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December 15, 2020

Village of Chestnut Ridge Planning Board
277 Old Nyack Turnpike
Chestnut Ridge, NY 10977

Attn: Mr. Allan Rubin, Chairperson

Re: Applicant: Congregation Dexter Park
Owner: Alexander and Bella Lowinger
Premises: 5 Samuel Road, Village of Chestnut Ridge, NY 10977
Tax Map Designation: Sec. 63.18 Block 2 Lot 26

Applicant/Owner: Congregation Torah Ufillah
Premises: 6 Weiss Terrace & 8 Roxbury Court, Village of Chestnut Ridge, NY 10977
Tax Map Designation: Sec. 63.09 Block 1 Lots 5 & 31

Applications for Neighborhood Place of Worship

Dear Chairman Rubin:

As you are aware, we represent the above applicants Congregation Dexter Park and Congregation Torah Ufillah.

We are in receipt of the December 3, 2020 letter of Carolyn Worstell, PP, AICP, of the firm Dresdner Robin (copy annexed), submitted on behalf of Citizens United to Protect Our Neighborhoods of Chestnut Ridge ("CUPON").

CUPON, a group known for opposing projects involving Orthodox and Hasidic Jews, is seeking to limit the Orthodox applicants from obtaining variances because they are applying for a house of worship. CUPON is asking the Village to treat houses of worship differently and worse than any other applicant.

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Village of Chestnut Ridge
Bldg / Planning / Zoning

If the Village were to do so, the Village would be in violation of many laws, including RLUIPA and the federal and state constitutions. RLUIPA prohibits a government from “impos[ing] or implement[ing] 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,” which is exactly what would happen here. 42 U.S.C. § 2000cc(b)(1). The First and Fourteenth Amendments to the U.S. Constitution also prohibit such action. Further, if a municipality imposes more stringent requirements upon a religious use than it would on a residential use, courts will look at such requirements with suspicion. *Apostolic Holiness Church v. Zoning Bd. of Appeals of Town of Babylon*, 220 A.D.2d 740, 743 (App. Div. 2d Dept. 1995).

In fact, under New York law, religious institutions have a special status in land use applications. Municipalities are required to apply that special status to applications for variances by religious institutions. *Jewish Reconstructionist Synagogue of N. Shore, Inc. v. Inc. Vill. of Roslyn Harbor*, 38 N.Y.2d 283, 285 (NY 1975); *Cornell Univ. v. Bagnardi*, 68 N.Y.2d 583 (NY 1986).

We believe that if the Village were to follow Ms. Worstell’s advice, the Village would be opening itself up to substantial liability under both Federal and New York State Laws.

Sincerely,



JOSEPH A. CHURGIN

JAC/mc

cc: Walter Sevastian, Esq.
Stu Strow, PE
Congregation Dexter Park
Congregation Torah Ufillah

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Mr. Allan Rubin., Chairperson
277 Old Nyack Turnpike
Village of Chestnut Ridge, New York (10977)
Mary Ballak, Board Secretary
Via email: bdsecretary@chestnutridgevillage.org

DR. Project No.: 11490-001
December 3, 2020

Re: APPLICATIONS FOR NEIGHBORHOOD PLACE OF WORSHIP CONDITIONAL USE PERMIT
CONGREGATION TORAH UTFILLAH (WEISS TERRACE AND ROXBURY COURT)
CONGREGATION DEXTER PARK (6 SAMUEL ROAD)
VILLAGE OF CHESTNUT RIDGE, ROCKLAND COUNTY, NEW YORK

We are submitting this memorandum on behalf of Citizens United to Protect Our Neighborhoods of Chestnut Ridge ("CUPON CNR"), who has retained our firm to review several ongoing planning actions in the Village of Chestnut Ridge ("Village"). We are aware that there are two projects that are seeking approvals before the Board under the recently adopted Place of Worship law (Local Law 1 of 2019): [1] Congregation Torah Ufillah (Weiss Terrace and Roxbury Court) which is on the Agenda for tonight's Planning Board Meeting and [2] Congregation Dexter (6 Samuel Road). The following memorandum provides a preliminary assessment and comment on the following relevant documents:

1. Narrative Summary – Congregation Torah Ufillah, prepared by Brooker Engineering, dated August 17, 2020;
2. Site Plans for Congregation Torah Ufillah, prepared by Brooker Engineering, dated August 12, 2020;
3. Floor Plans for Congregation Torah Ufillah, prepared by Mayerfeld Architecture PLLC, dated April 21, 2020.
4. Narrative Summary – Congregation Dexter Park, prepared by Brooker Engineering, dated August 17, 2020;
5. Site Plans for Congregation Dexter Park, prepared by Brooker Engineering, dated August 12, 2020;
6. FAR Calculation for Congregation Dexter Park, prepared by 3D Studio, dated August 12, 2020.

Our firm has recently received copies of the Preliminary Drainage Studies conducted by Brooker Engineering for both projects, and additional comments will be provided on these studies once a review is completed.

PRELIMINARY ASSESSMENT & COMMENTS

1. Both Applications Violate the First Condition for a Neighborhood Place of Worship Use.

The first condition for a Neighborhood Place of Worship under Local Law 1 of 2019 states:

"The building containing the Neighborhood Place of Worship shall comply with all requirements of all applicable building and fire prevention codes of New York State and the zoning code of the Village of Chestnut Ridge." [Emphasis Added]

The requirement to conform with the Village's bulk standards is reiterated in Condition R, with an explicit exception for lot coverage. See Comment 3 of this memorandum for further discussion.

Both applications seek multiple variances from the Village's Zoning Code, as well as from the conditions set forth for the Conditional Use Permit. Under best planning practices, variances should be treated as a "safety valve" to prevent the oppressive operation of zoning laws in particular instances, when the zoning restrictions

are otherwise generally reasonable.¹ Planning should not be undertaken as legislation by variance. Setting aside the multiple challenges to the law, the Village recently undertook the efforts to adopt the new Place of Worship law so that these types of developments would not require variance approvals.

As the first two applications, that we are aware of, to be considered for approval under this new Special Permit Use law, to approve projects which seek variances sets a precedent for all future applications under the law.

2. Plans for Congregation Torah Ufillah Show Significant Floor Area Excessive of the 9,958 SF Described.

The Narrative Summary for the project indicates that previous submissions were for an 11,162 square foot building, which the Board's Planner (Nelson, Pope and Voorhis) noted in their February 3, 2020 review letter should be submitted as a "Community Place of Worship" use as it exceeded the 10,000 square foot threshold for a "Neighborhood Place of Worship". The Narrative Summary indicates that the project was reduced to 9,958 square feet. However, a review of the architectural floor plans (prepared by Mayerfeld Architecture PLLC, dated April 21, 2020) shows that there are significant areas of the building labeled "low storage" on the basement and mezzanine levels that are not included in the square footage calculations to determine the use proposed.

A Neighborhood Place of Worship as defined is limited to a "total floor area of up to 10,000 square feet". The Village defines Gross Floor Area as the sum of gross horizontal area of every floor of a building, measured from the exterior faces of exterior walls, including basement space, attic space where there is at least 6 feet-3 inches of headroom, and cellar space with more than 6 feet-3 inches of headroom.

Based on the Village's definition of "total" or "gross" floor area, it is unclear if these "low storage" spaces can be excluded from the calculation of the floor area of the building. If they are to be excluded from the calculations for floor area, the Applicant should provide building elevations which show floor-to-floor heights designing the space to be uninhabitable and not easily converted to habitable space in future.

3. Both Applications Seek Lot Coverage Variances Despite the Additional 10% Coverage Permitted.

Condition R for a Neighborhood Place of Worship under Local Law 1 of 2019, states that:

"The Neighborhood Place of Worship shall conform with all bulk standards as indicated in the use group in the Table of General Use Requirements, except the maximum development coverage may be exceeded by an additional ten (10) percent above the amount indicated for that use group."

Both Applications seek variances for lot coverage which exceed this bonus provision. The Site Plan for Congregation Torah Ufillah proposes a lot coverage of 54%, which is 14% more than the maximum lot coverage permitted in the base R-35 zone (40%). The Congregation Dexter Park project is seeking a variance for a lot coverage of 63.8% which is 13.8% greater than the maximum lot coverage permitted in the base R-25 zone (50%). To approve projects which seek these lot coverage variances above the already 10% increase that the law grants them sets a precedent for all future applications under the law.

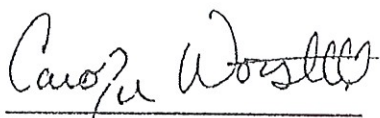
¹ Otto v. Steinhilber, 282 N.Y. 71 (1939)

Furthermore, both applications seek other variances, including: front yard setback and sign variances for Congregation Torah Utfillah and lot width, side yard setback, FAR and parking variances for Congregation Dexter Park.

We request on behalf of our Client that the Board carefully review these projects, considering the purpose and intent behind the Local Law 1 of 2019 creating these new Place of Worship uses and the Conditional Use requirements which were adopted.

We reserve the right to provide additional comments on these and future Neighborhood Place of Worship applications at a later date.

Very Truly



Carolyn Worstell, PP, AICP
Senior Planner

cc: Steven N. Mogel, Esq.
Hon. Rosario Presti Jr., Mayor

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