STATEMENT IN OPPOSITION

TO VARIANCE APPLICATION

OF CONGREGATION SHEARITH ISRAEL

(March 25, 2008)

Affected Premises:

6-10 West 70th Street

Block 1122, Lots 36 & 37

18 West 70th Street
91 Central Park West
101 Central Park West
Other residents of West 70th Street
&
LANDMARK WEST!

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NEW YORK CITY
BOARD OF STANDARDS AND APPEALS

Application: 74-07-BZ

Affected: Premise 6-10 West 70th Street
Block 1122/Lots 36 & 37
Manhattan

STATEMENT IN OPPOSITION

Applicant: Congregation Shearith Israel
6-10 West 70th Street
99-100 Central Park West

This statement in opposition to the variance application filed by Congregation Shearith Israel ("Applicant") is submitted by a coalition of buildings and residents of West 70th Street, including 18 West 70th Street, 91 Central Park West and 101 Central Park West, the immediately adjacent neighbors, together with LANDMARK WEST!.

This statement responds to revised and new information submitted by Applicant to the Board of Standards and Appeals on March 11, 2008. Despite minor design revisions, Applicant's desire to construct a 9-story, 105'-tall building in violation of the R8B zoning designed to protect West 70th Street and other low-rise, brownstone-scale midblocks throughout the Upper West Side is unchanged.

Applicant continues to ask the Board to waive R8B zoning so that it can build

1) a new community house for both program and income-producing purposes, and

2) five floors of luxury condominiums unrelated to Applicant's mission and for income-producing purposes only.

Applicant provides no justification to depart from the existing zoning for this site. Surrounding property owners will experience diminished property values and negative impacts on their quality of life if any of the proposed variances are granted.

Materials submitted by both Applicant and Opposition over the past year (Applicant's first formal submission to the Board was made on April 2, 2007) fall far short of establishing the existence of any hardship meriting relief from the zoning code.

It is impossible for the Board to make any of the five findings for variances required under Section 72-21 of the New York City Zoning Resolution. Therefore, the Board should deny this application completely.

Finding (a): "…there are unique physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular zoning lot; and that, as a result of such unique physical conditions, practical difficulties or unnecessary hardship arise in complying strictly with the use or bulk provisions of the Resolution; and that the alleged practical difficulties or unnecessary hardship are not due to circumstances created generally by the strict application of such provisions in the neighborhood or district in which the zoning lot is located…"

Programmatic Need

It is well-established that an applicant's status as a non-profit religious institution does not entitle it to automatic exemption from the zoning laws that apply generally to all property owners.[1] Applicant has failed to demonstrate with substantial and compelling evidence its asserted programmatic needs and its inability to meet those needs within an as-of-right building.[2]

Applicant has consistently invoked programmatic need in a strategic attempt to blur the Board's vision, especially with regard to finding (a) and specifically to the requirement of finding (a) to show a "unique physical condition."

Applicant repeatedly attempts to establish the unique physical condition in terms of the obsolescence of the existing building occupying its proposed development site, access and circulation difficulties, and lack of space. These conditions are not unique physical conditions as contemplated by the language of 72-21(a). Whether or not the existing building meets Applicant's programmatic needs is irrelevant for the purposes of establishing unique physical conditions required under finding (a). Indeed inability to meet programmatic needs in the existing building is not relevant to any other finding of 72-21. Programmatic need is really only relevant, if at all, to the question of whether Applicant can accommodate its mission-related programs in an as-of-right building.

Even if Applicant could establish a unique physical condition, Applicant has demonstrated that all of its programmatic needs could be accommodated in an as-of-right building;[3] thus the strict application of the zoning law does not prevent Applicant from meeting its needs. Indeed, adequate classroom space can be comfortably provided on floors 2 through 4 of an as-of-right building.[4] Furthermore, educational meeting space is available in ample supply elsewhere on the zoning lot, including 15,569 square feet elsewhere in the as-of-right building (Scheme A),[5] not to mention additional available

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[1] For further discussion of this issue, including references to relevant case law, see Susan Nial, Esq., letter dated March 23, 2008. Attached

[2] Applicant has failed repeatedly to provide information that the Board has specifically requested regarding programmatic need and other matters. See Alan D. Sugarman, Esq., letter dated March 25, 2008, pp. 5-6. Attached.

[3] See Craig Morrison, AIA, letter dated January 28, 2008 (previously submitted).

[4] James A. Greer, II, letter dated March 25, 2008, pp. 1. Attached.

[5] Ibid, p. 7. See also Craig Morrison, AIA, letter dated March 24, 2008, and Opp. Ex. GG. Attached.

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zoning floor area that could be constructed, as of right, elsewhere on the zoning lot.[6] Applicant's proposed building is not the minimum variance necessary, as will be discussed in further detail below.

The extent to which Applicant desires to employ any of these potential classroom spaces for income-generating purposes—such as the tenant school, market-rate apartments and other residences (as in the Parsonage)—is a matter of choice that does not speak to the existence of any unique physical condition nor does it constitute a legitimate programmatic need deserving of special deference from the Board.[7] Refusal by the Board to grant zoning variances would in no way burden Applicant's ability to pursue its mission.[8] Awarding special deference to a religious institution's profit-making activities pushes the line between constitutional protection of religious free exercise and unconstitutional preference of religious property owners.[9]

Availability of Zoning Floor Area

Applicant defines its "singular and unique condition" also in terms of "the existence of a substantial amount of zoning floor area available for transfer as a matter of right throughout the zoning lot."[10] Again, Applicant is playing to the Board's sympathies by suggesting that its inability to utilize this development potential under the contextual zoning imposes some kind of undue burden on the institution. In fact, all of the floor area that would be transferred across the zoning boundary into the low-rise, R8B district would be used for income-producing luxury condominiums that have nothing to do with Applicant's mission.

R10A/R8B Zoning Boundary

Applicant contends that the presence of a zoning boundary on a small portion of its zoning lot contributes to its unique site condition. As evidence, Applicant offers an untenable, so-called "as-of-right" tower scenario generated from a literal application of

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[6] Sugarman letter, pp. 6-7 and Opp. Ex. GG.

[7] See Nial, "Profit does not Constitute a Programmatic Need Which will Support the Grant of a Variance," pp. 3-7. In this matter and others, the Board has made clear its position that residential use created for the purpose of raising capital funds is not, in and of itself, a programmatic need. See transcript of November 27, 2008, public hearing, pp. 20-1. See also previous Board decisions cited in Opposition Statement dated January 28, 2008, p. 4.

[8] Nial, p. 5.

[9] The New York Constitution, Article 1 Section 3, "Freedom of worship; religious liberty," states, "The free exercise and enjoyment of religious profession and worship, without discrimination **or preference**, shall forever be allowed in this state to all humankind; and no person shall be rendered in competent to be a witness on account of his or her opinions on matters of religious belief but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of this state. (Amended by vote of the people November 7 2001)." Approval of the variances requested by Applicant would result in an unconstitutional preference that discriminates against rights of the residents in the community and allows Applicant to externalize the cost of its project at the expense of its neighbors. Such a preference offends both the New York State and the United States Constitutions.

[10] Friedman & Gotbaum letter dated March 11, p. 2

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the zoning, deliberately overlooking other, reasonable, as-of-right alternatives for developing the site in a more feasible manner.

Applicant does not even provide drawings for this tower scheme; obviously, it has not obtained any kind of Department of Buildings ruling on whether such a building is, in reality, "as of right."

On its face, it would appear to run afoul of Section 23-692 ("Height Limitations for Narrow Buildings or Enlargements," commonly referred to as the "Sliver Rule") of the New York Zoning Resolution, which limits the height of a new building or enlargement if the width of a street wall is 45 feet or less. The Zoning Definitions (Section 12-11) defines "street wall" as "a wall or portion of a wall of a building facing a street." Applicant's so-called as-of-right sliver scheme has a street wall of just 17 feet wide rising to a height of 120 feet, far exceeding the width of West 70th Street ("no such new or enlarged building shall exceed a height equal to the width of the abutting street on which it fronts or 100 feet, whichever is less"). Indeed, this scheme represents exactly the kind of building that the "Sliver Rule" was designed to prevent; thus, it cannot be considered as a valid "as of right" scenario for the purposes of establishing hardship as a result of unique conditions on the site.[11]

Other Soft Sites Along Central Park West: Uniqueness and Precedent-Setting Potential

At the Board's February 12, 2008, public hearing, Chair Srinivasan pointed out deficiencies in Applicant's December 28, 2007, submission with regard to the analysis of other potential development sites along Central Park West. The Chair said:

> "The issue really over here is an issue of the split lot and the split lot zoning and how it affects the ability to use development potential on the site…I think it would be helpful if you went site-by-site and really identified some of the underbuilt sites that are affected by the lot, this zoning lot line division. And, I think it will reinforce whether this is a common condition versus something that is few and far between."[12]

The Chair specifically asked Applicant for an answer to the question, "…how many lots are what you would consider soft sites or underdeveloped that are affected by the zoning district boundary?"[13] The Chair further clarified the question:

> "I think that's what we're trying to figure out, whether there's many sites that, in fact, are split because of the zoning that took places in 1984 and that in any of these situations, you will always find sites that cannot use their development potential in a way which is reasonable because that's the thrust of this argument; that you had the split district."[14]

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[11] Sugarman letter, pp. 8-9
[12] Transcript of February 12, 2008, public hearing, p. 12.
[13] Ibid, p. 14.
[14] Ibid, p. 15.

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The standard established by 72-21(a) is that the condition be "unique." Therefore, the question is not whether the split-lot condition is "common," but whether it occurs elsewhere at all. Furthermore, the language of 72-21(a) does not support the interpretation of a split lot as a "unique physical condition." Applicant's site is neither irregular, narrow nor shallow, nor does it suffer from any "exceptional topographical or other physical conditions peculiar to and inherent in the particular zoning lot." Were the Board to accept the split lot as a basis for a hardship finding under 72-21(a), it would set a dangerous precedent for future variance applications, and particularly for other property owners along Central Park West.

Community-Initiated "Soft Site" Analysis

The Upper West Side community has long recognized the potential for development plans such as this one to destroy the essential character of this historic neighborhood and set precedents for future development along the avenue and in the midblocks adjacent to Central Park. The 1984 contextual rezoning and the 1990 historic district designation were both community-driven responses to projects and proposals that were perceived as out-of-scale and damaging to the character of the neighborhood. The 1984 rezoning was a valid exercise of the City's police power to protect public health, safety and welfare and was approved after careful study of the neighborhood and due consideration by Manhattan Community Board 7, the New York City Planning Commission, and the Board of Estimate.[15]

Despite the 1984 rezoning, Applicant has not given up its ambition to construct as large a building as possible, including as many market-rate residences as it can, on the site of its existing community house, which is 83% in the low-rise, midblock, R8B zoning district. Applicant is arguing that, regardless of the rezoning of most of Lot 37 to R8B, the rezoning should be ignored because part of Lot 37 remains in the R10A zoning distict. The precedent-setting potential of the current application is even more significant than previous attempts since approval would enable this and other religious non-profit institutions—not just those with properties located on a split lot—to ignore zoning in order to build luxury condominiums to fund themselves.

Perceiving the potential for a new rash of tall-building development that would transform the iconic skyline silhouette of Central Park West—officially recognized and protected as a historic resource by both the City and State of New York[16]—LANDMARK WEST! (LW) recently commissioned the architectural planning firm Weisz + Yoes to conduct a study of the Central Park West skyline. Attached to this submission is working draft of the report, which speaks directly to the issues the Board asked Applicant to address.[17]

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[15] See Elliott D. Sclar letter dated February 12, 2008, previously submitted.
[16] Central Park West between West 63rd and 96th Streets is included in the Upper West Side/Central Park West Historic District (designated by the NYC Landmarks Preservation Commission in 1990), which was subsequently certified by the State of New York for listing on the National Register of Historic Places.
[17] Weisz + Yoes Architecture, "Central Park West: Potential Futures," draft report dated March 25, 2008. Attached with firm CV.

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The Weisz + Yoes study carefully analyzes the entire length of Central Park West between 59th and 110th Streets and identifies 10 "soft sites" within 200 feet of the avenue. Conveniently for its argument, Applicant narrowly defines its interpretation of the Board's request and identifies no "soft sites." First, Applicant looks only at the blocks between 65th and 86th Streets. Second, Applicant looks only at residential buildings, not institutional sites. Thus, its analysis ignores the very real development potential of such sites as:

1) Society for Ethical Cultural (between 63rd and 64th Streets)
2) 9 West 64th Street
3) Holy Trinity Lutheran Church (65th Street)
4) First and Second Church of Christ Scientist (68th Street)
5) Fourth Universalist Society (76th Street)
6) New-York Historical Society (between 76th and 77th Streets)
7) The southwest corner of 85th Street
8) Trevor Day School (88th Street)
9) Former First Church of Christ

The 10th "soft site" identified by the Weisz + Yoes study is, of course, Congregation Shearith Israel. By omitting institutions from its analysis, Applicant leaves out the very sites that are most comparable to its own.

The Weisz + Yoes study provides detailed development scenarios, including zoning calculations and axonometric diagrams, for each of the 10 soft sites it identifies. First, the study models possible as-of-right development on each site, strictly adhering to zoning and fairly conservative assumptions about what the Landmarks Preservation Commission would approve. Then, the study models potential tower development, taking the viewpoint of a developer seeking to maximize the use of available floor area through special permits or variances releasing the development from height and bulk restrictions. Comparison of these development scenarios shows the likelihood, under certain economic and regulatory conditions, that additional towers will be built along Central Park West.

The Weisz + Yoes development scenarios illustrate that each of the 10 identified soft sites has a substantial amount of unused zoning floor area. Each contains a landmark-protected building or buildings that limit the manner in which floor area can be used on the site in compliance with existing zoning. Each of these institutions could argue that variances are needed so that zoning floor area can be more fully utilized. Arguments could surely be made by some that the existing buildings are obsolete and underperforming.[18] Several of the zoning lots are split by the R10A/R8B zoning

[18] In a November 1, 2006, *New York Times* article New-York Historical Society President Louise Mirrer was quoted as saying that the landmark has been described as "a mausoleum, a very forbidding building that is hardly welcoming." The article announced the Historical Society's plans to construct a 23-story apartment tower behind the landmark (in whole or in part in the R8-B zoning district), an extra floor on top

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boundary, including Congregation Shearith Israel, Fourth Universalist Society, New-York Historical Society and Trevor Day School.[19]

This evidence proves that Applicant's site condition is not unique. Indeed, were the Board to find that the strict application of contextual height and setback requirements to Applicant poses a hardship meriting zoning relief, it would open the door to applications from many more Central Park West institutions.

Applicant has failed to meet finding (a).

Finding (b): "…because of such 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; this finding shall not be required for the granting of a variance to a non-profit organization…"

Martin B. Levine, MAI, a New York State Licensed commercial real estate appraiser and Chairman of Metropolitan Valuation Services, Inc., has again identified numerous fatal flaws in the Freeman/Frazier feasibility study, as revised and included in Applicant's March 11, 2008, submission, underscoring that its conclusions cannot be relied upon as a basis for granting variances.[20]

> "The Freeman/Frazier March 11, 2008 report appears to intentionally overestimate the underlying land value in an attempt to prove that as of right development is not economically feasible. Insofar as the value of the underlying land has been clearly demonstrated to be the fulcrum upon which economic feasibility is balance, basing the land value on the opinion of a consultant with no appraisal qualifications or licenses, who does not identify themselves as a real estate appraiser, and who has demonstrated a failure to employ proper appraisal methodology and technique, can only result in an unreliable indication of economic feasibility."[21]

Freeman/Frazier erroneously base their land value estimate on the so-called as-of-right sliver scheme (also discussed herein on pages 4-5) that, in reality, could not be constructed on the site and, in any case, would not command the value ascribed to it in the Freeman/Frazier report.[22]

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of the landmark, and a five-story annex on an adjacent empty lot the Historical Society owns at 7-13 West 76th Street. Attached.

[19] Weisz + Yoes draft report, Appendices: Mass Diagrams, pp. xiii-xv (Congregation Shearith Israel soft site), xvi-xvii (Fourth Universalist Society soft site), xviii-xx (New-York Historical Society soft site), and xxiv-xxvi (Trevor Day School soft site).

[20] Martin Levine, MAI, Metropolitan Valuation Services, letter dated March 20, 2008, p. 2. Attached.

[21] Ibid, p. 3.

[22] Ibid, pp. 2, 8.

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Applicant's as-of-right Scheme C is economically feasible and would provide a reasonable return.[23]

Applicant has failed to meet finding (b).

Finding (c): "…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 use or development of adjacent property; and will not be detrimental to the public welfare…"

The Board has made clear its position that residential use created for the purpose of raising capital funds is not, in and of itself, a programmatic need. Given that the sole function of the upper-floor variances is income-producing luxury condominiums unrelated to Applicant's mission, Applicant's new plans showing a "notch" carved out of the condominium floors of its proposed building are irrelevant.

Still, these new plans, the ostensible purpose of which is to mitigate the impact on adjacent properties, underscore the legitimacy of neighbors' concerns about compromised light, air and views.

Robert Von Ancken, MAI, CRE, and Kathryn J. Cosentino, of Grubb & Ellis Consulting Services Company performed a professional appraisal and concluded that three residential properties adjacent to 8 West 70th Street would be adversely impacted: 18 West 70th Street, 91 Central Park West and 9 West 69th Street.[24]

> "The proposed construction will cause damage to all three adjacent buildings by 1) cutting off the natural lighting in the E and F line apartments with windows on the northerly and westerly elevations on the lower floors at 91 Central Park West, 2) to a lesser extent diminishing natural lighting to the rear apartments at 9 West 69th Street, and 3) eliminate most of the natural light and the easterly views of Central Park from the apartments at 18 West 70th Street that have windows facing east."[25]

The appraisal report concludes that the aggregate loss in value to the apartments at 18 West 70th Street alone would be $2,577,250.[26]

Finally, nearly a year after first submitting its application to the Board, Applicant proffers new information to supplement its Environmental Assessment Statement, which was shallow in its analysis of impacts on the surrounding neighborhood, particularly with regard to garbage and traffic generated from the planned Banquet Hall and Toddler Program. The AKRF report does not remedy the deficiencies of the original EAS, and it

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[23] Ibid, pp. 4, 8.
[24] Grubb & Ellis appraisal report dated March 18, 2008, p. 1. Attached.
[25] Ibid, pp. 2-3.
[26] Ibid, p. 15.

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does not alleviate our concerns, especially since Applicant seems unable to cope with its current volume of garbage and traffic.[27]

Applicant has failed to meet finding (c).

Finding (d): "…the practical difficulties or unnecessary hardship claimed as a ground for a variance have not been created by the owner or by a predecessor in title; however where all other required findings are made, the purchase of a zoning lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship…"

Opposition has shown in previous submissions that Applicant has failed to meet finding (d). Applicant creates its own "hardship" by its desire to construct new religious and educational facilities along with five floors of for-profit luxury condominiums, and thereby finance the creation of space for its religious mission. It is not the Board's role to ensure Applicant's ability to pay for a new community house, but rather to assess whether or not zoning impedes the useful development of this site. The site can be developed in a variety of ways that comply with zoning and would produce tangible benefits to Applicant. The fact that Applicant chose not to pursue any of these options is illegitimate grounds for a hardship finding.

No new materials have been submitted by Applicant to cure the deficiencies of its previous submissions. Therefore, Applicant has still failed to meet finding (d).

Finding (e): "…within the intent and purposes of this Resolution the variance, if granted, is the minimum variance necessary to afford relief; and to this end, the Board may permit a lesser variance than that applied for."

<u>Accessibility, Circulation and Program Usage</u>
Opposition's previous submissions have demonstrated that Applicant's asserted accessibility and circulation issues could be resolved by simply modifying or replacing the elevator in the existing building.[28] Both the as-of-right Scheme A and the proposed new building handle accessibility and circulation issues in exactly the same way.[29] A very small portion of the proposed building is required and programmed to meet circulations and accessibility needs.[30] Therefore, in this regard, the variances requested are not the minimum necessary to afford relief.

In terms of classroom needs, Applicant's attorney submits a Proposed Program Usage Chart that serves only to reinforce Opposition's previous conclusion that all of Applicant's needs can be met without any of the requested variances and indeed within the first four floors of an as-of-right building.[31] Furthermore, there is ample space in the

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[27] Opp. Ex. Z.
[28] Morrison report dated February 12, 2008.
[29] Ibid.
[30] Morrison letter dated March 24, 2008, Point 7 and Opp. Ex. GG. Attached.
[31] Ibid, Point 1 and Opp. Ex. GG.

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entire zoning lot to accommodate Applicant's programmatic needs without zoning variances.[32]

Applicant's Chart shows that peak classroom usage would occur on Thursdays from 3:30 to 6:00 PM, when a maximum of 50 Hebrew School students and a maximum of 60 Toddlers would occupy the building simultaneously. Using Applicant's assignment of 35 square feet per child,[33] this would require a maximum of 3850 square feet of classroom space, which could easily be provided in 12 classrooms on the 2nd, 3rd and 4th floors of an as-of-right building, which provides 4135 square feet of classroom space.[34]

During the other days of the week, much of the non-residential space provided in the proposed building would lie fallow, except for the income-generating tenant school, because the vast majority of Applicant's programs are non-simultaneous and would not compete for space.

Throughout this proceeding, Applicant has made vague and increasingly confusing and conflicting statements about its programmatic needs. In sum, Applicant has not made a convincing case explaining why its proposed building is the minimum variance needed to afford relief, or indeed why any relief is necessary since an as-of-right building could accommodate Applicant's programmatic needs, with room to spare.

Applicant's Financial Need

Ever since Applicant presented the first version of this new building scheme to the Landmarks Preservation Commission in 2002, it has referred to the residential portion of the development as an "economic engine" to generate capital funds for the synagogue and has continued to reiterate this position during proceedings before the Board.

Applicant's attorney has stated on the record at public meetings that the Board specifically requested Applicant to produce a feasibility study for the purposes of finding (e). This request only makes sense if, contrary to its previous decisions rejecting the need or desire to raise capital funds as a legitimate programmatic need, the Board believes that the finances of the project have a nexus with Applicant's need for variances and that, in order to meet its financial needs, the minimum variance required is one that allows the construction of market-rate condominiums.

To the extent that the Board does have a concern, however misplaced, as to Applicant's ability to fund the programmatic needs, the issue at that point would not be a classic rate-of-return computation as performed for the (b) finding, but a computation as to cash proceeds generated. All of Applicant's many versions of its convoluted feasibility study

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[32] Ibid, Points 1-5 and Opp. Ex. GG.

[33] Applicant's plan to provide 25 square feet of classroom space per adult and 35 square feet per child exceeds the NYC Building Code requirement of 20 square feet per occupant for "Classrooms." Opp. Ex. JJ-20-22. Attached. When proposing an as-of-right option, standard and accepted code-compliant regulations should apply.

[34] Greer letter (regarding program usage) dated March 25, 2008, p. 1.

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show Applicant as receiving the proceeds from the sale of the land, providing ample financial support for the Congregation to fund its new building.

If it is the Board's position that Applicant's claimed economic needs are relevant under (e), then it is well within the bounds of this inquiry to review Applicant's finances and its other potential sources of income, and to rethink Vice Chair Christopher Collins's statement at the February 12, 2008, public hearing that "The presence of wealthy individuals in a congregation…is of absolutely no relevance to the legal findings that this Board is going to make." As James A. Greer, II, points out in his March 25, 2008, letter to the Board regarding Vice Chair Collins's statement, "[O]ne of the principal sources of financing for such institutions is the generosity of their wealthy members….Accordingly, the number of wealthy members of a religious institution and the amount of their resources directly affect its finances."[35]

At the very least, we request that Vice Chair Collins clarify his statement in terms of the findings the Board must make under 72-21 and that the Board explain its position on the relationship, if any, between its request for a feasibility study and finding (e).

Applicant has not shown as required by finding (e) that it needs any variances to obtain relief from the zoning code.

Procedural Irregularities

Finally, we remain concerned about procedural irregularities that cloud the record and prevent the Board from formulating a factually sound opinion on this matter.

Recently, it was discovered that, contrary to the New York City Charter and Board of Standards and Appeals Rules of Practice and Procedure,[36] neither the Department of Buildings Commissioner nor the Manhattan Borough Commissioner signed the Objections on which Applicant's Board of Standards and Appeals application is based.[37] As a result, the Board lacks jurisdiction over this matter.

Furthermore, in testimony to the Board on February 12, 2008, Applicant's attorney revealed that the plans it submitted as part of its application for zoning variances were not the plans for which the Department of Buildings had issued objections. Again, this circumvention of process—and Applicant's misrepresentation of its process up to this point—deprives the Board of jurisdiction over this matter.[38]

Conclusion

For all of the foregoing reasons, all of Applicant's requests for variances from the zoning code should be denied.

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[35] James A. Greer, II, letter (regarding Vice Chair Christopher Collins) dated March 25, 2008, pp. 2-3. Attached.
[36] New York City Charter, Chapter 27, Section 666, adopted as Sections 1-01(a)(6) and 1-07(a) of the Board of Standards and Appeals Rules of Practice and Procedure.
[37] David Rosenberg, Esq., letter dated March 25, 2008, pp. 1-2. Attached.
[38] Rosenberg, pp. 3-6.

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