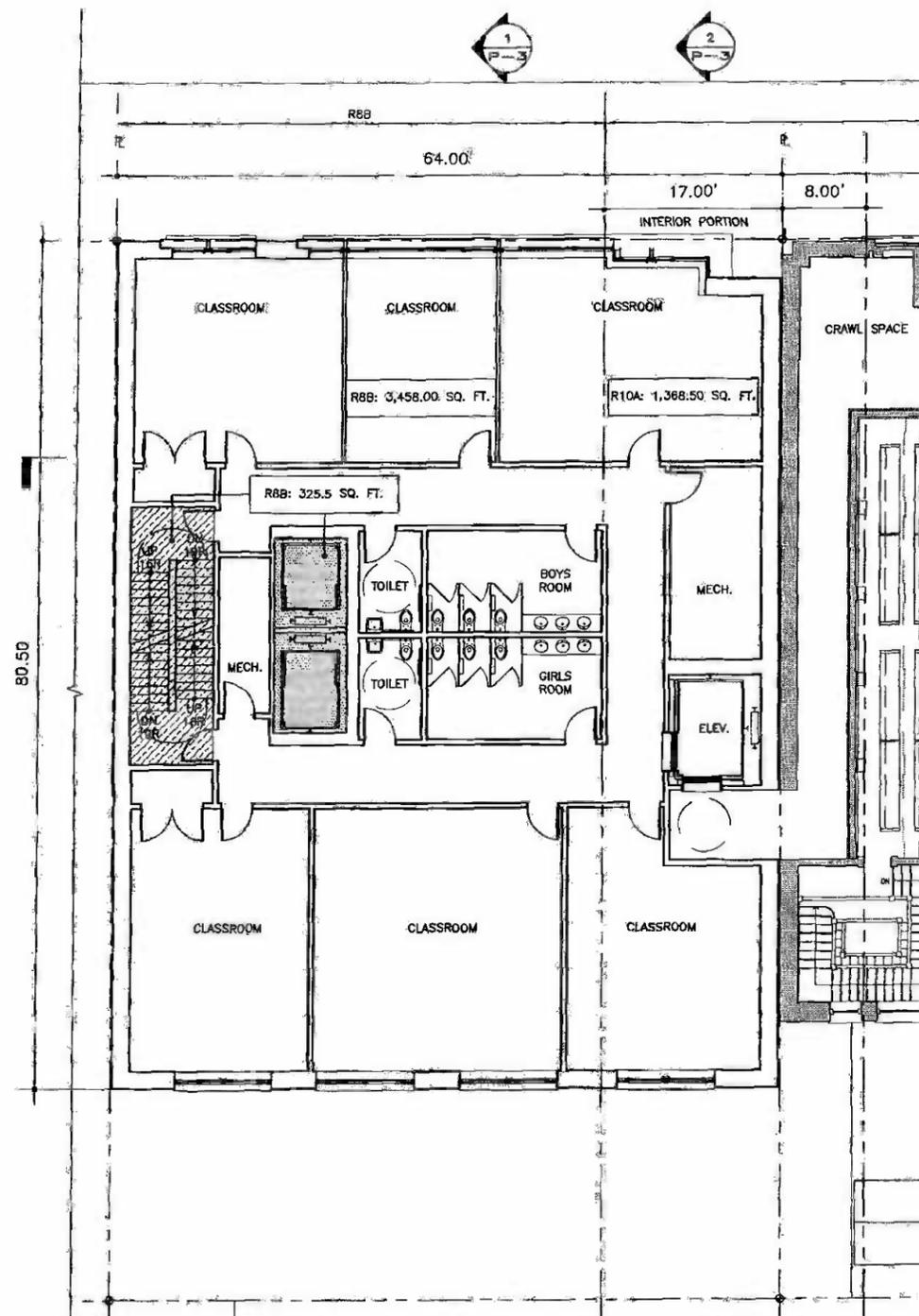
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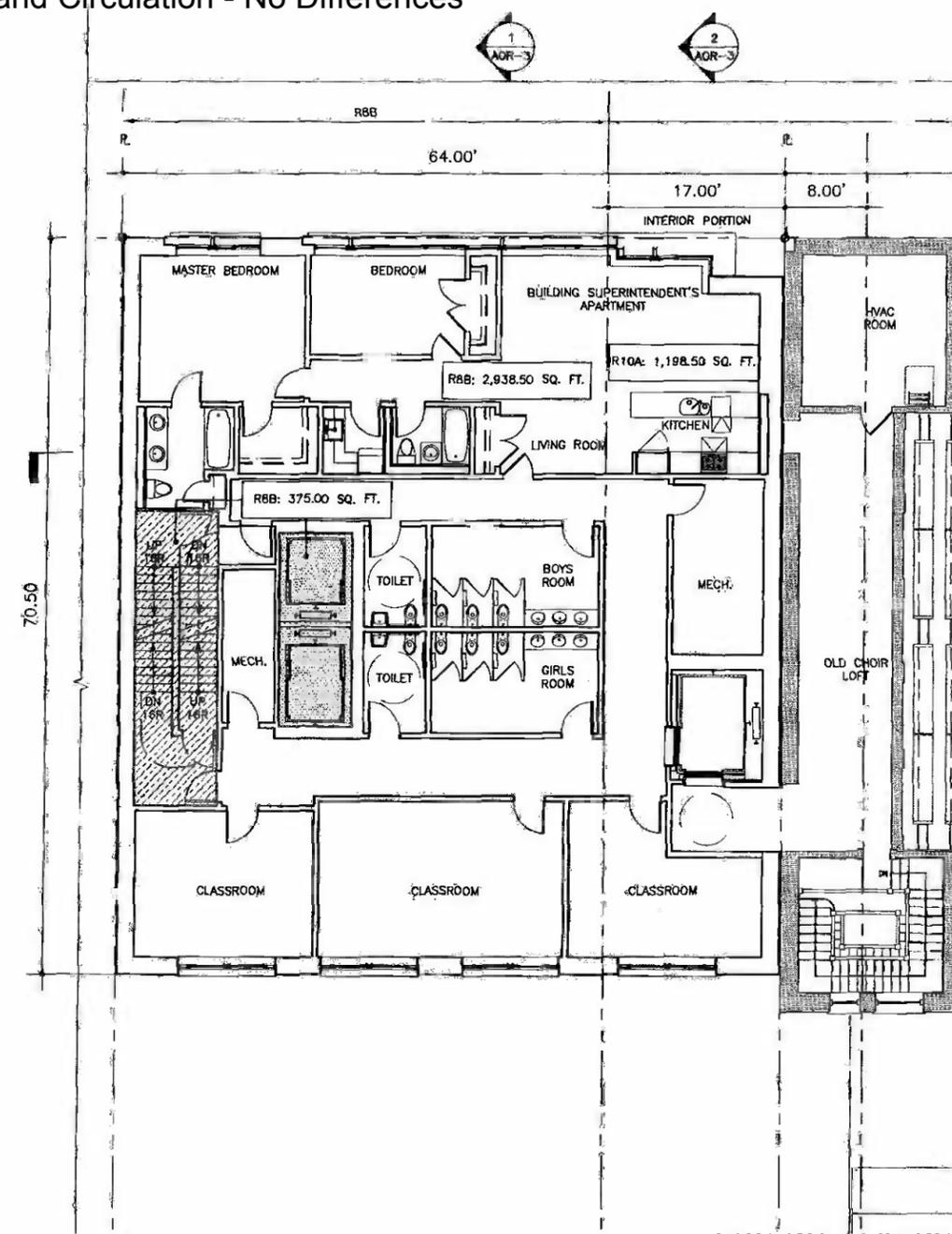
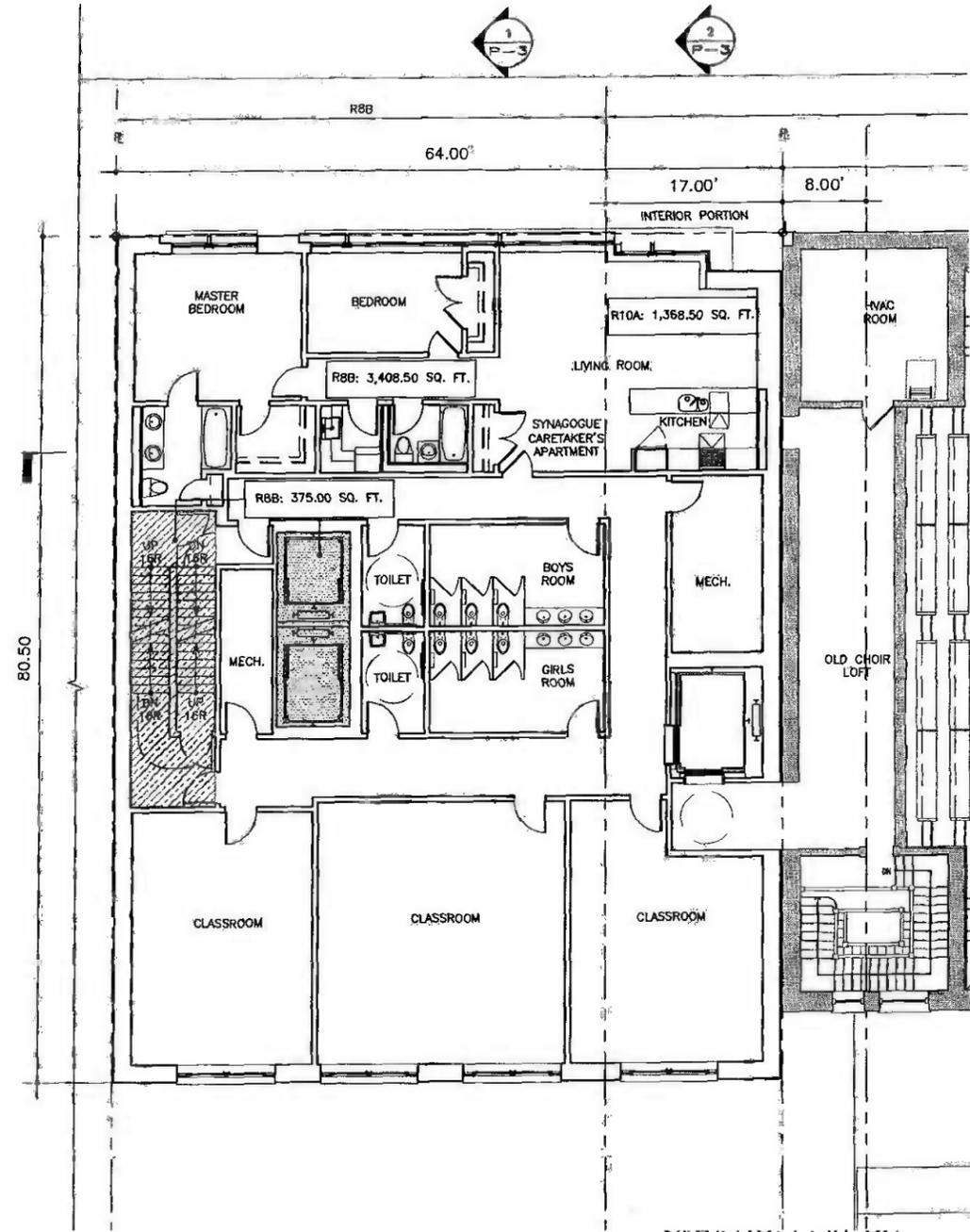
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