

Defending the Use of the Boardwalk Railing for the Long Branch Eruv



In the creation of the extension of the Long Branch Eruv we rely on the above pictured boardwalk railing for its eastern boundary. We believe this creates a Halachically legitimate Tzurat HaPetach. A Tzurat HePetach (doorframe) consists of two side posts with a top post running above it (Eruvin 11a).

Relying on Tachuv

Although the top pole does not run above the pole, it does run through the pole at a height higher than ten Tephachim creating a situation known as “Tachuv”. We have addressed this issue at length elsewhere and have noted the many Posekim both classic (including the Aruch HaShulchan and the Chazon Ish) and contemporary (Rav Hershel Schachter and Rav Mordechai Willig) that permit relying upon Tachuv.

Blockage within the Petach

One Rav who lives in a nearby community challenged my relying on this railing as a Tzurat HaPetach, noting the many Acharonim who believe that there should not be obstruction within a Tzurat HaPetach. Indeed, there is considerable discussion and debate concerning this matter.

Some argue that a Tzurat HaPetach must create a Petach (opening) and just as a Petach is not obstructed so too a Tzurat HaPetach must have no obstructions. Others, though, argue that since a Tzurat HaPetach seeks to enclose an area, the more the area is sealed the more effective is the Tzurat HaPetach. Moreover, one may argue that the goal of an Eruv is not to create a Petach but rather to eliminate Pirtzot (breaches).

Acharonim debate this matter vigorously. Teshuvot Teshurat Chai (1:327) leads the list of those who rule strictly and Teshuvot Avnei Neizer (Orach Chaim 295) is among those who adopt the lenient approach. The objection of the nearby Rav seems to have merit, as what allows one the Halachic right to rely on the lenient opinion. However, there are three reasons to defend our relying on the boardwalk railing as a major component of the Eruv.

Posekim Who Fundamentally Accept the Lenient Opinion

Rav Moshe Heinemann stated (in the Eruv webinar posted on the Star-K website) that he adopts the approach of the Tchebiner Rav (Teshuvot Doveiv Meisharim 1:3) who adopts the stricter approach in practice but fundamentally (Me'ikar HaDin) rules in accordance with the lenient approach. Indeed, the Tchebiner Rav writes "those who follow the lenient approach certainly have a legitimate view upon which to rely".

Rav Hershel Schachter also told me (in 1989) that agrees with the lenient opinion since we are interested in creating a Tzurat HaPetach and what transpires in the area below is irrelevant. Rav Zvi Pesach Frank (Teshuvot Har Zvi Orach Chaim 2:18:4) also rules in accordance with the lenient view. Rav Yaakov Bloi (Netivot Shabbat 19:9) presents this issue stating "there are those who permit"

without noting those who rule strictly on the body of the text, indicating that he fundamentally rules in accordance with the lenient view.

Rishon who Support the Lenient View

The lenient view enjoys strong support since a Rishon supports this view. The Rishon is the Maharil (Likuttim number 15) whose writings serve as a basis for a significant number of Ashkenazic customs.

Even Those Who Rule Strictly Might Agree

Rav Heinemann (in the aforementioned webinar) notes that even according to the strict view the Tzurat HaPetach may have some obstructions. He rules that as long as there is some place within the Tzurat HaPetach where one can pass it constitutes a proper Tzurat HaPetach. This argument is supported by the Satmar Rebbe (Teshuvot Divrei Yoel Orach Chaim 21:13).

Regarding the specific situation of the boardwalk railing I showed pictures of the same design of the boardwalk railing (located in nearby Bradley Beach, New Jersey) to Rav Mordechai Willig and Rav Baruch Simon in 2000. Both Rav Willig and Rav Simon ruled that this is a Kosher Tzurat HaPetach since there is enough room for one to climb through the railing through to the other side. I tried in practice and indeed was able to climb through the railings.

One cannot argue that the stricter opinion requires that one walk upright through the Tzurat HaPetach. This is because the minimum height is 10 Tephachim which according to the strictest approach is not taller than 40 inches. Almost all adults would have to bend to be able to pass through such a Tzurat HaPetach and it is nonetheless undoubtedly defined as a Petach.

A Tzurat HaPetach Constructed for another Purpose

One could also raise an objection to relying on the boardwalk rail since it was not created for the purpose of serving as a Tzurat HaPetach. Indeed, there is considerable discussion of the issue of whether one may rely on such a Tzurat HaPetach. However, Rav Bloi (Netivot Shabbat 19:12) notes that the consensus has emerged to rely on such a Tzurat HaPetach. He explains that since a Tzurat

HaPetach serves as a Mechitza and the Shulchan Aruch (Orach Chaim 362:3) rules that a Mechitza that was constructed for a purpose other than for Shabbat needs constitutes a valid Mechitza regarding Hilchot Shabbat.

Rav Bloi notes that the lenient approach is adopted in practice especially in regards to utilizing preexisting utility poles as a Tzurat HaPetach. Rav Bloi notes that utility poles are relied upon as Tzurot HaPetach in practice even if no Halachic adjustment needs to be made to the poles (such as if the wire runs above the pole)¹.

A Similar Situation in Princeton University



¹ Rav Heinemann states otherwise in the aforementioned Eruv webinar stating that the utility poles are relied upon as a Tzurat HaPetach only because Halachically mandated additions are made to said poles. However, I have seen Eruvin approved by Rav Heinemann where utility poles and wires without any Halachic adjustment are relied upon as a Kosher Tzurot HaPetach.

Based on the ruling of Rav Willig and Rav Simon the same approach was followed in the Eruv created in the Princeton, New Jersey area. In the planning for this Eruv a few gaps wider than ten Amot were discovered. Since Princeton University is quite particular in maintaining the high aesthetic quality of their campus, simply constructing a Tzurat HaPetach would simply not fit into the landscape. Instead split rail fences, like those shown in the picture above were added into two locations to close the gaps. The exact same considerations to be lenient presented above apply here as well. The possible objection in this case is that the pole is only partially Tachuv through the pole and not completely running through. However, both Rav Shlomo Zalman Auerbach (Teshuvot Minchat Shlomo 2:35:25) and Rav Mordechai Willig (personal connection) rule that even a partial Tachuv is acceptable since we may ignore (“Dal Me’hacha” in Talmudic parlance) regarding the rest of the pole.

Conclusion

The extension of the Long Branch Eruv to cover the areas where all of the Orthodox Jews reside required relying on the boardwalk railing. We have mentioned elsewhere that it is imperative for each community to have an Eruv even if it cannot satisfy all opinions. In the case of the Long Branch Eruv there is abundant basis to rely on the boardwalk railings (and the Princeton community relying on split rail fences) as Tzurat HaPetach, especially because it seems that the stringent opinion is satisfied in this situation as well.