

Window of opportunity is still open in P.S. 42 case

BY ALBERT AMATEAU

Parents of children at P.S. 42, the Benjamin Altman School on the Lower East Side, are going to court again this week to try to stop the developer of a seven-story residential condo from blocking a window in a fifth-floor classroom in the school.

Construction of the condo at 48 Orchard St. has reached the fifth floor and is about to block the large three-bay window on the lot line of the school whose address is 71 Hester St.

But on Sept. 12, Barry Mallin, lawyer for the Committee to Save the Benjamin Altman School, and others, including Asian Americans for Equality and City Councilmember Alan J. Gerson, filed suit against the developer, Voyager Development Co.

When the school was built in 1898, the adjacent building was only four stories high and didn't block the lot line window. But the adjacent building was demolished about two years ago to make way for the condo now under construction.

The imperiled window on the Orchard St. side of the building is in a classroom where 35 students in Allen Ng's fifth grade class get their basic schooling. The classroom also has two small windows, partially obscured by an air conditioning unit, and which are too high for the children to look out of, on the Hester St. side of the building.

"My daughter looked out of this window and my granddaughter looked out of this window. I don't want to lose it," said Elsie Rivera, a plaintiff in the lawsuit.

The threatened school window could be saved, however, if the developer modifies plans for the condo and changes a fifth-

floor setback planned for the rear if the condo to the Orchard St. front of the project. But Barry Strauss, a development partner, told the parents and P.S. 42 Principal Rosa O'Day Cassiello at the beginning of this month that the proposal would cost \$1 million. "It is totally unreasonable," he said.

Nevertheless, prompted by State Supreme Court Justice Diane Lebedeff, the developer's attorney, Allen M. Turek, agreed last week with Mallin and Gerson to try to find a solution. Justice Lebedeff on Fri. Sept. 19 explained to a group of P.S. 42 parents and neighbors led by Victor J. Papa, an organizer of the Committee to Save the Benjamin Altman School, the alternatives.

One possibility would be for the developer to move the setback to the rear of the building in return for a variance that would allow him to build two stories higher to make up for the expense involved in the change. Gerson said last week the Board of Standards and Appeals indicated that with community support, "the variance is a distinct possibility."

But the delay might jeopardize financing for the project and would require the developer to post \$3 million bond. The developer, moreover, wants the school advocates to pay for the \$30,000 cost of the bond.

Another possibility would be for the developer to build another window on the north side of the school building in an adjacent fifth-floor classroom that would not be blocked by the current configuration of the condo. In addition, the developer would remove the air conditioning unit from the two small windows on the Hester St. side of the threatened classroom and

install ventilation and air conditioning equipment in the ceiling. The developer also wants a variance to build two more stories to cover the expense of the second alternative.

The two parties were scheduled to appear in court again on Tues. Sept. 23.

Papa said that parents and neighbors had complained earlier this year that children were at risk because there was no sidewalk and no protective shed at the construction site. He said he discovered in July that the condo would cover the fifth-floor

classroom window and wrote a letter of protest to the developer. Inspectors from the Department of Education came to the site on Sept. 3, and the developer put up the shed and built the sidewalk in front of the building a day later, Papa said.

Parents demonstrated at the site the first week in August and the developer met with the school principal and neighbors later that month. "They told us it was as-of-right, but the rights of these children, many of them immigrants, takes precedence over real estate rights," Papa said.

