



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

New Case Electronically Filed: COMPLAINT
June 7, 2021 09:50

By: MICHAEL E. CICERO 0058610

Confirmation Nbr. 2270443

CITY OF UNIVERSITY HEIGHTS

CV 21 948437

vs.

UNIVERSITY REALTY USA, LLC, ET AL

Judge: JOAN SYNENBERG

Pages Filed: 24

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

CITY OF UNIVERSITY HEIGHTS)

2300 Warrensville Ctr. Rd.)

University Heights, Ohio 44118)

Plaintiff,)

v.)

UNIVERSITY REALTY USA, LLC)

c/o Willis R. Barker, Statutory Agent)

10606 Ashbury Avenue)

Cleveland, Ohio 44106)

and)

ALEKSANDER SHUL)

4380 University Parkway)

University Heights, Ohio 44118)

and)

RABBI SHNEUR ZALMAN DANZIGER)

Aka **SHNEUR ZALMAN DANCYGER**)

Aka **SHNIOR DENCIGER**)

4380 University Parkway)

University Heights, Ohio 44118)

Defendants.)

CASE NO.

JUDGE

**VERIFIED COMPLAINT SEEKING
TEMPORARY RESTRAINING ORDER,
PRELIMINARY AND PERMANENT
INJUNCTION**

For its Verified Complaint against the Defendants, Plaintiff City of University Heights

(the "City") hereby states as follows:

Parties, Jurisdiction and Venue

1. Plaintiff City of University Heights is a chartered municipal corporation in Cuyahoga County, Ohio and enjoys home rule powers under Article XVIII, Section 3 of the Ohio Constitution. Mr. Michael Dylan Brennan is the Mayor of the City of University Heights.

2. Defendant University Realty USA, LLC (hereinafter “University Realty”) is an Ohio limited liability company and is the record owner of real property and improvements located at 4380 University Parkway, University Heights, Ohio 44118, Permanent Parcel No. 721-20--053 (the “Premises”).

3. Based upon information and belief, Defendant Aleksander Shul (“Synagogue”) is an unincorporated association of persons who have formed a religious congregation and/or synagogue to conduct religious services at the Premises.

4. Defendant Rabbi Shneur Zalman Danziger, aka Shneur Zalman Dancyger, aka Shnior Denciger (“Rabbi Danziger”) is an individual who resides in University Heights, Ohio and based upon information and belief, is a member and religious leader of Defendant Synagogue.

5. The parties are either individuals, corporate entities or associations of and within Cuyahoga County, Ohio, therefore Jurisdiction is proper in this Court. Venue in this Court is also proper pursuant to Ohio Civil Rule 3(B)(1), (2), (3), and (6).

City Zoning

5. The Premises located at 4380 University Parkway in University Heights is zoned U-1 for use as a single-family residential home.

6. University Heights Codified Ordinance (hereinafter “UHCO”) Chapter 1250, entitled “One-Family Residence District, U-1,” establishes the permitted uses within the U-1 zoning district. UHCO § 1250.03(g) indicates that certain “public, semi-public and other uses” may be permitted pursuant to special permit.

7. Pursuant to UHCO Chapter 1274, the City Planning Commission may approve, in relevant part, a special permit for houses of worship or religious education within the U-1 zoning district located on certain specified streets, if the applicant can satisfy certain specific, codified criteria related the health, safety and welfare of the City and its residents.

Facts Common to All Requests of Relief

8. Based upon information and belief, during the Summer of 2017 the City learned that Defendants University Realty USA, LLC and Rabbi Danziger was operating the Aleksander Shul illegally at the Premises. The Defendants were warned by the City’s Law Director, through legal counsel, that the use of the premises as a synagogue was not permitted. The use did not cease.

9. On or about September 6, 2019, the University Heights City Prosecutor charged Defendant University Realty USA, LLC with five (5) counts of criminal violations, including UHCO Chapters 1280, 1420 and 1274. The case was filed as Shaker Heights Municipal Court Case No. 19 CRB 01016 (the “Criminal Case”).

10. In response, on or about October 14, 2019, Defendant University Realty, through former counsel, applied for a Special Use Permit/Variance to operate a house of worship at the

Premises. A copy of former counsel's October 14, 2019, correspondence is attached hereto and made a part hereof as Exhibit A.

11. The University Heights Planning Commission heard the Special Use Permit/Variance application at its duly convened meeting on November 21, 2019, and at its conclusion, voted to table the matter to allow Defendant University Realty to: (1) supplement its application with plans to be submitted to the Planning Commission in order for said body to reconvene on the issue prior to the end of February 2020; and (2) that the plans be consistent with the requirements of UHCO Chapter 1274; and (3) that the City would forbear from enforcement actions to prevent operation of the premises as a synagogue until the end of February 2020.

12. In January 2020, Defendant University Realty submitted plans, which were reviewed by the University Heights Building Commissioner, who also inspected the Premises. The plans and the condition of the Premises were inadequate and violated numerous Building Code and Ohio Fire Code provisions.

13. Defendant University Realty's application was brought before the University Heights Planning Commission again at its February 6, 2020, meeting. After much discussion and at the request of Defendant University Realty, the Commission again voted to table the application for ninety (90) days until appropriate plans were submitted, and permitted Defendant Synagogue to continue operations upon the express written agreement to conditions that: (1) there would be no use of open flame, (2) fire extinguishers would be installed; (3) the number of people in Premises would not exceed fifteen (15) in number; and (4) the applicant would expedite obtaining stamped architectural drawings and would submit them to the City.

14. Defendant University Realty's former counsel wrote to City officials on February

as are outlined in paragraph 13 hereinabove. A copy of former counsel's February 11, 2020, correspondence is attached hereto and made a part hereof as Exhibit B.

15. Due to the COVID-19 pandemic, the processing of Defendant University Realty's application came to a standstill until late May 2020, when the matter was set on the Planning Commission's June 4, 2020, agenda. Defendant University Realty's former counsel requested the matter to be pulled from the agenda, as the revised plans were not completed by the architect. A copy of former counsel's May 29, 2020, correspondence is attached hereto and made a part hereof as Exhibit C.

16. Defendant University Realty did not submit any revised plans at any point during the remainder of 2020, nor did it request to have its application reviewed further by the Planning Commission.

17. In early 2021, various residents complained to the University Heights Mayor Michael Dylan Brennan, both verbally and via email, that the Defendants have continued to operate an illegal synagogue at the Premises.

18. In mid-February 2021 on a Sunday morning, Mayor Brennan personally observed thirteen (13) cars parked in driveway at the Premises and surrounding dwellings, and another thirty-three (33) cars parked on the streets immediately surrounding the Premises, which would lead to the likelihood of more than fifteen (15) people being in the Premises.

19. On February 19, 2021, the City sent written correspondence via regular and certified mail to Defendants indicating that the use or operation of the Premises for religious assembly is not permitted, and directing Defendants to cease and desist, and if there was a failure to do so, that the City could pursue additional criminal charges or seek injunctive relief. A copy of the February 19, 2021, correspondence is attached hereto and made a part hereof as Exhibit D.

20. The City received additional complaints that the Defendants were continuing to operate a Synagogue illegally, and as a result, sought and obtained an administrative search warrant from the Shaker Heights Municipal Court in early April 2021.

21. On or about April 9, 2021, City Fire, Housing and Building inspectors executed the administrative search warrant, which revealed numerous Building, Fire and Zoning Code violations. A copy of the City Building Official's Findings and Notice to Vacate Property or Remediate Violations Immediately is attached hereto and made a part hereof as Exhibit E.

22. On or about May 13, 2021, Defendant University Realty pled no contest to all charges in the Criminal Case. The matter is set for sentencing on June 26, 2021.

23. By information and belief, the Defendants continue to conduct religious services and/or offer a place for religious assembly at the Premises, which violates both UHCO Chapter 1274.

24. Defendant's use of the Premises a place of religious assembly also violates Ohio Building Code, as buildings that are places of assembly are covered by said Code, and the dwelling located on the Premises does not meet said Code.

25. By information and belief, Defendants have performed work and conducted construction activities within the Premises without the requisite building permits, and without coordination with, or inspection by, City Building Department inspectors.

26. Work performed or installed without the requisite inspections is not in conformance with UHCO Building or Fire Code, nor the Ohio Building Code, and results in health and safety hazards for occupants and neighbors.

27. The Premises is located in a U-1 zoning district, whereby use of the Premises as a place of religious assembly is not permitted, except upon issuance by the City of a Special Use

has, amongst other issues, disturbed the peace and tranquility of the neighborhood, result in increased vehicular and pedestrian traffic, created unwanted congestion and parking problems, and is not be in conformance with the zoning laws of the City of University Heights.

28. R.C. § 713.13 states that an injunction is an appropriate remedy in connection with the violation or imminent threat of violation of any zoning ordinance, and states as follows:

No person shall erect construct alter, repair, or maintain any building or structure or use any land in violation of any zoning ordinance or regulation enacted pursuant to sections 713.06 and 713.12, inclusive, of the Revised Code, or Section 3 of Article XVIII, Ohio Constitution. In the event of any such violation, or imminent threat thereof, **the municipal corporation**, or the owner of any contiguous or neighboring property who would be especially damages by such violation, **in addition to any other remedies provided by law, may institute a suit for injunction to prevent or terminate such violation**. (Emphasis added.)

WHEREFORE, Plaintiff requests that this Court grant the following relief:

A. A Temporary Restraining Order prohibiting Defendants and any of their respective officers, officials, board members, congregation members, heirs, legatees, personal representatives, attorneys, insurers, successors, assigns or affiliates, from operating any synagogue, shul, learning center or place of religious assembly at the Premises, and authorizing the City of University Heights officials and employees to enter upon the Premises for the purpose of inspecting the interior and exterior of the residence and appurtenant structures, to ensure compliance with the City of University Heights Building Code and Zoning Code, and to take such other action as may be necessary in order to prevent the Premises from being used as a synagogue, shul, learning center or place of religious assembly until the Court holds a preliminary injunction hearing; and

B. An order for a preliminary injunction that: (1) prohibits Defendants and any of their respective officers, officials, board members, congregation members, heirs, legatees, personal representatives, attorneys, insurers, successors, assigns or affiliates, and those persons in active concert or participation with any of them, from operating any synagogue, shul, learning center or place of religious assembly at the Premises; and (2) mandates that Defendants shall obtain building permits in connection with any work that has been performed or is to be performed at, on or within the Premises in accordance with the City's Building, Fire and Zoning Codes; (3) prohibits Defendants and any of their respective officers, officials, board members, congregation members, heirs, legatees, personal representatives, attorneys, insurers, successors, assigns or affiliates, from in any way inhibiting the City in its efforts to enter upon the Premises for the purpose of the inspection or re-inspection of same; and

C. A permanent injunction granting the same relief; and

D. Grant Plaintiff such other and further relief as may be just and/or appropriate.

Respectfully submitted,

/s/ Luke F. McConville

LUKE F. McCONVILLE (0067222)
NICOLA GUDBRANSON & COOPER, LLC
25 West Prospect Avenue
1400 Republic Building
Cleveland, OH 44115
(216) 621-7227
(216) 621-3999 – Fax
Direct Email: mcconville@nicola.com
Director of Law, City of University Heights

And

/s/ Michael E. Cicero

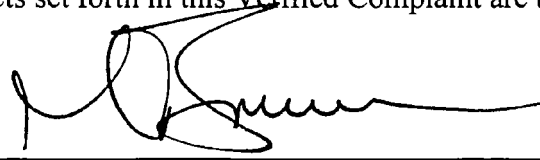
MICHAEL E. CICERO (0058610)
NICOLA GUDBRANSON & COOPER, LLC
25 West Prospect Avenue
1400 Republic Building
Cleveland, OH 44115
(216) 621-7227
(216) 621-3999 – Fax
Direct Email: cicero@nicola.com

Attorneys for City of University Heights

STATE OF OHIO)
)
COUNTY OF CUYAHOGA)

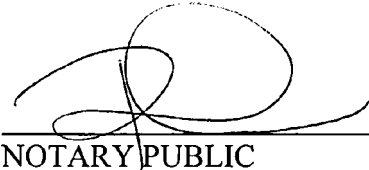
SS: VERIFICATION

I, Mayor Michael Dylan Brennan, being first duly sworn, states upon my own personal knowledge, unless otherwise stated, that the facts set forth in this Verified Complaint are true.



Mayor Michael Dylan Brennan

SWORN TO BEFORE ME, and signed in my presence this 28th day of May, 2021.



NOTARY PUBLIC



INSTRUCTIONS TO THE CLERK FOR SERVICE

Please make certified mail service on all persons listed in the case caption.

/s/ Luke F. McConville
One of the Attorneys for Plaintiff

KENNETH J. FISHER CO., L.P.A.

ATTORNEYS AT LAW

50 PUBLIC SQUARE, SUITE 2100
CLEVELAND, OHIO 44113-2204

TEL (216) 696-7661 • FAX (216) 696-0439

www.kenfisherlpa.com

KENNETH J. FISHER
kfisher@fisher-lpa.com

DENNIS A. NEVAR
dnevar@fisher-lpa.com

October 14, 2019

**VIA EMAIL: kthomas@universityheights.com
AND HAND DELIVERY**

Kelly M. Thomas, Clerk
City Planning Commission
2300 Warrensville Center Road
University Heights, Ohio 44118

**Re: Special Use Permit/Variance Application
4380 University Parkway, University Heights, Ohio - PPN 721-20-053**

Dear Clerk Thomas:

Please be advised the undersigned represents University Realty USA, LLC, the record owner of the above-captioned Property consisting of approximately 0.45± acres and located in the City of University Heights U-1 One Family Residence District, which is presently developed with a single-family residence.

As an initial matter, please be advised that the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. §§2000cc, et seq., prohibits any government from imposing or implementing a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly or institution: (a) is in furtherance of a compelling governmental interest; and (b) is the least restrictive means of furthering that compelling governmental interest.

In accordance with City of University Heights Codified Ordinance Chapter 1274, please accept this correspondence as a Special Use Permit Application to allow for the utilization of the subject Property as a House of Worship with residential quarters on the second floor of the existing structure. Subject to approval of necessary Variances as detailed hereinbelow, the proposed Special Use will be in conformity with the provisions of Codified Ordinance Chapter 1274, will not impair surrounding property values or uses, will not impair vehicular parking or pedestrian/traffic conditions, will not produce lighting glare or noise pollution and will not otherwise be contrary to the public health, safety or welfare.

**** Please note, at or prior to the Planning Commission hearing on this matter, Guest Parking Grant Agreements will be submitted evidencing the approval of**

neighboring property owners to allow parking on their properties on Sunday through Friday from 8:30 a.m. to 10:30 a.m. and 6:00 p.m. to 8:00 p.m., which will ensure adequate off-street parking for all guests.

Additionally, per Codified Ordinance Section 1274.02(f)(5), please also accept this correspondence as a Variance Application relative to the following:

- 1) Codified Ordinance Section 1274.02(a)(1) - Area Variance relative to the required minimum lot area of three (3) acres.
- 2) Codified Ordinance Sections 1274.02(f)(1), (2) and (4) - Use Variances from the prohibitions against conversion of a residence to allow for a House of Worship use and to allow for residential use accommodations.
- 3) Codified Ordinance Section 1274.04(c) - Area Variance to the required number of parking spaces, as to be determined by the Building Commissioner.
- 4) Such other Area Variance(s) as identified by the Building Commissioner.

A variance is designed to afford protection and relief against unjust invasions of private property rights and to provide a flexible procedure for the protection of constitutional rights. *Nunamaker v. Bd. of Zoning Appeals*, 2 Ohio St. 3d 115 (1982).

As detailed in *Duncan v. Middlefield*, 23 Ohio St.3d 83, 491 N.E.2d 692 (1986), the factors to be considered and weighed in determining whether a property owner seeking an Area Variance has encountered practical difficulties include:

- 1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance.

**** The proposed use of the Property for a House of Worship requires the approval of the requested Area Variances to the existing Zoning regulations, which regulations place a substantial burden on religious exercise in contravention of the RLUIPA.**

- 2) Whether the variance is substantial.

**** The requested Area Variances are insubstantial and the minimum necessary to allow for the proposed use of the Property for a House of Worship consistent with the requirements of the RLUIPA.**

- 3) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance.

**** Approval of the requested Area Variances would have no effect on the essential character of the neighborhood or otherwise act as a substantial detriment to adjoining properties. As previously provided herein, Guest Parking Grant Agreements will be submitted to ensure adequate off-street parking for all guests.**

- 4) Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage).

**** Approval of the requested Area Variances would have no effect whatsoever on the delivery of governmental services.**

- 5) Whether the property owner purchased the property with knowledge of the zoning restriction.

**** The property owner purchased the Property with knowledge of the RLUIPA, which prohibits the imposition of land use regulations in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution.**

- 6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance.

**** The proposed use of the Property as a House of Worship is unable to proceed without the approval of the requested Area Variances, which are the minimum necessary to allow for the proposed use.**

- 7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done.

**** Approval of the requested Area Variances would ensure compliance with applicable Federal Law (the RLUIPA).**

Separately, common factors to be considered and weighed in determining whether a property owner seeking a Use Variance has encountered unnecessary hardship (see *Consolidated Management, Inc. v. Cleveland*, 6 Ohio St.3d 238 (1983)), include:

- 1) Whether the literal application of the provisions of the Zoning Code would result in undue hardship.

**** Literal application of the Zoning Code would place a substantial burden on religious exercise in violation of the RLUIPA and create an undue hardship.**

- 2) Whether unique or exceptional circumstances or conditions apply only to the property involved or to the intended use of the property and do not apply to other property within the same zone.

**** The proposed use of the Property for a House of Worship is protected by the RLUIPA, which is applicable to all properties in the City of University Heights.**

- 3) Whether granting of a variance will be injurious to property or improvements in the neighborhood in which the property is located or will be materially prejudicial to the public welfare.

**** Approval of the requested Use Variances would not be injurious to property or improvements in the neighborhood or otherwise be materially prejudicial to the public welfare. As previously provided herein, Guest Parking Grant Agreements will be submitted to ensure adequate off-street parking for all guests.**

- 4) Whether refusal of the variance will deprive the property owner of substantial rights.

**** Refusal of the requested Use Variances will deprive the property owner of substantial rights, including those rights specifically protected by the RLUIPA and the Constitutions of the United States and State of Ohio.**

- 5) Whether the granting of a variance will be contrary to the purpose, intent and objectives of the Zoning Code.

**** Approval of the requested Use Variances would ensure compliance with applicable Federal Law (the RLUIPA).**

Without waiving any remedy that may be available under the RLUIPA, request is hereby made that the City of University Heights grant the requested Special Use Permit and necessary Area/Use Variances to alleviate an unnecessary hardship, practical difficulty and/or substantial

Kelly M. Thomas, Clerk

October 14, 2019

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burden on religious exercise and allow for the subject Property to be utilized as a House of Worship with residential quarters on the second floor.

Thank you for giving this matter your attention and do not hesitate to contact me with any questions as I await confirmation that this matter will be considered by the Planning Commission at its November 7, 2019 meeting.

Very truly yours,

A handwritten signature in black ink, appearing to read 'K.J.F.', with a stylized flourish at the end.

Kenneth J. Fisher

KJF/dan

cc: Michael Dylan Brennan, Mayor (via email only: mayor@universityheights.com)
Luke McConville, Law Director (via email only: lmconville@universityheights.com)
Client

KENNETH J. FISHER CO., L.P.A.

ATTORNEYS AT LAW

50 PUBLIC SQUARE, SUITE 2100
CLEVELAND, OHIO 44113-2204

TEL (216) 696-7661 • FAX (216) 696-0439
www.kenfisherlpa.com

KENNETH J. FISHER
kfisher@fisher-lpa.com

DENNIS A. NEVAR
dnevar@fisher-lpa.com

February 11, 2020

**VIA EMAIL: mayor@universityheights.com
AND REGULAR U.S. MAIL**

Mayor Michael Dylan Brennan
City of University Heights
2300 Warrensville Center Road
University Heights, Ohio 44118

Re: 4380 University Parkway, University Heights, Ohio (the "Property")

Dear Mayor Brennan:

As you are aware, the undersigned is legal counsel for University Realty USA, LLC, the record owner of the above-captioned Property.

Per discussions at last evening's Planning Commission meeting, please note the following:

- 1) My client will agree to post notice on the Property as follows:

"NOTICE - Occupancy in the Shul is temporarily limited to a maximum of fifteen (15) individuals to allow the Shul to work cooperatively with the City of University Heights to address Special Permit issues. Thank you very much for your cooperation."
- 2) My client will agree that no candles will be permitted in the Shul.
- 3) My client has installed fire extinguishers in the Shul.
- 4) My client has engaged Bialosky Cleveland to prepare Plans to retrofit the existing window wells as emergency exits. Upon completion, same will be immediately submitted to the City.
- 5) My client has engaged Bialosky Cleveland to address those items identified in Building Commissioner McReynolds' Memorandum dated January 23, 2020. Upon completion of "as-built" drawings, same will be immediately submitted to the City.

Mayor Michael Dylan Brennan
February 11, 2020
Page 2

Thank you for giving this matter your attention and do not hesitate to contact me with any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'K.F.' with a horizontal line extending to the right.

Kenneth J. Fisher

KJF/dan

cc: Luke F. McConville, Law Director (via email only: mcconville@nicola.com)
Client

Luke McConville

From: Michael Brennan <MDB@universityheights.com>
Sent: Friday, May 29, 2020 4:10 PM
To: Luke McConville; Stephanie Scalise
Subject: FW: 4380 University Parkway

This message was sent from the City of University Heights.
Forwarding this on, as there may be implications you should be aware of.



Michael Dylan Brennan | Mayor

City of University Heights
2300 Warrensville Center Road, University Heights, Ohio 44118-3895
(216) 932-7800 x222 | Mobile: (216) 906-0383 | Fax: (216) 932-8531
mdb@universityheights.com

From: Kelly Thomas <kthomas@universityheights.com>
Sent: Friday, May 29, 2020 2:32 PM
To: Kenneth Fisher <kfisher@fisher-lpa.com>
Cc: Michael Brennan <MDB@universityheights.com>; Paul Deutsch <pauld@bialosky.com>; Elliott Jacobs <ejacobs@j-dek.com>
Subject: RE: 4380 University Parkway

This message was sent from the City of University Heights.
Ken - Thank you for letting me know.

Kelly



**UNIVERSITY
HEIGHTS**

KELLY M. THOMAS MMC

Mayor
City of University Heights
(216) 932-7800 ext. 222
Mobile: (216) 906-0383
2300 Warrensville Center Road
University Heights, Ohio 44118-3895

From: Kenneth Fisher <kfisher@fisher-lpa.com>
Sent: Friday, May 29, 2020 1:52 PM
To: Kelly Thomas <kthomas@universityheights.com>
Cc: Michael Brennan <MDB@universityheights.com>; Paul Deutsch <pauld@bialosky.com>; Elliott Jacobs <ejacobs@j-dek.com>
Electronically Filed 06/07/2021 09:50:7 / CV 21-948437 / Confirmation Nbr: 22704437/CLJSZ

1
PLAINTIFF'S EXHIBIT C

dek.com>

Subject: RE: 4380 University Parkway

Importance: High

Kelly:

Please be advised that the drawings to be submitted by Paul Deutsch/Bialosky will not be completed and submitted to the City until after Friday, June 5th.

Accordingly, please remove my Client from the June 4, 2020 Planning Commission Meeting, and continue to the next Meeting of the University Heights Planning Commission when we will be prepared to proceed without further continuances.

Thank you for giving this matter your attention, and please do not hesitate to contact me with any questions.

Regards,
Ken

Kenneth J. Fisher
Kenneth J. Fisher Co., L.P.A.
50 Public Square, Suite 2100
Cleveland, OH 44113
Tel. (216) 696-7661, ext. 101
Fax (216) 696-0439
Email: kfisher@fisher-lpa.com
www.kenfisherlpa.com

From: Kelly Thomas <kthomas@universityheights.com>
Sent: Monday, April 27, 2020 2:59 PM
To: Kenneth Fisher <kfisher@fisher-lpa.com>
Cc: Dennis Nevar <dnevar@fisher-lpa.com>; Paul Deutsch <pauld@bialosky.com>; Elliott Jacobs <ejacobs@j-dek.com>
Subject: RE: 4380 University Parkway

This message was sent from the City of University Heights.

Ken: I have to get my Planning Commission out today so I have not included 4380 Univ. Pkwy. With that being said the next meeting would be June 4th.

Kelly



KELLY M. THOMAS MMC

(City of Council)

kthomas@cityofuniversityheights.com

T: 216-932-7800 ext. 273

F: 216-932-8531

2300 Warrensville Center Road

University Heights, Ohio 44118-6905

From: Kenneth Fisher <kfisher@fisher-lpa.com>

Sent: Thursday, April 23, 2020 4:26 PM

To: Kelly Thomas <kthomas@universityheights.com>

Cc: Dennis Nevar <dnevar@fisher-lpa.com>; Paul Deutsch <pauld@bialosky.com>; Elliott Jacobs <ejacobs@j-dek.com>

Subject: RE: 4380 University Parkway

Kelly: Will update you shortly but as of date the Bialosky Firm has not completed a new set of stamped drawings.

Kenneth J. Fisher
Kenneth J. Fisher Co., L.P.A.
50 Public Square, Suite 2100
Cleveland, OH 44113
Tel. (216) 696-7661, ext. 101
Fax (216) 696-0439
Email: kfisher@fisher-lpa.com
www.kenfisherlpa.com

From: Kelly Thomas <kthomas@universityheights.com>

Sent: Thursday, April 23, 2020 3:29 PM

To: Kenneth Fisher <kfisher@fisher-lpa.com>; Dennis Nevar <dnevar@fisher-lpa.com>

Subject: 4380 University Parkway

This message was sent from the City of University Heights.

Hi Ken and Dennis, hope you and your families are well:

Checking to see that 4380 University Parkway is ready to go to the Planning Commission on May 7. Also can you confirm if the new set of stamped architectural drawings have been submitted. Thank you. Kelly



KELLY M. THOMAS MMC
Clerk of Council

kthomas@universityheights.com
T 216.937.7800 ext. 225
F 216.937.8931
2300 Warrensville Center Road
University Heights, Ohio 44118-3895

This email has been scanned for spam and viruses. Click [here](#) to report this email as spam.

February 19, 2021

Direct Email: mcconville@nicola.com

VIA CERTIFIED AND REGULAR U.S. MAIL

Mr. Shnior Denciger
4380 University Parkway
University Heights, OH 44118

Haram Shneur Zalman Danziger
4380 University Parkway
University Heights, OH 44118

University Realty USA, LLC
4380 University Parkway
University Heights, OH 44118

Re: 4380 University Parkway, University Heights, Ohio
Aleksander Shul

Dear Mr. Denciger, Rabbi Danziger, et al.:

I am writing to you in my capacity as Law Director for the City of University Heights (the "City"). The use or operation of the Premises as a religious place of assembly and/or in operation as a shul or synagogue is not permitted under the City's ordinances.

You have previously acknowledged, during proceedings before the City's Planning Commission on November 21, 2019, that the home located at 4380 University Parkway (the "Premises") is used and operated as the Aleksander Shul. During the hearing on November 21, 2019, the Planning Commission tabled your application for a special use permit pending your prompt return to the Planning Commission with plans that would address the City's health, safety and welfare concerns.

Then, during a Planning Commission Hearing held in February of 2020, you asked the Planning Commission for an additional ninety (90) days to continue to address fire safety issues. At that February, 2020 Planning Commission meeting, the Planning Commission again tabled your application, on the condition that no more than fifteen (15) persons be within the premises at any time and that you return to the Planning Commission with a revised proposal within ninety (90) days.

PLAINTIFF'S EXHIBIT D

Mr. Shnior Denciger
Rabbi Danziger
University Realty USA, LLC
February 19, 2021

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Since the Planning Commission meeting in February, 2020, you have not returned to the City's Planning Commission, and you currently do not have a special use permit for operation of the Premises as a shul or place of religious assembly. Moreover, it has come to the City's attention that many of the representations made to the City during the November 21, 2019 Planning Commission meeting were inaccurate. Off-street parking is not utilized, there is inadequate parking to serve the current use, and throughout the day, as many as thirty-five to forty cars can be observed parking on the street in the very near vicinity of the Premises. This congestion is damaging the quality of life for neighboring property owners and disturbing the peaceful nature of the neighborhood. In addition, based on the heavy volume of vehicular and pedestrian traffic to and from the premises, the City has reason to believe that the 15-person limit placed by the City as a temporary accommodation is being violated.

The City attempted to direct you through the proper channels to seek Planning Commission approval, but it is now clear to the City that that hasn't worked. You have continued to operate without making timely or serious attempts to obtain a special use permit, and you have unilaterally disregarded the City's mandate that no more than fifteen (15) persons be within the entire Premises at any given time. The presence of more than fifteen (15) persons within the Premises places an undue and unsustainable burden on the neighborhood and your neighboring property owners, and results in unacceptable levels of risk to the health, safety and welfare of any occupants of the premises. As previously noted by the City, the presence of any significant number of people within the shul area in the Premises' basement presents a clear fire hazard, since there are inadequate means of ingress and egress to support the use or to allow people to evacuate in the event of a fire or other emergency.

The City hereby notifies you that the use of the Premises as a place of religious assembly and/or in operation of a shul or synagogue is prohibited. To the extent that the Premises are currently being used for said purposes or are intended to be used for such purposes in the immediate or near future, the City hereby demands that you immediately cease and desist any and all such operations. Violation of the City's ordinances in this manner may result in building code citations against you (in addition to those currently charged against you in the case pending in Shaker Heights Municipal Court), and in the pursuit of additional remedies including an injunction.

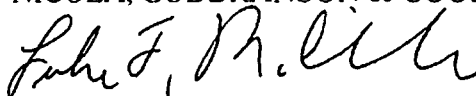
Mr. Shnior Denciger
Rabbi Danziger
University Realty USA, LLC
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The City will not tolerate any use of the Premises as a shul without a special use permit. If operation of the Premises as a shul do not cease immediately, the City will have no choice but to consider what legal options may be at its disposal.

Sincerely,

NICOLA, GUDBRANSON & COOPER, LLC

A handwritten signature in black ink, appearing to read "Luke F. McConville".

Luke F. McConville

LFM/cdwj

cc: Mayor Michael Dylan Brennan