

KETTANEH SUIT

Introduction

The Kettaneh/Lepow suit against the Board of Standards and Appeals and its Chair and Vice-chair, and the Trustees of Congregation Shearith Israel, requests that the Board's grant of zoning variances be annulled. The variances are documented in the Board's resolution filed 29 August 2008.

If remanded to the Board for further consideration, the suit seeks to have the Chair and Vice-Chair excluded and that Plaintiffs, as a party to the reconsideration, be permitted to question Trustee representatives.

The Petition filed on 29 September 2008 by attorney Alan D. Sugarman asserts that any of several misstatements of fact, violations of BSA procedures, lack of findings, and ambiguous regulations are grounds for annulment.

The Petition in Numbers

8 Causes of Action
365 Paragraphs of Details
69 Pages

The various misrepresentations by representatives of the Trustees, Shelly S. Friedman¹ and Jack Freeman², and the lack of diligence of the Board, are not without purpose. The Trustees seek variances that allow them to proceed with a very profitable project to develop the property at 10 West 70th Street. As the petition demonstrates, the property could be developed to satisfy all of the architectural and program needs of the Congregation without variances, but it might be less profitable.

The representatives task, then, was to prove the unprovable--that the building configurations conforming to zoning rules are unprofitable, while the desired configuration is barely profitable, conditions necessary for approval of the variances, particularly those related to the income-producing luxury condominiums.

A few topics are highlighted below reference the Petition paragraph numbers.

¹ Friedman & Gottbaum LLP

² Freeman/Frazier & Associates, Inc.

Variations Are Unnecessary

The variations requested by the Trustees are unnecessary because the needs at the heart of the request, defined as “the access, accessibility and circulation” related to the Synagogue's sanctuary, can be met by a building that is fully compliant within existing zoning. This was acknowledged by the Trustees architect, Charles Platt. ¶ 13,14,109,110,243,251-252,335-337,341,342

False or Misleading Statements

Contrary to the evidence presented at hearings, and contrary to the Trustees' own drawings, the BSA accepted the Trustees' false statement “[Without variations] CSI will not be able to build a Community House in manner that addresses the access deficiencies ...” ¶ 12

BSA instructed the Trustees to remove from its application the revealing, true statement “addition of residential use in the upper portion of the building is consistent with CSI's need to raise enough capital funds...” thus obscuring the purpose of the luxury condominiums and the fact that they were not programmatic needs for the congregation. ¶ 60

The statements that the Beit Rabban school will only use space not used by the Congregation is “absolutely false”. ¶ 84

The Board Resolution stated that the Trustees had presented a “financial return based on profits” analysis, a simply stupid, meaningless term. The Trustee representatives never presented such an analysis, although they did not present the Board-specified analysis either.

The financial analysis presented by Jack Freeman on behalf of the the Trustees claimed that the space allocated for luxury condominium development was worth between \$12,347,000 to \$22,875,000 no matter how much space was involved.

Space allocations ranged from 37,889 sq.ft. to 17,845 sq.ft. even though the actual space was 7,594 sq.ft. In one series of analysis the cost was \$12,347,000 whether 5, 4, or 2 condos were built. The problem with this approach is that if no condos were built, occupying

zero space, a cost of \$12,347,000 would still apply. ¶ 152-153, 181, 182.

The Trustees' Statements of Support contained 30 instances of false statements. ¶ 256.

BSA Violated Its Own Guidelines

Published BSA rules require waiver applicants to provide analysis of investment return, and drawings and other documentation from independent, qualified professionals. See undated City of New York, Board of Standards and Appeals, Detailed Instructions for Completing BZ Applications, Item M.

Several presentations of construction costs as a basis for financial returns are incomplete, questionable, unverified, and violate the BSA requirements. ¶ 25, 139, 187, 188, 189, 190, 192, 193, 195, 196, 313

The required figures for Equity invested in a project, and Return on Equity were not provided. Jack Freeman then claimed that the alternate method used, which method did not conform to the written Board requirements, was the standard normally used ¶ 137, 139, 199-204.

The Board generally ignored the law and its own rules. ¶ 37, 64, 74, 75, 255, 315-319.

BSA Lack of Attention, Care

Many errors or misstatements are included in the Boards' Resolution granting the Trustees' requested variances. Together these suggest that either that the BSA did not understand what they were doing, did not exercise required diligence, or were determined to grant the variances regardless of the facts.

The Resolution explained that the Trustees had performed a "financial return based on profits" rather than the Return on Equity analysis required by BSA instructions. Nowhere in many analyses submitted by the Trustees over a year or so, did the applicant identify a figure for "financial return based on profits". The Petition identifies this as nonsense, noting it as a reason not to uphold the Resolution. ¶ 205.

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The Resolution gives incorrect or misleading dimensions. ¶ 45, 48.

During the hearing and submission period, the Board failed to acknowledge or pursue the Trustees' failure to provide information requested by the Board or otherwise known to be missing or false. ¶ 26, 139, 174, 192, 194, 218-220, 225-227, 253, 256-257, 307-313, 320, 337.

BSA Guidelines & Procedures Are Inadequate

The Trustees requested variances for two different activities: those related directly to the mission of the Congregation, and those providing income. Other, earlier applications have involved similar profit/non-profit splits but with clear physical boundaries between them. The Trustees' application is unique in that some parts of the proposed structure appear to be separated (but are not), other parts are time shared, and still others are inseparable.

Neither regulations nor precedent nor Board procedures are prepared to deal with such a smushed configuration, or even recognize it. With confused boundaries exploited by the application and inadequate Board responses, the Petition identifies many flaws in the result. ¶ 70,132-133,197,230-233

The variances requested for the 'Congregation's needs' include space for commercial rental to a school and a staff residence, but with no tie or ongoing restriction to such uses in the application or Resolution. The space can be rented to anyone. Obvious income sources are ignored by the Board. ¶ 35,51-52,82,85,185,313.

The purpose of the proposed condominiums is 'as an "economic engine" needed to create funds for the congregation.' The Board acknowledged that the condominium use would not justify zoning variances, then proceeded to approve them. In fact, 90% of the variances are in support of the income-producing condominiums. ¶ 55,56,57,102.

The Board's reference to the non-existent "financial return based on profit" model indicates that they do not understand simple savings account return calculations and have ignored their own Return on Equity Guidelines. ¶ 205.

Resolution Defects

The Resolution omitted the fact that the Revised Proposed Development scheme would show a cash return to the Congregation of \$19,162,000 according to the Trustees' submissions, which described the scheme as barely profitable. ¶ 239, 241,261

The Board failed to provide links from needs (access as heart of the matter) to which facts (space requirements and financial figures) to the decision to grant which variances. Conclusions are drawn considering "substantial" but unidentified "evidence" ¶ 37-40, 247-252

Many significant facts that would indicate that variances are contra-indicated were withheld from the Board's Resolution ¶ 22-24,26

The Resolution failed to make findings on which conclusions are based, instead accepting without critical evaluation Trustee statements, even when rebutted by opponents. ¶ 257,272,338