

KATHERINE L. DAVIS
21 WEST 76TH STREET
NEW YORK, NEW YORK 10023

EMAIL:
DAVIS@CLAREMONTGROUPLTD.COM

TEL: (212) 697-6665
FAX: (212) 697-8902

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

Reference:
Calendar 74-07-BZ
6-10 West 70th Street
New York, NY

Honorable Chair and Members of the Board of Standards and Appeals:

Congregation Shearith Israel (CSI) requests that the BSA provide zoning variances for condo development because CSI claims that, without the income from condo development, its income is insufficient to build the “community house”.

This letter points out conflicts in CSI statements, and the additional information that the BSA needs to review, before granting the variances, 72-21(a) and 72-21(e), which are required for CSI to produce its desired level of condo profits.

CSI and BSA statements, and the material requested and produced, do not address the legitimacy of the claim for required condo income and are not in sync with each other.

Mr. Shelly Friedman, on behalf of CSI, makes the “hardship” and “economic engine” claim to the BSA:

*I do want to start out by stating that while the application does focus on site-specific conditions giving rise to **hardship**, this particular matter that I'm going to speak to **augments each specific hardship as an additional form of hardship** and it's really borne of the congregation's growth from pre-colonial times to the position it now finds itself in.¹*

¹ Mr. Shelly Friedman (counsel to and presenter for CSI) at New York City Board of Standards and Appeals hearing, 27 November 2007, transcript page 3, lines 65-68

*...Integral to each move was a parlay of its real estate to serve as a **economic engine** for its next generation's building.²*

...And, so we turn to, again, the residential solely to provide the economic engine. I've referred to it before.³

Here Mr. Friedman makes two separate, different hardship claims:

- 1) site-specific hardship
- 2) additional form of hardship

neither of which have a bearing on BSA's considerations.

The first is not supported by reference to any site-specific "unique physical conditions" as required by a 72-21(a) finding. Since CSI has not supported such a claim, and there is no support in the hearing record, BSA cannot make a finding, and can grant variances on neither the community house nor the condos.

The second is explained as deriving from "the congregation's growth from pre-colonial times...". The major portion of that growth was presumably taken into account when CSI constructed the existing community house in 1950s. CSI has not submitted any figures showing growth since then. However, there may indeed be some kind of (unexplained) hardship, as experienced by many organizations, that deserves sympathy but is not grounds for zoning variances.

In subsequent statements, the distinction between the hardship types and their justifications is unclear. It appears that CSI is attempting to deliberately confuse a permitted regulatory hardship that is not present, with an inconvenient obstruction to a very profitable real estate development project.

If, however, a financial hardship can arise out of a development proposal that exceeds lot capacity, then to accept CSI's statement, without any support, it is necessary to believe that CSI's income from multiple sources is insufficient to build the "community house". The income sources are rental income from the parish brownstone, rental income at market rates from the classroom rentals and other income from the toddler program, Hebrew school attendance, synagogue membership, CSI's expanded endowment from the "rainy day" anniversary fund of \$10 million, and donations specified for the "community house"

Income and cash are fungible. The condo development income is not segregated; it will be added to all the other sources of income to CSI. Since income and expense accounting span several years, current and prospective income from all sources must

² Ibid. page 4, lines 75-76.

³ Ibid. page 24, lines 534-535.

be considered, to determine whether there is a shortfall to build the “community house”.

Mr Friedman's term “programmatically need” is misleading in the sense that it implies that condo income would be spent on religious-related programs when it is actually to be spent (“totally eaten up”) on construction of an income producing building. Perhaps this is why “programmatically need” rather than ‘program need’ has been introduced. A capital building project that provides multi-use space is not the same as funding programs.

Three interrelated questions arise:

- (1) Is the referenced “economic engine” requirement true or false?
- (2) What proportion of the “community house” must be financed by the residential development?
- (3) What other resources would be used to fund the balance of the “community house” development cost, if rights acquisition proceeds fall short?

Since none of these questions are answered in CSI submissions to BSA, the ‘requirement’ cannot be taken at face value.

The “economic engine” requirement is also so (deliberately?) vague as to be meaningless. CSI has not stated whether the full construction cost of \$11,551,602, or whether \$1,000,000 or \$1, is required from the residential development income. Whatever the amount, it is not the \$13m to \$14m shown in their various proposals.

An answer to the proportion question is essential for any BSA variance grant that depends on 72-21(e) that requires minimum variance. If smaller condos yielding less income require fewer variances, then the requested variances must be denied.

The necessary level of residential rights income can only be supported by CSI’s own audited financial statements, not the project financials that have been produced so far. CSI’s financials would show available resources. They should also include projections of income from the proposed development, broken down by income source from classrooms, toddler program, hall rental, et al. Any of several methods can be devised whereby the results of an analysis could be made available without public revelation of details. Lacking such results, the CSI premise that residential rights acquisition proceeds on the order of \$13m or \$14m are required, must be dismissed as support for requested variances.

To provide context, the CSI congregants and Trustees give substantial publicly-announced donations elsewhere and have supported two CSI fund raising campaigns in the past. See Attachment 1.

In a message from the Campaign Chairman on the recent \$10 million fund raising campaign:

The new 350th Anniversary Campaign,we must have a strong endowment fund that will support our religious services, educational and cultural programs.... synagogue archives...and other services to our congregation It is therefore essential that our endowment fund be substantial enough ...^{4,5}

Why then cannot CSI reveal their congregant and trustee contributions to CSI, in general, and specifically for construction of the current and proposed community houses? At a minimum, knowledge of the wealth and philanthropy of the CSI Board and Campaigners for the Anniversary Campaign is required to judge this, contrary to the following statement by BSA Vice Chair COLLINS:

The presence of wealthy individuals in a congregation, regardless of the denomination, is of absolutely no relevance to the legal findings that this Board is going to make. I just wanted to state my opinion on that.⁶

Mr. Collins can't have it both ways. Since the "**additional form of hardship**" derives from CSI financial resources, if BSA supports Mr. Collins's statement, then BSA cannot consider the CSI "hardship" and "economic engine" argument at all. If it is not supported, then it is up to CSI to prove, not simply state, that residential income is required and in what amount.

Mr. Shelly Friedman, on behalf of CSI, makes a statement that the condo development only breaks-even, when this notion is contradicted by other statements made on behalf of CSI.

Mr Friedman states:

*And, so we turn to, again, the **residential** solely to provide the **economic engine**. I've referred to it before. People don't like it but I think it's a viable concept, the economic engine to assist in providing the means necessary for the new community house and to solve the accessibility problems and nothing else. I mean the **money**, as you'll see, **is totally eaten up** in the replacement of the community house and in overcoming the accessibility issue.*

⁴ Message from Norman S.. Benzaquen, Campaign Chairman, concerning the 350th Anniversary Campaign, commencing 2004. See www.shearithisrael.org/folder/350_campaign_new.html.

⁵ Note that the anniversary campaign was subsequent to the 1999 campaign that funded the restoration of historic sanctuary and the building.

⁶ NYC Board of Standards & Appeals. 12 February 2008, page 86, lines 1923-1926.

There is no other programmatic purpose for these funds other than to replace the aging facilities that we have now. ⁷

The Friedman statement is false on its face. The minimum projected rights acquisition price of \$13,384,000 is \$1,832,398 greater than the \$11,551,602 community house construction cost, so CSI's own submissions show that the statement "**... the money ... is totally eaten up in the replacement ...**" is false. In fact, it produces pure fungible profit of \$1,832,398.

Further, there is nothing in the CSI submissions to indicate that the Trustees have irrevocably committed to spend the residential proceeds on anything in particular. There is nothing in the submissions that prevent them from re-purposing the largely empty basement or 'classroom' spaces to further increase income.

Note also that CSI's developer Return on Investment (ROI) is misstated, by using an investment number many multiples of the actual amount⁸.

The correctly stated developer returns, using CSI assumptions for the Revised Development Without Courtyard scenario, are actually 63% and the return to CSI is 16%, assuming CSI is not the developer. Since CSI has consistently stated that there will be no developer, these returns may be added together for an approximate total return to CSI of well over 75%.

In conclusion, CSI submissions to date do not support the contention that the residential development income is required to support its development proposals. Without that link, and without a finding of inherent site-hardship, the BSA cannot grant the requested variances.

I would be pleased to answer any questions and discuss this further.

Sincerely,



⁷ NYC Board of Standards & Appeals. 27 November 2007, page 24-25, lines 534-541.

⁸ See James Mulford's letter to the BSA dated March 25, 2008 for calculation, results, and refutation of the ROIs, which were cited in the December 2007 and March 2008 letters from Frazier & Freeman on this subject.

HIGHLIGHTS OF CAMPAIGNERS \$10 MILLION ANNIVERSARY FUND

CAMPAIGN MEMBERS

The campaign members were directors or members of Congregation Shearith Israel (CSI). The campaign started in 2004 on CSI's 350th anniversary in New York. These campaigners raised \$10,000,000 for a 'rainy day' fund. The full list of the 24 campaigners can be found on the CSI website: http://www.shearithisrael.org/folder/350_campaign_new.html

For six of the 24 campaigners, the past and present affiliations, accomplishments, and philanthropy are highlighted below. The six campaigners were selected for profile to represent a cross section of the campaigners. The bullet points are extracted from in-depth profiles from multiple sources. See <http://www.zoominfo.com/> Then select People Search > input name.⁹ The footnoted number of profiles resulted after eliminating material for the same name but not the same individual.

Honorary Chairman of the Campaign (Also Honorary Trustee of CSI)

Jack Rudin¹⁰

- Chairman of Rudin Management for the Rudin Family that owns and manages one of the largest private property portfolios in New York City.
- Board member of Memorial Sloan-Kettering.
- Honorary Trustee of American Museum of Natural History.
- The Rudin family has a long history of philanthropy in New York City.

⁹ [Zoominfo.com](http://www.zoominfo.com) uses patented semantic technology, which continually crawls the Business Web, millions of company websites, news feeds, SEC filings and registrations, directories, and other online sources, and develops profiles, depending on the number of affiliations, outstanding awards etc.. Different affiliations can generate different profiles.

¹⁰ Extracted from 12 profiles assembled from 138 references for Jack Rudin. See [Zoominfo.com](http://www.zoominfo.com)> People Search>Jack Rudin.

Honorary Committee

Ronald P. Stanton¹¹

- Chairman of Transamonia, a company with \$5.4 Billion in revenues, 525 employees, from which Mr Stanton built his fortune.
- Director emeritus, Lincoln Center
- Donated \$100 million, or 10%, of a \$1 Billion fund raising campaign by Yeshiva University. It was the largest gift ever to a Jewish organization.

Mr. Stanton stated he hoped to encourage others that could contribute the same.

- Board member, New York Presbyterian Hospital.

Honorary Committee Chairman

Edgar J. Nathan III¹²

- Board of trustees, American Jewish Historical Society.
- Honorary Member Board of Trustees, Benjamin N. Cardozo School of Law.
- Board member, Center for Jewish History.
- Advisory Committee, Sephardic House.

Members

Leon Levy (Deceased)¹³

- As founder and Chief Executive Officer of Oppenheimer & Co., he built a fortune. The Oppenheimer mutual funds still carry the name.

¹¹ Extracted from 6 profiles assembled from 90 references for Ronald Stanton: See Zoominfo.com> People Search>Ron Stanton.

¹² Extracted from 6 profiles assembled from 12 references for Edgar Nathan: See Zoominfo.com> People Search>Edgar Nathan.

¹³ Extracted from 21 profiles assembled from 54 references on Leon Levy. See Zoominfo.com>People Search>Leon Levy.

- Mr. Levy's significant contributions of capital and works of art to the Metropolitan Museum of Art resulted in what is called the Leon Levy and Shelby White (his wife) Court, which is the centerpiece for display of the Metropolitan's World-Renowned Classical Art Collection.

"..... in an unprecedented building campaign – more than a dozen years in the making – to construct anew within the framework of our historic building, to make use of new methodologies while honoring the old...." Press Release of the Met, November 16, 2006.

- The Leon Levy Foundation is a private, not-for-profit foundation funded by the estate of Leon Levy, a legendary investor with a longstanding commitment to philanthropy and humanism.
- Past President of the Anti-Defamation League.

Thomas Unterberg¹⁴

- Chairman of the Board, Chief Executive Officer and Senior Managing Director of L.F. Rothschild, Unterberg, Towbin Holdings, Inc., an investment banking and money management firm.
- As leader of the "Four Horsemen" of Silicon Valley, Mr. Unterberg was influential in nearly every significant technology financing in the late 1970s and early 1980s.
- Mr. Unterberg has holdings and Board seats in numerous companies.
- Mr. Unterberg's advice is sought by companies and investors alike, in the U.S., Israel, and elsewhere.

Roy Zuckerberg¹⁵

- Partner, Chairman Investment Committee, Senior Director, and Advisor to Goldman, Sachs, & Co.

¹⁴ Extracted from 19 profiles assembled from 162 references on Tom Unterberg. See Zoominfo.com>People Search> Tom Unterberg.

¹⁵ Extracted from 14 profiles assembled from 118 references on Roy Zuckerberg. See Zoominfo.com>People>Search> Roy Zuckerberg.

- Member of the Executive Committee of the Board of Directors, Mack-Cali Realty Corporation

Mack-Cali is a leading real estate investment trust (REIT), with a total market capitalization of approximately \$6.0 billion. The company owns and manages over 34 million square feet of class A office and office/flex properties, located in the Northeast.

- Chairman of Governors, Ben Gurion University.
- Trustee American Red Cross.
- Chairman of Investment Committee, University of Massachusetts Foundation.
- Chairman and Member of the Board of Trustees and a Member of the Executive Committee (past), North Shore Long Island Jewish Health System.
- Chairman (Past), Securities Industry Association.