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* ALSO ADMITTED IN NEW YORK

Members
Planning & Zoning Commission
Town of Greenwich
101 Field Point Road
Greenwich, CT 06830

Re: Chabad Lubavitch of Greenwich – 270 Lake Avenue - PLPZ 2021 0394

Dear Commission Members:

The Town of Greenwich's Planning and Zoning Commission's ("Commission") actions in regard to the approval of the Chabad of Greenwich's ("Chabad") preschool on what is known as the Carmel campus are guided not only by the provisions of the Town of Greenwich's ("Town") Zoning Regulations, but also federal and state law protecting religious land use. The federal Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. §§ 2000cc, *et seq.*, also applies to any decision by the Commission regarding the Chabad's ability to operate its school on the Property. *See* 42 U.S.C. § 2000cc-5(4)(A)(i)-(ii) (the term "government" includes "any branch, department, agency, instrumentality, or official of" a "county"); *see also Congregation Anshei Roosevelt v. Plan. & Zoning Bd. of Borough of Roosevelt*, 338 F. App'x 214, 219 (3d Cir. 2009) (board's denial of variance to religious school, if final, could form the basis for a RLUIPA complaint). A finding by the Commission as to the issues specified in the Town's Regulations is not the only relevant inquiry. Rather, the Commission has an affirmative obligation to avoid violating Chabad's rights.

The Chabad's operation of its school constitutes religious exercise within the meaning of RLUIPA, and failing to approve its application to operate that school would substantially burden that exercise. The operation of a school that provides religious instruction--the basis for its application--easily falls within RLUIPA's broad definition of religious exercise, which "includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. §§ 2000cc-3(g), 2000cc-5(7)(A). Courts, including the federal Court of Appeals for the Second Circuit, have long acknowledged schools with a religious mission as falling within the religious activities protected by RLUIPA. *See Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 348 (2d Cir. 2007) (affirming district court finding that religious school's expansion project was covered under RLUIPA). Denial of the application would substantially burden the Chabad's religious exercise. *See generally id.* The Chabad here does not have a readily available alternative and an inability to operate will prevent it from fulfilling its religious mission to teach Orthodox Jewish students religious and secular subjects.

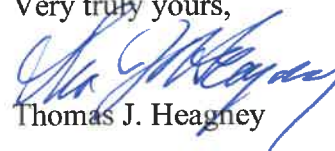
Here, Chabad's rights are even more compelling as it desires to use an existing school campus for its preschool and has been doing so with the approval of the Town for at least a one-year period. Under RLUIPA, if a religious organization demonstrates that its religious exercise is substantially burdened, the burden of persuasion then shifts to the government to show that it acted in furtherance of a compelling governmental interest and using the least restrictive means to do so. 42 U.S.C. § 2000cc(a), 2000cc-2(b). The Chabad would easily be able to make its *prima facie* showing of substantial burden, and there does not exist any compelling governmental interest justifying the denial of its Application. "Compelling governmental interests are those that protect public health, safety or welfare." *Westchester Day Sch. v. Vill. of Mamaroneck*, 417 F. Supp. 2d 477, 550 (S.D.N.Y. 2006), *aff'd*, 504 F.3d 338 (2d Cir. 2007). The Town's Planning Director reviewed the Chabad's application and recommended approval of the same in 2020. The Town's Planning Director actually noted that there would be a decrease in the intensity of the use on the property with the approval of Chabad's application, and comments primarily relate to the school hours of operation and bussing for the entire campus, including the existing Japanese school on the campus. Even assuming that the Town's concerns about bussing were "compelling," the Town would have to show that a denial of a zoning permit would be the "least restrictive means" of furthering that interest; in other words, that there was no way of addressing the issues presented other than outright denial. Given that the preschool has operated at the property without incident and within the confines of the conditions imposed by the Town last year, the Town will not succeed in arguing that a denial at this time is the least restrictive means of addressing Chabad's application.

In addition, the Connecticut Religious Freedom Act, C.G.S.A. § 52-571b ("RFA"), provides in pertinent part:

The state or any political subdivision of the state may burden a person's exercise of religion only if it demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest, and (2) is the least restrictive means of furthering that compelling governmental interest.

The "RFA merely requires a 'burden' on religious exercise" and not the substantial burden on religious exercise required by RLUIPA. *Woodland Cemetery Ass'n v. Zoning Bd. of Appeals of City of Stamford*, No. FSTCV146023631S, 2016 WL 2935460, at *11 n.7 (Conn. Super. Ct. May 5, 2016) (citing *Cambodian Buddhist Society of Connecticut v. Planning & Zoning Commission*, Docket No. CV-03-0350572-S (Super. Ct. Nov. 18, 2005) [40 Conn. L. Rptr. 410], *aff'd* 285 Conn. 381, 389, 941 A.2d 868 (2008)) (emphasis added). Thus, Chabad's right to use the property as a religious school is even more secure under State law and failure to approve Chabad's application will also implicate and violate Connecticut's RFA.

Very truly yours,



Thomas J. Heagney