

JAMES A. GREER, II
25 Central Park West, #4B
New York, NY 10023

March 25, 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,

This letter addresses CSI's repeated contention that it cannot satisfy the need for classroom space for its educational program in an As-Of-Right (AOR) building. A careful analysis of its latest (3-11-07) filing confirms the Opponents' previous contention that an AOR building provides sufficient classroom space to accommodate those needs, and that the adequate space is available even within floors 2-4 of the AOR building together with other space on the zoning site.

A. There are a variety of ways of addressing CSI's claimed requirements for classrooms. For example, if the 9 south-facing classrooms on floors 2-4 in an AOR building are too small to suit CSI, the needed space can be provided by dividing the space in half and having two larger classrooms on each of those floors. This results in 12 classrooms – 5 on the 2nd and 3rd floors, and 2 on the 4th floor of an AOR building.¹

B. All CSI's students could be accommodated in these 12 classrooms. Using CSI's assignment of 35 sq. ft. /child, this would require a maximum of 3850 sq. ft. of classroom space. In fact, the 12-classroom configuration provides 4135 sq. ft. of classroom space. Attached is a "Program Usage Chart (AOR)" prepared by me, which I believe demonstrates this contention. Obviously, as outlined in the submissions by Craig Morrison, AIA, there are numerous other space configurations that would produce the same result.

¹ CSI's Counsel has challenged his contention. See Friedman & Gotbaum, LLC, Statement dtd Dec. 28, 2007, at page 5. However, as this letter seeks to make plain, CSI's position is untenable.

C. In any event, CSI's peak classroom usage would occur on Thursdays from 3:30-6 PM, when its stated maximum of 50 Hebrew School students and its planned 20-60 "Community" Toddler Program students would be meeting. At 35 sq.ft./child this would require 3,850 sq. ft. of classroom space. (Currently the "Community" Toddler Program toddlers meet only in the morning twice during the week, and CSI claims there are only 20 toddlers.)

BACKGROUND

The following background information is taken entirely from materials provided by CSI. The numbers of students are stated as being "approximate" or are given as being with in broad range and lack specificity. Further, there is reason to believe the maximum numbers are inflated and not reliable.² CSI's submission does not make clear that all the students in its various programs do not use the space simultaneously, and observation shows they do not. However, this analysis is based on – but does not concede the accuracy of - the maximum numbers used by CSI.

1. The current CSI weekday program involves the following:

A. Adult Education-

- i. Mon. 7-9:30 PM – TALMUD – 17 ADULTS ONCE/MONTH
- ii. Wed. 3-4 PM – POETRY GROUP – 15-20 ADULTS
- iii. Thu. 11AM – Noon – MEDITATION – 10-20 ADULTS

B. Hebrew School – Thu. 3:30-6 PM - 35-50 students – grades K-9

C. Youth Tutoring – unspecified times - "[~] 20 boys and girls now meet individually with the Cantor [in the Cantor's study] for private lessons in preparation for Bar and Bat Mitzvah. The students also participate in ongoing supplemental tutoring and voice training, which is available on Sunday mornings, every after noon and on weekends (daytime or evenings)."³

² For example, Counsel states in numerous places that CSI's Hebrew School has 35-50 students. Yet CSI's website sets the number at "approximately" 40. (Opp. Ex. JJ-5) Further, Alan Sugarman, Esq., whose apartment overlooks the entrance to the community house has submitted a statement that, based on his personal observations, the number of Hebrew School students using the CSI classroom space at the same time on Thursday afternoon is probably closer to 20. Community members have never observed 50, or even 35, students leaving the community house at 6 PM on Thursdays, when the Hebrew School ends. Rather, there are small groups that seem to use the community house during the course of the afternoon. In addition, CSI's Counsel states – again in numerous places – that the Beit Rabban tenant school has 125 students. However, Beit Rabban's website reveals that the number that may be currently enrolled ranges from 103-119. See Opp. Ex. JJ-12.

³ See Friedman & Gotbaum, LLC, ltr to Chair, BSA, dtd December 28, 2007, at p. 10.

2. CSI also runs a “Community” Toddler Program, which meets on Mondays and Wednesdays from 9 AM - Noon. It is a fee-paying program open to members and non-members. See CSI’s website⁴. According to CSI Drawing Prog E-7, there are 20 children, and they currently meet in the auditorium in the existing community house. According to CSI, these children are unable to use the classrooms in the morning because they are being used by the Beit Rabban tenant school.

The Community Toddler Program is open to non-Members, as well as Members. Members pay \$2230 a year for two morning sessions. Non-Members pay \$2700 for those two sessions. (See Opp. Ex. JJ-2) The Program is open to children 16 months to 33 month, and caregiver attendance is required. (See Opp. JJ-4) In the proposed building CSI anticipates 20-60 children from 8AM to 6 PM, Monday through Friday. (See Note on CSI Drawing Prog P-9) While CSI does not suggest that all these children will attend simultaneously, as noted below, there is sufficient space to accommodate them if they do.

As the attached chart makes plain, all these activities can be easily accommodated in an AOR building. Indeed, CSI’s space allocation of approximately 25 sq. ft. /person of classroom space for each adult and 35 sq. ft./child of classroom space for each child is very generous and in fact is well in excess of the 20 sq. ft. Net Floor Area for “Classrooms” that is required by the New York City Building Code.⁵ It is accepted that institutions may increase the amount of square feet per occupant to suit their budget and plan configuration. However, when proposing an AOR option, standard and accepted code compliant regulations should apply. As CSI has not provided references to explain the derivation of program occupancy per square foot, it is appropriate to use square footage areas as provided by the relevant articles of the New York City Building Code.

Ages for the “Community” Toddler Program are assumed to be 2 years to 6 years, commensurate with typical pre-school programs.⁶ It is understood that additional provisions apply for children aged 2 years to 6 years for toilets and furnishings which need to be diminutive to suit the height and reach requirements of small children. Children 7 years and older are assumed to use adult-sized furnishings and plumbing fixtures.

⁴See “Synagogue Happenings – Toddler Program. http://www.shearthisrael.org/folder/main_frames_new.html (Opp. Ex. JJ-4)

⁵ See Opp. Ex. JJ-21 and JJ-22.

⁶ CSI’s current Toddler Program enrolls children from 18 months to 33 months. See Opp. Ex. JJ-4. However, CSI does not provide any information about the ages of children who will be eligible for the expanded program. Accordingly, this, more liberal assumption, which affords CSI greater scope for recruiting students, seems appropriate.

CSI has not provided any precise information about the ages of the “children” in its Hebrew School and CSI Youth Group. What information CSI has provided strongly suggests that most of the Hebrew School students are 7 years old and older and, therefore should be classified as “adults” for purposes of space allocation.⁷

If all these programs met simultaneously and the maximum number of students attended each session, using CSI’s space allocations, this would require a maximum of 3850 sq. ft of space to accommodate all the children at 35 sq. ft. /child and 1425 sq. ft. /adult of space to accommodate all the adults. However, as the chart also shows, the children’s weekday programs meet at different times from the adult weekday programs and do not overlap. Hence, the 3850 sq. ft. maximum space for children is the controlling number for this analysis. (If the Building Code Occupant Load Requirements are used, the space required is substantially less than that. Similarly, if, as seems appropriate, the majority of Hebrew School students are characterized as “adults,” the space needs are further diminished.)

3. CSI’s weekend program currently consists of the following:

- A. Adult Education – Sun. 8:40 AM –9:40 AM – Jewish Thought and Law
40-50 students
Sun. 9:45 AM- 11:00 AM - “ “ “ “
5-15 students
Sat. 3:30 PM – 4:30 PM - Bible Study
20-50 students
- B. Hebrew School - Sun. 9:30 AM – Noon
35-50 students (Kindergarten through 9)
- C. Shabbat Toddler – Sat. 9 AM – Noon - 20 children⁸

Not mentioned in any of the Statements of CSI’s Counsel is the “CSI Youth Group,” a reference to which first appears in identical notes on the PROG P-10 and PROG P-11 drawings filed by CSI on December 28, 2007, as part of its Exhibit D. According to these notes, the Youth Group meets from 9AM-Noon on Saturdays and consists of 15-35 children. There are also references to the Group in the “CSI PROPOSED PROGRAM USAGE

⁷ See Friedman & Gotbaum, LLC ltr to Chair, BSA, dtd December 28, 2007, page 10, which states “The third floor [where the Hebrew School will meet] provides individual classrooms for first through third grade, 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.”

⁸ It is not clear from CSI’s filings whether it plans to expand its 9AM-NOON, Saturday morning Shabbat Toddler Program to 60, but , if so, there should be ample space on the 2nd floor of an AOR building plus 1-2 classrooms on the 3rd floor, which should be available at the that time.

CHART: FLOORS 2-4, which is part of its March 12, 2008, filing. Curiously, the chart shows the Youth Group occupying 5 classrooms - 4 on the 3rd floor and 1 on the 4th floor - that have a total capacity of 52-73 students @25 sq.ft./adult;35 sq.ft./child.

The Saturday meeting times of the Shabbat Toddler Program and the CSI Youth Group overlap but do not compete for space, since the Toddler Space is on the 2nd floor and a minor part of the 3rd floor, and the Youth Group would have ample room on the 3rd and, if needed, 4th floors of an AOR building.

The Sunday morning meeting times for one of the Adult Education programs and the Hebrew School do overlap. However, as that adult program involves only 5-15 students, it should be easily accommodated in one of the two 4th floor classrooms, which will not be occupied by the Hebrew School, and will accommodate up to 18 adults, using CSI's formula of 25 sq. ft. /adult.

In December, 2007, CSI claimed – for the first time - (a) that its “Community” Toddler Program was part of its mission; (b) that it intended to expand that program from 20 toddlers to accommodate 60 toddlers from the “community;” and (c) that it intended to increase the hours of the program from 3 hours on Monday and Wednesday mornings to 8AM -6PM, Monday to Friday. CSI's Counsel advised that the expanded “Community” Toddler Program was to be accommodated on the second floor of its proposed new building, which it would share with children from the Beit Rabban tenant school.⁹ Opponents have challenged CSI's inclusion of the “Community” Toddler Program in the definition of its mission because CSI's Counsel had stated that “CSI's Toddler Program is open to all in the community and enjoys a diverse and multicultural membership.”¹⁰ The application form makes it clear that children unaffiliated with CSI are enrolled in the program.¹¹

It is clear that day care activities open to members and non-members¹², are not part of CSI's religious mission. We also question how the demographics and residence of any CSI members involved could result in the parents of as many as 60 toddlers wishing to use the services of a location that may be far from their homes. (Although many members of CSI

⁹ See, e.g., Friedman & Gotbaum, LLC, ltr to BSA Chair, dtd December 28, 2007, at p. 9. (Opp. Ex. JJ-15)

¹⁰ Id. at p. 12 (Opp. Ex. JJ-18)

¹¹ See Opp. Ex. JJ-2

¹² Although CSI's Counsel claims that under CSI's bylaws the planned banquet hall will not be open to non-members, it has opened and intends to continue opening its facilities to the Community Toddler Program and Beit Rabban tenant school, which include a significant number of non-members. Further, Jeanne Martowski, former President of 91 Central Park West Corporation, testified, and I know from my service with her on that Board, that CSI has for many years opened its meeting space to the residents of 91 Central Park West for the Annual Meetings of their cooperative corporation, a majority of whom are not CSI members. I can affirm that while I was president of their cooperative corporation, CSI also did so for residents of 101 Central Park West, a majority of whom are not CSI members. (CSI charged for this use of their space in both cases.)

doubtless live in the local community, many do not. However, CSI to date has not revealed this information, or even whether there are 50-60 toddlers amongst its members.)

If, contrary to Opponents' contention, the expanded "Community" Toddler Program is considered part of CSI's religious mission, all its children could be accommodated in the five classrooms on the 2nd floor plus one and, if needed, two more on the 3rd floor. The only potential conflict would be on Thursday afternoon from 3:30-6 PM, when the Hebrew School meets on that floor. However, if additional space was needed for the Hebrew School at that time, there are two fourth floor classrooms that would be available for the 7th-8th and 9th grade classes, as there is no adult education program scheduled at that time. Since the Hebrew School has at least two classes of K/1st grade children, it should be able to share them with the older children in the Community Toddler Program. Further, outside of floors 2-4, there is abundant space available for Hebrew School activities, including the Levy Auditorium, the Elias Room, and the Small Synagogue Extension. Presumably, at least some of the tutoring of Bar and Bat Mitzvah students will continue to take place in private offices.

5. From Monday to Friday CSI's tenant school, Beit Rabban, currently occupies all CSI's classroom space in the existing community house, plus all the additional space in a "temporary" trailer that was installed adjacent to the existing community house in 2007. CSI has provided no details of its agreement with Beit Rabban; nor has the BSA required production of this information. However, Counsel for CSI has stated on several occasions that Beit Rabban has 125 students.¹³ Beit Rabban has also not provided any information about its arrangements with CSI. However, its website indicates it had a potential enrollment of 103-119 children in its pre-kindergarten and K-5th grades.¹⁴

Counsel for CSI has stated¹⁵ and notes on the drawings filed by him as part of Exhibit D to his December 27, 2007, Statement show, that Beit Rabban classes will occupy the 2nd, 3rd and 4th floor classrooms in the proposed building and will "share" at least the 2nd floor classrooms with CSI. CSI has provided no information as to how such an arrangement would work, but it is irrelevant to the issue of variances, since Beit Rabban, as CSI has consistently stated from its first filing with the BSA, is not part of CSI's mission.¹⁶ In any

¹³ See Friedman & Gotbaum, LLP, Statements dtd March 30, 2007 (pp. 9-10), September 7, 2007 (p.13), and October 25, 2007 (pp.11-12). The relevant portion of the October 25, 2007, Statement, which is typical, is quoted in fn. 16, *infra*.

¹⁴ See frequently asked questions. "http://www.beitrabban.org/admissions_faq.php" (Opp. Ex. JJ- 12) Also note that Beit Rabban describes its program as for pre-Kindergarten and Grades K-5 and not "between the ages of five and seventeen in full time attendance," as stated by Applicant's Counsel on several occasions, e.g. Friedman & Gotbaum, LLC Statement dtd September 7, 2007, at p. 13.

¹⁵ See Statement of Friedman & Gotbaum, LLC dtd 10/25/07 at pp. 11-12, quoted fn.16, *infra*.

¹⁶ [CSI's]... tenant day-school, Beit Rabban, which enrolls 125 children between the ages of five and seventeen [sic] in full time attendance. Beit Rabban is a licensed private school that has been a tenant since 1994. This school now occupies the 2nd 3rd and one-half of the fourth floors and it is anticipated that it will retain a comparable space in

case, it appears that CSI would have enough space in an AOR building to accommodate virtually all Beit Rabban's needs for classroom space as well as CSI's needs.¹⁷

If for any reason, CSI needed more educational meeting space than is provided on floors 2-4 of the AOR building, there is approximately 26,468sq. ft. of such space elsewhere on the zoning site, including 15,569 sq. ft. elsewhere in the AOR building. As just one example, it is obvious that the caretaker's apartment on the 4th floor could be relocated elsewhere, which would free up an additional 1244 sq. ft. of space for classrooms. See Letter from Craig Morrison, AIA, to Chair of BSA, dated March 24, 2008.

CONCLUSION

Based on the foregoing it is plain that all CSI's needs for classroom space for its present and proposed program can be met not only within the zoning site, which is the requisite site to be considered by the BSA, and not only within the building contemplated in AOR Scheme A, but indeed, with in floors 2-4 of an AOR building, and that there is no basis for granting either the rear yard variances or the upper floor variances that CSI is seeking.

In making this analysis, I noted that CSI's stated case for programmatic need is not well-grounded in fact and is based on confusing and conflicting assumptions that have changed over time. CSI also uses hypothetical projections of future use that are couched in the most general terms and, in some cases at least, appear to be inconsistent with its current uses. Opponents do not believe these vaguely-stated "programmatic needs" provide a proper basis for obtaining waivers of the zoning law.

Respectfully submitted,

James A. Greer, II

Attachment: 2008-03-11-program-usage-chart – AOR

the New Building. Recently the Landmarks Preservation Commission approved the addition of a temporary trailer in the vacant portion of Lot 37 to permit these educators to alleviate the severe overcrowding in the Community House. **Beit Rabban is unaffiliated with CSI other than as its tenant and membership in CSI is not a prerequisite for admissions.**"(Emphasis added.). Friedman & Gotbaum, LLP, Statement dtd September 7, 2007, at p.13.

¹⁷ If Beit Rabban's enrollment is in fact 125 students, it might need as much as 4375 sq. ft. of classroom space, providing 35 sq. ft./child. This is 240 sq. ft. less than the total provided on floors 2-4 of an AOR building. However, this is trivial, since, as stated in the letter from Craig Morris to Chair of the BSA dtd March 24, 2008, CSI will have approximately 26,468 sq. ft. of meeting space elsewhere on its site, of which 15,569 sq. ft. are in the AOR building and can be used by CSI and/or Beit Rabban to eliminate any potential problem.

