

JAMES A. GREER, II
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April 15, 2008

BY HAND DELIVERY

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,

CSI's April 1, 2008, response ignores the March 15, 2008, submissions from Alan Sugarman, Esq., and me. Specifically, we stated that CSI's repeated claim that it cannot do without all the 15 classrooms provided in its proposed building for its education programs is demonstrably false. (This claim of "programmatic need" bears no relationship at all to the upper floor variances requested by CSI, having relevance only to the rear yard variances.)

CSI has no rebuttal to our factual presentations and has also deliberately chosen not to provide the programmatic need charts and tables in an understandable form, as repeatedly requested by the Board.

The 15 classrooms listed in the "PROGRAM USE USAGE CHART – FLOORS 2-4" filed by CSI on March 11, 2008, (OPP Ex. GG-1-3) provide a total of 6066 sq. ft. **of net classroom space**.¹ The CSI chart in the fifth column states that CSI allocates 35 sq. ft. per "child" and 25 sq. ft. per adult in calculating the classroom space needs for its education program. Thus, according to CSI's own figures, the classrooms on floors 2-4 of the proposed building would provide space for 173.31 "children" at the same time. This far exceeds the number of children that CSI will ever program into the proposed building.

In fact, CSI's submissions reveal that the greatest number of children in its own programs will be – at most - 95 – on Saturday mornings, when the CSI Youth Group (35

¹ No equivalent charts were provided by CI to show usage in the existing or any of the as-of-right buildings, rendering the record insufficient for the Board to make an (e) finding. CSI did provide difficult-to-understand information as to both existing and proposed scenarios in the programmatic drawings it submitted on December 28, 2007, which were confusing and led the Board to request greater clarity. CSI's subsequent submissions have not cured this deficiency. Given CSI's deliberate dereliction in this regard, the Board cannot make an (e) finding and, accordingly, must deny the application for the rear yard variances.

children) and CSI Expanded (60 children) Shabbat Toddler Program will both be meeting from 9 AM-Noon.

According to CSI's various submissions the maximum number of "children" that would occupy any building CSI plans to construct would be 110, on Thursday afternoons from 3:30 to 6PM, when the CSI Hebrew School (50 "children" (maximum)) and the expanded (60 children) so-called "Community Toddler Program" would both be in session. Assuming without conceding that the Community Toddler Program is a legitimate part of CSI's mission and using CSI's formula of 35 sq. ft. per child, this would require no more than 3850 sq. ft.² In fact, using CSI's formula, an A-O-R building will provide 4145.80 sq. ft of classroom space.³

As shown in the Chart A and Table of the attached Exhibit A and B, there is more space on floors 2-4 of an A-O-R building than CSI's programs require. Except for Thursday afternoons from 3:30-6 PM, this surplus is substantial, but there is still surplus space on Thursday afternoons.⁴ The surplus space in CSI's proposed building is dramatically higher. As shown in Table B and Chart B of the attached Exhibit A and B, the surplus space far exceeds the space required for CSI's programs every day except Thursday and Saturday, when the surplus is still substantial.⁵

So, what is this extra space for? Quite simply, it can only be to accommodate Beit Rabban. According to Beit Rabban's most recent PF-990 filing, it paid CSI \$441,998 in 2006-2007 for rent.⁶ According to CSI's financial consultant, that rent in the proposed new building would increase by \$819,002 to \$1,261,000 - almost triple Beit Rabban's present rent.⁷

² This makes the charitable assumption that no student will be old enough or big enough to qualify as an "adult" for purposes of calculating CSI's space needs. Since CSI's Counsel in his October 25, 2007 submission (at p. 10) has represented that the majority of the Hebrew School space is for students in grades 4-9, the required square footage should doubtless be much lower. As stated in footnote 2 on page 2 of my March 15, 2008, letter to you, it appears CSI has inflated the number students in its Hebrew School.

³ In his Statement dated December 28, 2007, CSI's Counsel argues (at page 5) that CSI needs 1920 sq. ft. more on floors 2-4 than would be available in an A-O-R building. Subtracting 1920 sq. ft. from the 6065. 80 sq. ft. shown in the CSI'S "PROPOSED PROGRAM USAGE CHART: FLOORS 2-4" leaves a remainder of 4145.80 sq. ft.

⁴ As stated in my March 15, 2008, letter to the Board, there is ample classroom space in the A-O-R building for both the CSI Hebrew School and Community Toddler Program to permit them to meet simultaneously.

⁵ As the legends on these drawings note, the 1200 sq. ft. caretaker's apartment on the 4th floor and the 8500 additional square feet on the 5th and 6th floors are not reflected in these charts.

⁶ Opp. Ex. HH-2.

⁷ See October 24, 2007, letter from Freeman Fraser to BSA, Schedule A2, page 9.

Beit Rabban could not prudently undertake such a large financial commitment without a guarantee from CSI that it would construct sufficient space to accommodate a much larger Beit Rabban enrollment than it has at present.⁸ If CSI has some other explanation, it should provide evidence to support it. Remarkably, the Board has not made even a cursory inquiry into the financial arrangements between CSI and Beit Rabban, even though it is abundantly clear that the income stream from Beit Rabban is a key element of CSI's proposal. In view of the repeated, substantive and well-documented criticisms by Opponents and the obvious importance of the Beit Rabban relationship, the lack of interest by the Board is baffling and suggests an inappropriate deference by the Board to CSI's religious status, political connections, or both.

Using its formula of 35 sq. ft. per child, CSI's proposed building would accommodate at least 173 "children," or 48 more than CSI's Counsel states are currently enrolled. According to the Beit Rabban website (Opp. Ex. JJ-11), current tuition per child ranges from \$12,800 for the children in the Gan (prekindergarten) classes to \$19,950 for those in its Elementary School (K-5th Grade). Forty-eight additional children would generate an additional minimum of \$640,000 and a maximum of \$957,000. More than 48 more children could be accommodated if they were old enough to meet the 25 sq.ft./student criterion. In a modern building Beit Rabban would likely be able to charge more per student.

By every metric, Beit Rabban is the dominant user of the proposed building. I have prepared and attach, as Exhibits C and D, charts showing the metrics of use by square foot and the number of student hours per week. These show that in the current building Beit Rabban is responsible for 88.62% of the student hours per week. In the proposed building it will be responsible for 60.73% of the student hours per week, and the "Community" Toddler Program will be responsible for a further 28.7%.⁹ The programs that are indisputably part of CSI's mission amount to a mere 10.57% of the student hours per week.

Simply looking at the drawings of the existing building filed by CSI on December 28, 2007, it is apparent that some classrooms in the existing building are never used by the Congregation from Monday to Friday. Drawing Prog E-8 shows that Beit Rabban is the exclusive user of the Second Floor during that time. Drawing Prog E-7 shows that on Monday and Wednesday mornings and, possibly, Friday morning as well, the Congregation

⁸ According to repeated statements by CSI's Counsel, Beit Rabban currently enrolls 125 students.

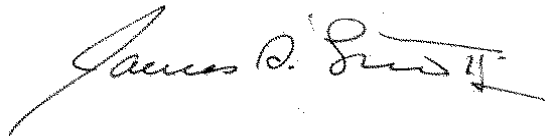
⁹ CSI has not revealed the financial impact of the expansion of the present 20-child, 3-hour per day, 2 days per week Community Toddler Program to the 60-child, 10-hours per day, 5-day per week. However, I estimate that, conservatively, this is likely to generate approximately \$300,000 - \$400,000 per year, as opposed to the approximately \$50,000 the present program probably generates. Taken together with the planned \$1,200,000 in rent from Beit Rabban, CSI's proposed Community House is truly a "financial engine." In fact, CSI's proposed building really would house a commercial enterprise that would generate substantial tax-exempt income and be located on land that CSI would likely argue is an essential part of its religious mission and, therefore, exempt from property taxes!

is forced to use the auditorium for the Community Toddler Program because Beit Rabban, the dominant, rent-paying user, is using all the classrooms in the existing building.¹⁰

Counsel for CSI has stated that Beit Rabban only uses classroom space that CSI needs when CSI is not using it. As the foregoing charts make abundantly clear, that is exactly the opposite of the truth. CSI's programs only use existing and proposed classroom space when Beit Rabban is not using it. When it comes to the use of classroom space, Beit Rabban truly is the "500 pound gorilla" in this case.

Accordingly, there is no lawful basis for the BSA to grant CSI's request for the rear yard variances. Granting this request would be concrete evidence that the BSA Commissioners either have neglected their duty to pay attention to the evidence Opponents has submitted about this aspect of CSI's Application or have determined – for reasons that will not bear scrutiny - to ignore the various fallacious arguments CSI has made in the course of this proceeding, particularly those relating to its need for classroom space, and the strong, factual presentations by the Opponents pointing out these fallacies.

Respectfully,

A handwritten signature in black ink, appearing to read "James A. Greer, II". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

James A. Greer, II

Atts. Exhibits A-B and C-D

¹⁰ This is inconsistent with the Rabbi's 11/27/07 testimony, which referred (Tr. at ll. 233-234) to only two weekday mornings and the CSI website, which refers to only Monday and Wednesday mornings. Counsel for CSI's 12/28/07 letter refers – at p.12 – to Monday, Wednesday and Saturday morning sessions.

Contents

Opposition Exhibit LL - Attachments to Jay Greer Statement of
April 15, 2008 re educational programmatic needs.

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EXHIBIT A AND B TO GREER STATEMENT OF APRIL 15, 2008

Table A

Day	Peak AOR	Surplus AOR
SUNDAY	1750	2395
MONDAY	2100	2045
TUESDAY	2100	2045
WEDNESDAY	2600	1545
THURSDAY	3850	295
FRIDAY	2100	2045
SATURDAY	3325	820

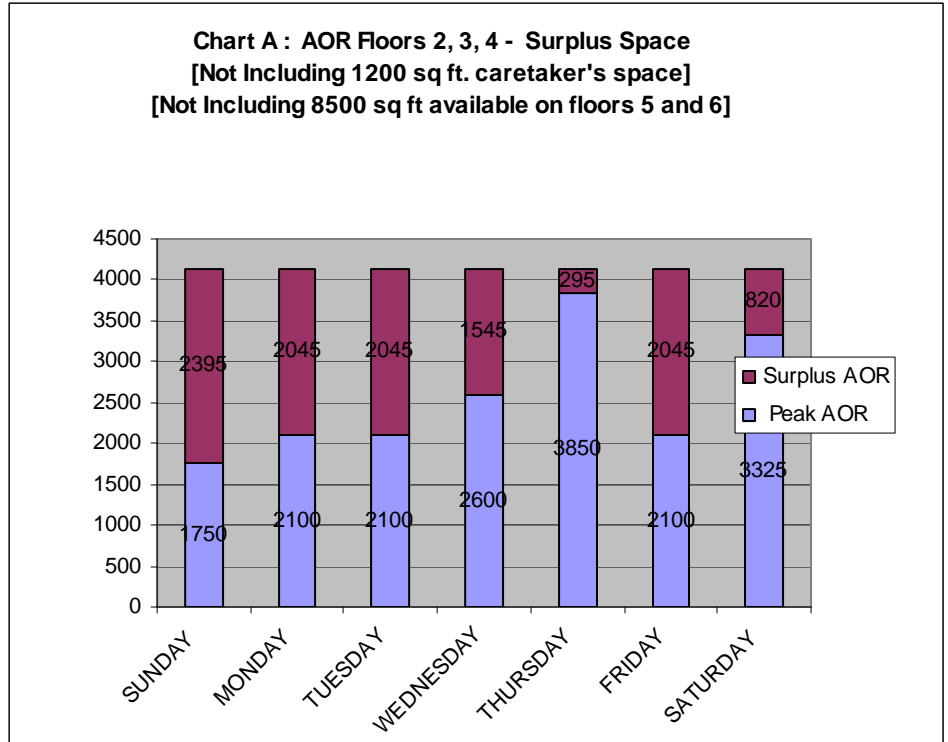


Table B

Day	Peak Prop	Surplus Prop
SUNDAY	1750	4315
MONDAY	2100	3965
TUESDAY	2100	3965
WEDNESDAY	2600	3465
THURSDAY	3850	2215
FRIDAY	2100	3965
SATURDAY	3325	2740

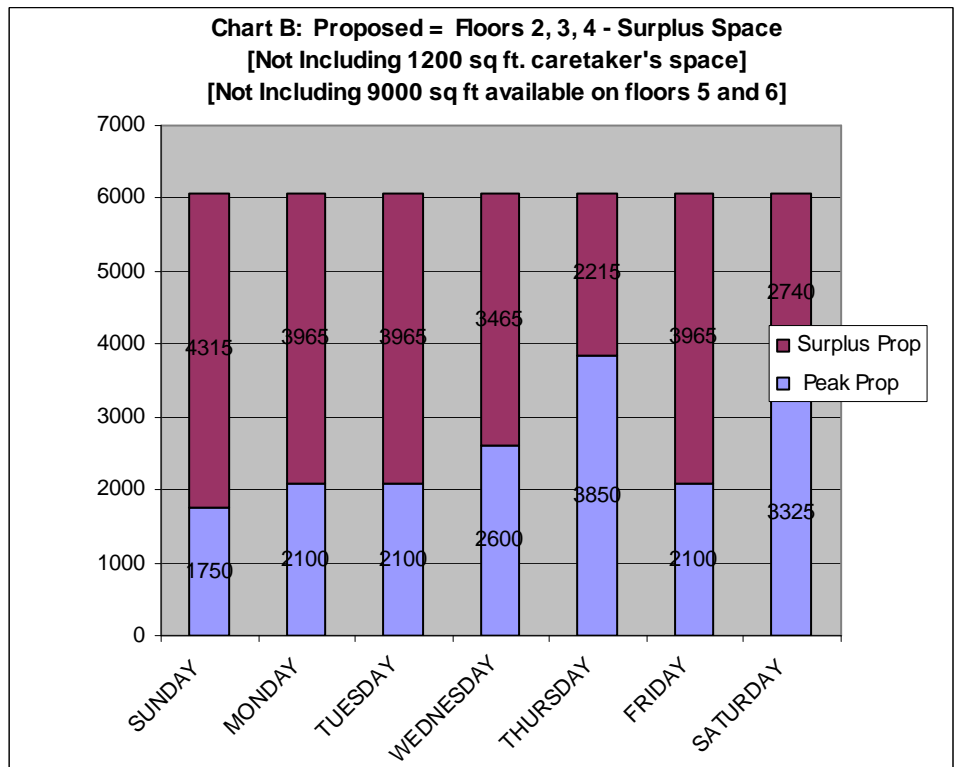


EXHIBIT C-D TO GREER STATEMENT OF APRIL 15, 2008

Chart C - Proposed - Student Hours Per Week - Percentage

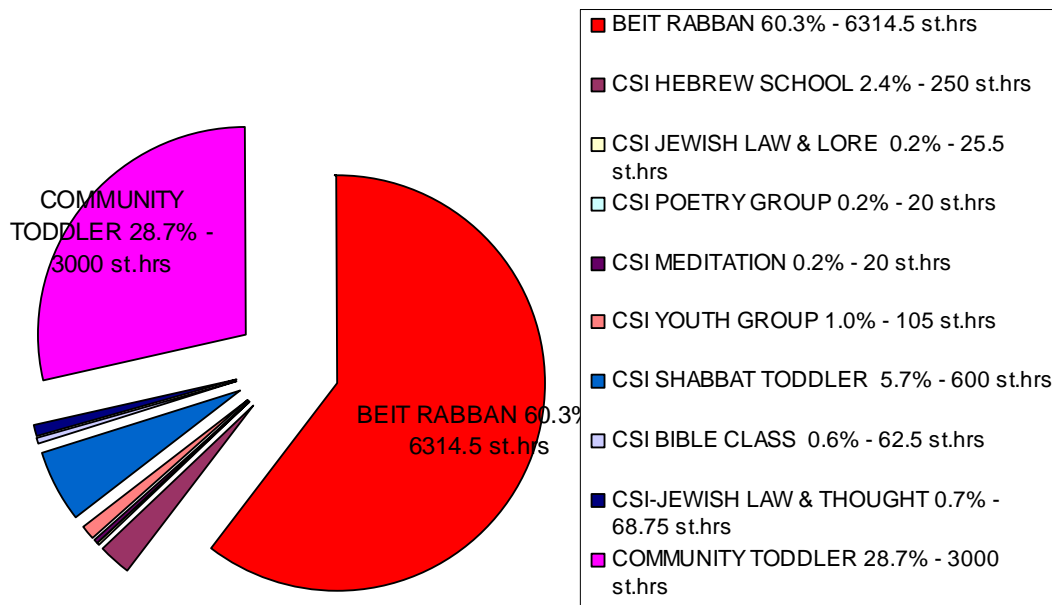


Chart D: Existing - Student Hours Per Week - Percentage

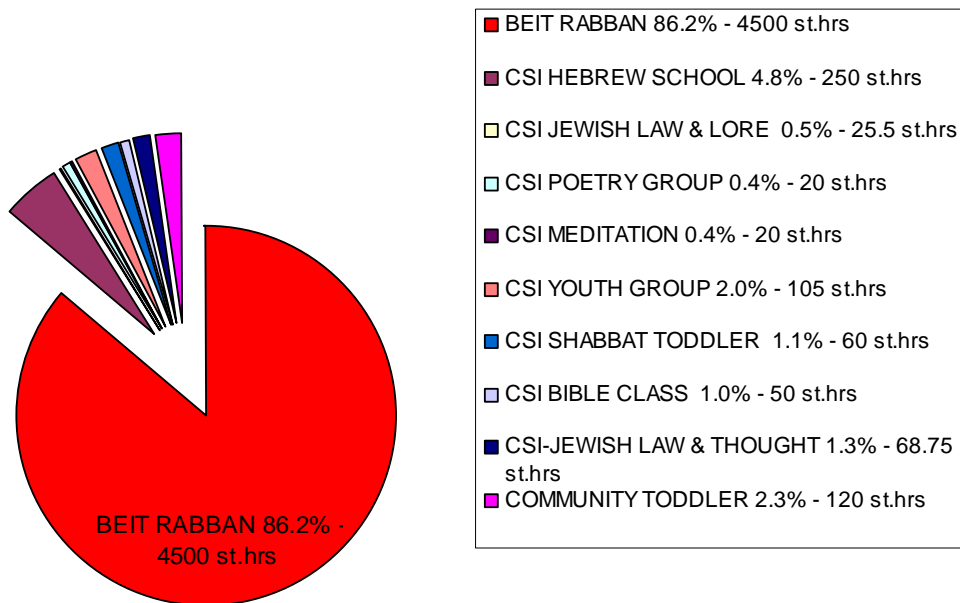


Exhibit C to Greer Statement of April 15, 2008

TOTAL STUDENT HOURS -PROPOSED - Table C for Chart C

	Mon	Tue	Wed	Thu	Fri	Sat	Sun	7-Days	%										
	Stud/Hrs	Stud/Hrs	Stud/Hrs	Stud/Hrs	Stud/Hrs	Stud/Hrs	Stud/Hrs	Stud/Hrs											
BET RABBAN	1384	173	8	1384	173	8	1211	173	7	952	173	5.5	0	0	125	50	2.5	6314.5	60.3%
CSI HEBREW SCHOOL	0	0	0	0	0	0	125	50	2.5	0	0	0	0	0	0	0	0	250	2.4%
CSI JEWISH LAW & LORE (TALMUD)	25.5	17	1.5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	25.5	0.2%
CSI POETRY GROUP	0	0	0	20	20	1	0	0	0	0	0	0	0	0	0	0	0	20	0.2%
CSI MEDITATION(0	0	0	0	0	0	20	20	1	0	0	0	0	0	0	0	0	20	0.2%
CSI YOUTH GROUP	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	105	1.0%
CSI SHABBAT TODDLER	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	600	5.7%
CSI BIBLE CLASS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	600	5.7%
CSI-JEWISH LAW & THOUGHT	0	0	0	0	0	0	0	0	0	0	0	0	0	0	68.8	1	50	62.5	0.6%
COMMUNITY TODDLER	600	60	10	600	60	10	600	60	10	600	60	10	0	0	68.8	1	50	68.75	0.7%
TOTAL CSI STUDENT HOURS	625.5	600	620	745	600	774	188	4151.75	39.7%										
TOTAL BET RABBAN	1384	173	8	1384	173	8	1211	173	7	952	173	5.5	0	0	125	50	2.5	6314.5	60.3%
Total Student Hours	2010	173	8	1956	173	8	1552	173	5.5	774	0	188	10466.25	100.0%					

Chart C - Proposed - Student Hours Per Week - Percentage

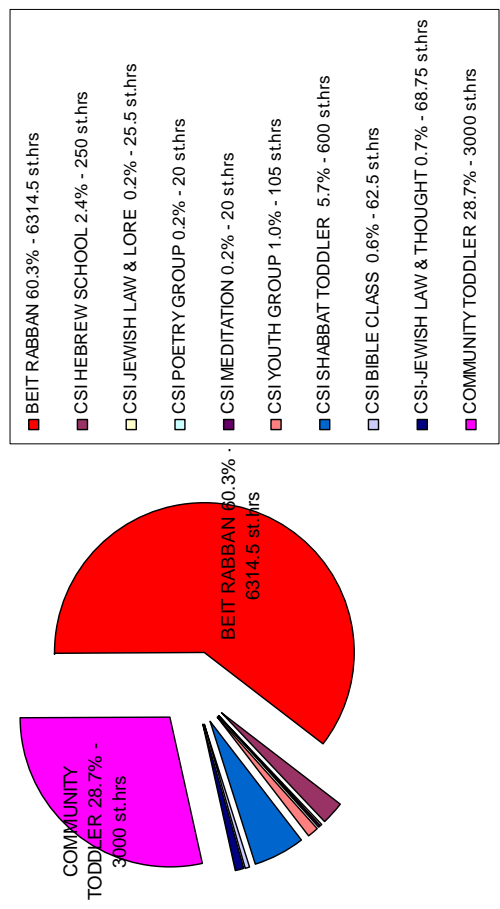


Exhibit D to Greer Statement of April 15, 2008

TOTAL STUDENT HOURS - EXISTING - Table D for Chart D

	Mon	Tue	Wed	Thu	Fri	Sat	Sun	7-Days	%	
	Stud/Hrs	Stud/Hrs	Stud/Hrs	Stud/Hrs	Stud/Hrs	Stud/Hrs	Stud/Hrs	Stud/Hrs		
BEIT RABBAN	1000	125	8	1000	125	8	1000	125	4500	86.2%
CSI HEBREW SCHOOL	0	0	0	0	0	0	0	0	0	0.0%
CSI JEWISH LAW & LORE (TALMUD)	25.5	17	1.5	0	0	0	0	0	25.5	0.5%
CSI POETRY GROUP	0	0	0	0	0	0	0	0	0	0.0%
CSI MEDITATION	0	0	0	0	0	0	0	0	0	0.0%
CSI YOUTH GROUP	0	0	0	0	0	0	0	0	0	0.0%
CSI SHABBAT TODDLER	0	0	0	0	0	0	0	0	0	0.0%
CSI BIBLE CLASS	0	0	0	0	0	0	0	0	0	0.0%
CSI-JEWISH LAW & THOUGHT	0	0	0	0	0	0	0	0	0	0.0%
COMMUNITY TODDLER	60	20	3	0	0	0	0	0	120	2.3%
TOTAL CSI STUDENT HOURS	85.5	0	80	145	0	234	0	719.25	13.8%	
TOTAL BEIT RABBAN	1000	125	8	1000	125	8	1000	125	4500	86.2%
Total Student Hours	1086	125	8	1080	125	8	1080	125	5219.25	100.0%

Chart D: Existing - Student Hours Per Week - Percentage

