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November 15, 2022

**BY FEDERAL EXPRESS AND E-MAIL**

Mayor Steven A. Vescio and  
Members of the Board of Trustees  
Briarcliff Manor Village Hall  
1111 Pleasantville Road  
Briarcliff Manor, NY 10510

Re: Yeshivath Viznitz  
Special Permit Application  
235 Elm Road, Briarcliff Manor, NY

Dear Mayor Vescio and Village Trustees:

On behalf of Yeshivath Viznitz Dkhal Torath Chaim (the “Yeshiva Viznitz”), we submit this letter to the Village Board of Trustees (the “Board”) in furtherance of its application for Special Permit approval for the proposed adaptive reuse of the property located at 235 Elm Road (SBL: 98.19-2-11) (the “Premises”) as a Place of Worship/Religious School (the “Application”). Specifically, we write to request a waiver from Section 220-6(J)(a) insofar as that provision is not necessary to protect against any legitimate public health, safety, or welfare concern. Rather, coupled with this project’s review timeline detailed herein, the refusal to grant such a waiver and the requirement that Yeshiva Viznitz seek and obtain relief from the Village Zoning Board of Appeals (“ZBA”) would impose an undue and substantial burden and delay.

As you are aware, the proposed religious education use is one that is presumed to be inherently beneficial under New York State Law<sup>1</sup> and protected by the United States Constitution as well as the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”).<sup>2</sup>

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<sup>1</sup> *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986); *Matter of Pine Knolls Alliance Church v. Zoning Board of Appeals of the Town of Moreau*, 5 N.Y.3d 407 (2005).

<sup>2</sup> Pub. L. No. 106-274, 114 Stat. 803, codified at 42 U.S.C. §§ 2000cc, et seq. *See also Westchester Day Sch. v. Vill. of Mamaroneck*, 379 F.Supp.2d 550 (S.D.N.Y. 2005) (zoning applications of religious school protected by RLUIPA). Applicant also refers to its analysis of the applicability of RLUIPA to the Yeshiva in



11/15/2022

Page 2

RLUIPA provides that no local governmental “shall impose or implement 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 that burden” is both “in furtherance of a compelling government interest” and “the least restrictive means” of furthering that interest.<sup>3</sup>

A complete denial of an application is not a prerequisite to establishing a RLUIPA violation.<sup>4</sup> Rather, the operative question is whether the local board’s application of its regulations has imposed a substantial burden on religious exercise.<sup>5</sup>

### **Timeline**

The timeline both leading up to the formal filing of the Application and since demonstrates a substantial burden on religious exercise, whether intentionally or unintentionally imposed.

On December 15, 2020, the Board adopted LL 01-2021, which comprehensively overhauled the Village’s Special Permit uses and requirements. The law was signed by the Village Clerk on January 7, 2021 and stamped received by the New York Department of State on April 26, 2021. Of particular note, the law did not include Section 220-6(J)(a), the provision upon which the Building Department’s November 4, 2022 denial was based.

In early March 2021, Yeshiva Viznitz purchased the Premises, which purchase was reported in local news reports. In one such report, the Village Manager was quoted regarding the potential religious educational use of the Premises.<sup>6</sup>

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its October 12, 2022 supplemental submission, a copy of which is annexed hereto and incorporated by reference.

<sup>3</sup> 42 U.S.C. § 2000cc(a)(1).

<sup>4</sup> *Cathedral Church of Intercessor v. Inc. Vill. of Malverne*, No. CV 02-2989 (TCP(MO), 2006 WL 572855, at \*8 (E.D.N.Y. Mar. 6, 2006).

<sup>5</sup> *Westchester Day Schl.*, 379 F.Supp.2d at 556-57.

<sup>6</sup> Steve Lieberman, *What comes next for former Pace campus bought by Yeshiva Viznitz*, LoHud (March 12, 2021, 9:21AM), <https://www.lohud.com/story/news/local/westchester/briarcliff-manor/2021/03/12/pace-briarcliff-campus-whats-next-yeshiva-viznitz-new-permits/4645818001/>.



11/15/2022

Page 3

On March 25, 2021, representatives of Yeshiva Viznitz, with counsel from this office, held a pre-application meeting with Village staff and Village counsel at which the project was introduced and the parties discussed the special permit process, local requirements, and submission requirements.

At the Board's April 6, 2021 meeting, the next regular meeting following the pre-application meeting, it scheduled a public hearing for consideration of Section 220-6(J)(a)-(d)—the Code provision upon which the Building Department denied the Application just one and a half weeks ago. Curiously, this agenda item was not referenced in the meeting agenda, and, in fact, there was not even a draft of the proposed amendment at this time.

Through May and June 2021, this office communicated with Village staff regarding the project and the upcoming Application submissions. The Applications, seeking a Special Permit approval from the Board and Site Plan Approval from the Planning Board, were simultaneously submitted on June 18, 2021.

Just three-days prior, on June 15, 2021, the Board adopted Section 220-6(J)(a)-(e). The law was signed by the Village Clerk on June 21, 2021, and stamped by the New York Department of State on June 23, 2021.

After the Applications were submitted, the Board did not deem the Special Permit application complete for approximately a full year despite the Application submission containing all materials required by Village Code. The Board repeatedly requested supplemental materials and analyses, some of which are required or more appropriate for review during the forthcoming Site Plan application review as opposed to this Board's Special Permit review. Each time the Board requested supplemental materials, Yeshiva Viznitz responded and each submission was followed with additional requests for materials either already provided or never before requested nor required by the Code for Special Permit applications.

Despite the almost year and a half process of multiple rounds of Board requests and Village consultant comments with correspondent responses, the first time a reference was made to compliance with the frontage requirement of Section 220-6(J)(a) was in a September 14, 2022 Memorandum from the Village Planning Consultant.<sup>7</sup>

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<sup>7</sup> It is difficult to reconcile that Section 220-6(J)(a) was not once referenced in the first 16-months of its review of the Application. It would appear that either (a) the frontage requirement was something that the



11/15/2022

Page 4

Approximately six-weeks later, the Building Department issued its denial letter based on Section 220-6(J)(a) and the corresponding memorandum prepared by the Village Traffic Consultant refuting our application of Section 220-6(J)(a). The Building Department denial letter offers that an appeal of the determination therein may be appealed to the ZBA, though the earliest an appeal or relief request could be heard by the ZBA is February 6, 2023, resulting in a minimum of 3-months being added to the Special Permit application review.

There is little doubt that the totality of the Board's application of local land use regulations to the Application has imposed, unintentionally or not, a substantial burden on Yeshiva Viznitz and the exercise of religion and the Board's actions cannot be defended as narrowly tailored in furtherance of a compelling interest.

### **Waiver**

The project will have no adverse public health or safety (including traffic) impacts. Nor does it pose a risk to the general welfare. The proposed use is significantly less intense than the prior use of the Premises by a factor of several multiples.<sup>8</sup> All traffic reports concur that the road fronting the Premises can easily accommodate vehicles coming to and from the Premises.

Even assuming the Building Department's interpretation of Section 220-6(J)(a) is correct, the Board has the authority to waive any Special Permit requirements it deems to be unnecessary to protect the public health, safety, or general welfare.<sup>9</sup> Since it is axiomatic that a zoning denial on grounds "unrelated to the public's health safety or welfare [is impermissible]" and in the context of a proposed religious use will constitute a violation of RLUIPA,<sup>10</sup> we respectfully request that the Board grant a waiver of the road frontage requirement of Section 220-6(J)(a) to allow the

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Board had never viewed as relevant or material to the Application and was merely used as a pretext to derail the Application in the face of public opposition; or (b) the Board avoided reference to this provision until very late in the application process as a delay tactic (especially since the Board was aware that the Application was submitted based on the local law in effect at the time of its preparation, which did not include the frontage condition).

<sup>8</sup> Applicant refers to its October 12, 2022 submission, at 5-6, a copy of which is annexed hereto and incorporated by reference.

<sup>9</sup> *Id.*

<sup>10</sup> *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 351 (2d Cir. 2007) citing *Cornell Univ. v. Bagnardi*, 68 N.Y.2d 583, 597 (1986).



11/15/2022

Page 5

Special Permit application to be approved and to avoid further burdens and costs associated with the additional three-month minimum resulting from the ZBA review at this time.

Yeshiva Viznitz would, of course, prefer to resolve this matter on amicable grounds and move forward with its project which will bring benefits to the community and with no correspondent material adverse impacts. But as discussed above, in light of the troubling history of this project, Yeshiva Viznitz encourages the Board to re-evaluate its course to date and reserves all of its rights.

Thank you in advance for your consideration.

Very truly yours,

A handwritten signature in blue ink, appearing to read "DP".

Daniel Patrick

Enclosures

cc: Client

Steven Barshov, Sive, Paget & Riesel P.C., Special Counsel for Briarcliff Manor  
Joshua Subin, McCarthy Fingar LLP, Village Attorney for Briarcliff Manor  
Anthony B. Gioffre III, Cuddy & Feder LLP