

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CHABAD LUBAVITCH OF THE BEACHES,
INC.,

Plaintiff,

v.

INCORPORATED VILLAGE OF ATLANTIC
BEACH, BOARD OF ZONING APPEALS OF
THE VILLAGE OF ATLANTIC BEACH,
MAYOR GEORGE PAPPAS, EDWARD A.
SULLIVAN, LINDA L. BAESSLER,
ANDREW J. RUBIN, PATRICIA
BEAUMONT, GEORGE CORNISH, GARY
SPINDLER, CARL BAESSLER, NANCI B.
FREIMAN, ALLAN JACOBS, ANTHONY
PISCIONE, and PETER SAVINE,

Defendants.

No. 2:22-cv-4141(JS)(ARL)

JURY TRIAL REQUESTED

**[PROPOSED] FIRST AMENDED
COMPLAINT FOR MONETARY
AND EQUITABLE RELIEF**

INTRODUCTION

1. Chabad Lubavitch of the Beaches (“Chabad of the Beaches” or “Chabad”) is a Hasidic Jewish outreach organization. In 2021, Chabad purchased a long-vacant building formerly used as a bank at [REDACTED] in the Village of Atlantic Beach, NY (the “Village” or “Atlantic Beach”) with the intention to turn the property into a center for Jewish worship, education, and outreach.

2. What followed was an ongoing, coordinated campaign among Atlantic Beach’s officials, driven by animus towards Chabad’s Hasidic Jewish identity, to keep Chabad out of the Village by abusing the Village’s eminent domain and zoning authority.

3. Within days of Chabad's closing its purchase, Village officials responded by commencing eminent domain proceedings to seize the property, ultimately approving the taking on February 14, 2022. Publicly, the Village said its purpose in seizing the property was to build a community center. But that justification has never made any sense—the property had been on the market for years without any prior efforts by the Village to purchase it; the Village already owned properties it could use for that purpose; there had been no public discussions about this supposedly essential public facility until the Village's rushed efforts to seize Chabad's property; and to date—three years later—the Village has made no apparent effort to establish a community center at an alternative location.

4. In reality, Village officials' private communications told a vastly different story. In private communications produced in this case, Village officials freely and frequently engaged in open anti-Chabad and anti-Orthodox sentiment and trafficked in vile antisemitic tropes, including that Jews are "buying the world," "procreate" too much, and "don't tip."

5. These messages reveal that the Village's proffered reason for seizing Chabad's property is and always has been pretextual. In truth, the Village seized Chabad's property because, in the words of the Village's Associate Justice in a text message to Village Mayor George Pappas, "**most people don't want the Chabad** and just don't want to say it. Any secular Jew doesn't want them"—to which Mayor Pappas responded, "Very true."

6. Other Village officials expressed their animus towards Chabad more colorfully.

7. Immediately upon learning of Chabad interest in purchasing the 2025 Park Street property, then-Village Trustee Andrew Rubin dashed off an email to Mayor Pappas and fellow Trustee Edward Sullivan: “[T]here is a pending contract by Habbad [sic] of LB to buy the property. **We can not dick around anymore. We need to move fast.** I know that our Temple is concerned.”¹

8. Two different Trustees—Patricia Beaumont and Linda Baessler—separately described Chabad’s presence in the Village as a “nightmare,” and Beaumont privately mused that Hasidic groups like Chabad must be stopped from “buying the world-town by town city by city ... they have the numbers—they procreate.” And the Village Building Examiner—who, by virtue of his office, plays an outsized role in land use decisions—suggested to Mayor Pappas that the Village “string an Eruv^[2] around the village with Xmas lights” to “keep Chabbad [sic] out of the village.”

9. On July 14, 2022, Chabad initiated this lawsuit, bringing claims against the Village of Atlantic Beach and the five then-members of the Village’s Board of Trustees:

¹ The “Temple” referenced in Rubin’s email is, upon information and belief, the Jewish Center of Atlantic Beach (“JCAB”), an incumbent temple who some in the Village saw as a competitor to Chabad of the Beaches.

² An eruv is a symbolic boundary that permits observant Jews to carry certain items on the Sabbath and holidays that Jewish law would otherwise forbid them to carry. An eruv typically consists of a string of fishing line running between utility poles, and is usually not noticeable unless one is specifically looking for it. An eruv of Christmas lights would serve no purpose other than to remind Orthodox and Hasidic Jews that they are outsiders in the Village.

Mayor George Pappas, Edward Sullivan, Andrew Rubin, Patrician Beaumont, and Linda Baessler (collectively, with the Village, the “Original Defendants”). Chabad’s claims challenged the taking of 2025 Park Street as, *inter alia*, a violation of the First, Fifth, and Fourteenth Amendments. Chabad also moved for a preliminary injunction enjoining the Village and its officials from proceeding with the taking. On September 6, 2022, the Court granted Chabad’s motion, finding that it was likely to succeed on the merits of its claim that the Village’s actions were unlawfully driven by anti-religious animus.

10. This case then proceeded to discovery. In response to Chabad’s document requests, the Village and then-Trustees produced the emails and text messages described above—and many more. The documents laid bare the truth of Chabad’s allegations, revealing a Village leadership driven by blatant, openly-expressed religious animus towards Chabad and Hasidic and Orthodox Jews more generally.

11. In November 2023, Chabad and the Original Defendants conditionally agreed to settle Chabad’s claims. Under the terms of the settlement, Chabad would be entitled to retain ownership and use of the 2025 Park Street property, the parties would jointly ask the Court to enter a consent decree permanently enjoining the Village from future efforts to seize the property, and the Village would make a six-figure monetary payment to Chabad. The settlement was contingent on the Village’s Board of Zoning Appeals (“ZBA”) issuing all necessary zoning permits and variances necessary for Chabad to make full use of its property.

12. Chabad hoped the settlement would begin a new, positive chapter in its relationship with the Village. But that hope was misplaced. Despite its public statements

to the contrary, the Village remained determined to exclude Chabad. What the Village failed to do through eminent domain it would next try to do through zoning.

13. In the summer of 2024, Chabad duly submitted a zoning application to the ZBA, seeking a special exception permit for religious use and various other forms of zoning relief required by the Village code. Chabad sought such relief to permit it to use the 2025 Park Street property for a religious purpose and improve it in ways that would allow Chabad to advance its mission of outreach to the Jewish community.

14. In its written application and in sworn testimony at a public hearing, Chabad offered a detailed account of how it intended to use the property and of how those uses served its religious mission. To further demonstrate that those intended uses would not negatively affect the surrounding neighborhood, Chabad also submitted a traffic and parking study prepared by a well-qualified transportation engineer. The engineer, as well as an expert real estate appraiser, both testified at the public ZBA hearing to explain why the Chabad House would not affect property values or substantially increase traffic.

15. Rather than evaluating Chabad's application in good faith, however, the ZBA engaged in a sham process designed to uphold the foregone determination to keep Chabad out of the Village.

16. On November 6, 2024, the ZBA denied Chabad's application in its entirety, save for permitting Chabad to maintain one pre-existing non-conforming use of the property. The ZBA's decision flouts both the facts and the law. In denying Chabad a permit for religious use, the ZBA ignored Chabad's clear testimony about the intended

religious uses of the property and ruled that, because Chabad is focused on outreach to unaffiliated Jews who “are not into synagogue services,” the property was not intended for a religious use. The ZBA also ignored the criteria set forth in the Village Code regulating the issuance of religious special exception permits and made mockery of both federal and state law, denying all of Chabad’s requested relief outright rather than suggesting measures to accommodate the property religious use, as state law requires, or narrowly tailoring its decision to a compelling state interest, as federal law requires. The ZBA also failed to engage with the required factors under New York Village Law section 7-712-B(3) when reviewing applications for area variances.

17. The ZBA’s groundless decision evinces the same anti-Chabad animus as the Village’s earlier attempt to seize Chabad’s property through eminent domain. Upon information and belief, both actions are part of an orchestrated campaign by Village officials and residents to deny Chabad, a religious minority group, the ability to freely exercise its religious beliefs in the Village.

18. Chabad accordingly has no choice but to, once again, seek relief from this Court to prevent Atlantic Beach from violating Chabad’s fundamental rights by denying it the right to use its property to freely practice its religion.

JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction over Counts 1–9 pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States, and supplemental jurisdiction over Count 10 pursuant to 28 U.S.C. § 1367 because

Chabad's state-law claim arises from the same facts and circumstances as its federal civil rights claims.

20. This Court has authority to issue the relief sought pursuant to 28 U.S.C. §§ 1343(a), 2201, and 2202; 42 U.S.C. §§ 1983, 1988, and 2000cc-2; and N.Y. C.P.L.R. § 7804.

21. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and (2). All Defendants maintain offices and perform their official duties in this District, a substantial part of the events giving rise to the claims occurred in this District, and the property that is the subject of the action is situated in this District. In addition, upon all information and belief, all Defendants reside in this District.

PARTIES

22. Plaintiff Chabad Lubavitch of the Beaches, Inc. is a non-profit religious organization affiliated with Chabad Lubavitch, a worldwide Hasidic movement. Chabad of the Beaches' principal location is 570 West Walnut, Long Beach, NY 11561, where it operates a center for Jewish life that serves the Jewish communities of Long Beach, Lido Beach, and Atlantic Beach by promoting and strengthening Jewish awareness, observance, and community through religious, educational, cultural, and social activities.

23. Defendant Incorporated Village of Atlantic Beach is an incorporated community on Long Beach Barrier Island in Nassau County, New York. The Village maintains an office at 65 The Plaza, Atlantic Beach, NY 11509. The Village is governed by a five-member Board of Trustees.

24. Defendant George J. Pappas is mayor of the Village of Atlantic Beach and a member of the Village's Board of Trustees, in which capacity he voted to authorize the Village's taking of Chabad's property through eminent domain.

25. Defendants Edward A. Sullivan, Linda L. Baessler, Andrew J. Rubin, and Patricia Beaumont (collectively with Mayor Pappas, the "Individual Trustee Defendants," and all Individual Trustee Defendants collectively with the Village, the "Village Defendants") were trustees of the Village of Atlantic Beach on February 12, 2022, in which capacities they voted to authorize the Village's taking of Chabad's property through eminent domain. Upon information and belief, all Individual Trustee Defendants reside in Atlantic Beach, New York.

26. Defendant Board of Zoning Appeals of the Village of Atlantic Beach is a municipal organ of the Village of Atlantic Beach and, under the Village code, has authority to grant variances, permits, and exceptions to Village zoning ordinances. The ZBA maintains an office at 65 The Plaza, Atlantic Beach, NY 11509.

27. George Cornish is the chairman and a Commissioner of the ZBA. Anthony Piscione, Nanci Freiman, Carl Baessler, and Gary Spindler are Commissioners of the ZBA and Allan Jacobs and Peter Savine are Alternate Commissioners (collectively, "Individual ZBA Defendants," and collectively with the ZBA, the "ZBA Defendants") who participated in the decision at issue here to deny Chabad's zoning application.³ Members

³ It is not clear whether Carl Baessler and Gary Spindler actually participated in the decision to deny Chabad's application. While the transcript from the August 22, 2024 ZBA public hearing regarding Chabad's application does *not* indicate their presence, both
(continued on next page)

are appointed by the Village Board of Trustees. Vill. of Atlantic Beach Mun. Code § 250-95(a). Upon information and belief, all Individual ZBA Defendants reside in Atlantic Beach, New York.

28. The Individual Trustee Defendants and Individual ZBA Defendants are sued both in their official and personal capacities.

FACTS

A. Chabad of the Beaches

29. Chabad Lubavitch is a branch of Hasidic Judaism founded in the late eighteenth century by Rabbi Schneur Zalman. The word “Chabad” is an acronym for the Hebrew words *chochmah* (wisdom), *binah* (comprehension), and *da’at* (knowledge). “Lubavitch” is the Yiddish word for Lyubavichi, the Russian village where the Chabad Lubavitch movement was based for nearly a century.

30. Following World War I, to escape persecution by the Bolsheviks, Chabad Lubavitch moved its center first to Riga, Latvia, and then to Warsaw, Poland. In 1940, with the outbreak of World War II, the movement’s leadership fled persecution once again, this time to the United States. Since then, Chabad Lubavitch has been headquartered in the Crown Heights neighborhood of Brooklyn.

31. One of Chabad Lubavitch’s central tenets is outreach to the broader Jewish world, including non-Orthodox and secular Jews. At the heart of Chabad Lubavitch’s commitment to outreach is the principle of *Ahavat Yisrael* – love of all Jews.

individuals were listed as present on the transcript of the October 10, 2024 ZBA meeting during which “all members of the board” responded in favor of each denial.

32. Chabad Lubavitch carries out its mission of Jewish outreach principally through emissaries known as *shluchim*. *Shluchim* are husband-and-wife teams who, as young married couples, permanently move to areas with a Jewish presence to set up Chabad Houses, from which they conduct a wide range of outreach activities to the broader Jewish community. Such activities, which may vary from Chabad House to Chabad House, generally include religious services, Torah study, religious instruction, and holiday celebrations. They may also include running Jewish day schools, summer camps, after-school programs, or social service organizations.

33. Through these outreach activities, Chabad Lubavitch aims to bring Jews closer to God and their Jewish heritage and to strengthen Jews' commitment to Judaism. This goal is known as *kiruv*, a term derived from the Hebrew word for "bringing close," and Chabad Lubavitch's emphasis on outreach, especially through its *shluchim*, is known as the Kiruv Movement. That outreach includes encouraging Jews who may not otherwise observe the Jewish traditions to take any small step to draw closer to the faith. Such steps might include eating a kosher meal, affixing a *mezuzah* (a small case enclosing a scroll of parchment containing biblical passages) in their home, or attending one of Chabad Lubavitch's educational worship services, which include English explanations of the traditionally Hebrew components of synagogue worship. It is thus a distinctive feature of Chabad Lubavitch that its members often engage in *kiruv* outside traditional settings so as to better reach unaffiliated Jews who may not belong to a synagogue or otherwise participate in organized Jewish life.

34. Today, Chabad Lubavitch is one of the most influential and far-reaching Jewish organizations in the world, with over 2,000 emissary families in the United States, over 5,000 worldwide, and over 3,500 institutions located in over 100 countries.

35. *Shluchim* Rabbi Eli and Beila Goodman founded Plaintiff Chabad of the Beaches nearly 20 years ago to serve the Jewish population of Long Beach Barrier Island and the surrounding towns.

36. Long Beach Barrier Island is an approximately 10-mile wide island running along the southern coast of Long Island. From west to east, Long Beach Barrier Island comprises the communities of Atlantic Beach, Long Beach, Lido Beach, and Point Lookout. Atlantic Beach sits across a narrow waterway from, and is connected by a bridge to, the Long Island mainland.

37. Chabad of the Beaches currently operates a center for Jewish life in Long Beach offering a wide range of religious, educational, cultural, and social programming to the Jewish community of Long Beach Barrier Island. In addition to running a synagogue, Chabad runs a Hebrew school, adult Jewish education programs, young Jewish professional events, programming for Jewish teens, and women's programming.

B. Atlantic Beach's Longstanding Animosity Towards Chabad of the Beaches

38. Chabad of the Beaches has long enjoyed a good relationship with the City of Long Beach, where it is based, and its work has extended across the barrier island. However, Atlantic Beach's leadership has long been hostile to Chabad's religious work and Hasidic Jews more generally.

39. The Village's animosity towards more visibly observant forms of Judaism traces back decades. In 1989, some Village residents proposed to construct an *eruv* around parts of the Village. At that time, several residents told the *New York Times* that an *eruv* would lead to the "ghettoization" of the Village as Orthodox Jews moved in from surrounding neighborhoods.⁴ One resident, a then-trustee of the Village, told the *Times*, "We are a small, varied community which has now opened up to a group that has narrowly defined interests. We are not comfortable with the *eruv*."

40. More recently, the Village has trained its focus and suspicions on Chabad groups in and around the Village. In 2017, for example, after a different Chabad chapter placed a menorah on the bridge connecting Atlantic Beach to Long Island, then-Village Trustee Andrew Rubin emailed Mayor George Pappas, "I just came home and saw the menorah[.] **This will be the only year that it will be there. It is not this village's style.**" Rubin also dismissively suggested the Chabad group could "use it in Lawrence," referring to a nearby community with a large Orthodox community. Mayor Pappas replied, "I totally agree," and the next year the menorah was gone.

⁴ Sharon Monahan, *Atlantic Beach Split by Sabbath Border*, N.Y. Times, Nov. 26 1989, at 24.

FIGURE 1

Date: Thursday, December 14 2017 08:55 PM
Subject: Re: Bridge
From: George Pappas <[REDACTED]@gmail.com>
To: [REDACTED]@aol.com;

I totally agree
On Dec 14, 2017, at 8:51 PM, [REDACTED]@aol.com wrote:

George
I just came home and saw the menorah
This will be the only year that it will be there. It is not this village's style.
They can use it in lawrence
Andy

41. The following year, Rabbi Goodman proposed to parade a Menorah across the barrier island to commemorate the start of Channukah. Trustee Rubin responded to his fellow trustees that “[t]here will not be a menorah placed in our village **by this individual,**” and suggested that he “discuss with the officers of the JCAB,” the incumbent, non-Hasidic synagogue in Atlantic Beach. Separately, Trustee Rubin emailed Mayor Pappas and offered to have a letter prepared by JCAB to “explain[] why the menorah is not necessary,” and further noting “suspicion[s] of that organization and rabbi Goodman.”

FIGURE 2

Date: Thursday, November 15 2018 03:05 PM
Subject: Menorah
From: Andrew Rubin <[REDACTED]@gettrymarcus.com>
To: 'George Pappas' <[REDACTED]@gmail.com>;

Do you want the temple to draft a letter to the bridge authority explaining why the menorah is not necessary and discuss why Mark is suspicious of that organization and rabbi Goodman.
Call me

42. Due to Mayor Pappas and Trustee Rubin’s opposition, the Village did not approve Rabbi Goodman’s request. Notably, however, a short time later, the Village approved JCAB’s similar request to parade a Torah through Atlantic Beach.

43. In a separate incident in April 2022, a speaker at a Village Board of Trustees meeting in nearby Rockville Center suggested legislation to limit the number of synagogues in response to a Chabad House setting up a menorah. Every major political leader in New York—Governor Hochul, Senator Schumer, then-Congressman Zeldin, County Executive Blakeman, and others—condemned these statements as antisemitic. Mayor Pappas, by contrast, *endorsed* them, writing of the speaker, “**everything she said is true,**” and bemoaning that “the state and courts lean with religious organizations.”

C. Chabad of the Beaches Purchases 2025 Park Street

44. In November 2021, to better serve the Atlantic Beach community by expanding opportunities for *kiruv* there, Chabad purchased a property located at 2025 Park Street (the “Property” or “2025 Park Street”) in Atlantic Beach for \$950,000. The 9,995 square-foot property—which is down the block from the Village offices at 65 The Plaza, Atlantic Beach—houses a 1,698 square-foot building that was formerly a Capital One bank. Chabad’s deed was recorded on November 18, 2021 in the Nassau County Clerk’s Office.

45. For years, Rabbi Goodman has hoped to establish a Chabad House in Atlantic Beach. The idea to expand Chabad’s presence into Atlantic Beach originated from members of the Atlantic Beach community who are currently forced to travel to Long Beach to participate in Chabad’s offerings. Having a local location would allow

Sabbath-observant individuals to walk to synagogue services. For less observant people, a Chabad House would allow them to become more involved without having to travel across the island or join a more formal synagogue.

46. When Chabad purchased the Property, it had been vacant for at least three years and for lease and/or sale since December 2019. During the bulk of that time, the Property had “For Sale” signs posted in its front yard, facing Park Street and Albany Street—literally around the corner just steps away, from the Village of Atlantic Beach’s Village Hall. The Property had also been listed for sale on MLS, as well as Zillow, Redfin, and other real estate websites.

47. Due to its long period of disuse, the Property currently is not suitable for hosting indoor public gatherings. Chabad intends to invest significant resources to make the Property a welcoming gathering space for its members and the broader Jewish community in Atlantic Beach.

48. An image of the Property from Google maps, taken while the Property was for sale, is included below:

FIGURE 3



49. Figure 4 below is an artistic rendering of Chabad’s intended renovations to the property:

FIGURE 4



50. During the entire time that the Property was listed for sale, the Village never made an offer to purchase the Property from its then-owner.

51. The Village was also aware during this time that the Property’s owner was considering selling or leasing the property for various commercial uses. The Property owner advertised the Property as “perfect for a Starbucks.” As the Village was also aware, there were discussions about converting the Property into an urgent care facility or a travel agency.

52. Chabad acquired the Property with the intent of opening a Chabad House offering religious services, religious education, and other Jewish outreach activities. In

addition to using the Property to expand its religious, educational, and social programming, Chabad planned to use the Property to provide kosher food for the Jewish community.

53. As is common at other Chabad Houses around the country, Chabad also planned to make the Property available to the broader Atlantic Beach community as a space for meetings and gatherings when it was not in use for religious purposes.

54. Rabbi Goodman selected the property because of its location at the foot of the bridge that serves as the main entry point to Long Beach Barrier Island. By virtue of its high visibility to the residents of the barrier island, this location promised to promote awareness of Chabad among the island's large Jewish population, especially among secular and unaffiliated Jews who might not otherwise know of Chabad's presence. Chabad considered such visibility essential to its outreach efforts.

D. Defendants Mobilize Against Chabad of the Beaches' Acquisition of the Property.

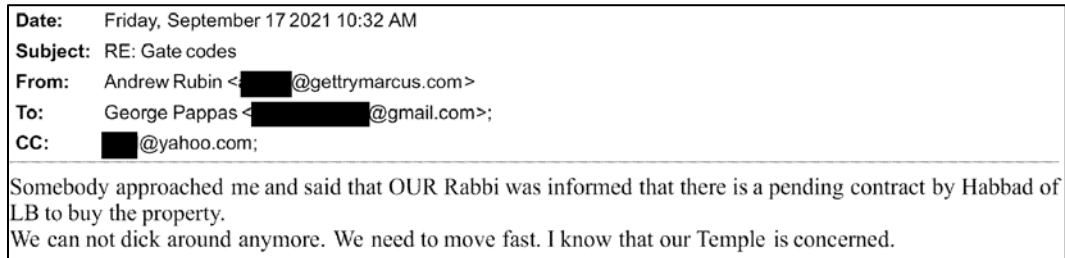
55. By September 17, 2021, Mayor Pappas and Trustees Rubin and Sullivan had learned that Chabad was in negotiations to purchase the Property.

56. That day, Rubin emailed Pappas and Sullivan stating that "OUR Rabbi was informed that there is a pending contract by Habbad [*sic*] of LB to buy the property,"⁵

⁵ This email contradicts Sullivan's sworn testimony at the preliminary injunction hearing that he did not "even know that Chabad was in negotiations to acquire ... the former Capital One property" until December 2021. Prelim. Inj. Hr'g Tr. 133:11-134:16 (Aug. 3, 2022).

noting that “our Temple is concerned,” and demanding that they “stop dick[ing] around” and “move fast” to keep Chabad out:

FIGURE 5



On information and belief, “our Temple” and “OUR Rabbi” refer to JCAB and JCAB’s rabbi, respectively.

57. Following Rubin’s email, Atlantic Beach’s government mobilized to prevent Chabad from establishing a home in Atlantic Beach.

58. The Village quickly settled on a strategy of seizing the Property through eminent domain, even though the Village had never sought to buy the Property while it was for sale and had expressed no concern when it looked like the Property would be sold or leased for a commercial purpose. Indeed, in the hearing on Chabad’s motion for a preliminary injunction, the deputy mayor testified the Village never considered taking the property while it was a bank, because the bank – seemingly in contradistinction to the proposed Chabad House – “was providing a service to the community.”

59. Four days after the Rubin email, the Village retained eminent domain counsel.

60. On November 18, 2021, Chabad closed on the Property.

61. When it acquired the Property, Chabad was unaware that the Village intended to seize the property through eminent domain.

62. On December 2, 2021, two weeks after completing its purchase of the Property, Chabad held a menorah lighting at the Property to celebrate Hannukah.

63. For 17 years, Chabad has held annual menorah lightings in neighboring Long Beach, which that city's elected officials have consistently attended.

64. Consistent with that practice, in advance of the menorah lighting at 2025 Park Street, Rabbi Goodman emailed Atlantic Beach's official account to invite Mayor Pappas to light the center candle "to bring blessing and light to the Village of Atlantic Beach and the entire Barrier Island."

FIGURE 6

Dear Village of Atlantic Beach,

I'm sure you have seen the Menorah outside the former Capital 1 Bank site.

We will have a community Menorah lighting TOMORROW, Thursday Dec 2. Fifth Night of Chanukah with community leaders, elected officials and other dignitaries.

We would be honored to have the Mayor light the center candle of the Menorah to bring blessing and light to the Village of Atlantic Beach and the entire Barrier Island.

Please let me know if the Mayor is able to attend at your earliest convenience.

Warm regards

Rabbi G

65. At the ceremony on December 2, participants lit a twelve-foot menorah and sang religious songs.

66. Trustee Beaumont attended part of the Menorah lighting. She later described the event as a "nightmare" and called the police to shut down the event.

67. Upon information and belief, Mayor Pappas also either watched the lighting from a distance or heard about the ceremony from local residents.

68. Upon information and belief, in response to complaints about the ceremony, Mayor Pappas stated that he had a plan to prevent Chabad from remaining in Atlantic Beach.

69. Mere days later, on December 13, 2021, the Individual Trustee Defendants put this plan into action. That evening, the Village's Board of Trustees unanimously adopted a resolution to begin the process of seizing the Property and the neighboring lot at 2035 Park Street by eminent domain (collectively, the "Park Street Properties"). The trustees and mayor set January 10, 2022, as the date to hold a public hearing on the issue.

70. In published notices of the upcoming hearing, the Village announced its intention to use the Park Street Properties as a "recreation facility, community center and lifeguard beach operations facility."

71. Prior to that notice, the Village had never held a single board meeting to discuss building a community center.

72. The Village held the public hearing as scheduled, on January 10, 2022.

73. At the hearing, the Village's eminent domain counsel, Joshua Rikon, stated that the Village planned to use the Property as a "recreational facility and community center with lifeguard beach operations," and to use the neighboring parcel (2035 Park Street) as a community park. *See Prelim. Inj. Hr'g Tr.*, at 9:8-15.

74. Mr. Rikon further stated that "[n]o alternative locations were considered for the project." *Id.* at 9:15-16.

75. The Village's preference for having recreational facilities instead of a religious institution at the Property reflects official Village policy. One current Atlantic Beach zoning ordinance, in particular, regulates "religious and educational uses" to address "the concerns of the surrounding Village inhabitants about the potential adverse effects on the quality of life that these uses may engender." § 250-108.1(A)(1).⁶ The ordinance aims to regulate religious uses with a purported "net negative impact on the surrounding neighborhood." § 250-108.1(A)(2). To that end, it requires "[a] house of worship or other place regularly and primarily devoted to religious practice," § 250-108.1(B), to apply for a special permit before establishing or expanding a religious use in the Village, § 250-108.1(A)(3) and § 250-108.1(C)(1). It notes that the Village Board of Appeals may deny such an application if it believes that a proposed religious use "will sufficiently detract from the public's health, safety, welfare or morals." § 250-108.1(A)(4). And this could include everything from "[a] substantial adverse effect on surrounding property values" to "[a]ny other negative impact." § 250-108.1(D)(4)(b), (e).

76. This ordinance creates a nearly impossible standard to overcome if Village officials are determined not to permit the religious use. Any religious use (or for that matter, any use at all) could theoretically have a "negative impact." Whether something "sufficiently detract[s]" from "health, safety, welfare or morals" is left to the subjective determinations of Village officials. Upon information and belief, only one religious

⁶ The Village zoning ordinance is available at <https://ecode360.com/7204110>.

institution, JCAB, has been allowed by the Village to use its property for religious purposes.

77. At the January 10 hearing, several residents of Atlantic Beach voiced concerns about the Village's plans. Multiple residents, for example, asked how the Village planned to pay for acquiring the two parcels and building the proposed facilities. Prelim. Inj. Hr'g Tr., at 16:21-17:17, 36:2-9, 53:10-12. One speaker, a former comptroller for Long Beach, stated that "financially this is not a sound idea." *Id.* at 51:14-15.

78. Several residents also questioned why the Village chose to locate a community center on two parcels it needed to acquire through condemnation, rather than at one of several suitable sites it already owned. *Id.* at 18:17-19:21, 48:4-10. They also questioned the need for a community center by noting that when the Village Hall was built, that building "was supposed to be the community center" and currently had both staff and space to serve that function. *Id.* at 20:22-21:6; *see id.* at 48:14-15, 49:10-12.

79. Another resident questioned where visitors would park and noted that placing a park for "little kids ... right next to a main street ... doesn't make any sense." *Id.* at 30:8-12. Several other speakers echoed the latter concern, observing that 2035 Park Street "doesn't look like an ideal location to have a park" given that "[e]verybody knows about the speeding problems on Park Street." *Id.* at 38:2-4; *see also id.* at 45:18-46:9.

80. Other residents commented on the conspicuous absence of formal plans—such as detailed renderings or designs—of the proposed park and community center, despite the Village leadership's determination to move forward to take the properties. A resident, who worked as an Atlantic Beach lifeguard, noted that there had been "no

discussion as to what services [the Village's community center] would provide." *Id.* at 31:25-32:14. Other speakers raised similar concerns, asking "where are these plans of the community center?" and "[w]hy isn't something displayed here to show me what you're talking about?," *id.* at 52:9-12, and criticizing the fact that "we don't have any specific proposals and we can't ask questions about the price with the acquisition method and ... what the specifics are for the place," *id.* at 37:19-24.

81. Several residents suspected foul play by the Village. For example, one resident observed that the Property "wasn't interesting for the Village to buy it during those two years" it was on sale, and only attracted the Village's interest "after the Chabad bought it." *Id.* at 24:6-11. Another worried about "this subtext about Chabad having purchased the property," *id.* at 38:19-21, while a third described the Village's actions as "so suspicious," *id.* at 49:23.

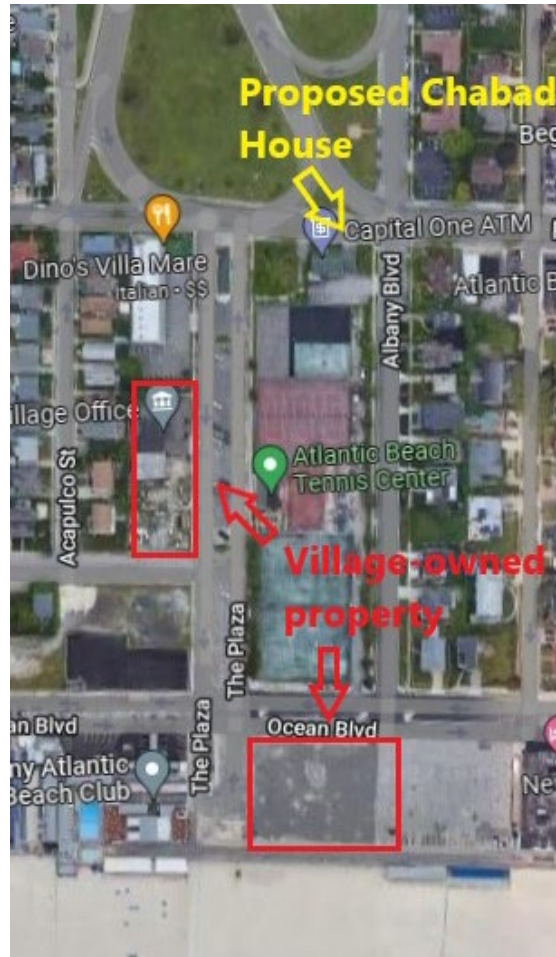
82. At the hearing, neither the mayor nor any trustee nor the Village's attorney offered any answers or responses to the questions and concerns speakers had raised.

83. As several speakers at the public hearing noted, the Village itself owns multiple parcels of land equally if not better suited to a community center.

84. For example, as illustrated below, in Figure 7, the Village owns two sizable plots near the Park Street Properties. Both plots are nearer to the beach than the Park Street Properties – indeed, one is beachfront – making them a more logical place to build a lifeguard operations center; both are centrally located in Atlantic Beach, within a block of the Park Street Properties; both already have adjacent parking, something the Park Street Properties lack; and neither is located along as busy a roadway as Park Street. In

addition, on information and belief, the beachfront plot is nearly double the combined size of the Park Street Properties.

FIGURE 7



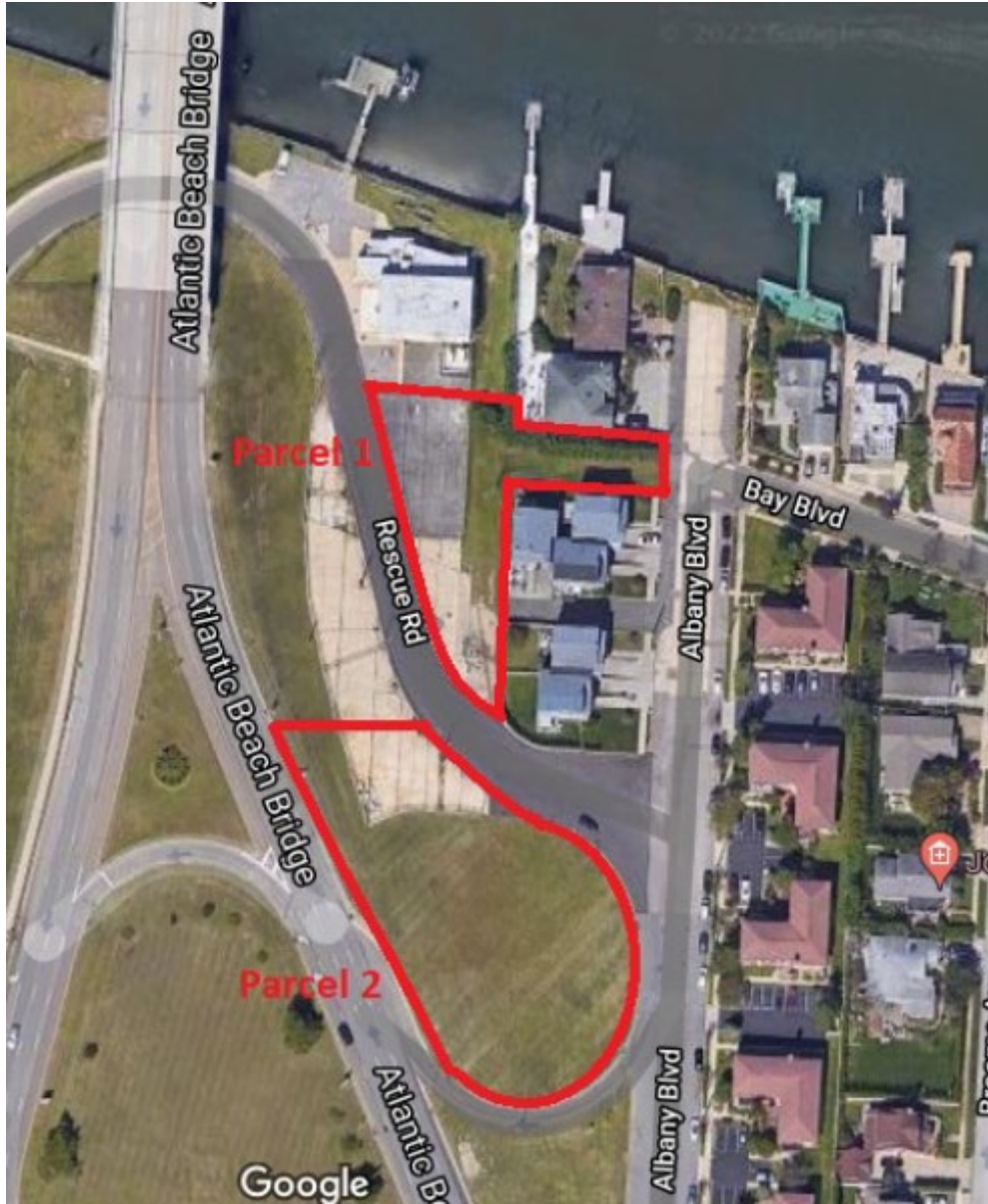
85. There are also several other plots of land in Atlantic Beach well-suited to the Village's purported plans. For example, there are multiple plots comprising undeveloped land and/or parking lots located along Ocean Boulevard, in the vicinity of the Village's beachfront plot, as shown below in Figure 8.

FIGURE 8



86. In addition, there are several acres of undeveloped land adjacent to the Atlantic Beach Bridge and Atlantic Beach Fire Station, as shown below in Figure 9, which on information and belief are owned by Nassau County.

FIGURE 9



87. As still another option, there is a nearly 3-acre undeveloped property at the intersection of Bay Boulevard and Hamilton and Ithaca Avenues, as shown below in Figure 10. On information and belief, this property is owned by Nassau County or one of its instrumentalities.

FIGURE 10



88. And of course, there are numerous other commercial properties in Atlantic Beach, including ones known by the Village to be for sale, that the Village could have considered buying or seizing. This includes two adjacent properties on Park Street, just 400 feet away from the Property, which are currently vacant and listed for sale.

FIGURE 11



89. Because the Village already owns some of these properties, it could at any time have built a community center, lifeguard operations center, and/or park on any of them at much lower expense and without having to undertake costly eminent domain proceedings.

90. Similarly, on information and belief, the Village could have purchased or leased the undeveloped properties it does not own at much lower expense than is required to take the Park Street Properties, or it could have taken those properties through eminent domain without effectively expelling a religious group from the Village.

91. But as its attorney acknowledged at the public hearing, the Village did not consider condemning, purchasing, or leasing these or any other parcels as alternatives to condemning the Property.

E. Discovery Reveals the Village's Animus Towards Chabad.

92. Publicly, despite numerous circumstances suggesting that the Village's stated purpose for taking the Park Street Properties was pretextual, Mayor Pappas and other Village officials maintained that "no bias whatsoever" motivated the taking.⁷ In August 2022, after Chabad initiated this action, Mayor Pappas wrote an open letter to Atlantic Beach residents "strongly deny[ing]" Chabad's accusation that "the Village's efforts to acquire 2025 Park Avenue [sic] was motivated by discrimination" and reaffirming "our dedication to fairness for all."⁸

93. The Individual Trustee Defendants' private conversations from this time, however, tell a disturbingly different story.

94. Mayor Pappas is a case in point. Despite publicly denying Chabad's allegations of religious discrimination in August and September 2022, just several months earlier, in a text message exchange with Village Associate Justice Allison Lewis *about this very case*, Mayor Pappas agreed that it was "very true" that "most people don't want the Chabad" and that "[a]ny secular Jew doesn't want them here."

⁷ Jeff Bessen, *Court Ruling Favors Chabad of the Beaches Over Atlantic Beach Village*, LIHerald.com (Sept. 6, 2022), <https://www.liherald.com/fivetowns/stories/court-ruling-favors-chabad-of-the-beaches-over-atlantic-beach-village,143647> (quoting Mayor Pappas).

⁸ George Pappas, *A Letter from the Mayor* (August 1, 2022), <https://www.villageofatlanticbeach.com/a-letter-from-the-mayor/>.

FIGURE 12⁹

AL	Allison Lewis <[REDACTED]> I get that but do t you think most people don't want the Chabad and just don't want to say it. Any secular Jew doesn't want them there. Just saying	3/13/2022, 7:29 PM
AL	Allison Lewis <[REDACTED]> Who wants them? Do those people actually live in AB?	3/13/2022, 7:30 PM
M	Mortgage <[REDACTED]> Very true	3/13/2022, 7:30 PM

95. Mayor Pappas similarly passed along, with apparent approval, conspiratorial musing that Chabad was part of an “ultra-Orthodox machine” whose mere presence constituted an “assault on the tax base, home values, character and community of our neighborhood.”

96. These comments bore an echo of the opposition of some Village residents, three decades prior, to the construction of an eruv in Atlantic Beach. *See Monahan, supra* note 4, at 12. Seemingly invoking this ugly chapter in the Village’s history, when news of Chabad’s purchase spread (but before the Village announced its intention to proceed with eminent domain), a senior government official recommended to the Mayor that the Village “string an Eruv around the village with Xmas lights” to “keep Chabbad [*sic*] out of the village.” The mayor voiced no objection to that idea.

FIGURE 13

SC	Steve Cherson <[REDACTED]> George, if you want to keep Chabbad out of the village, we should string an Eruv around the village with Xmas lights	11/20/2021, 1:58 PM
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97. Trustee Rubin similarly saw Chabad as something that the Village needed to be “save[d]” from. In May 2022, a former Trustee texted Trustee Rubin a photograph

⁹ “Mortgage” is how messages from Mayor Pappas is occasionally rendered in the text messages produced by the Village’s lawyers in this case.

of a man in a Chabad shirt with the warning “they’re coming” and “only [a private developer] can save you.” Rubin’s response – “Kelo vs city of new london [sic]” – made clear that the Village believed that eminent domain (the subject of the Supreme Court’s decision in *Kelo*) would “save” Atlantic Beach from Chabad.

FIGURE 14



98. Trustee Patricia Beaumont was even more blunt. She wrote to others that it was “scary” that Orthodox Jews were “buying the world-town by town city by

city ... they have the numbers-they procreate," and that Chabad "brainwashed" its members. She also stated that she is "on the same side and ag[re]e 100%" with someone who said that "the local non-orthodox Jewish community is the only thing standing in the[] way" of "AB becom[ing] an orthodox neighborhood"; that Chabad purchasing the bank was a "red flag"; and that the Trustees needed to hold the line to "preserve the character of our town." Trustee Beaumont also initiated and participated in numerous conversations critical of Chabad and Hasidic Jews more generally, including ones where Hasidic Jews were called "savages," a "cult," "corrupt," and concerned "only with their pockets."

99. Trustee Linda Baessler complained that Chabad's purchase of the property was "a nightmare!" that stood in the way of "something positive for the community."

100. The Trustees' animus towards Chabad was shared by a vocal and well-connected group of Village residents. When word spread that Chabad was purchasing property in Atlantic Beach, but before the Village announced its plan to seize the property, Trustee Beaumont reported that a group was "plan[n]ing on 'storming the meeting' to protest the creating of a [C]habad." Rather than discourage this, Trustee Beaumont placated the "marauders," telling them to "read the village agenda" announcing the planned seizure.

101. In the aftermath of the public hearing, several members of the Facebook group "Village of Atlantic Beach Residents," which at the time was managed by Trustee Beaumont and on information and belief includes Mayor Pappas, expressed openly hostile attitudes towards Chabad. Comments included:

- a. "Chabad's first foray into this community was an unlawful, disrespectful and thoughtless religious celebration for their supporters (the majority of whom are not residents). Perhaps their actions contributed to the sentiment that many of the AB residents do not want or need Chabad."
- b. "Let's be real. The Atlantic Beach community and the Chabad community are two very different things. Atlantic Beach has been affected by religious agendas for far too long.... The orthodox systematically took over our once excellent school district. Piece by piece."
- c. "Are they going to have a Christmas event for the local kids? I am sure they won't.... I have friends who live in a Chabad block and their lives are constantly disrupted. I bet there will be a preschool (mostly attended by children from across the bridge), religious classes, prayer sessions etc. Let's be real, NOT inclusive."
- d. "I don't agree with Chabad coming into this village and changing the dynamic here. Because that is what will happen.... Chabad coming in and trampling all over our beautiful village."

102. Other Village residents with a direct line to Village officials opted to convey their antipathy to the Trustees directly. For example, one local business owner emailed Mayor Pappas directly, pledging to "do whatever I can to prevent them from setting up a home base in our town," including buying newspaper advertising and rallying "all the businesses in AB" to the cause. Chabad, he warned, would change "the character and culture of AB," would make the village "more crowded and noisier during the Jewish holidays" and "more conservative and religious," and would force JCAB "to compete for members."

F. The Village Makes a Final Decision to Seize the Property.

103. On February 14, 2022, the Village Board voted to proceed with taking both 2025 Park Street and 2035 Park Street through eminent domain. The minutes of the February 14 meeting reflect that at no point during the meeting did any Village official

or representative address the questions and concerns expressed at the January 10 hearing regarding the Village's plans.

104. The Village Board is the final policymaker for the Village, and its decision to take Chabad's property constitutes the final policymaking authority.

105. On June 14, 2022, pursuant to § 402 of the New York Eminent Domain Procedural Law, the Village filed a petition to acquire fee title to the Property, setting a hearing date of July 14, 2022, "or as soon thereafter as counsel can be heard."

106. Due to the ongoing threat of eminent domain, Chabad has been unable to renovate the inside of its building, which is currently not suitable to host public gatherings. As a result, Chabad has been unable to use and enjoy its property in furtherance of its religious mission.

107. At all times relevant to this action, the Village Defendants were acting under the color of state law by exercising the quintessentially governmental power of eminent domain.

G. This Lawsuit & the Conditional Settlement

108. After the Village decided to seize the property, Chabad sued the Village and the Individual Trustee Defendants, asserting claims under the First, Fifth, and Fourteenth Amendments and the federal Religious Land Use and Institutionalized Persons Act ("RLUIPA"). Chabad also sought a temporary restraining order and preliminary injunction against any further action by the Village to seize the Property.

109. On September 6, 2022, following an evidentiary hearing, the Court preliminarily enjoined Defendants from "taking any further steps to take Chabad's

property by eminent domain pending final resolution” of this litigation. *See* Order Granting Prelim. Inj. 31, ECF No. 51. The Court found that “the Village’s acquisition decision was targeted and not done neutrally” and thus required strict scrutiny. *Id.* at 24–26. All told, the Court explained, “the record evidence lends strong support to Chabad likely succeeding on the merits of its Free Exercise claim.” *Id.* at 27.

110. Following an initial round of document discovery and two days of mediation, the parties agreed to settle. Under the terms of the settlement, the Village agreed to dismiss its eminent domain action and to consent to entry of a consent decree that “permanently enjoined [the Village] from taking any action to acquire, through eminent domain or any other procedure” Chabad’s property. In addition, the Village agreed to pay Chabad’s \$400,000 as further consideration of settlement of the lawsuit and release of its claims for damages and attorneys’ fees. The agreed-upon announcement of the settlement by the Village stated that “the settlement clears the way for Chabad to keep **and use** the property as a center that will provide educational and outreach activities for the entire Jewish community.”

111. Recognizing that the settlement would be meaningless if Chabad could not “make full and effective use of the Property,” the settlement was contingent on the Village of Atlantic Beach issuing any “permits, approvals, and variances” necessary for Chabad’s intended use of the Property. If the Village failed to issue any necessary permits or applications, the settlement agreement gave Chabad the unilateral right to terminate the settlement and resume litigation.

H. ZBA Proceedings

112. Chabad hoped its settlement with the Village and Individual Trustee Defendants would begin a new, positive chapter in its relationship with the Village, and set about preparing its zoning application in the hope that the Village reciprocated that good faith. But that hope was misplaced. Stymied in its efforts to exclude Chabad through eminent domain, the Village, through the ZBA, sought to achieve the same result through zoning.

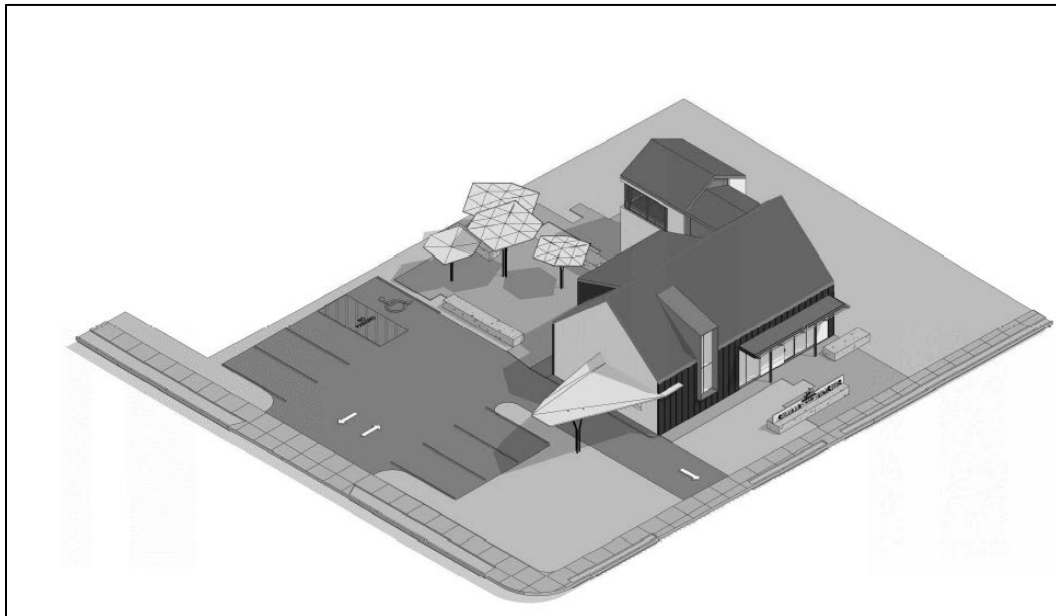
113. To use the Property to fulfill its religious mission of drawing members of the Jewish community closer to God and Judaism, Chabad – with the help of experienced architects and engineers – has developed detailed plans to renovate the Property into a modern, inviting, multi-functional Chabad House that can host everything from worship services to Jewish education and programming to festive meals and events.

114. Examples of Chabad’s intended uses for the property include:

- a. Small worship services on Sabbath mornings, *see* Ex. C, at 21:18–19;
- b. Lox and bagel breakfasts on Sunday mornings as an “opening for people to participate and find out what Chabad is” and “to see that the Jewish offering is something conducive and very, very uplifting for people from all walks of life,” Ex. C, at 23:3–18;
- c. Jewish programming for children and teens and occasional guest speakers and community outreach events, Ex. C, at 23:22–24:10;
- d. A drive-thru serving kosher food to create more opportunities for Jewish residents of Atlantic Beach and nearby towns to observe the laws of *kashrut*, Ex. C, at 23:3–15; and
- e. One-on-one counseling and other pastoral services, Ex. C, at 18:14–19.

115. Chabad plans to maintain the footprint of the existing structure on the Property while making modest alterations to the building and surrounding grounds, many of which continue or only slightly expand existing zoning non-conformances. Specifically, Chabad intends to (i) remove the existing vault, a relic of the time when the building served as a bank; (ii) add a second floor balcony; (iii) add trellises and canopies for outdoor shaded areas; (iv) remodel the existing drive-thru by reducing it from two lanes to one and adding a new canopy over it; (v) add an open porch with a flat roof; and (vi) display a ground-level sign identifying the Property's occupant as "Chabad of the Beaches."

FIGURE 15



116. Each of these alterations is intended to make the Property more inviting and further Chabad's religious mission of *kiruv*.

117. For example, by building canopies in the back yard area for people to gather and enjoy the outdoors on the property, Chabad aims to provide an opportunity for

people to attend events and gatherings without having to walk inside and formally engage with a rabbi. Maximizing the opportunities for engagement, especially for Jews who may be less comfortable in traditional synagogue settings, is essential in achieving Chabad's religious aims. Ex. C, at 11:24-12:1.

118. The planned kosher drive-thru has similar goals. As a former bank, the Property has a two-lane drive-thru that was used for banking services. Chabad has proposed operating a one-lane drive-thru serving kosher food, with the goal of encouraging observance of Jewish dietary laws, known as *kashrut*, by providing the community with convenient access to kosher food and by giving representatives of Chabad an opportunity to encourage observance of other ritual commandments. Ex. C, at 23:3-15.

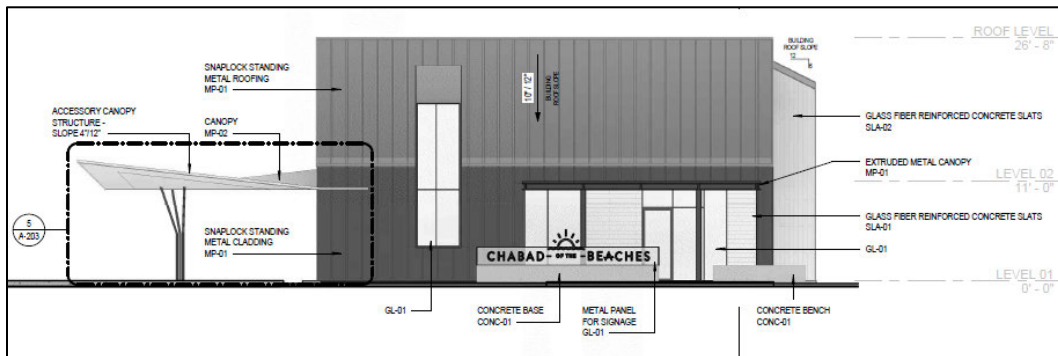
119. In January 2024, Chabad submitted a building application to the Village Building Department. On May 1, 2024, the Village Building Department denied Chabad's application.

120. On June 14, 2024, Chabad filed a zoning application appealing the denial of its building application and seeking the zoning relief necessary for Chabad to use the Property for its intended religious purposes. The permits and variances Chabad sought include:

- a. A special exception permit allowing it to use the Property for a religious use ("Religious Use Permit"). The Property is currently zoned for residential use and may also be used for municipal recreational purposes. Under the Village Code, Chabad needs Religious Use Permit to use the Property for religious purposes.

- b. A special exception permit for accessory use of the drive-thru (“Religious Accessory Permit”) to serve kosher food. The permit allows uses that, while not religious in nature, are customarily incidental to the primary religious use.
- c. A special exception permit allowing it to place a ground sign in front of the building exceeding the permitted size. As illustrated in Figure 16 below, Chabad’s sign would be set low to the ground in the lawn in front of the building.
- d. A variance regarding the number of required on-premises parking spaces. According to the Village Building Department, Chabad is required to have eleven on-premises parking spaces. To accommodate expanded outdoor space for gatherings conducive to *kiruv*, however, Chabad sought permission to have seven spaces.
- e. A variance for parking in the front yard setback area. That variance is necessary just to maintain the currently existing parking spaces at the Property.
- f. A special exception to add several trellises and a special exception to exceed the permitted trellis size.
- g. A front yard setback variance to allow for a larger canopy over the drive-thru area.
- h. A variance to build a porch that extends over 6 feet into the front yard with a flat roof.
- i. Variances to replace the bank vault with a two-story addition, including an awning that would slightly expand an existing encroachment on yard setbacks.

FIGURE 16



121. On August 12, 2024, the Nassau County Planning Commission issued a letter of local determination stating that the Commission deferred to the ZBA to take action as deemed appropriate.

122. The ZBA held a public hearing on the August 24, 2024.

123. At the August 24 hearing, several witnesses provided sworn testimony in support of Chabad's application. First, Rabbi Goodman testified to Chabad's intended religious uses for the Property and to how the sought-after zoning relief would facilitate Chabad's use of the Property to advance its religious mission. Ex. C, at 40:12-13.

124. Rabbi Goodman further testified that he wanted the Chabad House to "fit[] right into Atlantic Beach" and have a "beachy feel." *Id.* at 34:19-20. He explained that he wants the Property "to be done in such a way that it looks beautiful and fits the feel. People aren't going to go, ugh. They will go, wow. This feels like a beachy community." *Id.* at 34:17-35:7.

125. Next, Barry Nelson, a licensed real estate appraiser, gave unrebutted expert testimony that the requested permits and variances would not materially affect the property values or character of the surrounding area. Mr. Nelson testified that real estate values adjacent to religious uses, including property values at the Village's only other synagogue, JCAB, continued to appreciate consistent with the rest of the real estate market. *Id.* at 52:17-18. Mr. Nelson further testified that real estate values, specifically around Chabad centers in surrounding municipalities, continued to appreciate consistent with the real estate market. *Id.* at 53:5-7.

126. Mr. Nelson then went through all Village criteria for granting a special exception for a religious use, concluding that approval of the Chabad application would: (1) not have a substantial adverse effect on surrounding property values; (2) not represent any kind of over taxation of basic municipal services; and (3) not negatively affect the public's health, safety, welfare, or morals. *Id.* at 54-55.

127. Finally, Wayne Muller, a transportation engineer widely recognized as an expert in traffic and parking, gave un rebutted expert testimony that the requested permits and variances would not materially affect traffic or parking availability.

128. Mr. Muller based these conclusions on a traffic study he conducted that summer, during the Village's peak summer season. Mr. Muller testified that he had identified 101 parking spaces within close proximity to the Property, *id.* at 60:16-17, and that, even during the peak summer season, no more than 18 of those spaces were ever occupied at any one time, leaving over 80 spaces available for Village residents who might visit the Chabad House. *Id.* at 60:17-61:4. Mr. Muller concluded that "there's plenty of available parking for Village residents with permits." *Id.* at 61:7-8. Mr. Muller also concluded that because Chabad's outreach would be focused on Atlantic Beach residents, non-resident parking would not be an issue. *Id.* at 62:8.

129. Mr. Muller then addressed the traffic impact study regarding the proposed accessory café and drive-thru. Mr. Muller testified that the proposed building could never generate the kind of traffic that a commercial coffee or donut shop generates. *Id.* at 62:23. Given the limited capacity, he testified that the Chabad "would not have a significant

impact on the traffic conditions on the roadways and/or at the driveways." *Id.* at 65:18-20.

130. While the Rabbi estimated that the proposed religious accessory drive-thru would receive, at most, 30-50 vehicles per day, Mr. Muller's study assumed 60 vehicles for purposes of evaluating traffic impact. After explaining the intensive engineering process used to evaluate the traffic impact, Mr. Muller concluded:

In every one of the instances we looked at, we determined based on recognized modeling procedures that the addition of the traffic that could be generated by the café during peak times would not have a significant impact on the traffic conditions on the roadways and/or at the driveways. ... So therefore, based on all the analyses that we performed, it is my professional opinion that granting of the use that's before the Board this evening will not have a significant impact on traffic conditions and that there is available parking within the surrounding areas and onsite to accommodate the activity that would be generated by the Chabad."

Id. at 65-66.

131. Mr. Muller's traffic study, moreover, noted that a commercial bank drive-thru would have generated more trips than the proposed religious accessory café drive-thru, demonstrating that the Property was capable of accommodating the proposed kosher drive-thru.

132. The Village did not retain its own experts or conduct its own appraisal or traffic study.

133. When the Board opened the hearing to the public, several Atlantic Beach residents expressed open hostility to Chabad's presence in the Village.

134. One individual stated that the idea of a kosher drive-thru is “the worst thing to raise in a community” and worried that Chabad would “**turn this place into an Orthodox community.**” *Id.* at 68:22–69:4.

135. Another complained that Atlantic Beach is “a beach community ... not an outreach center,” and that Chabad is “prying our neighborhood apart.” *Id.* at 84:22–23.

136. A third person suggested that “I would not be surprised if on a Saturday morning” –referring to the Jewish Sabbath– “the complaints come in about the noise from pickleball, and before you know it, they’ll be asking us to stop pickleball on a Saturday morning and a lot of people use those facilities.” *Id.* at 96:7–12.

137. Commissioner Freiman also participated in the commentary, questioning Chabad’s intent in wanting to operate a Chabad House in the Village: “I just have a question for the Rabbi. How does a Chabad decide to come to a community? Like, do you decide because you’re wanted there or you decide because, like, you’re in the room and there’s a lot of negative energy?” *Id.* at 104:7–12. Upon information and belief, the ZBA does not routinely question applicants’ motives for wanting to be in the Village.

138. Chairman Cornish expressed similar views. He questioned whether the drive-thru would be open on Saturday, the Sabbath. When Rabbi Goodman explained that it would not because “[w]e’re not allowed to handle any money [on the Sabbath,]” Chairman Cornish mockingly stated “Oh, this is a business. I’m sorry. This is the business

part. ... So it's closed on Saturdays, as opposed to, like the temple in Atlantic Beach is open on Saturday. This is the opposite?"¹⁰ *Id.* at 36:22–37:10.

I. The ZBA's Final Decision

139. On November 6, 2024, the ZBA issued its decision. Ex. A. Six days later, on November 12, 2024, the ZBA issued a corrected decision. Ex. B. The corrected decision represents the ZBA's final decision on Chabad's application.

140. The ZBA's final decision denies Chabad's Religious Use Permit and Religious Accessory Permit and all but one minor variance (which merely allowed an existing nonconformity to remain).

141. To justify its denials, the ZBA misconstrued Chabad's zoning application and the record of the August 24 hearing in a manner so egregious that it can be explained only by a willful determination by the ZBA to deny Chabad a home in Atlantic Beach.

142. The ZBA's denial of the Religious Use Permit exemplifies the problem.

143. The only justifications the Board proffered for denying Chabad this permit were that:

Rabbi Goodman testified that the building will have multi-use purposes and further testified that "I would say that as people get more involved in Judaism and they start to appreciate it more, they'll probably go to the main synagogue here, the Jewish center in Atlantic Beach[.] So really, we want to cover that entire gamut and make it a community for all people that are not into synagogue services."

Ex. A, at 4.

¹⁰ Of course, only the drive-thru would be closed on Saturdays; the rest of the Chabad House, including the plan to hold Shabbat services, would be open.

144. Each of the “multi-use purposes” Rabbi Goodman identified at the August 24 hearing, however, was a *religious* purpose. *E.g.*, Ex. C, at 18:3-11 (“So we have basically created a multipurpose space so people could, we could offer, whether it’s a class or teen program, whether it’s a synagog[ue] service or a Chabad dinner or a holiday dinner, these spaces are made in such a way that these could be utilized in all different ways that we would see befitting the Atlantic Beach community in the best possible way.”).

145. Similarly, far from admitting to a secular purpose for the Property, the quoted statement attributed to Rabbi Goodman plainly describes Chabad’s mission of religious outreach.¹¹ As Rabbi Goodman repeatedly explained to the ZBA at the August 24 hearing, one of Chabad’s main goals is to offer less observant Jews an accessible way to grow closer to their faith, consistent with the Chabad movement’s commitment to the religious practice of *kiruv*. Whereas formal worship at a synagogue might intimidate Jews that are less familiar with those traditions, a Chabad House offers a comfortable entry point for Jews to learn more about Judaism and worship. *E.g.*, Ex. C, at 15:8-17 (“We usually reach out to members of the community that are not so traditionally Jewish and, therefore, give[] them an opportunity to participate. You know, for them, sometimes synagogue services [are] not their typical type of thing. So we offer so many other

¹¹ The quoted passage does not actually appear in the transcript of the August 24 hearing. Rather, the ZBA appears to have combined two separate statements by Rabbi Goodman in the course of the hearing. *See* Ex. C, at 17:23-18:1 (“So really, we want to cover that entire gamut and make it a community center for people that are not into synagogue services.”); *id.* at 39:7-11 (“I would say that as people get more involved in Judaism and they start to appreciate it more, they’ll probably go to the main synagogue here, the Jewish center in Atlantic Beach.”).

educational and outreach type of programs to allow people to participate at any level that they want.”).

146. Indeed, immediately before one of the statements quoted in the ZBA’s decision, Rabbi Goodman said of the planned Chabad House: “[S]ometimes it will have synagogue services, but also, we want it to be an opportunity for people to come. In Judaism, it’s not just prayer. There’s kosher and mezuzah. There’s culture, there’s education, there’s kids and teens and adults.” *Id.* at 17:16-23. The ZBA, without explanation, omitted these statements from its final decision, quoting only the next sentence — “So really, we want to cover that entire gamut and make it a community center for people that are not into synagogue services,” *Id.* at 17:23-18:1 — completely out of context.

147. These flagrant errors and omissions evince the bad faith nature of the ZBA’s final decision and the ZBA’s blatant disregard for Chabad’s free exercise rights.

148. Many other aspects of the final decision further evidence the ZBA’s bad faith and the baseless, predetermined nature of the final decision.

149. To provide a pretext for denying the special use permit for an accessory kosher drive-thru, for example, the ZBA again twisted Rabbi Goodman’s words.

150. At the August 24 hearing, Rabbi Goodman testified that he expected to purchase pre-made kosher food for sale at the drive-thru, “[j]ust like Dunkin’ Donuts doesn’t really make [its donuts] but they get delivered every morning.” *Id.* at 26:19-24. To conjure the specter of a busy drive-thru, however, the ZBA’s denial claimed that Rabbi

Goodman “compared the proposed drive-thru café to a ‘Dunkin Donuts Like’ establishment with possibly 30, 40, or maybe 50 cars passing through daily.”

151. The ZBA further justified its denial of the accessory use permit based on the fear that cars “will potentially back up onto Park Street,” even though no record evidence supported this concern and Chabad’s traffic expert provided un rebutted testimony to the contrary.

152. Moreover, the ZBA’s stated concern with the volume of cars using the kosher drive-thru ignores the reality that the property was previously used as a bank with a drive-thru.

153. The ZBA’s decision was clearly erroneous and contrary to the record in other respects as well.

154. For example, while the ZBA found that the proposed sign would “mak[e] it difficult to see pedestrians walking and oncoming traffic from the bridge,” Ex. A, at 3, no testimony or evidence supported this finding, nor did the ZBA explain how a ground-level sign situated in the middle of the front lawn, see *supra* ¶ 120(c), could pose such a concern. In fact, as depicted in Figure 16, *supra*, the sign is barely taller than an adjacent concrete bench.

155. The ZBA’s denial of the requested parking variance similarly lacked any support. The ZBA based this decision on its finding that “there will be at least 5 employees,” but nothing in the record supports that. Rabbi Goodman testified only that he expected to hire two *shluchim* – a husband and wife – for the Atlantic Beach House,

and perhaps to occasionally have someone on the property “helping prepare a sandwich.” Ex. C, at 110:20-21.

156. Rather than denying Chabad’s requested permits and variances outright, the ZBA could have proposed reasonable modifications to accommodate any legitimate municipal interests. The ZBA’s final decision, however, proposes no such modifications.

157. Under federal and state law, religious institutions such as Chabad are entitled to special solicitude in land use determinations. In particular, RLUIPA mandates that land use regulations may not substantially burden religious exercise unless the zoning authority can satisfy strict scrutiny—*i.e.*, establish that the land use regulation furthers a compelling government interest and is the least restrictive means of doing so. Under state law, New York courts have recognized that “religious uses ordinarily have inherent beneficial effects that must be weighed against their potential for harming the community.” *Cornell Univ. v. Bagnardi*, 503 N.E.2d 509 (N.Y. Ct. App. 1986); *see also* Village Code § 250-15 (acknowledging the “settled public policy in the State of New York that systematic exclusion of religious ... institutions from a zoning district is beyond the power of any municipality” and that religious uses must be “presumed to be in furtherance of the public health, safety and morals”).

158. The ZBA’s decision identifies no compelling interest furthered by the denial of Chabad’s requested permits and variances, nor does it demonstrate that any such interest could not be furthered through less restrictive means.

159. The ZBA’s final decision constitutes official Village policy towards Chabad’s zoning application.

160. The ZBA decision is but one step in a years-long campaign to prohibit Chabad from carrying out its religious mission in the Village. A vocal group of Village residents, elected leaders, and government officials—including the Trustees and the ZBA—are determined to prevent the Chabad from coming to the Village.

161. The ZBA prefers non-religious uses to religious uses. On information and belief, despite denying Chabad's requested permits and variances, it has approved variances allowing similarly situated, non-religious uses of shade structures.

162. Defendants' orchestrated efforts to exclude Chabad from Atlantic Beach—first through eminent domain and then, when that effort failed, through zoning—have imposed a substantial and irreparable burden on Chabad's religious exercise. More than three years after it closed on the Property, Chabad still has been unable to renovate and meaningfully use it. And the ZBA's denial of its permit and variance applications ensures that Chabad will not be able to do so unless and until that decision is reversed.

163. The Village's preference for non-religious uses over religious ones reflects official Village policy. One current Atlantic Beach zoning ordinance, in particular, regulates "religious and educational uses" to address "the concerns of the surrounding Village inhabitants about the potential adverse effects on the quality of life that these uses may engender." § 250-108.1(A)(1). The ordinance aims to regulate religious uses with a purported "net negative impact on the surrounding neighborhood." § 250-108.1(A)(2). To that end, it requires "[a] house of worship or other place regularly and primarily devoted to religious practice," § 250-108.1(B), to apply for a special permit before establishing or expanding a religious use in the Village, § 250-108.1(A)(3) and § 250-108.1(C)(1). The

Village ZBA may deny such an application if it believes that a proposed religious use “will sufficiently detract from the public’s health, safety, welfare or morals.” § 250-108.1(A)(4). This could include everything from “[a] substantial adverse effect on surrounding property values” to “[a]ny other negative impact.” § 250-108.1(D)(4)(b), (e).

164. At all times relevant to this action, all individual Defendants were acting under color of state law.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

First and Fourteenth Amendments – Free Exercise Clause (Against All Defendants)

165. Chabad incorporates the preceding paragraphs by reference as if fully set forth herein.

166. The Free Exercise Clause of the First Amendment, made applicable to the states through the Fourteenth Amendment, prohibits any state action abridging the free exercise of religion.

167. A state action that discriminates on the basis of religion is subject to strict scrutiny, and must be invalidated unless it is “justified by a compelling interest and is narrowly tailored to advance that interest.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993).

168. Strict scrutiny also applies to state action that burdens the exercise of religion and that is not generally applicable. State action that represents individualized assessments, made at government officials’ discretion, is not generally applicable. *See Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021).

169. Official expressions of hostility toward the free exercise of religion are also a violation of the Free Exercise Clause. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 n.1 (2022) (“A plaintiff may also prove a free exercise violation by showing that ‘official expressions of hostility’ to religion accompany laws or policies burdening religious exercise; in cases like that we have ‘set aside’ such policies without further inquiry.”); *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm’n*, 138 S. Ct. 1719, 1729–30 (2018) (action by multi-member government body violates the First Amendment where statements betray “elements of a clear and impermissible hostility toward [] sincere religious beliefs”).

170. Chabad purchased 2025 Park Street to serve as a center for religious worship, religious education, and other forms of outreach to the Jewish community. These activities are central to Chabad’s religious mission. Indeed, Chabad has already used the Property for this purpose by hosting a menorah lighting there to celebrate Hannukah. And it would continue to use the property for religious purposes but for the Defendants’ wrongful efforts to interfere with Chabad’s First Amendment rights.

171. The Village Defendants’ decision to take the Property by eminent domain violates Chabad’s right to the free exercise of religion in at least three ways.

172. *First*, the Village Defendants’ decision targets Chabad due to religious animus and fails to satisfy strict scrutiny.

173. The Village could have purchased 2025 Park Street at any point during the years it was vacant and available for lease or sale. Yet it was only after the Individual Trustee Defendants learned of Chabad’s interest in the property that the Village Defendants took any meaningful steps towards seizing the property.

174. The Individual Trustee Defendants' private conversations reveal a specific intent to keep Chabad out of Atlantic Beach and a more general, long-standing animus towards Chabad and Hasidic Jews.

175. The Village Defendants' decision to condemn the Property substantially burdens Chabad's free exercise of religion by preventing Chabad from using the Property for Jewish worship, Jewish education, and other religious activities central to Chabad's religious mission of bringing Jews closer to God and their faith.

176. The Village's purported interest in building a community and lifeguard operations center on the Property is pretextual. The Village could have purchased 2025 Park Street for a community center at any point during the years it was vacant and available for lease or sale. Yet it was only after the Individual Trustee Defendants learned of Chabad's interest in the property that the Village Defendants took any meaningful steps towards seizing the property. Nor, in the years since this litigation began, has the Village made any effort to build a community center or lifeguard operations center anywhere else.

177. In any event, the purported desire to build a community center and lifeguard operations center does not constitute a compelling interest.

178. Furthermore, even if the Village Defendants' interest in building a community and lifeguard operations center were a compelling governmental interest, taking Chabad's property is not the least restrictive means of achieving that interest.

179. As described above, any number of other parcels in the Village – including two owned by the Village itself – are equally if not better suited than the Park Street Properties for its purported plans, and several other suitable parcels are available as well.

180. Yet, as the Village’s eminent domain counsel admitted, the Village did not even consider alternatives to taking the Property.

181. *Second*, the Village Defendants’ decision constitutes individualized, non-generally applicable state action that substantially burdens Chabad’s religious exercise and fails strict scrutiny for the same reasons set forth above.

182. Defendants’ decision is not generally applicable because, in exercising the authority to take property by eminent domain, the Village Defendants had discretion to make individualized assessments. Specifically, the Village Defendants had the power to target certain parcels (or not), to adjust their plans in response to public comments (or not), and to exempt specific parcels from government action (or not). Here, the Village Defendants exercised such discretion throughout the condemnation process and decided to target – not exempt – Chabad’s property.

183. *Third*, the Village Defendants’ decision was joined with private and public expressions of hostility towards religion.

184. The Village Defendants acted intentionally, with animus, willfully, and with a reckless or callous disregard for Chabad’s constitutional rights.

185. The ZBA Defendants likewise violated Chabad’s right to free exercise when they, in furtherance of the same animus towards Chabad and Hasidic Jewry, infringed on Chabad’s right to free exercise of religion.

186. As with the decision to take the Property through eminent domain, the ZBA Defendants' decision to deny Chabad the permits and variances necessary to operate a Chabad House is not a generally applicable decision, and as such is subject to strict scrutiny.

187. The ZBA Defendants did not connect the reasons for their denial to any compelling government interest or narrowly tailor their decision to such an interest, nor can they rectify that failure now.

188. In particular, the ZBA Defendants' denial of Chabad's application for a Religious Use Permit reflects an animus towards Chabad and Hasidic and Orthodox Jews generally.

189. The Individual Trustee Defendants and the Individual ZBA Defendants acted intentionally, with animus, willfully, and with a reckless or callous disregard for Chabad's constitutional rights.

190. As a direct and proximate result of Defendants' conduct, Chabad has suffered and will continue to suffer irreparable harm, including the loss of its constitutional rights, entitling it to compensatory and punitive damages, declaratory and injunctive relief, and attorneys' fees.

SECOND CAUSE OF ACTION
First and Fourteenth Amendments – Establishment Clause
(Against the Village Defendants)

191. Chabad incorporates the preceding paragraphs by reference as if fully set forth herein.

192. The Establishment Clause of the First Amendment, made applicable to the states through the Fourteenth Amendment, prohibits governmental hostility to religion.

193. The Village Defendants' use of eminent domain to take the Property in furtherance of a plan conceived in religious animus is the sort of "removal ... [that] would be seen by many not as a neutral act but as the manifestation of 'a hostility toward religion that has no place in our Establishment Clause traditions.'" *Am. Legion v. Am. Humanist Ass'n*, 139 S. Ct. 2067, 2074 (2019) (quoting *Van Orden v. Perry*, 545 U.S. 677, 704 (2005) (Breyer, J., concurring in judgment)).

194. The Village Defendants' pretextual taking of the Property due to their hostility to Chabad's religion constitutes hostility to religion in violation of the Establishment Clause.

195. The Establishment Clause also prohibits governmental entities from favoring one religion, sect, or denomination over another. *Larson v. Valente*, 456 U.S. 228 (1982).

196. The Village Defendants' anti-Chabad animus was motivated at least partly by a preference for JCAB, the incumbent non-Hasidic synagogue in Atlantic Beach. Trustee Rubin, for example, exhorted his fellow trustees to "stop dicking around" because "OUR rabbi" and "our temple is concerned." A local business owner with a direct line to Mayor Pappas similarly expressed his opposition to Chabad in part by asking, "Does the small town of Atlantic Beach need two religious centers?"

197. Separate and apart from Chabad purchase of the Property, the Village Defendants have long treated JCAB more favorably than Chabad.

198. The Individual Trustee Defendants acted intentionally, with animus, willfully, and with a reckless or callous disregard for Chabad's constitutional rights.

199. As a direct and proximate result of the Village Defendants' conduct, Chabad has suffered and will continue to suffer irreparable harm, including the loss of its constitutional rights, entitling it to compensatory and punitive damages, declaratory and injunctive relief, and attorneys' fees.

THIRD CAUSE OF ACTION
Fourteenth Amendment – Equal Protection
(Against the Village Defendants)

200. Chabad incorporates the preceding paragraphs by reference as if fully set forth herein.

201. The Equal Protection Clause of the Fourteenth Amendment forbids state action that discriminates on the basis of religion, sect, or denomination.

202. State action violates the Equal Protection Clause when, based on a protected characteristic of a party, such as its religion or religious sect, it treats that party differently from other similarly situated parties and is not narrowly tailored to achieving a compelling government interest.

203. The Village Defendants' decision to take the Property by eminent domain discriminates against Chabad based on its religious beliefs. As alleged above, the decision to seize the Property was not a neutral action, but rather one specifically targeted at keeping Chabad out of the Village. The Village was aware of, and had no apparent concern about, possible purchases of the Property for various commercial uses. The

Village Defendants decided to seize the Property only once they learned of “a pending contract by Habbad [*sic*] of LB to buy the property.”

204. Within Atlantic Beach are several similarly situated, undeveloped or minimally developed parcels – including several owned by the Village itself – that would serve the Village’s purported purposes as well as, if not better than, Chabad’s Property.

205. The Village Defendants, however, did not even consider condemning or using any similarly situated parcels, even though doing so would have cost less than seizing Chabad’s Property.

206. Targeting Chabad’s Property in this manner is a denial of equal protection of the law. The Village Defendants treated Chabad worse than similarly situated property owners, in a manner demonstrating intent to discriminate against Chabad’s use of property for religious purposes.

207. For the reasons set forth above, the Village Defendants’ discriminatory treatment of Chabad neither serves a compelling governmental interest nor is the least restrictive means of achieving Defendants’ purported ends.

208. The Individual Trustee Defendants acted intentionally, with animus, willfully, and with a reckless or callous disregard for Chabad’s constitutional rights.

209. As a direct and proximate result of the Village Defendants’ conduct, Chabad has suffered and will continue to suffer irreparable harm, including the loss of its constitutional rights, entitling it to compensatory and punitive damages, declaratory and injunctive relief, and attorneys’ fees.

FOURTH CAUSE OF ACTION
Fifth and Fourteenth Amendments – Takings Clause
(Against the Village Defendants)

210. Chabad incorporates the preceding paragraphs by reference as if fully set forth herein.

211. The Takings Clause of the Fifth Amendment, made applicable to the states through the Fourteenth Amendment, bars the government from depriving private persons of property without a legitimate public use.

212. Religious discrimination is not a legitimate public use justifying the exercise of eminent domain.

213. The Village Defendants have deprived, and are continuing to deprive, Chabad of its Fifth Amendment rights by failing to establish the requisite “public use” for the taking the Property.

214. The Village Defendants have violated Chabad’s rights under the Takings Clause because their purported public purpose for taking the Property is pretextual, and their true purpose is to prevent Chabad from operating in a highly visible location at the entrance to the Village.

215. The Individual Trustee Defendants acted intentionally, with animus, willfully, and with a reckless or callous disregard for Chabad’s constitutional rights.

216. As a direct and proximate result of the Village Defendants’ conduct, Chabad has suffered and will continue to suffer irreparable harm, including the loss of its constitutional rights, entitling it to compensatory and punitive damages, declaratory and injunctive relief, and attorneys’ fees.

FIFTH CAUSE OF ACTION
Religious Land Use and Institutionalized Persons Act – Substantial Burden
(Against the Village and the ZBA Defendants)

217. Chabad incorporates the preceding paragraphs by reference as if fully set forth herein.

218. Under RLUIPA, the government may not “impose or implement a land use regulation in a manner that imposes a substantial burden” on religious exercise, unless it shows that imposing that burden is the “least restrictive means” of furthering a “compelling” interest. 42 U.S.C. § 2000cc(a)(1).

219. RLUIPA defines a “land use regulation,” in relevant part, as “a zoning or landmarking law, or the application of such a law, that limits or restrict a claimant’s use or development of land.” 42 U.S.C. § 2000cc-5(5).

220. The ZBA Defendants’ decision to deny the Chabad’s application for zoning permits and variances constitutes a land use regulation under RLUIPA.

221. For purposes of RLUIPA, the ZBA Defendants have burdened Chabad’s religious exercise by imposing or implementing a “land use regulation” that involves “individualized assessments of the proposed uses for the property involved.” 42 U.S.C. § 2000cc(a)(2)(C). In their final decision on Chabad’s application, the ZBA Defendants made individualized assessments about how the property may be used.

222. The ZBA Defendants’ zoning decision denying Chabad’s requested permits and variances substantially burdens Chabad’s religious exercise by preventing Chabad from using the Property for religious worship, religious education, and other activities central to Chabad’s religious mission.

223. Specifically, the ZBA Defendants' denial of Chabad's Religious Use Permit and the Religious Accessory Permit prohibits Chabad from using the Property to carry out its religious mission of bringing Jews closer to God and Judaism through worship, educational programming, and other forms of outreach. The denial of the Religious Use Permit bars any religious use of the Property, while the denial of Religious Accessory Permit to operate a kosher drive-thru substantially burdens Chabad's religious exercise because helping the Jewish community understand and observe the laws of *kashrut* is part of Chabad's religious mission.

224. The ZBA Defendants' denial of the other permits and zoning variances also impose a substantial burden on Chabad's religious exercise.

225. Each of the permits and zoning variances Chabad sought was designed to permit certain specific intended uses of the property that would further Chabad's religious outreach mission. Without the permits and zoning variances, it will be harder, more costly, or impossible for Chabad to conduct religious outreach to the Jewish community of Atlantic Beach.

226. The substantial burden imposed by the ZBA Defendants' actions will prevent Chabad from engaging in activities that will affect interstate and foreign commerce.

227. No compelling interest justifies this substantial burden on Chabad.

228. Furthermore, as set forth above, the ZBA Defendants' near blanket denial of Chabad's application is not the least restrictive means of achieving Defendants'

purported interest. There are numerous alternatives that the Village could have chosen, including imposing conditions.

229. The Individual ZBA Defendants acted intentionally, with animus, willfully, and with a reckless or callous disregard for Chabad's federally protected rights.

230. The ZBA's final decision represents official Village policy towards Chabad's requested zoning relief.

231. As a direct and proximate result of Defendants' conduct, Chabad has suffered and will continue to suffer irreparable harm, including the loss of its constitutional rights, entitling it to compensatory and punitive damages, declaratory and injunctive relief, and attorneys' fees.

SIXTH CAUSE OF ACTION
Religious Land Use and Institutionalized Persons Act – Equal Terms
(Against the Village and ZBA Defendants)

232. Chabad incorporates the preceding paragraphs by reference as if fully set forth herein.

233. Under RLUIPA, the government may not "impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." 42 U.S.C. § 2000cc(b)(2).

234. The ZBA's denial violates RLUIPA because it treats Chabad on less than equal terms when compared to other comparable nonreligious assembly or institutional land uses in the surrounding area, including other commercial, recreational, and residential uses of nearby buildings zoned in residential districts. For example, the Village itself was proposing to take the Property for use as a community center, recreation

facility, and lifeguard station—uses that would surely be more intensive than a Chabad House, which is meant to serve a subsection of that community. This facility undoubtedly would have been approved as Village law categorically permits any use of buildings “for public or municipal purposes in any use district.” § 250-116.

235. Additionally, many of the other buildings surrounding the Property already feature similar encroachments, canopies, porches, and parking situations to those proposed for the Chabad House. That the Village tolerates those conditions on secular properties while finding that Chabad’s similar conditions would change “the character of the neighborhood” evidences the targeted application of the zoning rules to Chabad.

236. Village zoning ordinances also violate RLUIPA. First, § 250-108.1 imposes a heightened standard only on religious institutions. Religious use exceptions may be denied if the ZBA finds that the proposed religious use “will sufficiently detract from the public’s health, safety, and welfare.” § 250-108.1(A)(4). Under the code, anything the board considers as “any other negative impact” can constitute a negative impact on the public’s health, safety, and welfare. § 250-108.1(D)(4)(e). This same standard does not apply to non-religious special exceptions. For those exceptions, there is no catchall, “any other negative impact” provision. § 250-95(D)(2).

237. As a direct and proximate result of Defendants’ conduct, Chabad has suffered and will continue to suffer irreparable harm, including the loss of its constitutional rights, entitling it to compensatory and punitive damages, declaratory and injunctive relief, and attorneys’ fees.

SEVENTH CAUSE OF ACTION
Religious Land Use and Institutionalized Persons Act – Discrimination
(Against the Village and the ZBA Defendants)

238. Chabad incorporates the preceding paragraphs by reference as if fully set forth herein.

239. Under RLUIPA, the government may not “impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.” 42 U.S.C. § 2000cc(b)(2).

240. Defendants’ decision to deny the proposed plan, including the religious use of the Property, violates RLUIPA because it discriminates against Chabad on the basis of its religion and religious practices.

241. The Individual Defendants acted intentionally, with animus, willfully, and with a reckless or callous disregard for Chabad’s federally protected rights.

242. Upon information and belief, the Individual Defendants were motivated in substantial part by a desire to keep Chabad from operating in the Village.

243. The flagrant disregard for relevant facts in the ZBA’s denial of Chabad’s Religious Use Permit evinces the ZBA’s bad faith and discriminatory motive. The ZBA ignored overwhelming evidence of Chabad’s religious mission and intended religious uses of the Property in order to impute a secular purpose to Chabad based on a fabricated statement by Rabbi Goodman quoted entirely out of context. The ZBA also ignored un rebutted testimony from experts regarding the impacts of the proposed variances, reaching unexplained conclusions in its denial that were unsupported by any record evidence, contrary to the “substantial evidence in the record” requirement in the zoning

code. § 250-108.1D(4). And rather than modifying Chabad's requested relief in order to accommodate its religious use, as state law requires, the ZBA denied its requested permits and variances outright.

244. Furthermore, even if the ZBA had reason to believe that the facilities would have both religious and secular uses, the partially secular uses do not forfeit Chabad's protection under RLUIPA. *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 348 (2d Cir. 2007).

245. The Board's bad faith, baseless denial of Chabad's application is pretextual, discriminatory, and just the latest step in a years-long campaign against Chabad orchestrated by Village leaders and fueled by religious animus.

246. As a direct and proximate result of Defendants' conduct, Chabad has suffered and will continue to suffer irreparable harm, including the loss of its constitutional rights, entitling it to compensatory and punitive damages, declaratory and injunctive relief, and attorneys' fees.

EIGHTH CAUSE OF ACTION
Religious Land Use and Institutionalized Persons Act – Substantial Burden &
Discrimination
(Against the Village Defendants)

247. Chabad incorporates the preceding paragraphs by reference as if fully set forth herein.

248. As set forth above, RLUIPA prohibits local governments from (1) "impos[ing] or implement[ing] a land use regulation in a manner that imposes a substantial burden" on religious exercise, unless it shows that imposing that burden is

the “least restrictive means” of furthering a “compelling” interest, 42 U.S.C. § 2000cc(a)(1); and (2) “impos[ing] or implement[ing] a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination,” 42 U.S.C. § 2000cc(b)(2). The Village Defendants’ attempt to seize the Property through eminent domain independently violates these proscriptions.

249. The Village Defendants’ decision to take Chabad’s Property by eminent domain constitutes a land use regulation under RLUIPA. Specifically, Defendants’ decision to exercise eminent domain to seize Chabad’s Property is being done as a proxy for applying the Village’s zoning ordinance regulation curtailing religious land uses. The application of the Village’s zoning ordinance by seizing the Property will limit or restrict Chabad’s use or development of the Property.

250. Starting with the substantial burden analysis, the Village Defendants’ actions have substantially burdened Chabad’s religious exercise by preventing Chabad from using the Property for religious worship, religious education, and other activities central to its religious mission.

251. The substantial burden imposed by the Village Defendants’ actions will prevent Chabad from engaging in activities that will affect interstate and foreign commerce.

252. As set forth above, no compelling interest justifies this substantial burden on Chabad. The Village Defendants’ purported interest in building a community center and lifeguard operations facility is pretextual, and, even if it were genuine, would not constitute a compelling government interest.

253. Furthermore, as set forth above, taking the Property is not the “least restrictive means” of achieving the Village Defendants’ purported interest. There are numerous similarly situated parcels offering better, safer, cheaper, and more convenient locations for a community center, yet by the Village Defendants’ own admission, they did not consider any as alternatives to taking the Property from Chabad.

254. The Village Defendants have also transgressed RLUIPA’s prohibition on discriminatory treatment because it discriminates against Chabad on the basis of its religion and religious practices.

255. As a direct and proximate result of the Village Defendants’ RLUIPA violation, Chabad has suffered and will continue to suffer irreparable harm, including the loss of its statutorily protected rights, entitling it to declaratory and injunctive relief, and attorneys’ fees.

**NINTH CAUSE OF ACTION
First Amendment – Free Speech Clause
(Against the Village and ZBA Defendants)**

256. Chabad incorporates the preceding paragraphs by reference as if fully set forth herein.

257. The Free Speech Clause of the First Amendment, made applicable to the states through the Fourteenth Amendment, prohibits prior restraints on speech. Prior restraints on speech are vulnerable to facial challenges.

258. Prior restraints have a chilling effect on protected speech because potential speakers may choose to self-censor rather than either acquiring a permit or being subject

to penalties. Further, where a regulation lacks clear standards, an as-applied challenge may not provide adequate protection against censorship.

259. “An ordinance which ... makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official—as by requiring a permit or license which may be granted or withheld in the discretion of such official—is an unconstitutional censorship or prior restraint.” *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 151 (1969).

260. A law will be invalidated as a prior restraint if it (1) confers “unbridled discretion in the hands of a government official or agency,” (2) regulates conduct with a “close enough nexus to expression, or to conduct commonly associated with expression, to pose a real and substantial threat of the identified censorship risks,” and (3) applies to the conduct in question. *City of Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S. 757 (1988).

261. Village Code § 250-108.1(D)(4)(e) confers unbridled discretion to the ZBA by authorizing it to consider “any other negative impact” when making determinations on an application for a religious use permit. This vague and opaque standard allows the ZBA to consider factors that would otherwise be irrelevant.

262. Village Code § 250-108.1(D)(5)(c) allows the ZBA to deny an application for a religious use permit as long as it finds that the religious or accessory use “would actually have a net negative impact on the surrounding residential neighborhood.” The “net negative impact” standard likewise confers unbridled discretion on the ZBA to deny religious use.

263. “Religious use” of the property includes expressive conduct protected by the First Amendment. Village Code § 250-108.1(B) defines the term as “a house of worship or other place regularly and primarily devoted to religious practice.” Religious practice is necessarily expressive conduct: it encompasses public prayer, religious instruction, and ceremonial use such as weddings or rites. The law regulates where religious practice can occur and is thus broad enough to provide a sufficient nexus to expression.

264. The law granted authority to the ZBA to deny the Chabad’s Religious Use Permit. Because Chabad was harmed, it has standing to challenge the law as a prior restraint on its ability openly practice its religious beliefs and fulfil its religious purpose to communicate its beliefs to the public.

265. Chabad is therefore entitled to a declaratory judgment that the foregoing zoning provisions are unenforceable.

TENTH CAUSE OF ACTION
Article 78 – Arbitrary and Capricious Zoning Decision
(Against the Village and the ZBA Defendants)

266. Chabad incorporates the preceding paragraphs by reference as if fully set forth herein.

267. Article 78 of the New York Civil Practice Law and Rules authorizes judicial review of final decisions made by a New York administrative body, including Board of Zoning Appeals. Determinations that are arbitrary and capricious, or lacking support by substantial evidence, may be reversed and annulled.

268. The denial of the Chabad House application is a final determination that is reviewable in an Article 78 proceeding.

269. Not more than thirty days have elapsed since the filing of the ZBA decision with the office of the Clerk of the Village of Atlantic Beach.

270. Plaintiff has exhausted all administrative remedies and has no adequate remedy at law or in equity.

271. The ZBA's denial should be reversed and annulled, and the application submitted to the Village should be approved.

272. There is nothing in the record or in the application that would warrant or justify the denial of the Chabad application.

273. The evidence presented at the August 24, 2024 hearing demonstrated that Chabad's application warrants every special exception requested pursuant to the Village's special exception criteria, especially the Religious Use Permit.

274. In addition, the record supports granting every variance requested pursuant to criteria for area variances in New York Village Law § 7-712-B.

275. As a result of the foregoing, the ZBA exceeded its powers when it denied the Chabad application.

276. The evidence presented at the hearing demonstrates that Chabad's application would not pose a detriment to the community and/or neighborhood. Indeed, the religious community center proposed by Chabad would have similar or less impact than the Village's proposed use of the property as a secular community center had the attempt at eminent domain succeeded.

277. The ZBA thus acted in an arbitrary, capricious and unreasonable manner in failing to approve Chabad's application.

278. In denying Chabad's application, the ZBA ignored credible, unrebutted expert testimony from Chabad's traffic and parking expert as well as its real estate appraisal expert and appears to have improperly accepted speculative, conclusory, non-expert testimony and generalized community opposition.

279. The ZBA's determinations and findings in their Decisions and Notice of Decisions are thus unsupported by sufficient evidence in the record and are arbitrary, capricious and irrational.

280. The ZBA's determination in their Decisions and Notice of Decisions wholly fails to apply or analyze any required legal criteria from either the New York State Village Law, in their determination of area variances, or the Village Code, in their determination of special exceptions, and are therefore arbitrary and capricious.

281. The ZBA's Decisions do not engage in any legal analysis and provide no legal basis for their determination.

282. Under New York law, religious use of property is presumptively beneficial to the community and is entitled to preferential treatment in land use determinations, pursuant to which municipalities must strive to exercise greater flexibility when considering an application for a religious use and make every effort to accommodate religious use.

283. The ZBA's Decisions failed to comply with, or even acknowledge, the presumption and preference that should have been afforded to Chabad's religious use and failed to impose any conditions, instead preferring outright denial. As a result the ZBA's determination must be annulled and reversed.

284. Unless the ZBA's denial of Chabad's application is reversed, Chabad will experience substantial harm in the loss of the full use and enjoyment of the Premises because the ZBA has denied Chabad's Religious Use Permit and other associated permits and variances.

285. In denying the Chabad application, the ZBA, at a minimum, has improperly yielded to generalized community opposition and engaged in political appeasement.

286. Based on the foregoing, the ZBA's decision to deny the Chabad application is an error of law and abuse of discretion. The ZBA's determination must not be permitted to stand.

PRAYER FOR RELIEF

Chabad respectfully asks the Court to:

1. Declare that Village Defendants' decision to take Plaintiff's Property violates Plaintiff's rights under the First, Fifth, and Fourteenth Amendments and under RLUIPA;
2. Declare that ZBA Defendants and the Village's decision to deny the requests in Plaintiff's zoning application violates Plaintiff's rights under the First and Fourteenth Amendments and under RLUIPA;
3. Declare that the ZBA Defendants and the Village's decision was arbitrary and capricious under Article 78;
4. Permanently enjoin the Village Defendants from taking any further steps to take Plaintiff's Property through eminent domain proceedings;

5. Reverse and annul the ZBA Defendants and the Village's denial of Plaintiff's zoning application;
6. Compel the ZBA Defendants and the Village to grant each of the requests in Plaintiff's zoning application in full;
7. Invalidate the portions of Atlantic Beach's zoning ordinances that confer unbridled discretion to the ZBA Defendants and the Village to restrict protected speech;
8. Award nominal damages to Plaintiff;
9. Award actual damages to Plaintiff;
10. Award punitive damages to Plaintiff;
11. Award Plaintiff attorney's fees and costs under 42 U.S.C. § 1988; and
12. Award such other relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues so triable.

Dated: December 6, 2024

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DOMINICK MINERVA, ESQ.
VILLAGE ATTORNEY
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TREASIRER
EMILY SINISCALCHI
VILLAGE CLERK

November 6, 2024

Chabad of the Beaches
60 W. Beech Street
Long Beach, NY 11561

RE: Case #24-01-6423. Chabad of the Beaches
2025 Park Street, Atlantic Beach, New York 11509

Dear Sir/Madam:

Enclosed please find a copy of the decision of the Board of Zoning Appeals regarding the above referenced application dated 11/4/24 and filed with the Village Clerk on 11/6/24.

Thank you.

Very truly yours,

RECEIVED

NOV - 6 2024

NOTICE OF DECISION
BOARD OF ZONING APPEALS
INCORPORATED VILLAGE OF ATLANTIC BEACH

INC. VILLAGE OF ATLANTIC BEACH

Case #24-01-6423 Chabad of the Beaches
2025 Park Street, Atlantic Beach, New York 11509
Section 58, Block 60, Lots 5-9. Residence "A"

Variations and special permits from Section 250-125(3) – Accessory Parking – 11 spaces required; 7 spaces provided. Section 250-125(F)- Special Exception - Parking within the Front Yard Setback Area. Section 250-108.1(C)(1) – Special Exception – Proposed Religious Use. Section 250-108.1(c)(2) – Special Exception – Accessory Use – Proposed Café accessory to primary religious use. Section 185-4(B) and 250-81– Signs – Special Exception for exceeding sign size – Permitted 12 square feet and 3 foot in height, Proposed 20 square feet and 3’ 10” in height. Section 250-16.2(A) – Special Exception – Accessory Structure in Front Yard. Section 250-22(B) – Front Yard Setback – Required 25 feet, proposed 18’ 6 7/8” to drive thru fixed canopy on Albany Boulevard and 16’ 6 1/2” to Park Street. Section 250-25(A)(2) – Open Porch – Permitted 6-foot encroachment into front yard and pitched roof, proposed 12’ 4 5/8” encroachment and flat roof. Section 250-16.2(A) – Accessory Structures – Permitted 8’ in height and 80 square feet in size without a special exception – Proposed 12’ 10.5” in height and 483 square feet (special exception as to size). Section 250-23(D) – Side Yard Setback – Required 20 feet, proposed 0.1 feet to rear addition and 6’ 5 3/8” to front awning. Section 250-4 – Continuation or change of legal nonconforming uses and buildings – Proposed expansion of nonconforming use.

The record shows that this application and hearing were duly submitted for publishing in the official newspaper for the Village of Atlantic Beach, and that all persons entitled to notice were duly served. The hearing notice for the application provided for public participation and an opportunity to be heard. The hearing was held on August 24, 2024, and minutes of the hearing were transcribed by a stenographer.

Nassau County Planning Commission recommended local determination.

The Board acting as lead agency adopted a resolution classifying this application as a Type II matter under SEQRA and determination of non-significance which requires no further environmental review.

At a hearing of the Board of Zoning Appeals of the Incorporated Village of Atlantic Beach held on October 10, 2024, at Village Hall, the above -entitled matter was decided as follows:

- 1) Special Exception requested from section 185-4 (B) and section 250-81 for a sign larger than permitted proposed at 20 square feet in size and 3’10” in height which is

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five (5) times larger than permitted. The Board gave due consideration to the character of the district and vicinity and finds that there are no signs in the vicinity of the property with a sign that large. The Board also gave due consideration to whether the construction or location of the proposed sign will interfere with necessary light or air or impair property or aesthetic values or otherwise endanger the health and welfare of the public. The Board finds that the proposed sign is 1'6" from the front property line and 2'6" from the sidewalk making it difficult to see pedestrians walking and oncoming traffic from the bridge due to the length and height of the sign and base. Upon motion of Chairman Cornish, seconded by Commissioner Jacobs and unanimously carried, the above requests are hereby denied.

- 2) Variance from section 250-125 (3) for accessory parking with 11 spaces required and 7 spaces provided. The Board finds that the application does not show employee parking. Rabbi Goodman testified at the hearing that there will be at least 5 employees, therefore requiring an additional 1-2 parking spaces, bringing the off-street parking request to 7-8 spaces. Upon motion of Chairman Cornish, seconded by Commissioner Piscione and unanimously carried, the above request is hereby denied.
- 3) Variance from section 250-125F for parking in the front yard setback. The Board finds that this is an existing condition at the site and in the surrounding area and upon motion of Chairman Cornish, seconded by Commissioner Frieman and unanimously carried, the Board hereby grants the application for parking in the front yard setback.
- 4) Variance from section 250-22 B for a front yard setback variance for the proposed oversized drive-thru canopy and Albany Boulevard front yard encroachment canopy. The Board finds that the design could have easily been reduced to conform to zoning and there was no explanation for its use. Upon motion of Chairman Cornish, seconded by Commissioner Savine and unanimously carried, the above request is hereby denied.
- 5) Variance from section 250-25A (2) for an open porch encroaching into the side yard 12' 4 5/8" where 20 feet is required and upon motion of Chairman Cornish, seconded by Commissioner Piscione and unanimously carried, the above request is hereby denied.

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- 6) Variance from section 250-16.2A for an oversized accessory structure. The Board finds that the proposed accessory shade structures in the rear yard are over six (6) times larger than permitted in area and almost 5 feet higher than permitted with 80 square feet being the maximum and 483 square feet proposed. Upon motion of Chairman Cornish, seconded by Commissioner Frieman and unanimously carried, the above request is hereby denied.

- 7) Special Use Permit under section 250-108.1C2 for an accessory use drive-thru café. Rabbi Goodman's testimony compared the proposed drive-thru café to a "Dunkin Donuts Like" establishment with possibly 30, 40 or maybe 50 cars passing through daily. The current driveway is 38 feet from the intersection of Park Street and Albany Boulevard, and with a handful of cars, they will potentially back up onto Park Street, creating a health and safety hazard to the community. Upon motion of Chairman Cornish, seconded by Commissioner Jacobs and unanimously carried, the above request is hereby denied.

- 8) Variances from sections 250-23 (D) and 250-4 for side yard setback for a proposed rear addition and a proposed front awning addition thereby expanding a non-conforming use. The existing bank vault is 208.26 square feet with a permit issued by the Town of Hempstead. The applicant proposes a rear addition to the vault of approximately 116 square feet and a second story with windows on the west side which is not allowable. Including the addition of approximately 324 square feet the proposal is forty-seven (47%) percent larger than the existing vault and maintaining 5 inches off the property line there. There have not been any previous approvals in the Village of Atlantic Beach that has allowed the expansion of a non-conforming setback and upon motion of Chairman Cornish, seconded by Commissioner Piscione and unanimously carried, the above request is hereby denied.

- 9) Special Use Permit under section 250-108.1 C1 for a religious use. The Board notes that Rabbi Goodman testified that the building will have multi-use purposes and further testified that "I would say that as people get more involved in Judaism and they start to appreciate it more, they'll probably go to the main synagogue here, the Jewish center in Atlantic Beach, So really, we want to cover that entire gamut and make it a community for all people that are not into synagogue services". Upon motion of Commissioner Frieman, seconded by Commissioner Savine and unanimously carried, the above request is hereby denied.

The Board concludes based upon the above findings, reviewing the record and taking into consideration the benefit to the applicant as weighted against the detriment to the health, safety and welfare of the neighborhood that, except for the variance for parking in the front yard setback, the requested relief should be and is hereby denied as the variances and special permits requested are numerous and substantial, an undesirable change will be produced in the character of the neighborhood, there will be a detriment to nearby properties, the benefit sought by the applicant can be achieved by some other method other than the requested numerous and substantial variances, the difficulty is self-created and the proposed use will sufficiently detract from the public's health, safety and welfare.



George Cornish, Chairman

DATED: 11/4/24,
Atlantic Beach, New York 11509



INCORPORATED

Village of Atlantic Beach

GEORGE J. PAPPAS
MAYOR
PATRICIA BEAUMONT
NATHAN ETROG
BARRY M. FROHLINGER
ANTHONY LIVRERI
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VILLAGE CLERK

November 12, 2024

Chabad of the Beaches
60 W. Beech Street
Long Beach, NY 11561

RE: Case #24-01-6423. Chabad of the Beaches
2025 Park Street, Atlantic Beach, New York 11509

Dear Sir/Madam:

Enclosed please find a corrected copy of the decision of the Board of Zoning Appeals regarding the above referenced application dated 11/4/24 and filed with the Village Clerk on 11/12/24.

Thank you.

Very truly yours,

RECEIVED

NOV 12 2024

NOTICE OF DECISION - CORRECTED
BOARD OF ZONING APPEALS
INCORPORATED VILLAGE OF ATLANTIC BEACH

INC. VILLAGE OF ATLANTIC BEACH

Case #24-01-6423 Chabad of the Beaches

[Redacted] antic Beach, New York 11509
[Redacted] Lots 5-9. Residence "A"

Variances and special permits from Section 250-125(3) – Accessory Parking – 11 spaces required; 7 spaces provided. Section 250-125(F)- Special Exception - Parking within the Front Yard Setback Area. Section 250-108.1(C)(1) – Special Exception – Proposed Religious Use. Section 250-108.1(c)(2) – Special Exception – Accessory Use – Proposed Café accessory to primary religious use. Section 185-4(B) and 250-81– Signs – Special Exception for exceeding sign size – Permitted 12 square feet and 3 foot in height, Proposed 20 square feet and 3’ 10” in height. Section 250-16.2(A) – Special Exception – Accessory Structure in Front Yard. Section 250-22(B) – Front Yard Setback – Required 25 feet, proposed 18’ 6 7/8” to drive thru fixed canopy on Albany Boulevard and 16’ 6 1/2” to Park Street. Section 250-25(A)(2) – Open Porch – Permitted 6-foot encroachment into front yard and pitched roof, proposed 12’ 4 5/8” encroachment and flat roof. Section 250-16.2(A) – Accessory Structures – Permitted 8’ in height and 80 square feet in size without a special exception – Proposed 12’ 10.5” in height and 483 square feet (special exception as to size). Section 250-23(D) – Side Yard Setback – Required 20 feet, proposed 0.1 feet to rear addition and 6’ 5 3/8” to front awning. Section 250-4 – Continuation or change of legal nonconforming uses and buildings – Proposed expansion of nonconforming use.

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