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January 28, 2008

The Honorable Meenakshi Srinivasan  
Chair  
New York, New York 10006  
NYC Board of Standards and Appeals  
40 Rector Street - 9th Floor  
New York, New York 10006

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

Dear Chair Srinivasan:

I am an attorney and a resident of 17 West 70<sup>th</sup> Street, which is located across the street from the proposed project. In this matter, I am also counsel for Nizam Peter Kettaneh, owner of the brownstone at 15 West 70<sup>th</sup> Street, directly across from the project, as well as an authorized representative of other residents on West 70<sup>th</sup> Street.<sup>1</sup>

I will keep this letter brief out of respect for the concerns you expressed as to the multiplicity of submissions, and will try not to repeat statements made in the submission of Landmark West, with which I concur.

On behalf of Mr. Kettaneh, he, like the members of the Applicant Congregation, wishes to maximize the income potential of his building. In his case, he wishes to build an elevator behind his building to maximize the rent he could obtain from the upper floors. Like the Congregation waiver request, such an elevator extension would require a waiver of the rear yard setback, which is not obtainable. Mr. Kettaneh opposes the rear yard setback variances requested by the Congregation, because it would not be equitable to relax requirements for the Congregation members, but not for him.

Mr. Kettaneh also notes specifically that his building will be directly impacted by the shadows cast by the proposed building as compared with those cast by the as-of-right building, and, further, that a tall building will always limit the light (as opposed to direct sun.) He purchased his home with the expectation of living in a mid-block zoned area, and not facing a tall building not permitted by zoning law. He also objects to the continuing failure of the Congregation to provide shadow studies of West 70th Street.

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<sup>1</sup> Even though we cooperate, we are separate and apart from Landmark West.

With respect to the submissions of the Applicant of December 28, 2007:

1. Monetization. The Applicant starting in 2002 has at all times referred to condominiums as an economic engine. The issue, as articulated by the Applicant, is not whether the Applicant (or a proxy developer) could earn a "profit". The Applicant repeatedly speaks of the need for "funds" so that it can construct a building to satisfy its programmatic needs. See Opp. Ex. 1.<sup>2</sup> In all of the feasibility study scenarios, the Applicant will receive in its own coffers the "acquisition cost", i.e., the proceeds from the "sale" of the land, and these funds are of course available to the Applicant to meet its programmatic need.
2. Unused Development Right and the meaning of As-Of-Right. An as-of-right building is strictly speaking a building that can be built in accordance with applicable law, and the applicable law is not only the zoning resolution, but also the landmark law. What the Applicant is permitted to construct is that permitted by the police power of the state. So, in this case, although a sliver building is as of right perhaps under zoning law, it is not as-of-right under the combined zoning and landmark law.
3. Site History (I). The new site history provided by the Applicant does not support the Applicant's claims as to being sensitive to landmark protections. It is now clear that the rowhouse 10 West 70th Street was acquired in 1965 and then demolished in 1970 with the apparent interest to demolish the building before the district could be landmarked.
4. Availability of First Floor for Programmatic Needs:

The Applicant states on page 5:

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 ground floor were available for school uses, a community facility school might well be able to fit the 15 classrooms called for in this Application with an allowable rear yard. However, the floor usually providing the most flexibility for community facility schools, the ground floor, is entirely unavailable for educational purposes because the Synagogue must "take" all of the ground floor and portions of floors 2 - 4 for an elevator and landing as well for its own remedial purposes. There are no reasonable alternatives to dedicating nearly the entire first floor of the New Building to Synagogue use because (1) both this 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..

This is completely untrue. The access and accessibility issues can be addressed by using only a small portion of the as-of-right building. See Opp. Ex. M and Opp. Ex. FF and Statement of Craig Morrison dated January 28, 2008. There is no reason whatsoever that

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<sup>2</sup> Accompanying this letter is Opponent's Exhibit Binder I, and exhibits are cited to as Opp. Ex.

the rear ground floor is not available for school programmatic needs. See Statement of Craig Morrison. Indeed, in all proposals submitted to Landmarks Preservation Commission, the small synagogue was located in the rear of the first floor, and, only when the plans were submitted to BSA, did this change. Opp. Ex. B and Opp. Ex. E. And, if the Applicant had chosen not to include residential uses, the entire West portion of the first floor would be available for programmatic needs because there would be no residential lobby.

5. The Applicant Should First Seek to Accommodate its Programmatic Needs in Floors 5 and 6 Before Resorting to a Variance. The Applicant states at page 5:

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.

This completely misstates the suggestion of the opponents. The opponents merely stated the inconvenient fact that in an as of right building, floors 5 and 6 are available to the Applicant for school and other programmatic need uses. The Applicant is entitled only to the minimum variance.

6. Residential Units May Be Built Below 50 Feet. The Applicant states at page 6:

Residential use is as of right and the zoning floor area is available on the CSI zoning lot. What is not available is any volume of space below the highest elevation of the New Building's fourth floor, which is shown in the Application to occur at El. 49.1.

This is of course not true. The adjoining building 18 West has numerous residential apartments below the 50 foot elevation level.

7. Programmatic needs (page 7). I will not address in detail the various statements made in this section except to note that the Applicant's asserted programmatic needs are irrelevant to this variance proceeding because the Applicant cannot contest the obvious fact that all programmatic needs could be met within the Scheme C As-Of-Right 75 foot building, and, indeed, within the first four floors. For that reason, the BSA should not waste its or the public's time. Having said that, I note that the Applicant did not honor the request of the board as to present uses: the Applicant does not schedule the actual use, nor does it show how an as-of-right building might accommodate these same needs. I might add that, because I live across the street, I have a perfect view of the entrances of the Applicant - the numbers of users presented by the Applicant are gross exaggerations, as I could show by providing to the Commission with weeks of video recordings from my security camera. The dominant user of these facilities is the private Beit Rabban school.

8. Precedent. -Page 13. The Applicant completely misstates the dangerous precedent that its variances will establish - the principle that a variance should be granted to a non-profit to build condominiums so as to fund an asserted barely plausible assertion

of programmatic need. The BSA and CB7 have asked the Applicant for case law to support this radical proposition - and such case law still has not been forthcoming.

9. Desperate Contentions. On page 15 of its statement the Applicant makes a number of unfounded assertions in a last ditch effort to frame a basis for the variances. These statement exaggerate the minimal changes needed to remedy access issues. Once it is understood that the access issues are simple to resolve, are fully resolved by a small part of the as-of-right building, and conceivably could even be resolved by renovating the existing building by retrofitting a modern elevator configuration, the breathless claims of the Applicant fall flat.

10. Thus, on page 15, the Applicant states:

(1) CSI's zoning lot is the only zoning lot to include on it an existing obsolete, inefficient structure which must be replaced to overcome significant programmatic difficulties.

None of the statements have been proved by the Applicant. The fact that the Applicant has ignored maintenance for 54 years such as cleaning the building, removing ugly air conditioners, replacing window frames, and modernizing the elevator does not necessarily turn the building into an obsolete structure. Having said that, they can replace the building and satisfy all programmatic needs without resorting to 105 foot building.

11. On page 15, the Applicant asserts:

(2) the CSI zoning lot is the only zoning lot in which the LPC has approved a plan for approving internal circulation of a sacred site through features which can only be provided in an adjacent new building,

This is a complete overstatement and is just false. First, there is no internal landmarking. Second, the internal circulation changes are resolved to the Applicant's satisfaction essentially by including a double doored modern elevator in the new structure, all of which would fit into an as-of-right building, and, indeed within the footprint of the existing building. Third, the LPC never "approved" any internal circulation plan, and, if it did, it would be acting outside its authority.

12. The Applicant states at page 15:

3) the CSI zoning lot is the only zoning lot which has a development footprint with an as-of-right envelope that is wholly impractical and financially infeasible to develop, and

This is another untrue statement. A financially feasible FAR 4 building can be profitably constructed on the site, and not only return a profit, but, monetize the land value yielding according to the Applicant, \$16 million of cash for use by the Applicant. A building that would not be approved by the LPC is not an as-of-right building for these purposes.

13. The Applicant states at page 15:

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(4) the CSI zoning lot is the only zoning lot in which correction of the programmatic difficulties associated with a working house of worship and the replacement of a dysfunctional community house deprives the site the opportunity to include residential uses anywhere on the zoning lot below El. 49.1 ft.

Here the Applicant is creating a new right for itself - the right to include residential uses and at the same time resolve its programmatic need. This is such an absurd proposition, that little comment is unnecessary. No such right exists. If the right did exist, then in a City where non-profits own so much land, zoning would disappear. If the right exists, then we would like to see the case law.

14. On page 19, the Applicant states;

Some opponents have urged that the Parsonage be adapted for classroom use.

This is a complete distortion of the opponents' position. First, opponents have observed that the Parsonage would be suitable for the caretaker's apartment on the fourth floor of the proposed and as-of-right buildings. Note that in the initial plans submitted to the LPC, there was no caretaker's apartment. Opp. Ex. H. The opponents have also observed that the Parsonage would accommodate offices and libraries and small tutoring spaces, with no renovation at all. The Parsonage is clearly a part of the zoning lot and part of the interconnected site as the Applicant described the Parsonage, Sanctuary, and Community House to the LPC. Opp. Ex. C-3.

15. Shadow Studies. The opponents have repeatedly asked for shadow studies to show the comparative impact of an as of right scheme with the proposed scheme on West 70th St. The opponents did not request a shadow study of the impact on Central Park West, yet almost all of the December 19, 2007 letter from AKRF concerns shadows on Central Park. Moreover, AKRF only compared the existing to the proposed building, and that is not the test.

The screening analysis compared the shadows cast by the existing building to those cast by the proposed new building to identify incremental shadows that would be cast by the new building that are not cast today (i.e., shadows cast by the portion of the proposed building above the roof height of the existing building). A street map of the project site and surrounding area was prepared, and all open spaces and historic resources were denoted on the map. Using the heights of the proposed building and the existing building, the full extent of the area that could be shaded by the project was calculated for the full year. This analysis disregards the shadows that are already cast by other existing buildings in the surrounding area. The attached graphic illustrates the extent of the shadows that would be cast by the new building and those that are already cast by the existing building.

Mid-block contextual zoning is intended, in part, to provide light and sun to the mid-blocks. The proposed building would cast the same shadows as 18 West and anyone who has stood on the block on sunny morning would know this. Nonetheless, AKRF has claimed to have done an analysis of West 70th Street. So, the question is where are the actual shadow studies? How can one do a shadow study on the faces of opposing building without provide a 3-D model? The CEQR manual established minimal standards. The fact is that the proposed building would, together with 18 West, create a

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wall of shadows and a barrier to light, just the aesthetic standards to be protected by contextual zoning.

16. Feasibility Study - The Applicant submitted another attempt at a feasibility study. The latest study did not respond to a Commissioners question as to why the FAR 4.0 project did not show a reasonable return. The latest study, over the objection of Commissioners, continues not to allocate any land cost to the community facilities, distorting all the results. And, of course, failing to provide the plans for the tower building, incorporating unknown parts of prior submissions, and failing to use terms consistently, leads to confusion which is what the Applicant wants.

The most important issue as to the feasibility study is whether anything other than a best use analysis is relevant under finding (b). The Applicant is not clear whether it is submitting the analysis under finding (b) or under some inchoate right. If not submitted to support a finding (b), then the concept of reasonable return is not applicable. If one reads the arguments presented by the Applicant, the Applicant seek "funds" to meet the asserted programmatic needs and construct the community facilities. In that respect, then, the proceeds from the sale of land would provide such funds to the Applicant, whether or not a classic reasonable return analysis was positive.

The idea of computing an economic return of a slice of development rights is questionable and no authority for such an analysis would exist for finding (b). Once the BSA goes down this path, applicants will then contrive non-economic slices.

Finally, in presenting its case to the Community Board land use committee on November, 2007, the Applicant stated flatly that no finding (b) was required and therefore it provided no testimony on the subject and finding (b) was not considered by CB7. Now, the Applicant has reversed itself.

Accompanying this letter is an Affirmation that I prepared in support of Opposition Exhibit Binder I. The Affirmation discusses many of the exhibits, and rather than repeat that discussion, I refer to the Affirmation.

Finally, I note that the BSA has not responded to my open FOIL request nor responded with my request to attend any site visits made by Commissioners, as well as a request for information as to any site visits previously made. The latter was to prevent the Applicant from engaging in further improper ex parte contacts.

Sincerely,

Alan D. Sugarman to BSA  
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A handwritten signature in cursive script that reads "Alan D. Sugarman".

Alan D. Sugarman

P.S. Supporting Documents are posted at [ProtectWest70Street.org](http://ProtectWest70Street.org).

cc:

Jed Weiss  
Jeff Mulligan  
Landmark West  
Shelly Friedman

NEW YORK CITY  
BOARD OF STANDARDS AND APPEALS

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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 70<sup>th</sup> Street  
Manhattan

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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