COMMENTS TO VILLAGE OF CHESTNUT RIDGE PROPOSED AMENDMENTS TO LOCAL LAW ON PUBLIC ASSEMBLY USE – December 31, 2018

1. **TRUTH AND TRANSPARENCY** – The proposed zoning amendments (Amendments) were drafted in 2017 by Nelson, Pope & Voorhuis, LLC (NPV) after closed door meetings with NPV, OJC and Brooker Engineering (OJC consultant). The Village denies that the drafting and meetings took place in 2017 and claims the Amendments were produced in 2018 which is highly suspect. Efforts by CUPON to obtain the Village records for this drafting process have yielded nothing other than Village claims that no such records exist. During a Planning Board Workshop Meeting attended by NPV and Paul Baum (Assistant Village Attorney), Board Member Anthony Luciano questioned Max Stach from NPV about the drafting meetings and asked specifically if members of the OJC were present at the meetings. After several evasive replies from Max Stach, after more very pointed questions from Anthony Luciano, Max Stach advised that member of OJC were present and participated in the Amendment meetings but he could not remember their names or comments. CUPON and their attorney should continue to pursue the Village records by following up in writing by the attorney advising the Village reply to the FOIL request in not satisfactory. To date CUPON has correctly not aggressively pursued this lack of truth and transparency in the Village government and administration. There are other FOIL requests that have not been properly answered by the Village which suggest the Building Department filing system is inadequate and unsatisfactory. Basically, a general FOIL lawsuit against the Village should be considered.

2. **COMPLIANCE WITH LAW I** – The Mayor, Village Board of Trustees, Village Attorney and NPV continue to state in writing and verbally in public and private meetings that the Amendments are required in order to comply with Federal and State law. CUPON attorneys have repeatedly challenged this claim in writing and in public meetings. CUPON attorneys are drafting a white paper on this issue which will cite case law supporting this position and forcefully demanding that the Village and its attorneys explain their legal reasoning for the Village position that the Amendments are required to comply with Federal and State law.

3. **COMPLIANCE WITH LAW II** – Appears that the Village may not be in compliance with Federal Freedom of Information Act per replies to FOIL requests and also with New York State General Municipal Laws per answers to Rockland County questionnaire replies from the Village. Also, the SEQR EIS Part 1 and Part 2 have not been completed or signed per the Village website attachments.

4. **ESTABLISHMENT CLAUSE** – In the event the Amendments are approved and enacted into Village law, CUPON attorneys believe there may be grounds for a constitutional claim that the Amendments were passed in favor of one religious group alone. Many times in the public hearings, the Mayor, Board of Trustees, Village Attorney have stated that the Amendments are required to satisfy the needs of a particular religious group. The requirement to walk to service on the Sabbath is generally the starting point of this argument. While we respect this requirement and do nothing to prevent folks from walking or observing Sabbath worship in their homes, why then is one of the big issues

with the Amendments focused on parking? How does a walking requirement morph into a parking problem? Appears that the desire for accessory uses drives the need for parking not on the Sabbath. This problem has never been properly analyzed or explained.

5. **DESTRUCTION OF THE ZONING BOARD OF APPEALS** – The ZBA is the only zoning entity within the Village that has quasi-judicial powers and procedures. During the Springhill Terrace public hearings, the Village Attorney violated the Board Members powers and procedures and used every opportunity to criticize the opposition to the illegal use of a garage permit to build a synagogue. When the ZBA ruled against this illegal use, the Village Attorney instructed the Building Inspector to "work around" the ZBA decision and simply issue a new revised certificate of occupancy in a hidden manner that did not allow the public to file an Article 78 within the 30 day limitation. Shortly after this was done, the proposed Amendments were issued. As stated many times in the CUPON writings and testimony in the public hearings, the Amendments are simply designed to provide blanket variances for houses of worship and put the Village Planning Board in a difficult position as it does not have the quasi-judicial powers of the ZBA. Further, any decision the Planning Board makes can be overturned by the Village Board of Trustees. This Village assault on the ZBA is highly irregular and should be challenged vigorously as the proper role of the ZBA is to make decisions on variance requests in a fair and impartial way. The Amendments eliminate this process and codify the favoritism of one religious group over the legitimate rights of all citizens in the Village.

6. **COMMENTS TO THE AUGUST 29, 2018 MEMORANDUM FROM NPV TO THE VILLAGE** – The memorandum starts with Background comments to the public hearings and the Amendments.
Comment 1 states that residential places of worship should be changed to residential gathering places since "religious gatherings in homes should not be more stringently regulated than other assemblies in homes". This is quite a loaded statement since the Amendments actually give religious uses priority rather than more strictly regulate them. In fact, the Amendments define Residential Gathering Place as a "dedicated portion of a one-family detached residence" which is very different from just a public gathering at a one-family residence. Max Stach tried to justify this technical change by referring to three attorneys in Monticello who claimed this terminology change was required by RLUIPA. Who are these attorneys? Who do they represent? Have they provided anything in writing? Has the Village Attorney reviewed this loaded technical change?

   The Amendments switch back and forth from Special Permits to Conditional Use Permits. There are subtle but important legal differences between the two and the Village should explain why the words are used interchangeably and why. Further, Article XVI of the Village Zoning Law on Special Permits describes a process requiring the Board of Trustees to hold public hearings on applications and for the applicant to produce much more information than the simple "narrative summary" in the Amendments. Seems the Village is trying to avoid any approval process that requires full information and public input for fear that this will be portrayed as a "substantial burden" under RLUIPA. The CUPON position that **"Telling the truth is not a substantial burden"** should be repeated clearly and frequently.

At this point the analysis will focus on the so-called 3rd revisions to the Amendments as the revisions start to become repetitive. The Village should produce a clean final version of the Amendments so that the public and the Board can clearly see what is on the table for decision.

7. **COMMENTS TO THE DECEMBER 27, 2018 MEMORANDUM FROM NPV TO THE VILLAGE** – The Article XVIII Word Usage contains very meaningful definitions as follows:
   - Community Place of Worship – building more than 10,000 sf designed for religious assembly and not a residence. Could occur in any type of Residential District on any size lot without any frequency limit subject only to bulk and setback and on-site parking requirements.
   - Neighborhood Place of Worship – building up to 10,000 sf with or without a residential component and allows for substantial accessory use later on in the Amendments
   - Residential Gathering Place – This new terminology carries with it several apparent "restrictions" on the use. However, the drafting basically says if the applicant wants features that do not comply with the Residential Gathering Place restrictions, then all they have to do is call it a Neighborhood Place of Worship. **Further, the decision to place the application in the correct category is left to the Village Building Inspector**. This removes the responsibility for the applicant to argue their own case and makes the Village liable for incorrect decisions. There is no explanation of how or why or when the Building Inspector makes the decision.
   - Article XII heading once again stirs the words Conditional Use and Special Permit Standards together without explanation. Then the added text changes switches to only Conditional Use Permit conditions.
   - Article XII B and C conditions for Residential Gathering Places limit occupancy based on one person per 500 sf land size and only two rooms (supposed to be dedicated to religious worship) up to 50% of the gross square footage of the residential structure. If an applicant has a conforming property in an R-15 zone with 15,000 sf land allowing one person per 500 sf land, this would indicate maximum occupancy of 30 people which is less than the 49 allowed in the RGP definition. Further, the FAR limit of .25 in use group x.1 bulk requirement indicates a maximum gross square foot structure of 3,750 sf (highly unlikely) with maximum 50% of gross square feet gathering space would indicate 1,875 sf in two rooms (which is a highly unlikely configuration). Using religious use guidelines of 15 sf per person would suggest that 125 people could be accommodated. Presumably the 500 sf land per person would limit occupancy to 30 people, but this will be impossible to inspect and monitor compliance. Kindly remember that the same densities can occur under the Neighborhood and Community House of Worship categories with other accessory uses as well. Shocking effect on the residential character of a community! The Village NPV land planner who drafted the Amendments should be required to produce bulk, setback and occupancy examples of how the Amendment would work…..or not work.
   - Article XII F Parking spaces is practically speaking incomprehensible since it includes on-site parking with 10% lot coverage bonus which is supposed to have turn around capability so folks don't back up into the street. It also allows for 50% off-site parking on private property but it does not eliminate the ability to park on the street subject to some one side parking when the street is less than 30 feet wide. This is such a big issue with paper restrictions that are

impractical and impossible to inspect and force compliance. The Village NPV land planner who drafted the Amendments should be required to produce parking examples of how the Amendment would work…..or not work.

- Article XII K adds new language allowing for ZBA input only for bulk variances. This is clearly an attempt to say that the ZBA has not been destroyed, but it is actually an admission that applicants will no doubt be asking for bulk variances even though the Amendments already give them ample clearance for their needs.
- Article XII describes the "narrative summary" required by the applicant. It is shocking in its simplicity and lack of real information required from the applicant and their consultants (if any) and no requirement to sign and verify that the information is accurate and truthful. The application does not call for lot size, building square footage, internal room configuration, occupancy calculations etc. There is no apparent application fee although one could argue that the same conditional use or special permit fees apply which are driven by cost figures and other factors. No language on this implies there is no cost and the burden of proof of compliance is shifted to the Village and the Building Inspector. When violations become apparent, the applicant simply has to say "you guys checked everything and let me do it, so why are you bothering me now". **Truly an abdication of the Village's duty to exercise its zoning powers and obligation to represent all residents of the Village**.

8. **Article 18 for Neighborhood Places of Worship and Article 19 for Community Places of Worship can be attacked in the same way as the Residential Gathering Places**. To allow these uses on ¼ acre lots is completely out of order. While one could argue that the current 5 acre minimum lot size is too big, other religious groups such as Foster Church and the soon to be approved Coptic Church were required and able to meet with a rigorous application process. So why the free pass for one religious group alone? Establishment clause lawsuit – here we come!

9. **Amendments to Table of General Use Requirements.** Note the amendments to Column F Off-Street Parking now reads "200 square feet of floor area per 5 worshipers at maximum seating capacity, whichever is greater". What does this mean and why is it labeled "off-Street Parking" and not "off-site parking" written in the text of the amendments.

There are many more language and drafting issues in the proposed Amendments that cannot be fully vetted without sitting down with the NPV folks who drafted them.

The Amendments can be picked apart at the micro level and also at the macro level. The Amendments are basically a zoning workaround for one religious group providing blanket variances thereby avoiding proper ZBA quasi-judicial variance oversight using language that places the burden of proof of information on the Village so that compliance with the so-called restrictions is impossible.