

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

CHABAD LUBAVITCH OF
LITCHFIELD COUNTY, INC. and
RABBI JOSEPH EISENBACH,

CIVIL ACTION NO.:

Plaintiffs,

vs.

TOWN OF LITCHFIELD, CONNECTICUT;
LITCHFIELD HISTORIC DISTRICT COMMISSION;
AND DEFENDANTS DOE ONE THROUGH TEN

Defendants.

SEPTEMBER 9, 2009

VERIFIED COMPLAINT

COME NOW, the Plaintiffs, CHABAD LUBAVITCH OF LITCHFIELD COUNTY, INC., a nonprofit corporation, and RABBI JOSEPH EISENBACH, by and through their undersigned counsel, respectfully request this Court to issue Declaratory Judgment, Permanent Injunctive Relief, and Damages.

INTRODUCTION

The Plaintiffs, CHABAD LUBAVITCH OF LITCHFIELD COUNTY, INC., and RABBI JOSEPH EISENBACH, (hereinafter "Plaintiffs") purchased property located at 85 West Street, Litchfield, Connecticut, (hereinafter "Property") to operate a religious institution. The Property is located in the Historic District of the TOWN OF LITCHFIELD, CONNECTICUT – a "Historic Overlay District." Plaintiffs submitted a Certificate of Appropriateness to the LITCHFIELD HISTORIC DISTRICT COMMISSION (hereinafter "LHDC") to modify the Property in order to accommodate the needs of the planned religious activities at the Property.

The LHDC denied the Certificate of Appropriateness. Plaintiffs bring this suit because the LHDC's denial violates the federal Religious Land Use and Institutionalized Persons Act, several provisions of the federal Constitution and Connecticut's Constitution, and Connecticut Statutes, § 52-571b. Accordingly, Plaintiffs, by and through their attorneys, allege the following in this Verified Complaint against the Defendants, TOWN OF LITCHFIELD, CONNECTICUT; LITCHFIELD HISTORIC DISTRICT COMMISSION; AND DEFENDANTS DOE ONE THROUGH TEN (hereinafter "Defendants"):

NATURE OF ACTION

1. This action is commenced by Plaintiffs to redress violations of their civil rights as protected by the United States and Connecticut Constitutions, the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc *et seq.* ("RLUIPA"), and Connecticut Statutes, § 52-571b – caused by the Defendants' burdensome, discriminatory and unreasonable land use regulations and intentional conduct which have prohibited and continue to prohibit the Plaintiffs from building and operating a religious temple and facility that will include places of worship, religious educational facilities, children's preschool and youth activities, libraries of Jewish texts, and accessory rabbinical housing dedicated solely to its full-time rabbi's use (hereinafter "Temple") on a portion of the Plaintiffs' Property in the Town of Litchfield, Connecticut (hereinafter "Town").

2. Plaintiffs have a sincere religious belief that they must teach and study certain Jewish texts in such a manner to serve the religious needs within their community. Furthermore, there is no other temple anywhere in the Town where devoutly Chabad Jewish adherents may worship, or that is serving as a children's preschool and conducting youth activities, or where the

needs of the Chabad Jewish community are being fulfilled. The Town's laws preventing the existence of such an institution, therefore, substantially burdens Plaintiffs' religious exercise.

3. The Town's Historic District Commission's application and interpretation of its Administrative Regulations & Procedures (hereinafter "Policies") denied the Plaintiffs' Certificate of Appropriateness (hereinafter "Certificate") seeking to create a Temple and place of worship to serve the needs of the Jewish community. Plaintiffs have no administrative means of using their Property legally as a Temple.

4. In addition to burdening Plaintiffs' religious exercise, Defendants have made statements disparaging Plaintiffs' religious uses. Defendants have repeatedly used administrative means to prevent Plaintiffs and the Jewish community from utilizing the Property. This targeting is the direct result of the Defendants' opposition to Plaintiffs' religious sect.

5. In preventing the Plaintiffs from using their Property for their protected religious and expressive activity, the Defendants are violating both federal and state law, including the First and Fourteenth Amendments of the Constitution of the United States; 42 U.S.C. §§ 2000cc *et seq.* (the Religious Land Use and Institutionalized Persons Act of 2000, hereinafter "RLUIPA"); 42 U.S.C. § 1985(3); 42 U.S.C. § 1986; Article I §§ 3, 4, 5 and 14 of the Constitution of the State of Connecticut; and Connecticut Statutes, § 52-571b, by:

- D. Substantially burdening Plaintiffs' religious exercise and expression without a compelling governmental interest, or without using the least restrictive means of achieving any compelling governmental interest;
- E. Preferring nonreligious institutions over religious institutions;

- F. Preferring other religious institutions over the Plaintiffs' proposed religious institution and sect;
 - G. Applying unreasonable laws against the Plaintiffs' proposed religious land use;
 - E. Discriminating against the Jewish community in general and the Plaintiffs' proposed religious land use in particular.
6. An actual controversy has arisen between Plaintiffs and Defendants in that

Plaintiffs contend that, as a direct and proximate result of Defendants' interpretation of its Policies, their conduct and actions, Plaintiffs have been harmed in that Defendants' interpretation of its Policies, their conduct and actions, are hostile to a reasonable interpretation of the law as it pertains to Plaintiffs' rights protected under the United States and Connecticut Constitutions and Plaintiffs' rights protected under federal and Connecticut statutes. Plaintiffs desire a judicial determination of the rights and duties of the respective parties. The Defendants' actions, all of which took place under color of state law, are and should be declared unlawful, and should be permanently enjoined.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, as this action arises under the First and Fourteenth Amendments to the United States Constitution; under 28 U.S.C. § 1343(a)(3), to redress deprivations, under color of state law, of rights, privileges, and immunities secured by the United States Constitution; under 28 U.S.C. § 1343(a)(4), to recover damages and secure equitable relief under Acts of Congress, specifically, 42 U.S.C. § 1983, which provides a cause of action for deprivations of constitutional rights under color of state law, and 42 U.S.C. §§ 2000cc *et seq.* which provides causes of action for the protection of religious land use rights; under 42 U.S.C. § 1985(3) to prevent conspiracies against

protected rights; under 42 U.S.C. § 1986 to prevent failures to act when conspiracies against protected rights can be prevented; under 28 U.S.C. § 1367, to redress rights under state law; under Connecticut Statutes, § 52-571b (Connecticut's Religious Freedom Act); under 28 U.S.C. § 2201(a), to secure declaratory relief; under 28 U.S.C. § 2202, to secure injunctive relief and damages; and under 42 U.S.C. § 1988, to grant Plaintiffs' claim for reasonable attorney's fees as part of the costs; and under Title 28 U.S.C. § 1920, for other taxable costs.

8. Venue lies in this district pursuant to 28 U.S.C. § 1391(b). The Defendants and Plaintiffs reside in this district. All events giving rise to this action occurred in this district.

PARTIES

9. Plaintiff CHABAD LUBAVITCH OF LITCHFIELD COUNTY, INC., is a religious corporation formed in 1996 under Connecticut Religious Corporations Law and owns the Property within the Town upon which it is attempting to construct the Temple and a place of worship and related facilities. Plaintiff CHABAD LUBAVITCH OF LITCHFIELD COUNTY, INC., wishes to construct a Temple and a place of worship for the purposes of religious exercise, speech, assembly, and instruction, and is prevented from constructing due to laws and actions of the Defendants. For purposes of RLUIPA, Plaintiff CHABAD LUBAVITCH OF LITCHFIELD COUNTY, INC., is a "religious assembly or institution." 42 U.S.C. § 2000cc(2)(b).

10. Plaintiff RABBI JOSEPH EISENBACH is a natural person who resides in the Town and wishes to construct a place of worship for the purposes of religious exercise, speech, assembly, and instruction, and who, among others, is prevented from constructing a place of worship due to laws and actions of the Defendants. Plaintiff RABBI JOSEPH EISENBACH

wishes to attend a place of worship and a Temple in the Town for the purposes of religious exercise, speech, assembly, and instruction, and who, among others, is prevented from attending a place of worship and a Temple in the Town due to laws and actions of the Defendants.

11. Defendant TOWN OF LITCHFIELD, CONNECTICUT, is a municipal corporation duly formed and existing pursuant to the laws of the State of Connecticut. Defendant TOWN OF LITCHFIELD, CONNECTICUT, is empowered to act through its governing body, officials, and employees and may be sued. Defendant TOWN OF LITCHFIELD, CONNECTICUT, enacted laws, including land use laws for Litchfield, Connecticut, and the Litchfield Borough Historic District Commission's Administrative Regulations & Procedures, authorizing the LITCHFIELD HISTORIC DISTRICT COMMISSION to make decisions granting or denying applications for use of land and structural changes within the Historic District of Litchfield, Connecticut – a "Historic Overlay District."

12. Defendant LITCHFIELD HISTORIC DISTRICT COMMISSION, is the municipal legislative body authorized to adopt, interpret and apply land use regulations for the Town. Defendant LITCHFIELD HISTORIC DISTRICT COMMISSION, is a branch, department, agency or instrumentality of a government within the meaning of 42 U.S.C. § 2000cc-5(4)(A). Defendant LITCHFIELD HISTORIC DISTRICT COMMISSION, is empowered by the Defendant TOWN OF LITCHFIELD, CONNECTICUT, and the State of Connecticut to regulate and restrict the use of land within the Town including areas designated as a "Historic Overlay District." Defendants TOWN OF LITCHFIELD, CONNECTICUT, and LITCHFIELD HISTORIC DISTRICT COMMISSION, adopted, interpreted, and applied laws, including the Policies and other land use laws, for the Town meeting the definition of a land use

regulation under 42 U.S.C. § 2000cc-5(5). Defendants TOWN OF LITCHFIELD, CONNECTICUT, and LITCHFIELD HISTORIC DISTRICT COMMISSION, have the authority to grant or deny applications for use of land within the Town.

13. Plaintiffs are ignorant of the true and complete names and capacities of some Defendants sued herein, including those officers listed herein and Does 1 through 10, and for that reason have sued them by their fictitious names. On information and belief, Plaintiffs allege that each of these fictitiously named Defendants is responsible in some manner for some or all of the acts alleged herein. Plaintiffs will amend this Complaint to set forth the true and complete names and capacities of the partially-named and fictitiously-named Defendants once ascertained. Plaintiffs are informed and believe, and thereon allege, that each of the Defendants sued herein, including those named herein as Does, are the agents, servants, employees, licensees, guaranties, indemnitors, invitees, or assignees of each other, and in doing the things herein alleged acted within the course and scope of such agency, employment, license, guaranty, indemnity, invitation, assignment and/or relationship and with the full knowledge, consent and approval of the remaining Defendants.

14. For purposes of RLUIPA and RFA, the Defendants constitute a “government” under 42 U.S.C. § 2000cc-5(4)(A) and are a “person” acting under color of law under 42 U.S.C. § 1983, and is a “political subdivision” under Connecticut’s Religious Freedom Act (Connecticut Statutes, § 52-571b).

FACTUAL ALLEGATIONS

PLAINTIFFS' RELIGIOUS MISSION

15. CHABAD LUBAVITCH OF LITCHFIELD COUNTY, INC., (hereinafter "Chabad") was founded for the purpose of serving the spiritual and physical needs of the community in and around the Town.

16. The Chabad, its parishioners and associates, are fulfilling a religious and spiritual mission in and around the Town.

17. The Chabad is formed to communicate a message and mission to instruct in righteous living, foster fellowship of its parishioners, serve the community, and to empower its parishioners to fully participate in the community as productive citizens and caring neighbors.

18. RABBI JOSEPH EISENBACH (hereinafter "Rabbi") believes he is called to fulfill a religious and spiritual mission in and around the Town.

19. The Rabbi holds a sincere religious belief that he is called to communicate a message to instruct in righteous living, to foster fellowship of the Chabad's parishioners, to serve the community, and to empower the Chabad's parishioners to fully participate in the community as productive citizens and caring neighbors.

PLAINTIFFS' CURRENT FACILITY

20. There is no Temple in the Town where the Chabad is able to hold its regular services and various meetings.

21. The Plaintiffs' currently occupy a portion of a loading dock by lease. The facility

does not provide the space or physical facilities necessary to fulfill Plaintiffs' religious and spiritual mission in and around the Town.

22. The Chabad currently leases that facility at the rate of \$1,500 per month where it attempts to hold its regular services and various meetings. In the current facility, there is not sufficient space to allow the Plaintiffs' parishioners and associates to worship and conduct the religious practices required by their religion.

23. In the current facility, Plaintiffs are unable to meet the spiritual and physical needs of their parishioners and associates as required by their religion.

24. In the current facility, Plaintiffs do not have the necessary space to carry out the faith and practice required by their religion. Plaintiffs are unable to fulfill their religious purpose and mission because they cannot properly conduct a children's preschool or youth activities. The children's preschool and youth activities, with its attendant educational mission, are a central focus of the life and purpose of the Chabad. In addition, in the current facility, Plaintiffs are unable to construct a Mikvah to perform the purification ritual required by their religion.

25. In the current facility, Plaintiffs are unable to fulfill their religious mandate to consecrate the Property as a synagogue devoted to religious use and purpose.

26. Plaintiffs have lost parishioners because of the space limitations of the current facility, and individual parishioners and associates have specifically told the Rabbi that they were not able to join in religious practices because the Plaintiffs do not have enough space at the current facility for worship, instruction, and its other essential ministries. Specific interference

with the current facility includes:

- a. The facility is at the rear of a commercial building.
- b. Religious activities are continuously being disturbed due to the proximity of the loading dock area for Dunkin Donuts and Senor Panchos.
- c. The facility is not a suitable environment for a holy place due to the placement of nearby trash dumpsters emanating noxious odors.
- d. The facility is not visible thereby it has caused newcomers to become lost and then abandon efforts to attend the synagogue.

27. Plaintiffs' current facility does not have the necessary classrooms for religious instruction. This prevents Plaintiffs' parishioners and associates from effectively engaging in essential religious instruction. Moreover, the space limitations in the current facility prevent Plaintiffs from offering a number of other ministries for which they have been called in order to fulfill their religious and spiritual mission in and around the Town. These ministries are essential and integral to Plaintiffs' religious mission. In the current facility, Plaintiffs are failing to fulfill their religious conviction and mission because they cannot engage in these ministries.

PLAINTIFFS' NEW PROPERTY

28. To accommodate its existing parishioners, and those parishioners who would like to join the worship and religious instruction, Plaintiffs needed to acquire a larger facility to serve as its permanent location as a dedicated synagogue.

29. The Chabad purchased the Property located at 85 West Street, Litchfield, Connecticut, in order to communicate and accomplish the mission central to the belief and practice of their religion.

30. The Chabad requires modifications to the Property in order to accommodate the needs of its parishioners and associates so that it may communicate the message and accomplish the mission central to the belief and practice of their religion.

31. Prior to making the necessary modifications, the Chabad filed a Certificate of Appropriateness to restore and rehabilitate the existing structure (known as the Julia Deming house) on the Property as well as make additions to the Property to accommodate the needs of its parishioners and associates so that it may communicate the message and accomplish the mission central to the belief and practice of their religion.

32. After purchasing the property, Plaintiffs retained professionals in the fields of including engineering, architecture and historic preservation to develop a site plan with architectural drawings and to perform thorough studies to address all relevant health, welfare and safety issues.

33. Plaintiffs commissioned an extensive examination of the surrounding architectural uses, and examined the surrounding areas to ensure that no compelling governmental interest existed to deny Plaintiffs' architectural plans.

34. The Defendants demanded numerous architectural and site plan modifications. Plaintiffs repeatedly complied and performed the modifications demanded by the Defendants thereby increasing the costs and fees charged to Plaintiffs by the engineers and architects.

RELIGIOUS USE OF PLAINTIFFS' PROPERTY

35. Plaintiffs' plan to use the Property as a place of worship and Temple is "religious

exercise” within the meaning of RLUIPA, 42 U.S.C. § 2000cc-5(7)(a) & (b). Prayer will be a fundamental element of the religious use of the Property. Chabad Jews must pray three times per day – in morning, afternoon and evening services. Each prayer service (in the eleventh section of a prayer known as the *Shemoneh Esrei*, in which God’s help is requested), includes a request that God “Restore Our Judges” and again let us have Judges of the caliber which Jews once possessed (*Shimon Schwab*); and that God help the Judges rule wisely and justly (*Yaaros D’Vash*). The sources of authority and principal texts that will be studied are the laws and commentaries written in the Bible (*Torah*), the *Talmud*, and the *Shulchan Aruch* (a comprehensive code of *halakha* compiled by Rabbi Yosef Caro in the 16th century). The *Shulchan Aruch* is comprised of four books: (1) *Orach Chayim* - laws of daily life, including prayer, blessings, meals, synagogue, Sabbath, holidays, family codes, etc.; (2) *Yoreh De’ah* - laws of *shechita* (the religious and humane method of slaughter of animals for food), *kashrut* (keeping kosher), family purity, circumcision, burials, religious conversion, etc.; (3) *Even Ha’ezer* - laws of marriage, divorce and related issues; and (4) *Choshen Mishpat* – other civil controversies.

36. Completing a Temple as a place of worship is central to the Chabad Jewish belief. Many elements of the faith and practice may only be performed in a consecrated place of worship commonly referred to as a *shul* or synagogue. Without a *shul*, Chabad Jewish people are limited in their ability to practice their faith and religious tenets.

37. The Chabad Jewish leadership is Orthodox and Hasidic and is distinguished by a particular method of dress, certain religious customs and practices and their use of the Yiddish language. It is generally the Hasidic community that has often been the target of official and unofficial discriminatory actions. This discrimination is widespread as evidenced by the federal Second Circuit Court of Appeals' ruling in *LeBlanc-Sternberg v. Fletcher*, 67 F.3d 412 (2d Cir. 1995), which upheld a finding of discrimination by the nearby Village of Airmont as "amply support[ed by] a finding that the impetus was not a legitimate nondiscriminatory reason but rather an animosity toward Orthodox Jews as a group."

38. Prior to World War II, rabbis came from and were trained in Europe. Temples existed throughout Europe, and each large Jewish community had its own Temple to meet the spiritual and physical needs of Jews.

39. The Nazis eliminated Temples in WWII. Thousands were exterminated by the Nazis and most middle-aged Jews who would have been eligible to become rabbis were murdered by the Nazis, leaving mainly the very young and the elderly parishioners of the community.

40. Because of the systematic slaughter of the Jews, only a small fraction of the rabbis survived in Europe after the war, and very few organized places of worship continued to exist.

41. At the conclusion of World War II, approximately 10,000 Orthodox/Hasidic Jews immigrated to the United States, bringing with them this shortage of rabbis because most surviving Orthodox Jews were either too young or too old to be trained. Today, in the third generation since the Holocaust, the Orthodox Jewish population in America is approximately

600,000, and consequently, the need for rabbis and places of worship has become acute.

42. As the Orthodox population regenerates itself throughout the world (including America), the religious need for places of worship is becoming severe and cannot be met.

HISTORY OF PLAINTIFFS' NEW PROPERTY AND SURROUNDING PROPERTY

43. Plaintiffs' Property was most recently used as a commercial building which housed "The Wilderness Shop." Over the years, the existing structure (known as the Julia Deming house) was changed from a residential use to a commercial use. In 1971, a zoning change was granted to convert the Property from residential to business. The building subsequently housed an antique shop with multiple vendors, a fabric store and the Wilderness Shop, a retail outfitters store. All of these businesses have occupied the building in accordance with Defendants' zoning regulations.

44. In 1975, the zoning for the building next door to the Property was also changed from residential to business. This area of the Town's West Street was then zoned Business Historic at the time of the 1986 borough zone changes.

45. The Oliver Wolcott Library is an addition to a residential structure which is one of the most historically significant residential structures within the Historic District of the Town. It consists of a historically significant home to which is attached a substantially sized addition. The square footage of the rear addition to Wolcott's historic home is larger than the house itself, the addition extends way beyond the existing building at the south side of the structure. It is not half the size of the historic home – it is larger than the Wolcott's historic home. The Defendants approved these changes to the Wolcott's historic home.

46. The Rose Haven home is located on North Street within the Historic District of the Town. Like Plaintiffs' Property, the Rose Haven home is an historic Deming house which also has an extensive rear addition that is much larger than the residential home structure. The Defendants approved these changes to the Rose Haven's historic home.

47. Another originally historic home within the Historic District of the Town houses the Cramer & Anderson law firm. The Defendants approved an addition nearly doubling the size of the original historic home's structure.

48. The Town's Hall is within the Historic District of the Town. In 2007, the Town's Hall was nearly 7,884 square feet. The Defendants approved a planned addition to the Town Hall making it nearly 20,000 square feet.

49. Christian religious facilities within the Historic District of the Town exceed the building area to a lot size proposed by Plaintiffs' Certificate of Appropriateness.

50. Christian religious facilities within the Historic District of the Town modified their structures in manners exceeding the modifications proposed by Plaintiffs' Certificate of Appropriateness.

51. A Christian religious facility within the Historic District of the Town exceeds the height proposed by Plaintiffs' Certificate of Appropriateness.

52. Plaintiffs' proposed Certificate of Appropriateness is consistent with other houses of worship within the Historic District of the Town.

53. Plaintiffs' proposed Certificate of Appropriateness is consistent with the historical and current patterns of development within the Historic District of the Town.

54. The Defendants have engaged in a targeted and deliberate effort to prevent the Plaintiffs from developing the Property and use it as a place of worship, while permitting other development within the Town that is substantially similar to the modifications proposed for Plaintiffs' Property. Plaintiffs have attempted to use the Property for a religious purpose affiliated with the Jewish faith, but the Defendants acted to prevent such use, constituting a pattern of religious discrimination directed at the Jewish people. This targeting has been based in large part on anti-Hasidic animus. The Defendants, by their acts, have acted under color of law and have conspired and continue to conspire, in breach of the Plaintiffs' rights protected under the United States and Connecticut Constitutions and Plaintiffs' rights protected under federal and Connecticut statutes. Specific examples of the comments made by Defendants include:

- a. According to minutes of the meeting, the Commission's chairwoman, defendant Wendy Kuhn, "noted her objections . . . the Star of David may not comply with the district."
- b. Defendant Judith Acerbi stated that if the synogue is permitted: "This design will turn Litchfield into a factory town."
- c. Defendant Kathleen Crawford stated: "Stone from Israel? We'll have to get the whole town out for this one."
- d. An attorney representing Martha Bernstein, a Town Selectwoman, stated that the proposed improvements and use building should be reviewed as if it were a "strip joint."

PLAINTIFFS' PROPOSED CERTIFICATE OF APPROPRIATENESS

55. The Chabad submitted an application known as a Certificate of Appropriateness and elevation plans, along with a site plan and plot plan (including all required supporting materials) to the Defendants at a pre-hearing meeting held on September 6, 2007.

56. The Certificate of Appropriateness (including all required supporting materials) was formally filed at the second pre-hearing meeting on October 18, 2007.

57. The public hearing on the Certificate of Appropriateness was opened on November 15, 2007, and continuations of the public hearing were held on December 6, 2007, and again on December 17, 2007.

58. On December 20, 2007, the Defendants issued a written decision denying Plaintiffs' Certificate of Appropriateness.

59. Defendants' enforcing and applying its laws and Policies to deny Plaintiffs' Certificate of Appropriateness constitutes the imposition or implementation of land use regulations within the meaning of RLUIPA. 42 U.S.C. § 2000cc(a)(1).

PLAINTIFFS SUSTAIN ECONOMIC, STATUTORY, AND CONSTITUTIONAL INJURY

60. As a direct and proximate result of the Defendants' decision denying Plaintiffs Certificate of Appropriateness:

- a. Plaintiffs' plans to renovate its property have been suspended indefinitely;
- b. Plaintiffs' efforts to provide religious services to its parishioners and associates pursuant to its faith and practice has been impeded;

- c. Plaintiffs' plans to pursue its religious mission in the community has been impeded and thrown into uncertainty;
- d. Plaintiffs' efforts to communicate its message and pursue its religious mission in the community have been impeded; and
- e. Defendants' discrimination has communicated to the public that Plaintiffs' religious character, mission, and services have little value to the greater community, and are less valuable than comparable secular and Christian religious uses.

61. As a direct and proximate result of the Defendants' decision denying Plaintiffs' Certificate of Appropriateness, Plaintiffs have incurred, and are incurring, economic harm, including the following:

- a. Ongoing rental payments for the facility where it currently meets;
- b. Ongoing tenant-improvement and maintenance obligations for the facility where it currently meets;
- c. Ongoing insurance premiums for the facility where it currently meets;
- d. Market increases in the cost of renovating Plaintiffs' property; and,
- e. The inability to pursue fundraising activities for the renovation and occupation of Plaintiffs' property;
- f. Monetary losses incurred by the Chabad by paying for three buildings, one of which sits empty due to Defendants' adverse actions; and
- g. The substantial fees incurred by the Chabad for the architect's numerous changes to the original plans and for attorneys' fees related to this process.

62. Plaintiff has complied with all conditions precedent to bringing this action.

CLAIMS FOR RELIEF
AS A FIRST CAUSE OF ACTION
Free Exercise Clause
United States Constitution
First and Fourteenth Amendments
42 U.S.C. § 1983

63. Plaintiffs repeat and re-allege paragraphs “1” through “64” as if fully set forth herein.

64. Defendants’ laws and actions deprived and continue to deprive the Plaintiffs of their right to free exercise of religion, as secured by the First Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment, (1) by substantially burdening the Plaintiffs’ religious exercise without a compelling governmental interest; (2) by discriminating against and targeting the Plaintiffs for disfavor; and (3) by treating religious assemblies and institutions on less than equal terms as nonreligious assemblies and institutions.

65. The Plaintiffs have no adequate remedy at law for the harm and damage caused by Defendants’ violation of its constitutional rights.

66. Defendants have caused the Plaintiffs to suffer, and to continue to suffer, irreparable harm, damage and injury. The Plaintiffs will continue to suffer such damages unless the Defendants’ acts and conduct complained of are permanently enjoined.

AS A SECOND CAUSE OF ACTION
Free Speech Clause
United States Constitution
First and Fourteenth Amendments
42 U.S.C. § 1983

67. Plaintiffs repeat and re-allege paragraphs “1” through “68” as if fully set forth herein.

68. Defendants’ laws and actions deprived and continue to deprive the Plaintiffs of their right to free speech and freedom of association, as secured by the First Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment, by (1) by treating religious expressive activity on less than equal terms as nonreligious expressive activity; (2) by regulating expression and expressive conduct on the basis of the character of the speaker; (3) by failing to be content-neutral; (4) by failing to leave open any alternative channels of communication; and (5) by enforcing regulations against expressive activity that are not narrowly tailored to serve a legitimate governmental objective. The Plaintiffs have no adequate remedy at law for the harm and damage caused by Defendants’ violation of their constitutional rights.

69. Defendants have caused the Plaintiffs to suffer, and to continue to suffer, irreparable harm, damage and injury. The Plaintiffs will continue to suffer such damages unless the Defendants’ acts and conduct complained of are permanently enjoined.

AS A THIRD CAUSE OF ACTION
Freedom of Association
United States Constitution
First and Fourteenth Amendments
42 U.S.C. § 1983

70. Plaintiffs repeat and re-allege paragraphs “1” through “69” as if fully set forth herein.

71. Defendants’ laws and actions deprived and continue to deprive the Plaintiffs of their right to freedom of intimate association and freedom of expressive association, as secured by the First Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment, by intruding unduly upon the Plaintiffs’ right to the raising and education of children and by intruding upon the Plaintiffs’ right to associate for purposes of protected expressive activity.

72. The Plaintiffs have no adequate remedy at law for the harm and damage caused by Defendants’ violation of its constitutional rights.

73. Defendants have caused the Plaintiffs to suffer, and to continue to suffer, irreparable harm, damage and injury. The Plaintiffs will continue to suffer such damages unless the Defendants’ acts and conduct complained of are permanently enjoined.

AS A FOURTH CAUSE OF ACTION
Equal Protection Clause
United States Constitution
Fourteenth Amendment
42 U.S.C. § 1983

74. Plaintiffs repeat and re-allege paragraphs “1” through “73” as if fully set forth herein.

75. Defendants' laws and actions deprived and continue to deprive the Plaintiffs of their right to equal protection of the laws, as secured by the Fourteenth Amendment, by (1) discriminating against and targeting the Plaintiffs for disfavor; (2) by treating religious institutions on less than equal terms as similarly situated nonreligious institutions; and (3) by enforcing land use regulations which constitute a grave interference with fundamental rights.

76. The Plaintiffs have no adequate remedy at law for the harm and damage caused by Defendants' violation of its constitutional rights.

77. Defendants have caused the Plaintiffs to suffer, and to continue to suffer, irreparable harm, damage and injury. The Plaintiffs will continue to suffer such damages unless the Defendants' acts and conduct complained of are permanently enjoined.

AS A FIFTH CAUSE OF ACTION
Due Process Clause
United States Constitution
Fourteenth Amendment
42 U.S.C. § 1983

78. Plaintiffs repeat and re-allege paragraphs "1" through "77" as if fully set forth herein.

79. Defendants' laws and Policies give Defendants unfettered discretion to grant or deny Certificate of Appropriateness applications.

80. Defendants exercised unfettered discretion in denying Plaintiffs' Certificate of Appropriateness application by unequally applying broad and vague conditions.

81. Defendants' laws and Policies fail to adequately notify persons what is permitted and what is prohibited.

82. The Plaintiffs have no adequate remedy at law for the harm and damage caused by Defendants' violation of its constitutional rights.

83. Defendants have caused the Plaintiffs to suffer, and to continue to suffer, irreparable harm, damage and injury. The Plaintiffs will continue to suffer such damages unless the Defendants' acts and conduct complained of are permanently enjoined.

AS A SIXTH CAUSE OF ACTION
"Substantial Burdens"
Religious Land Use and Institutionalized Persons Act of 2000
42 U.S.C. § 2000cc(2)(a)

84. Plaintiffs repeat and re-allege paragraphs "1" through "83" as if fully set forth herein.

85. The Defendants have deprived and continue to deprive the Plaintiffs of their right to the free exercise of religion, as secured by the Religious Land Use and Institutionalized Persons Act, by imposing and implementing a land use regulation in a manner that places a substantial burden on the Plaintiffs' religious exercise without any compelling interest, and without using the least restrictive means of furthering any compelling interest.

86. The Plaintiffs have no adequate remedy at law for the harm and damage caused by Defendants' violation of its constitutional rights.

87. Defendants have caused the Plaintiffs to suffer, and to continue to suffer,

irreparable harm, damage and injury. The Plaintiffs will continue to suffer such damages unless the Defendants' acts and conduct complained of are permanently enjoined.

AS A SEVENTH CAUSE OF ACTION
"Nondiscrimination"
Religious Land Use and Institutionalized Persons Act of 2000
42 U.S.C. § 2000cc(2)(b)(2)

88. Plaintiffs repeat and re-allege paragraphs "1" through "87" as if fully set forth herein.

89. Defendants' laws and actions deprived and continue to deprive the Plaintiffs of their right to free exercise of religion, as secured by the Religious Land Use and Institutionalized Persons Act, by imposing and implementing a land use regulation that discriminates against the Plaintiffs on the basis of religion.

90. The Plaintiffs have no adequate remedy at law for the harm and damage caused by Defendants' violation of its constitutional rights.

91. Defendants have caused the Plaintiffs to suffer, and to continue to suffer, irreparable harm, damage and injury. The Plaintiffs will continue to suffer such damages unless the Defendants' acts and conduct complained of are permanently enjoined.

AS AN EIGHTH CAUSE OF ACTION
"Equal Terms"
Religious Land Use and Institutionalized Persons Act of 2000
42 U.S.C. § 2000cc(2)(b)(1)

92. Plaintiffs repeat and re-allege paragraphs "1" through "91" as if fully set forth herein.

93. Defendants' laws and actions deprived and continue to deprive the Plaintiffs of their right to free exercise of religion, as secured by the Religious Land Use and Institutionalized Persons Act, by imposing and implementing a land use regulation that treats religious assemblies and institutions on less than equal terms as nonreligious assemblies and institutions.

94. The Plaintiffs have no adequate remedy at law for the harm and damage caused by Defendants' violation of its constitutional rights.

95. Defendants have caused the Plaintiffs to suffer, and to continue to suffer, irreparable harm, damage and injury. The Plaintiffs will continue to suffer such damages unless the Defendants' acts and conduct complained of are permanently enjoined.

AS A NINTH CAUSE OF ACTION
Civil Conspiracy
(Against Individual Defendants)
42 U.S.C. Section 1985(3)

96. Plaintiffs repeat and re-allege paragraphs "1" through "95" as if fully set forth herein.

97. Defendants willfully, knowingly and with callous indifference entered into an agreement and conspired to do an unlawful act in an unlawful way by violating Plaintiffs' rights protected under the United States and Connecticut Constitutions and Plaintiffs' rights protected under federal and Connecticut statutes.

98. Defendants entered into an agreement and conspired to violate Plaintiffs' rights protected under the United States and Connecticut Constitutions and Plaintiffs' rights protected under federal and Connecticut statutes for the purpose of depriving, either directly or indirectly,

Plaintiffs of the equal protection of the laws, or of equal privileges and immunities under the laws.

99. Defendants entered into an agreement and conspired to violate Plaintiffs' rights protected under the United States and Connecticut Constitutions and Plaintiffs' rights protected under federal and Connecticut statutes and furthered their conspiracy by the actions recited herein.

100. Defendants acted willfully, wantonly, recklessly and with callous indifference by violating Plaintiffs' rights protected under the United States and Connecticut Constitutions and Plaintiffs' rights protected under federal and Connecticut statutes by conspiring to intimidate, threaten and coerce Plaintiffs so that Plaintiffs would forfeit said rights.

101. Defendants' laws and actions deprived and continue to deprive the Plaintiffs of their rights protected under the United States and Connecticut Constitutions and Plaintiffs' rights protected under federal and Connecticut statutes.

102. As a result and proximate cause of the conspiracy perpetrated by Defendants and furthered by the Defendants' actions, Plaintiffs have in the past and will continue in the future to suffer direct and consequential damages, including but not limited to, the loss of Plaintiffs' rights recited herein.

AS A TENTH CAUSE OF ACTION
Failure to Prevent Violations and Civil Conspiracy
(Against Individual Defendants)
42 U.S.C. Section 1986

103. Plaintiffs repeat and re-allege paragraphs “1” through “102” as if fully set forth herein.

104. Defendants had personal knowledge of the events described herein.

105. Defendants did, with the purpose and intent of willfully, knowingly and with callous indifference, deprive Plaintiffs of their rights protected under the United States and Connecticut Constitutions and Plaintiffs’ rights protected under federal and Connecticut statutes.

106. Defendants had the ability and authority to prevent the violation of Plaintiffs’ rights protected under the United States and Connecticut Constitutions and Plaintiffs’ rights protected under federal and Connecticut statutes.

107. Defendants failed to act in any way to prevent the alleged violations and the civil conspiracy affected contrary to Plaintiffs’ rights protected under the United States and Connecticut Constitutions and Plaintiffs’ rights protected under federal and Connecticut statutes.

108. Defendants acted willfully, wantonly, recklessly and with callous indifference by failing to prevent the violation of Plaintiffs’ rights protected under the United States and Connecticut Constitutions and Plaintiffs’ rights protected under federal and Connecticut statutes.

109. As a direct and proximate result of the Defendants’ willfully, wantonly, recklessly and with callous indifference failing to prevent the violation of Plaintiffs’ rights protected under

the United States and Connecticut Constitutions and Plaintiffs' rights protected under federal and Connecticut statutes, Plaintiffs have in the past and will continue in the future to suffer direct and consequential damages, including but not limited to, the loss of Plaintiffs' rights recited herein.

AS AN ELEVENTH CAUSE OF ACTION
Connecticut State Constitution - Article I §§ 3, 4, 5 and 14

110. Plaintiffs repeat and re-allege paragraphs "1" through "109" as if fully set forth herein.

111. The Defendants, by their acts, have acted under color of law and have conspired and continue to conspire, in breach of the rights of the Plaintiffs to protect their interests under the law in violation of Article I, § 3 (freedom of worship; religious liberty), Article 1 § 4 (freedom of speech), Article I, § 5 (equal protection of laws; discrimination prohibited) and Article 1 § 14 (freedom of assembly) of the Connecticut State Constitution.

112. The Plaintiffs have no adequate remedy at law for the harm and damage caused by Defendants' violation of its constitutional rights.

113. Defendants have caused the Plaintiffs to suffer, and to continue to suffer, irreparable harm, damage and injury. The Plaintiffs will continue to suffer such damages unless the Defendants' acts and conduct complained of are permanently enjoined.

AS A TWELFTH CAUSE OF ACTION
Free Exercise of Religion
(Connecticut's Religious Freedom Act)
Connecticut Statutes, § 52-571b

114. Plaintiffs repeat and re-allege paragraphs "1" through "113" as if fully set forth herein.

115. Pursuant to Connecticut Statutes, § 52-571b (Connecticut's Religious Freedom Act), the free exercise of religion is a fundamental right and shall not be substantially burdened by the government, even if that burden results from a government regulation of general applicability.

116. Defendants' law, Policies, conduct and actions impose a substantial burden on the Plaintiffs' right to freely exercise their religion.

117. Defendants have no reasonable, let alone compelling, governmental interest to justify their laws, Policies, conduct and actions.

118. Defendants' laws, Policies, conduct and actions, including the denial of Plaintiffs' Certificate of Appropriateness, are not the least restrictive means of achieving any governmental interest.

RELIEF SOUGHT

WHEREFORE, Plaintiffs pray for Judgment as follows:

On the First through Fifth Causes of Action:

- A. Declaratory judgment holding the decisions and actions of the Defendants to be unconstitutional and illegal under the United States Constitution;
- B. Annulment of those decisions and actions pursuant to the Town's Policies that violate the Plaintiffs' civil rights and permanent injunctive relief enjoining all Defendants from unconstitutionally and illegally applying the Town's Policies and laws;
- C. Declaratory judgment declaring that the Plaintiffs' use of their Property as a Temple and place of worship is permitted, subject to legitimate health and safety review;
- D. Appointment of a federal monitor to ensure that the Defendants comply with all orders of this Court by overseeing the actions of the Defendants so as to entitle the Plaintiffs to the relief awarded by the Court and to report to the Court as needed;
- E. Compensatory and/or nominal damages against Defendants as the Court deems just for Plaintiffs' monetary expenses;
- F. Compensatory and/or nominal damages against Defendants as the Court deems just for the loss of Plaintiffs' constitutional rights;
- G. Costs and expenses of this action, including a reasonable attorneys' fee award, in accordance with 42 U.S.C. § 1988, and other applicable law, and other taxable costs under Title 28 U.S.C. § 1920;
- H. Such other and further relief as the Court deems equitable, just, and proper;
- I. That the Court adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter here in controversy, in order that such declarations shall have the force and effect of final judgment; and;
- J. That the Court retain jurisdiction of this matter for the purpose of enforcing the Court's orders.

On the Sixth through Eighth Causes of Action:

- A. Declaratory judgment declaring that the Defendants have violated Plaintiffs' rights under RLUIPA;

- B. Annulment of those decisions and actions pursuant to the Town's Policies that violate the Plaintiffs' statutory rights under RLUIPA and permanent injunctive relief enjoining all Defendants from illegally applying the Town's Policies and laws;
- C. Declaratory judgment declaring that the Plaintiffs' use of their Property as a Temple and place of worship is permitted, subject to legitimate health and safety review;
- D. Appointment of a federal monitor to ensure that the Defendants comply with all orders of this Court by overseeing the actions of the Defendants so as to entitle the Plaintiffs to the relief awarded by the Court and to report to the Court as needed;
- E. Compensatory and/or nominal damages against Defendants as the Court deems just for Plaintiffs' monetary expenses and other losses;
- F. Compensatory and/or nominal damages against Defendants as the Court deems just for the loss of Plaintiffs' statutory rights;
- G. Costs and expenses of this action, including a reasonable attorneys' fee award, in accordance with 42 U.S.C. § 1988, and other applicable law, and other taxable costs under Title 28 U.S.C. § 1920;
- H. Such other and further relief as the Court deems equitable, just, and proper;
- I. That the Court adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter here in controversy, in order that such declarations shall have the force and effect of final judgment; and;
- J. That the Court retain jurisdiction of this matter for the purpose of enforcing the Court's orders.

On the Ninth and Tenth Causes of Action:

- A. Declaratory judgment declaring that the Defendants have conspired to violate, and failed to prevent a conspiracy to violate, Plaintiffs' rights protected under the United States and Connecticut Constitutions and Plaintiffs' rights protected under federal and Connecticut statutes;
- B. Appointment of a federal monitor to ensure that the Defendants comply with all orders of this Court by overseeing the actions of the Defendants so as to entitle the Plaintiffs to the relief awarded by the Court and to report to the Court as needed;
- C. Compensatory and/or nominal damages against Defendants as the Court deems just for Plaintiffs' monetary expenses and other losses;

- D. Compensatory and/or nominal damages against Defendants as the Court deems just for the loss of Plaintiffs' statutory rights;
- E. Costs and expenses of this action, including a reasonable attorneys' fee award, in accordance with 42 U.S.C. § 1988, and other applicable law, and other taxable costs under Title 28 U.S.C. § 1920;
- F. Such other and further relief as the Court deems equitable, just, and proper;
- G. That the Court adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter here in controversy, in order that such declarations shall have the force and effect of final judgment; and;
- H. That the Court retain jurisdiction of this matter for the purpose of enforcing the Court's orders.

On the Eleventh and Twelfth Causes of Action:

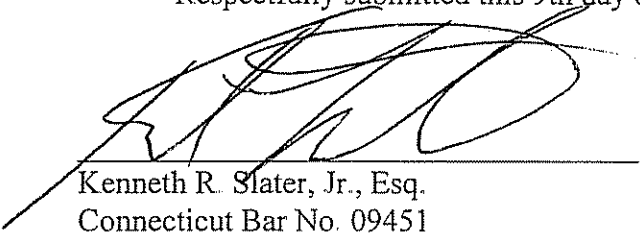
- A. Declaratory judgment holding the laws and actions of the Defendants to be unconstitutional and illegal under the Connecticut Constitution, and Connecticut's Religious Freedom Act;
- B. Annulment of those decisions and actions pursuant to the Town's Policies that violate the Plaintiffs' civil rights and permanent injunctive relief enjoining all Defendants from unconstitutionally and illegally applying the Town's Policies and laws;
- C. Declaratory judgment declaring that the Plaintiffs' use of their Property as a Temple and place of worship is permitted, subject to legitimate health and safety review;
- D. Appointment of a federal monitor to ensure that the Defendants comply with all orders of this Court by overseeing the actions of the Defendants so as to entitle the Plaintiffs to the relief awarded by the Court and to report to the Court as needed;
- E. An award of Plaintiffs' costs and disbursements; and
- F. Such other and further relief as the Court deems equitable, just, and proper;
- G. That the Court adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter here in controversy, in order that such declarations shall have the force and effect of final judgment; and;

H. That the Court retain jurisdiction of this matter for the purpose of enforcing the Court's orders.

DEMAND FOR JURY TRIAL

Plaintiffs respectfully request a trial by jury of all issues so triable.

Respectfully submitted this 9th day of September, 2009.



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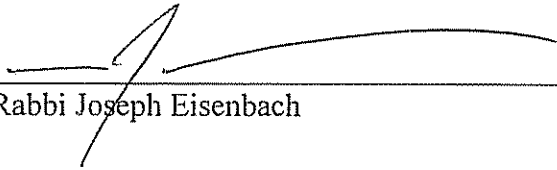
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(Pending *pro hac vice* admission)

VERIFICATION AND DECLARATION UNDER PENALTY OF PERJURY

Pursuant to 28 U.S.C. § 1746, I hereby declare, under penalty of perjury under the laws of the United States of America, that the foregoing factual statements are true and correct.

Executed this 9th day of September, 2009.

CHABAD LUBAVITCH OF LITCHFIELD COUNTY, INC.

By 
Rabbi Joseph Eisenbach