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Michael F. Buchanan (NJ Bar # 049041992)
Muhammad U. Faridi (*pro hac vice* application to be submitted)
Alejandro H. Cruz (*pro hac vice* application to be submitted)
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

THE ISLAMIC SOCIETY OF BASKING RIDGE and MOHAMMAD ALI CHAUDRY,

Plaintiffs,

v.

TOWNSHIP OF BERNARDS, BERNARDS TOWNSHIP PLANNING BOARD, BERNARDS TOWNSHIP COMMITTEE, BARBARA KLEINERT, in her official capacity, JEFFREY PLAZA, in his official capacity, JIM BALDASSARE, in his official capacity, JODI ALPER, in her official capacity, JOHN MALAY, in his official capacity, KATHLEEN "KIPPY" PIEDICI, in her official capacity, LEON HARRIS, in his official capacity, PAULA AXT, in her official capacity, RANDY SANTORO, in his official capacity, RICH MOSCHELLO, in his official capacity, SCOTT ROSS, in his official capacity, CAROL BIANCHI, in her official capacity, CAROLYN GAZIANO, in her official capacity, THOMAS S. RUSSO, JR., in his official capacity, and JOHN CARPENTER, in his official capacity,

Defendants.

Civil Action No. _____

COMPLAINT AND
DEMAND FOR JURY TRIAL

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LOCAL CIVIL RULE 10.1 STATEMENT OF PARTY ADDRESSES

Plaintiff the Islamic Society of Basking Ridge has a business address of 124 Church Street, Basking Ridge, New Jersey 07920. Plaintiff Mohammad Ali Chaudry serves as the Islamic Society of Basking Ridge's President and has a business address of 124 Church Street, Basking Ridge, New Jersey 07920. Defendants Township of Bernards, Bernards Township Planning Board, and Bernards Township Committee share a business address of 1 Collyer Lane, Basking Ridge, New Jersey 07920. Defendants Barbara Kleinert, Jeffrey Plaza, Jim Baldassare, Jodi Alper, John Malay, Kathleen "Kippy" Piedici, Leon Harris, Paula Axt, Randy Santoro, Rich Moschello, and Scott Ross are current members of the Bernards Township Planning Board and, therefore, have a business address of 1 Collyer Lane, Basking Ridge, New Jersey 07920. Defendants Carol Bianchi, Carolyn Gaziano, Thomas S. Russo, Jr., John Malay, and John Carpenter are current members of the Bernards Township Committee and, therefore, have a business address of 1 Collyer Lane, Basking Ridge, New Jersey 07920. The personal addresses of the parties who are natural persons are not provided at this time in order to protect their privacy and safety.

The Islamic Society of Basking Ridge ("ISBR") and Mohammad Ali Chaudry ("Dr. Chaudry") (together, "Plaintiffs"), through their attorneys, hereby allege as follows, except as to matters not within their personal knowledge, which are alleged on information and belief.

INTRODUCTION

1. Plaintiffs bring this action to challenge Defendants' denial of their application to build a mosque in the Township of Bernards, New Jersey (the "Township").

2. Mosques and Islam have a long history in the United States. Almost 60 years ago, President Dwight D. Eisenhower spoke at the inauguration of a mosque in Washington, D.C. He stated: "And I should like to assure you, my Islamic friends, that under the American Constitution, under American tradition, and in American hearts, this Center, this place of worship, is just as welcome as could be a similar edifice of any other religion. Indeed, America would fight with her whole strength for your right to have here your own church and worship according to your own conscience. This concept is indeed a part of America, and without that concept we would be something else than what we are." Almost two centuries before that, Thomas Jefferson similarly affirmed that he had designed the Virginia Statute of Religious Freedom, the First Amendment's primary precursor, to protect all faiths, including "the Jew and the gentile, the Christian and the Mahometan."

3. President Barack Obama recognized these deeply-rooted American truths while speaking at a mosque in Baltimore earlier this year: "when enshrining the freedom of religion in our Constitution and our Bill of Rights, our Founders meant what they said when they said it applied to all religions." He added: "If you're ever wondering whether you fit in here, let me say it as clearly as I can, as President of the United States: You fit in here—right here. You're right where you belong. You're part of America, too. You're not Muslim or American. You're Muslim and American."

4. Plaintiffs are just that. They are a small Islamic society that serves a historically rooted Muslim community in the Township, and its President, a Ph.D. economist who has lived with his family in the Basking Ridge section of the Township for almost 40 years. After decades without a spiritual home in a town filled with houses of worship, Plaintiffs decided to build a mosque that would provide a dedicated place for the local Muslim community to pray and for local children to attend Sunday School.

5. Conscious of the intense hostility that had met recent attempts to build mosques in other municipalities, including nearby Bridgewater Township, Plaintiffs purchased a four-acre property in a zone where a house of worship was a "permitted use" under the Township's zoning ordinance. In April 2012, ISBR applied to the Bernards Township Planning Board (the "Board" or the "Planning Board") for approval of its site plan to build a modest 4,252-square-foot mosque containing a 1,594-square-foot prayer hall. That application fully complied with all zoning requirements.

6. What should have been a simple Board approval for a permitted use devolved into a Kafkaesque process that spanned an unprecedented four years and included 39 public hearings. These proceedings took place against a backdrop of ugly spectacle. An anonymous flyer that circulated in town stated: "Let's ask [Plaintiff] Ali [Chaudry] about those Koranic verses regarding Jews and Christians in your Koran. Why are so many terroristic acts propagated by Muslims? Is it something they are taught in your mosques and at home? And what will <u>you</u> teach in your new Liberty Corner mosque?" (Emphasis in original.) A volunteer firefighter neighbor told Dr. Chaudry: "Eleven brothers died on 9/11 and now you want to put a mosque next to my house with the insignia of the people who did that." And perhaps the most outspoken objector to the mosque at Board hearings, a suspended lawyer with extreme views regarding

Islam, exhorted the community to "continue to attend [Board] meetings and create awareness among our neighbors" while warning "about the Muslim practice of 'taqiyya,' deceit, condoned and encouraged in the Quran."

7. This community opposition evolved into a well-funded machine that recruited objectors and coached them to channel their opposition through the permissible language of land use: parking, buffer and screening requirements, stormwater management, and so on. A community group—the Bernards Township Citizens for Responsible Development—was formed specifically to oppose the mosque. In one instance, a trustee of the organization presented members of another area group with details about the mosque. As meeting minutes reflect, the participants were cautioned not to reveal their true intentions: "**Please remember do not make any comments about the Religion or Islamic Mosque itself!!** If we do so we will loose [*sic*] the battle." (Emphasis in original.)

8. Meanwhile, inside the Board's hearings, hostile objectors raised one unreasonable and picayune land use objection after another, attempting to manufacture discretionary bases for the Board to deny ISBR's application even though, under state law, the Board had no such discretion. The Board and its professionals frequently adopted those objectors' arguments and leveled serial demands based on novel interpretations of the local zoning ordinance that had never been applied to any other applicant in the Township. Nonetheless, and without regard to the unreasonable and escalating nature of the Board's demands, Plaintiffs and their team of professional engineers and other experts bent over backwards to try to secure approval. At great cost and expense, Plaintiffs dutifully revised their site plan and brought back professionals to testify time and again, only to find that the Board had generated yet more requirements resulting from Plaintiffs' satisfaction of prior demands.

9. One objector revealed in a blog post that imposing delay and expense was a deliberate strategy aimed at getting ISBR to give up and move elsewhere: "Our goal is to force the township planning board to put a stay on the decision, order new studies, and drag the issue into Neverland . . . . Will our opponent be able to survive the wait? Will there be greener grass elsewhere . . . ."

10. A key early battle related to parking. The Township's parking ordinance specifies one parking spot for every three seats in a church. The term "church" in the municipal ordinance is defined to encompass all houses of worship, including mosques. ISBR's original application accommodated a maximum of 150 worshippers in its prayer hall and, accordingly, provided 50 parking spaces applying the three-to-one ratio. The Township's own Board Planner expressly agreed that ISBR's parking proposal satisfied the ordinance requirement. Objectors at public hearings, however, insisted that a different parking standard should apply to a mosque than to a church. The Board ultimately agreed and then explored one novel parking methodology after another. It discarded various different formulations, even those prepared by its own Board Planner, because they all generated reasonable numbers of parking spaces not dissimilar to the three-to-one ratio set forth in the parking ordinance. After much trial and error, the Board adopted a proposal from an objector that required a massive parking lot with 107 parking spaces. This for a congregation that, at the time of application, peaked at 65 worshippers for one weekly afternoon service. The Board ignored all of ISBR's proposals designed to address parking concerns, including a proposal to split the largest weekly service into two services, similar to the practice of area churches, if parking ever became a constraint due to future growth.

11. ISBR nonetheless complied and generated revised site plans featuring 107 parking spaces. Objectors and the Board then seized upon the oversized parking lot they had imposed as

a basis to make new objections. For example, a large parking lot created more impervious surface, left less room for drainage improvements, required more lighting, and so on. ISBR again made every effort to accommodate the Board's ever-escalating demands, but to no avail. In December 2015, the Board denied preliminary and final approval to build the mosque. Among its bases for denial:

- That ISBR's eastern buffer area included an "aesthetically displeasing fence," even though ISBR's plans provided many new evergreen trees for natural screening and ISBR had added a fence to its site plan at the suggestion of the Board's own planners, who proposed it to moot screening objections.

- That headlights from ISBR's parking lot might be visible from a property more than 200 feet to the south of ISBR's property, even though the parking lot was screened by both a pre-existing heavily-wooded area and new evergreen trees proposed by ISBR, which the Board ignored.

- That ISBR had failed to submit certain stormwater management-related technical calculations to the Board, even though those calculations were performed by the Board's own engineer, who had repeatedly confirmed that ISBR's plans satisfied all applicable regulations.

- That ISBR had failed to specify on its plans a safe place for Sunday School drop-off, even though ISBR's engineer had detailed drop-off plans both orally and in writing, which featured children stepping from cars onto a sidewalk under the supervision of a monitor at the rear of the building—the only permissible drop-off location per the Township's own prior rulings.

- That ISBR had failed to provide adequate fire truck access under an untenable legal theory that had been rejected by the Board's own attorney, fire official, and planner, and even though ISBR had proven, using a generally-accepted computer model, that the Township's largest fire truck could circumnavigate ISBR's property.

- That ISBR's plans provided for lighting that was too "intense" for adjoining properties, even though ISBR's lighting was well below the limits detailed in the local ordinance and ISBR submitted a lighting plan showing no off-premises impact.

12. The Board's treatment of Plaintiffs is exceptional relative to its dealings with numerous other organizations, both religious and secular, going back over two decades. The

Township's land use boards have routinely granted approvals to other site plan applicants under circumstances where ISBR was denied. And the Board subjected Plaintiffs to uniquely harsh and adverse treatment that contrasts sharply with how it has treated other applicants, including churches, synagogues, and schools.

13. But Defendants' zeal to prevent ISBR from establishing a spiritual home did not stop at the Board. Defendants recognized that a simple denial of Plaintiffs' application would have allowed for a renewed application. Accordingly, Defendants also changed the rules wholesale.

14. In the fall of 2013, at the instigation of the same suspended lawyer-objector, Defendants amended the local zoning laws to make it more difficult—and a practical impossibility for Plaintiffs—to build a house of worship in the Township. The new zoning ordinance made houses of worship a "conditionally permitted use," and required them to, among other things, have a minimum of six acres of land, meet draconian restrictions on parking and setbacks, and maintain primary access from state or county roadways. When local Christian leaders objected to the new law, Defendants assured them that they would be "grandfathered" in and that the new law would bar only new religious groups trying to gain entrance to the Township community. As community members at the meeting unaffiliated with Plaintiffs immediately recognized, "this is being done as a reaction to the Muslim community" and "the whole bugaboo about Islam."

15. On December 8, 2015, the Board voted to deny Plaintiffs' application. Just over a month later on January 19, 2016, the Board issued its formal resolution of denial. In combination with the new ordinance restricting houses of worship, the Board had done its part to prevent there ever being a mosque in the Township.

16. A local news report described the scene when community members, having packed the Board meeting, learned of the denial: "'Party! Party! Party!' yelled one Church Street resident as she jumped up and down outside with other residents in a circle. They hugged, cheered and danced at the decision. 'Yes I'm happy,' [a local resident] who lives on Church Street said. 'I wish them the best of luck and hope they find a property with six-plus acres to build. Or I hear they are building a mosque in Bridgewater, they can go there.'"

JURISDICTION AND VENUE

17. Plaintiffs' federal claims arise under 42 U.S.C. § 2000cc and 42 U.S.C. § 1983. This Court has jurisdiction over this action under 28 U.S.C. § 1331. The Court has supplemental jurisdiction over Plaintiffs' state-law claims under 28 U.S.C. § 1367(a). These state-law claims arise from the same set of facts and circumstances as Plaintiffs' federal claims and are so related to those claims that they form part of the same case or controversy.

18. Venue properly lies in this District pursuant to 28 U.S.C. § 1391(b)(2), because the events giving rise to this action occurred in the Township of Bernards, which is located within the District of New Jersey.

THE PARTIES

A. Islamic Society of Basking Ridge

19. Plaintiff ISBR, founded in 2011, is a not-for-profit religious congregation organized under the laws of New Jersey. ISBR's mission is to provide a religious, educational, cultural, and social community for Muslims living or working in the Township and the surrounding areas. ISBR aims to create an open, diverse, inclusive, and moderate environment for men, women, and children to practice the Islamic faith.

20. ISBR actively promotes interfaith dialogue in order to improve relations between Muslims and people of other faiths. ISBR also regularly engages with other faith groups and

secular affiliations in community-based efforts to reduce the effects of poverty and hunger. For example, ISBR participates in an ongoing program of service to homeless veterans through the Lyons V.A. Hospital located in the Township, participates in the Hunger Van project of Muslims Against Hunger by preparing meals for distribution in the New York and New Jersey area, and is a co-sponsor of Fighting Poverty with Faith, a nationwide interfaith program that combats poverty.

B. Mohammad Ali Chaudry

21. Plaintiff Mohammad Ali Chaudry, Ph.D., is a founder of ISBR and currently serves as its President. Dr. Chaudry grew up in Pakistan and graduated from the London School of Economics in 1967. He then came to the United States as an exchange student and earned a Ph.D. in economics from Tufts University in 1972. Dr. Chaudry spent his professional career at AT&T, where he worked for 30 years as an economist and strategic planner, rising to the level of Chief Financial Officer of AT&T's Public Relations Division. He also lectured at Rutgers University from 2004 to 2014 on topics including leadership, multinational business management, applied business statistics, and business policy.

22. Dr. Chaudry has a long history of community engagement. He was elected to serve on the Bernards Township Board of Education from 1990 to 1995. From 1996 to 1998, he headed-up a volunteer task force and advisory board to create the Bernards Township Community Center for the benefit of all Township residents. In November 2001, Dr. Chaudry was elected a member of the Bernards Township Committee, where he served two three-year terms in office from 2002 to 2007. Dr. Chaudry served as Deputy Mayor of the Township in 2003 and as its Mayor in 2004. Dr. Chaudry is believed to have been the first Pakistani-born mayor of a municipality in the United States.

23. Dr. Chaudry serves as the President of the Branchburg Rotary Foundation, which facilitates the charitable activities of the Branchburg Rotary Club and Rotary International. He is also a member of the Branchburg Rotary Club.

24. In 2013, the Governor of New Jersey appointed Dr. Chaudry to a three-year term as Commissioner on the New Jersey Commission on National and Community Service.

25. Dr. Chaudry regularly speaks publicly to religious organizations and community groups on the topic of encouraging interfaith communication and dialogue. Since 2012, Dr. Chaudry has served on the New Jersey Attorney General's Outreach Committee for the Muslim Community, which was created to build a relationship of mutual trust and understanding between law enforcement and the Muslim community. In fall 2013, Dr. Chaudry became part of the team of interfaith instructors offering cultural awareness training at the New Jersey State Police Academy. Since March 2015, Dr. Chaudry has also served on the Interfaith Advisory Council of the New Jersey Department of Homeland Security and Preparedness.

C. Township of Bernards

26. Defendant Township is a municipality, chartered under the laws of the State of New Jersey, and located in Somerset County, New Jersey.

D. Bernards Township Committee

27. Defendant Bernards Township Committee (the "Township Committee" or the "Committee") is the legislative and executive body of the Township. The Committee is comprised of five members, elected by Township residents in partisan elections for three-year terms of office. The Committee elects the Mayor of the Township from among its five members.

28. Defendants Carol Bianchi, Carolyn Gaziano, Thomas S. Russo, Jr., John Malay, and John Carpenter are all currently members of the Committee, and are joined herein as Defendants in their official capacities.

E. Bernards Township Planning Board

29. Defendant Bernards Township Planning Board is an agency of the Township Committee, and its 11 members include the Mayor (or the Mayor's designee), residents appointed by the Mayor, and one member of the Township Committee. The Board is responsible for preparing and adopting a Township Master Plan under New Jersey state law, and for reviewing land use development within the Township. The Board is charged by the Township with reviewing subdivisions, site plans, planned developments, conditional uses, and certain variances. The Board also reviews and recommends revisions to the land use ordinance to the Committee. The Board shares jurisdiction over administration and application of the Township's zoning ordinance with the Township's Zoning Board of Adjustment ("Zoning Board").

30. Defendants Barbara Kleinert, Jeffrey Plaza, Jim Baldassare, Jodi Alper, John Malay, Kathleen "Kippy" Piedici, Leon Harris, Paula Axt, Randy Santoro, Rich Moschello, and Scott Ross are all members of the Board, and are joined herein as Defendants in their official capacities.

OVERVIEW OF APPLICABLE LAW

31. Plaintiffs bring this action to enforce their rights under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc, the First and Fourteenth Amendments to the U.S. Constitution, the New Jersey Constitution, and New Jersey state law.

A. The Religious Land Use and Institutionalized Persons Act

32. The Religious Land Use and Institutionalized Persons Act ("RLUIPA") was unanimously passed by the U.S. Congress and signed into law on September 22, 2000. Congress passed RLUIPA after three years of hearings in the late-1990s. Those hearings revealed "massive evidence" of widespread discrimination against religious persons and organizations by

state and local officials in land use decisions.[1] "[T]he motive is not always easily discernible, but the result is a consistent, widespread pattern of political and governmental resistance to a core feature of religious exercise: the ability to assemble for worship."[2] Congress noted that zoning laws often place the ability of religious groups to assemble for worship "within the complete discretion of land use regulators," who often have "virtually unlimited discretion in granting or denying permits for land use and in other aspects of implementing zoning laws."[3] RLUIPA's Senate sponsors also observed that "[c]hurches and synagogues cannot function without a physical space adequate to their needs and consistent with their theological requirements."[4]

33. RLUIPA complements the protections endowed on religious exercise by the First Amendment by prohibiting, in relevant part, four types of conduct in the imposition and implementation of land use regulations. *First*, RLUIPA prohibits the implementation of land use regulations in a manner that imposes a substantial burden on the religious exercise of a person or religious institution, in the absence of a compelling state interest achieved by the least restrictive means.[5] *Second*, RLUIPA prohibits implementation of 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.[6] *Third*, RLUIPA prohibits discrimination on the basis of religion in the imposition or

[1] *See* H.R. Rep. No. 106-219, 18-24 (1999); 146 Cong. Rec. 16698 (2000) (Joint Statement of Senators Hatch and Kennedy).

[2] H.R. Rep. No. 106-219, at 24; *see also* 146 Cong. Rec. S7774 (daily ed. July 27, 2000).

[3] H.R. Rep. No. 106-219, at 19-20.

[4] 146 Cong. Rec. S7774.

[5] 42 U.S.C. § 2000cc(a).

[6] *Id.* at § 2000cc(b)(1).

implementation of any land use regulation.[7] *Fourth*, RLUIPA prohibits the imposition or implementation of a land use regulation that unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.[8] Additionally, pursuant to 42 U.S.C. § 1988(b), prevailing plaintiffs under RLUIPA are eligible for an award of attorneys' fees.

B. The First and Fourteenth Amendments to the U.S. Constitution and the New Jersey Constitution

34. The First Amendment to the U.S. Constitution, as incorporated through the Fourteenth Amendment, prohibits state and local governments from taking any action that unduly infringes on the free exercise of religion. The Free Exercise Clause limits enforcement of laws that impose a substantial burden on the exercise of sincerely held religious beliefs.

35. The Fourteenth Amendment, directly applicable by its terms to state and local governments, guarantees "the equal protection of the laws" to all individuals. The Equal Protection Clause strictly limits a state or local government's ability to distinguish individuals or groups on the basis of, among other things, religion. The Due Process Clause prohibits statutes that fail to provide people of ordinary intelligence a reasonable opportunity to understand the conduct governed thereby, as well as statutes that authorize or encourage arbitrary or discriminatory enforcement.

36. The New Jersey Constitution provides protections that overlap with those guaranteed by the U.S. Constitution.

C. The New Jersey Municipal Land Use Law

37. Under the New Jersey Municipal Land Use Law ("MLUL"), a developer must obtain preliminary and final approval of a site plan from a planning board established by a

[7] *Id.* at § 2000cc(b)(2).

[8] *Id.* at § 2000cc(b)(3)(B).

municipality. For preliminary approval, the applicant must submit site drawings, preliminary architectural plans, and engineering documents in "tentative form for discussion purposes." Upon submission of a complete application for a site plan like ISBR's, the planning board must grant or deny preliminary approval within 45 days of the date of such submission or within any additional time consented to by the developer.[9]

38. For a permitted use like ISBR's, so long as the application complies with the municipal land use ordinance, or the application can be conditioned to comply without "substantial amendment," the planning board must grant preliminary approval.[10] But if the application does not comply with a particular zoning ordinance, the applicant must seek either a variance or an exception, depending on the type of non-compliance at issue.

39. Once preliminary approval is granted, the right to develop the land vests in the applicant for a limited period of time, during which the applicant may satisfy any conditions of approval that the planning board imposed and then seek final approval. The planning board may not modify or add conditions once preliminary approval is granted. A planning board must grant final approval once the applicant's detailed drawings, specifications, and estimates conform to the local ordinances and the conditions of preliminary approval.[11]

40. In addition to requiring a predictable and standard-driven system of zoning regulations across New Jersey, the MLUL forbids decisions by local planning boards that are arbitrary, capricious, or unreasonable. It also limits the standard by which a land use board can review an application to the specific land use ordinances of the relevant municipality.

[9] N.J.S.A. § 40:55D-46(c).

[10] N.J.S.A. § 40:55D-46(b) & 50(a).

[11] N.J.S.A. § 40:55D-50(a).

FACTS

A. ISBR Has No Adequate Facilities for Muslim Worship in the Township

41. ***Dedicated sacred place of worship.*** Islam requires that a mosque be a sacred space dedicated to prayer and worship of God. Consistent with the teachings of Islam, ISBR's members believe there is substantial value to gathering for congregational prayer in a mosque, which they currently do not have in the Township. Without a dedicated, sacred space in which to worship God as a congregation, ISBR's members cannot fully realize their Islamic faith.

42. ***Prayer.*** Islam requires Muslims to pray five times a day. During prayer, worshippers must face in the direction of Mecca, Saudi Arabia, the holiest site in the Islamic faith. The Friday afternoon prayer service, referred to as *Jumma*, is the most important service of the week. Muslims also engage in various other special prayers, such as evening prayers during the Islamic holy month of Ramadan, prayers on Islamic holidays, and funeral prayers.

43. For over eight years, ISBR has held most *Jumma* services in the Township's Community Center ("Community Center"), a facility that Plaintiffs must rent from the Township. ISBR rents the Community Center for only one service per week, its Friday *Jumma* service. ISBR members have no place to gather for prayers during the rest of the week or for special prayers.

44. Even as to *Jumma* services, the Community Center is not available to ISBR year-round. During July and early August of each year, the Township uses the Community Center for public summer programs, forcing ISBR to rent space from the Township in Harry Dunham Park, a local public park.

45. The Community Center also has significant limitations as a place of worship. A mosque has a single prayer hall enabling all worshippers to pray in a single congregation, and to see and hear the *imam* leading the prayer. By contrast, the Community Center layout, with two

buildings separated by a patio, forces ISBR to split the congregation between the two buildings such that less than half of the weekly congregation can see and hear the *imam* directly. The remaining members of the congregation cannot see the *imam* and are only able to hear him via an audio link between the two buildings. If the link malfunctions, half of ISBR's congregants miss portions of the service altogether.

46. At both the Community Center and the public park, ISBR members are required to set up and break down their worship supplies—including the audio system that allows congregants to listen to the prayer service—each week. This involves a cumbersome process of transporting and storing these supplies. For years, Dr. Chaudry or another volunteer has hauled these supplies back and forth for *Jumma* services. For that reason, the congregation has come to call Dr. Chaudry's car the "mosque-mobile."

47. Further, ISBR cannot, as a practical matter, rent the Community Center on a continual basis as would be necessary to use it for all religious activities, such as the five daily prayers required by Islam. The Community Center also has timing restrictions and therefore cannot be used for special prayers conducted during the holy month of Ramadan. ISBR must also rent separate facilities with suitable space for special Islamic holiday prayers.

48. Both the Community Center and Harry Dunham Park are inadequate for Muslim worship; ISBR's members are unable to fully exercise their faith and meet their spiritual needs.

49. ***Wudu.*** Islam requires a ritual ablution called *wudu* prior to each prayer. This ritual cleansing involves cleaning of the face, arms, and feet, necessitating ample space, specially designed wash basins, and access to clean water. A mosque contains a *wudu* area designed and devoted to this ritual cleansing prior to prayers. Neither the Community Center nor Harry Dunham Park contains appropriate facilities for performing *wudu*.

50. ***Imam.*** ISBR's lack of a dedicated, sanctified place for prayer makes it substantially more difficult to attract a permanent *imam*, a leader of a Muslim congregation, who would lead its prayer services and address the congregation's spiritual needs. Like a pastor in a Christian church or a Rabbi in a Jewish synagogue, an *imam* is a central figure in a Muslim congregation, and a permanent *imam* is important to ISBR's full enjoyment of its religious rights. A permanent *imam* would strengthen ISBR's religious community and provide guidance to individuals and families. If ISBR were able to build a mosque, it could, in due course, attract a permanent *imam* to lead prayer services and attend to the spiritual needs of ISBR's members.

51. ***Religious educational services for children.*** As in other faiths, proper religious education for children is essential in Islam. A stable and central location for faith-based education provides a religious congregation's children the opportunity to learn and experience their faith in a manner consistent with the faith's tenets. At the time of its application and today, ISBR has rented space at different locations in the Township for its Sunday School. It was initially housed at the Community Center, but that space became inadequate. It was then housed at a local YMCA, but ISBR was unable to rent sufficient space for its Sunday School on a regular basis at that location as well. ISBR currently pays certain fees to use space in a local elementary school each Sunday, but it is not able to use all areas of even the classrooms available to it. The current location does not allow for storage of supplies or consistent use of permanent teaching tools, requiring both teachers and children to supply all necessary materials and equipment anew each Sunday. ISBR lacks a stable location in which to provide proper religious education to the congregation's children.

52. ***Inability to pray in a congregation.*** Due to the required timing of Islamic prayers throughout the day, and the required timing of *Jumma* services in the middle of Friday afternoon,

close proximity to a mosque is essential for practicing Muslims. The nearest mosque to the Township is a thirty-minute drive from most parts of town. Without a mosque in the Township, ISBR and its members are unable to engage in congregational worship in a timely manner consistent with their sincerely held beliefs.

B. ISBR's Search for a Permanent Spiritual Home in the Township

53. In 2008, the Township Muslim community, in an effort spearheaded by Dr. Chaudry, first began to search for a property on which to build a mosque. The purchase of the property and subsequent construction were to be funded by a variety of means, including donations from congregants and loans from financial institutions. The budget for the purchase of the property was approximately $750,000.

54. Dr. Chaudry was aware that attempts to build mosques in other areas had faced community opposition, including on zoning issues. He sought to purchase a property zoned as residential because a house of worship was a "permitted use" in all residential zones of the Township. Dr. Chaudry sought to avoid the need for any zoning variances. For example, ISBR sought to ensure that the contemplated lot exceeded the minimum acreage—three acres—required for a house of worship pursuant to the Township's zoning ordinance to avoid needing a variance.

55. In or around 2010, Dr. Chaudry identified a property located at 124 Church Street in the Liberty Corner section of the Township (the "Property"). The Property, located in the R-2 residential zone, is designated as Block 9301, Lot 2 on the Township's tax maps. It contained (and still contains) a single-family home and a detached structure situated on 4.08 acres of land.[12]

[12] The property is situated on approximately 4.3 acres of land, but ISBR can use only 4.08 acres because approximately 0.21 acres of the lot is reserved for an easement to the local utility company.

The Property met all requirements of the Township's zoning ordinance for a house of worship to be permitted in a residential zone as of right.

56. The Township contains a designated historical district referred to as the Liberty Corner Historic District. The Property is not located within the Liberty Corner Historic District.

57. The Property is located in a residential zone containing a mix of single-family homes, institutional uses, and commercial uses. Across the street from the Property is a fire station, the Liberty Corner Fire Company, and its immediate neighbors to the east and west are single-family residences. Within a half-mile of the Property, there is a church, an elementary school, a large public park, an auto body shop, and a gas station. Within one mile of the Property, there is a post office, a doctor's office, a yoga studio, a bakery, multiple restaurants, and other retail establishments. Some of these establishments are located inside the Liberty Corner Historic District.

58. There are at least 10 houses of worship located in residential zones in the Township. Those houses of worship include the following: (a) Liberty Corner Presbyterian Church; (b) Congregation B'nai Israel (also known as Somerset Hills Jewish Center); (c) Chabad Jewish Center; (d) Millington Baptist Church; (e) Covenant Chapel Reformed Episcopal Church; (f) St. James Catholic Church; (g) St. Mark's Episcopal Church; (h) Basking Ridge Presbyterian Church; (i) Somerset Hills Lutheran Church; and (j) Somerset Hills Baptist Church. Of those houses of worship, the following are located on properties abutting single-family residences: (a) Liberty Corner Presbyterian Church; (b) Chabad Jewish Center; (c) Millington Baptist Church; (d) Covenant Chapel Reformed Episcopal Church; (e) St. Mark's Episcopal Church; (f) Somerset Hills Lutheran Church; and (g) Somerset Hills Baptist Church.

59. On November 9, 2011, ISBR purchased the Property for $750,000. Dr. Chaudry personally guaranteed the mortgage obtained to finance the purchase of the Property. Following its purchase of the Property in November 2011, ISBR began planning the construction of a small mosque to accommodate its congregation's prayer services and to house its Sunday School. ISBR hired a team of experts—including civil and traffic engineers, architects, land surveyors, planners, and attorneys—to develop and draft a fully compliant site plan, architectural plans, and related documents for submission to the Board.

C. ISBR Applies to the Board for Preliminary and Final Site Plan Approval

60. By the time ISBR purchased its Property, controversy had erupted over a Muslim congregation's attempt to build a mosque in nearby Bridgewater Township, New Jersey. Eager to avoid any similar problems, ISBR sought to work closely with the Board, the Board's professional staff, and ISBR's future neighbors to preempt and address any legitimate concerns. To that end, prior to submitting its application to the Board, ISBR reached out to its neighbors on Church Street and held two open houses to share its plans.

61. ISBR also contacted the Board and certain engineering and planning staff of the Township to solicit informal feedback regarding ISBR's preliminary plans through a work session on January 17, 2012. Based on that work session with the Board, ISBR decided to abandon its original plan to renovate the existing structure in favor of building a new structure that complied with the setback requirements of the Township's ordinance.

62. On April 20, 2012, ISBR submitted its application for preliminary and final site plan approval for a new structure and parking lot that were designed to comply with all applicable requirements of the Township's zoning ordinance. ISBR's application (dated April 28, 2012 and revised slightly as of July 5, 2012) proposed construction of a 4,252-square-foot mosque on the Property—approximately the size of a large single-family home similar to

many in the area. The architectural plans depicted a building containing a 1,594-square-foot prayer hall, a *wudu* room, a multi-purpose room, an entry gallery, a kitchen, and an administrative office. The site plan included 50 parking spaces, drainage basins to handle stormwater runoff, a circular driveway, and screening around the Property to maintain a barrier between the parking lot and neighboring residential lots, as required by the Township's zoning ordinance. The plan also complied with acreage, setback, and lot-dimension requirements, as well as lot-coverage limitations, all front, side, and rear yard setback requirements, and restrictions on the height, square-footage, and location of the building.

Figure 1: Rendering of ISBR's Proposed Mosque
(Presented to Defendant Board on November 28, 2012)

63. The exterior appearance of ISBR's proposed mosque was designed to fit into a residential neighborhood. ISBR's architect chose to omit a traditional dome from his mosque design, and opted for discreet minarets on the sides of the building in a form that mimics

residential chimneys. The minarets were also designed to be lower in height than any church steeples in the surrounding area. In addition, the architect designed a lower roof line on the side of the building facing the street in order to minimize its visual impact. Finally, the architect used features such as a "hipped roof," which is common in nearby homes and other buildings.

64. ISBR's architect originally estimated the maximum occupancy of the mosque's 1,594-square-foot prayer hall at 150 people. The parking lot proposed in ISBR's initial application contained 50 parking spaces, which was a number calculated pursuant to the Township parking ordinance applicable—and historically applied—to houses of worship.

65. Once ISBR's application was deemed complete and ready for consideration by the Board's staff, the Board began public hearings on the proposed site plan. Those hearings commenced on August 7, 2012 and did not end until the denial of ISBR's application on December 8, 2015. In total, the Board held 39 public hearings over three-and-a-half years after ISBR's initial submission. The period of time from the initial Board work sessions to the issuance of a final resolution was four years.

66. The Board has never in its history held anywhere near as many public hearings on an application for site plan approval submitted by any organization, religious or secular, let alone for an as-of-right use. By contrast, the Board regularly approves major site plan applications and major subdivisions, including requests for variance relief from the zoning ordinance, in one or just a few meetings.

D. Community Opposition and Anti-Muslim Animus

67. As soon as ISBR stated its intention to build a mosque in the Township, vocal elements within the community responded with hostility. It soon became clear that opposition to ISBR's mosque proposal was substantially grounded in anti-Muslim animus.

68. The first overt hostile act occurred right after a local newspaper (*The Bernardsville News*) announced that ISBR would present initial plans for a mosque at a January 17, 2012 meeting with the Board. On January 13, 2012, an unknown individual knocked over and stomped on ISBR's mailbox. *See* Figure 2. That mailbox bore the letters "ISBR," and was the only sign identifying the Property as associated with ISBR. Dr. Chaudry reported this act of vandalism to the police.

Figure 2: Damaged ISBR Mailbox Bearing Police Measurement Tape

69. A few days later, on January 17, 2012, many community members attended the Board work session on ISBR's application to oppose ISBR's plans, even though ISBR had not yet filed a formal application and no public comment was permitted. Right after that meeting, one of ISBR's neighbors, a volunteer firefighter whose lot abuts the Property to the west, verbally accosted Dr. Chaudry in the parking lot, and stated, "Eleven brothers died on 9/11 and

now you want to put a mosque next to my house with the insignia of the people who did that." That neighbor spoke in opposition to ISBR's application at multiple Board hearings.

70. When formal Board hearings began on August 7, 2012, nearly eight months after ISBR's work session with the Board, they took place in an atmosphere of pronounced hostility. Large crowds attended the Board's meetings to express opposition to ISBR's proposal. The Board asked for police to be present to ensure security. The Board also allowed members of the public to engage in aggressive and misguided questioning of ISBR witnesses. For example, community members questioned ISBR witnesses about whether ISBR's members would use the Property for animal sacrifices. Lori Caratzola, one of the most fervent and persistent objectors at Board hearings on ISBR's application, despite living more than two miles from the Property, presented the Board with the peculiar claim that "100 billion animals are sacrificed in the name of Islam in the United States every year." The Board also heard testimony that the mosque may place a "burden on police forces if there's anything that's to be addressed that may be outside of our law."

71. A town resident unaffiliated with ISBR, who witnessed the Board's first hearing, wrote a letter to the Editor of *The Bernardsville News*, noting that "what pained me was the level of distrust and lack of respect expressed by some questioners." She urged the community to "remember that the society's representative at the meeting, Ali Chaudry, served our community on the school board and was mayor of the town, and that the members of the society are as sincerely committed to their religion as many of us are to ours." She urged "respect for everyone in our pluralistic community."

72. Her appeal fell on deaf ears. Shortly before that first hearing, a flyer was anonymously distributed throughout the local community. Among other things, it stated:

> So, welcome to the neighborhood, Ali [Chaudry]. Let's ask Ali about those Koranic verses regarding Jews and Christians in your Koran. Why are so many terroristic acts propagated by Muslims? Is it something they are taught in your mosques and at home? And what will you teach in your new Liberty Corner mosque? You wouldn't lie to us, would you? Taqiyya is wrong, right?

(Emphasis in original.)

73. Similar sentiments were expressed online. In response to an August 9, 2012 article regarding ISBR's application on the Patch local news website for Basking Ridge (http://patch.com/new-jersey/baskingridge), a commenter posting under the username "LC" described monitoring ISBR's *Jumma* services in Harry Dunham Park to count participants. This came two days after Ms. Caratzola, whose initials are "LC," had questioned Dr. Chaudry at the initial Board hearing about alleged violations of the fire code in Harry Dunham Park during ISBR's *Jumma* services. "LC" then commented as follows:

> I went on the websites of some other NJ mosques and they have activities at 1 and 2 in the morning! Look up the schedules at the Boonton mosque, which Choudry [*sic*] offered as a similar type of facility to what he plans: http://jmic.org/ And - remember the Imam of the Passaic County mosque is wanted in Israel for being a member of Hamas and is on the Homeland Security's deportation list. Chris Christie is a fan of his. Read a little here and ask yourself if this is what we want in Basking Ridge: https://www.familysecuritymatt . . . Remember - Chaudry said they would have lecturers and visiting imams. So, we really don't know who he'll be inviting into the community.

74. "LC" also exhorted the local community to attend the Board meetings and oppose the mosque by focusing on land use issues:

- We must continue to attend PB meetings and create awareness among our neighbors. Sadly, all the PB can consider is whether ISBR is in compliance with the ordinance. There's a lot of important information we're not allowed to present. For instance, Chaudry is a proponent of Islamic Society of North America (ISNA). . . . ISNA is a front for the Muslim Brotherhood . . . also learn about the Muslim practice of "taqiyya," deceit, condoned and encouraged in the Quran. Raymond Ibrahim, an Islamic scholar

> who has the advantage of being fluent in Arabic, has written an article called "Tawriya: 'Creative Lying' Advocated in Islam" available on www.gatestoneinstitute.org. I think Chaudry provided us an example of it when questioned by Mr. Orr Tuesday. Another great resource is 'Sharia Law for Non Muslims' by the Center for the Study of Political Islam. ($8 on Amazon -easy, short read) Read Pamela Geller. Go to ISBRI.org and see their posted Quran verses calling nonMuslims 'the worst of beasts' and more. Importantly- let's get together! If on FB - go to PreserveLibertyCorner page so we can unite. They're united - we should be!
>
> - Frankly, I think it's a shame and unjust that we cannot have an open discussion of ISBR's possible connections and intent in an open forum. But, yes, for the purpose of the Board, we must focus on whether they are compliant with the ordinance.
>
> - I'm more concerned with Islam's twenty year plan for the current century. As we sit in our homes this morning, people (Muslims, too) are being raped, tortured, and killed in the name of Islam. I can tell from your comment that you understand. Please attend all Board meetings and join the mailing list at www.btcrd.org to receive update. Have a nice day. :)

75. Other apparent community members on the same Patch community website continued to voice anti-Islamic sentiments through the second half of 2012. For example, one commentator on an article about the ISBR proposal stated: "Don't you realize that the goal of Muslim radicals is to TAKE OVER THE WHOLE WORLD and enforce Sharia law! Are you THAT misinformed!? Do your homework! When radical Islam realized they couldn't win by turning planes into missiles, they are now choosing the way of INFILTRATING our country . . . you are really naive to think this is not their mission."

76. Other commenters on Patch articles about the ISBR mosque in the same time period made more specific but equally false attacks against Plaintiffs:

> - When Ali Chaudry was in office the [Board of Education] did not allow a moment of silence for the victims on 9/11. . . . I submitted an earlier comment and sent a letter to the RHS administration to insure [*sic*] we Never forget. Something Ali would like us all to

> forget and methphorically [*sic*] build on the site where victims lived.[13]
>
> - The Mosque discriminates women [*sic*]. Women are not allowed to prayer [*sic*] with the men. Ali Chaudry said at the meeting he is abiding by the laws and constitution of the US. . . . I can prayer [*sic*] at any church in this town whether it be Catholic, Presbyterian, Methodist, etc and not be turned away. Why would we want a mosque in Basking Ridge for a religion that discriminates [*sic*] women praying with men.[14]
>
> - [A]s a woman, I have an issue with any institution that treats its women unfairly. I'm glad that I looked into this matter and intend to attend the upcoming meeting on September 4th. If anyone knows where to get the 'preserve liberty corner' sign, please let me know. I will proudly display it on my property.

77. In the Board's hearings, meanwhile, similar views were expressed in veiled terms. In an October 2012 Board hearing, for example, the Board heard testimony that ISBR's members are a "different kind of population instead of the normal Judeo-Christian population."

78. Insight into the objectors' motives and actions came when Ms. Caratzola plainly stated her true motives for a 2013 article in Shoe Leather Magazine: "I don't want a mosque anywhere in my town quite frankly."[15] Further, "[i]f I came in there and let [the Board] know I found out that [ISBR] had money from Hamas, that wouldn't even matter to the board because they can't consider anything but land use."[16]

79. Ms. Caratzola is listed as a supporter on the website of the American Public Policy Alliance ("APPA"), an advocacy group that claims "one of the greatest threats to American values and liberties today" comes from "Islamic Shari'ah law," which APPA claims is

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[13] Dr. Chaudry was not on the Board of Education during or after the events of September 11, 2001.

[14] ISBR does not accept the use of physical barriers to separate men and women during worship services.

[15] Taylor Hom, *American Mosque: America's mosques are caught in an uneasy tension between security concerns and prevailing values*, SHOE LEATHER, http://shoeleathermagazine.com/2013/hom.html.

[16] *Id.*

"infiltrating our court system."[17] She is identified among "Community Leaders for American Laws for American Courts" with the designation "New Jersey." As noted above, Ms. Caratzola has also endorsed the views of Pamela Geller, who is identified by the Southern Poverty Law Center in its index of Anti-Muslim Extremists as "the anti-Islam movement's most visible and flamboyant figurehead."[18]

80. As the hearings continued, an online poster who again identified herself as "LC"—and who now represented herself to be Ms. Caratzola—was also active on BareNakedIslam.com, a self-proclaimed "leading anti-Islam website[] in America."[19] The website posted an article about ISBR's mosque project copied from a news source and interspersed with the website's own commentary, which included statements such as "Nobody wants to live near potential terrorists" and "[Ms. Caratzola] should be applauded for her efforts here." The posting included a picture of the ISBR Property below a flaming skull next to the slogan, "It isn't Islamophobia when they ARE trying to kill you." The website headlined the posting: "A mosque by any other name is still a potential terrorist indoctrination center." *See* Figure 3. "LC" told the website author in her comments on the ISBR article that "I admire your work" and thanked him for his support.

[17] Center for American Progress, *Fear, Inc.: The Roots of the Islamophobic Network in America*, at 39 (Aug. 2011), *available at* https://cdn.americanprogress.org/wp-content/uploads/issues/2011/08/pdf/islamophobia.pdf.

[18] https://www.splcenter.org/fighting-hate/extremist-files/individual/pamela-geller.

[19] http://www.barenakedislam.com/2013/01/14/new-jersey-a-mosque-by-any-other-name-is-still-a-potential-terrorist-indoctrination-center.

Figure 3: BareNakedIslam.com Website

81. Ms. Caratzola cross-examined every witness for ISBR who testified at the Board's hearings.

82. Meanwhile, acts of physical hostility continued. On September 20, 2014, for example, an unknown individual again vandalized the mailbox of ISBR's Property at 124 Church Street. This time, the vandal placed on the mailbox three-inch stickers spelling the acronym "ISIS," which refers to a violent international terrorist group. The vandal then apparently attempted to peel off parts of the "ISIS" lettering to integrate it with the preexisting lettering on the mailbox. *See* Figure 4. Dr. Chaudry again reported the incident to the Township police. The police report specifically noted the vandal's attempt to convert "ISBR" into "ISIS" on the mailbox. *See* Figure 5.

Figure 4: Vandalized ISBR Mailbox with "ISIS" Lettering

13. Crime/Incident Location 124 CHURCH ST			28. Employer N/A		N/A
14. Municipality BASKING RIDGE, NJ	15. County SOMERSET	16. Code 1802	29. Person Reporting Crime/Incident MOHAMMAD CHAUDRY		30. Date and Time Sep 20, 2014 17:40
17. Type of Premises RELIGIOUS BUILDING	18. Code 78	19. Weapons - Tools	20. Code	31. Address [redacted] BASKING RIDGE NJ 07920	Phone [redacted]
32. Modus Operandi Unknown actor/s placed stickers spelling the acronym "ISIS", Islamic State in Iraq and Syria on the mailbox of 124 Church St.					

Figure 5: Police Report Regarding ISBR Mailbox Incident

83. And hostility continued to be expressed inside the Board's hearings. In September 2014, after the use of a fence in ISBR's site plans was addressed at a Board hearing, a community member was heard stating (off the record) that she would "rather look at a fence than a mosque."

84. Similarly, in the summer of 2015, a community member explained to the Board that "[t]he appropriate strategy I would argue for anyone moving into a community is to assimilate into that local society without unduly impacting the character of the community.

Liberty Corner is a historic village and that is why we chose to live here, we like it here, we like it the way it is. Assimilation means that one tries to minimize the impact on that community, live in it, enjoy it, but try to minimize your changes to it. . . . I worry about future congregants and how they will behave. . . . We have already seen some strange, aberrant behavior from [mosque] supporters . . . ."

85. On one occasion in August 2015, Dr. Chaudry was even the victim of physical intimidation in a restroom during a break at a Board hearing. Dr. Chaudry's assailant, a mosque opponent, claimed that Dr. Chaudry would put recordings he had made of the Board's public proceedings "up on radical Islamic websites." This incident was also reported to the police.

86. The motives of certain individual objectors who did not live proximate to the Property were further exposed that same month when a young Muslim family sought to purchase a home in the Basking Ridge area. Attending an open house in Basking Ridge, they were informed by a real estate agent that "Muslim people . . . are planning to build a mosque on Church Street in Liberty Corner area and the case is in town for over 3 years for getting [*sic*] an approval." The realtor, who assumed that the family was not Muslim, stated candidly that she was opposing the construction of the mosque because "Muslim people are terrorist [*sic*] and once they build the mosque, it will not be good for the community." The realtor explained that "we can't openly oppose the mosque construction, because it will be considered Racist [*sic*]." According to the realtor, "the Muslim community hired a high profile attorney to win their case and we are not happy at all. We wish we could shoot their attorney."

87. In December 2015, the Board denied ISBR's application. Days later, a sign on ISBR's Property reading "Proud to Be an American," which usually stands facing Church Street, was turned around by unknown trespassers so that only its blank rear side was visible.

E. An Organization Is Created to Oppose ISBR's Application

88. The opposition to ISBR's application to build a mosque in the Township reflected, on its face, religious and cultural animus against Muslims. This discriminatory intent was adopted by the Board itself and ultimately incorporated into its denial of ISBR's application. As the opposition grew more sophisticated, arguments inside the Board became increasingly focused on supposed land use concerns. And objectors, over time, grew more organized and coordinated.

89. In February 2012, right after ISBR's public work session with the Board, an organization was formed for the express purpose of opposing ISBR's application: the Bernards Township Citizens for Responsible Development (the "BTCRD").

90. The BTCRD website claims that the organization seeks appropriate land use policies that "strive to maintain the character of the community, protect the integrity of existing neighborhoods and prevent intrusion of incompatible new development."[20] Despite the organization's name and purported goals, however, it has never opposed any development other than ISBR's proposal to build a mosque. Indeed, the "our concerns" section of the BTCRD website discusses only one issue: "We are concerned about the impact of [ISBR's] development proposal to convert a current residential property to effectively commercial use by building a nearly 4,500 square foot Mosque complete with a 107 space parking lot on Church Street in Liberty Corner." As noted above, "LC", believed to be Ms. Caratzola, posted online encouraging people to visit the BTCRD website.

[20] https://btcrd.org/.

91. The BTCRD internet homepage prominently features a picture of a sign for the Liberty Corner Historic District. *See* Figure 6. As noted, however, ISBR's Property is not located in the Liberty Corner Historic District.

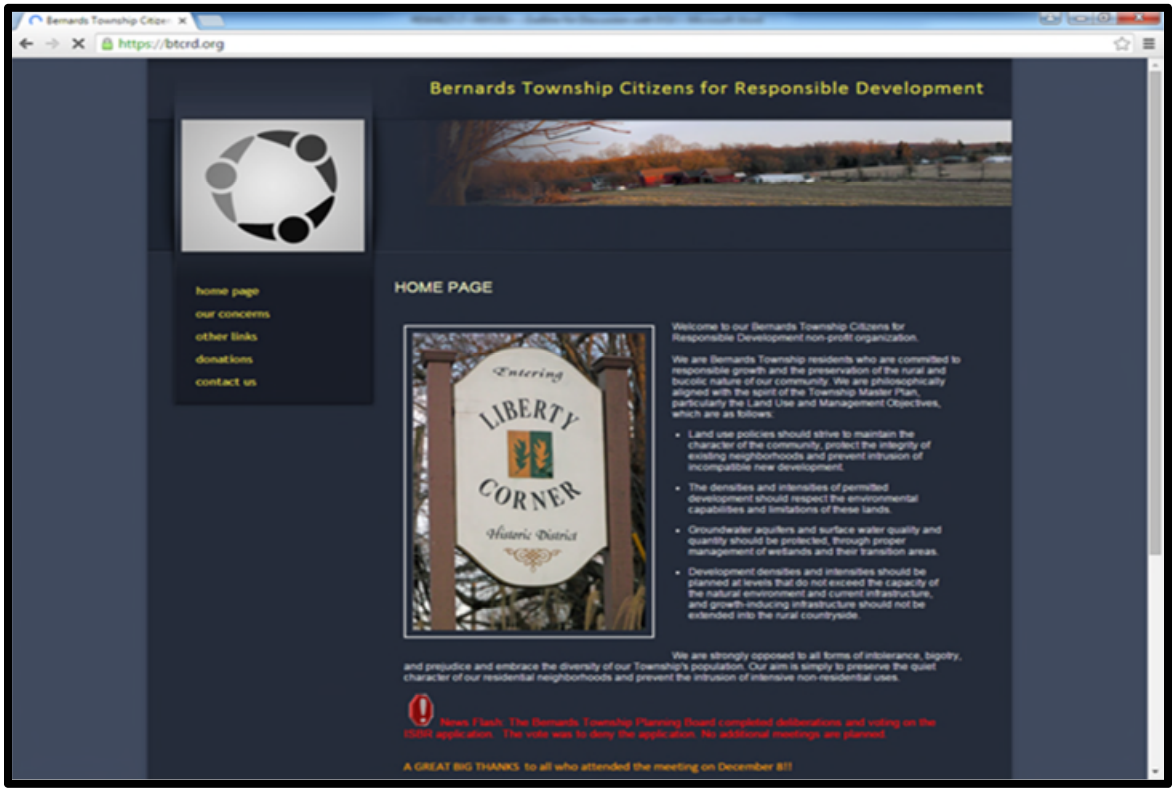

Figure 6: The Homepage for the BTCRD

92. The sources of the BTCRD's funding are not public. Online poster "LC," however, has posted online about having donated money to the BTCRD.

93. The BTCRD initiated its mission against ISBR by soliciting community opposition to ISBR's application. For instance, beginning in August 2012, individuals believed to be affiliated with the BTCRD began distributing signs stating "Preserve Liberty Corner" throughout the Township. *See* Figure 7. Those signs were prominently displayed in front yards across the Township.

Figure 7: "Preserve Liberty Corner" Sign

94. In or around August 2012, a picture of a "Preserve Liberty Corner" sign was also posted on the BTCRD website. That picture, however, was subsequently removed.

95. The "Preserve Liberty Corner" signs remained a fixture in the Township for years and were the subject of media coverage. In April 2013, for example, a local news channel interviewed a resident of Church Street who "proudly" displayed her "Preserve Liberty Corner" signs. The resident stated that she opposed the mosque "to preserve the look and the attitude . . . of the town." The reporters noted that, while none of the residents who opposed the mosque at Board hearings would say so on camera, they "indicated that in light of extremist actions since 9/11, some of them wouldn't feel comfortable with a mosque in their town."

96. The Preserve Liberty Corner terminology was also the subject of online commentary. One commentator on Patch, unaffiliated with ISBR, engaged in debate with

mosque opponents and stated: "Preserve Liberty Corner?! That's quite a large Fire Dept. you've got there within 1/4 mile of the elementary school, expansive Presbyterian Church complex, post office, beauty salon, bakery, dry cleaners, tennis court, major restaurant, convenience store, 2 gas stations, auto body shop, many office/busineses [*sic*] . . . Liberty Corner is a nice place but what are you preserving exactly besides the traditional bigotry of this republican area?"

97. In or around September 2012, after the BTCRD had appeared in Board proceedings opposing the mosque, flyers were distributed at the Liberty Corner Post Office depicting a stop sign and the phrase "Is Liberty Corner the Right Location for a Mosque?" The flyer urged community members to attend Board hearings to oppose ISBR's proposed mosque. The first issue the flyer addressed was "the [mosque's] impact on public safety." *See* Figure 8.

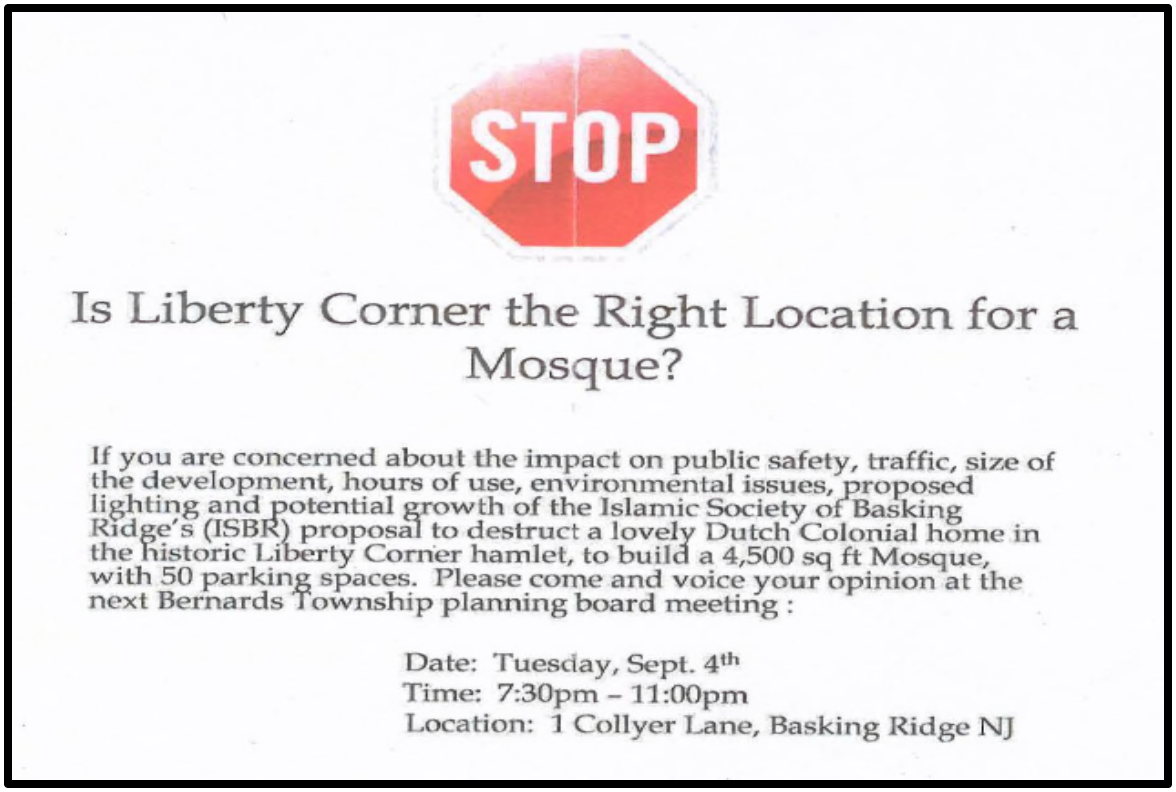

Figure 8: Stop Sign Flyer

98. Some BTCRD-related hostile activities were visible even from ISBR's own Property. In July 2014, for example, a sign reading "No Mosque Here" and "5 Times A Day Every Day" and depicting a bolt of lightning appeared in the yard of the ISBR's western neighbor. The sign was visible from a busy intersection and bore the website for the BTCRD. The sign also stated in darker text "100 Cars" and "Not a Proper Use." *See* Figure 9.

Figure 9: "No Mosque Here"

99. At one Board hearing, the husband of one of the BTCRD's founding trustees even questioned ISBR's affiliations with other entities and sources of funding—issues of no relevance to the Board proceedings. Dr. Chaudry dispelled the notion that ISBR was affiliated with or funded by any suspicious organizations, testifying that ISBR has no such affiliations and raises funds from the local community.

100. The BTCRD was the lead objector at Board meetings and hired private counsel to represent the opposition in those hearings. Because ISBR's application fully conformed to the Township's zoning ordinance, the Board had no discretion to deny it. The BTCRD, however, consistently argued that the Board, nonetheless, had discretion to deny ISBR's application. And it sought to mobilize opposition attendance to pressure the Board through private meetings with other community groups.

101. At one community meeting on September 7, 2014, the BTCRD appears to have coached members of the "Hills Fun Group" on how to make complaints at Board hearings that were facially non-discriminatory. Even while addressing Islamic prayer timing and noting that the mosque "won't serve the community at large," community members were cautioned to limit their public statements to land use issues because it would damage the opposition effort if alternative motives were revealed. Minutes from that September 7 meeting state, "**Please Remember Do Not Make Any Comments on the Religion or Islamic Mosque Itself!!** If we do so, we will loose [*sic*] the battle." *See* Figure 10.

n. It won't serve the community at large
o. and many more…
p. A representative Islamic service schedule will look like this:

08 September 2014		
Salah Timings**		
Salah	Iqamah	Start Time
Fajr	5:45 AM	5:14 AM*
Zuhr	1:15 PM	12:58 PM
Asr	5:45 PM	5:27 PM
Maghrib	7:21 PM	7:21 PM
Isha	8:45 PM	8:36 PM
Jum'ah	1st: 01:15 PM 2nd: 02:10 PM	
*Sunrise at 6:32 AM		

Please Remember Do Not Make Any Comments on the Religion or Islamic Mosque Itself!! If we do so, we will loose the battle.

Figure 10: Extract from Hills Fun Group Meeting Minutes

102. At about the same time, in the fall of 2014, a blogger affiliated with the Hills Fun Group posted on the internet about "a potential winning strategy" for defeating the mosque by engaging with the local fire chief. The blogger went on to summarize the opposition's strategy: "Our goal is to force the township planning board to put a stay on the decision, order new studies, and drag the issue into Neverland. Without a decision, our opponent can not [*sic*] file suit, as the delay is well warranted over public safety issue. Thus we take their best weapon off table. Will our opponent be able to survive the wait? Will there be greener grass elsewhere . . . "

103. Toward the end of the Board's process, a letter to the Editor of *The Bernardsville News* from an individual unaffiliated with ISBR and published on December 6, 2015, summarized the situation as follows: "[t]hough the BTCRD pretend[s] their opposition is only related to parking and traffic concerns, it's clear that this is rooted in xenophobia; an attempt to

keep Muslims out of the neighborhood." The author asked the newspapers readers to "see through [the BTCRD's] sneaky language and read between the lines. Ask yourselves whether the BTCRD would make the same arguments against the day care center, yoga studio or Presbyterian Church in that section of town, had they been the applicants in question."

F. Board Views Regarding Islam and ISBR's Mosque

104. At least some members of the Board also expressed themselves online. For example, John Malay—who served as Mayor of the Township throughout 2015, has served on the Township Committee since 2004, and began serving on the Board in January 2014—referenced presidential candidate Ben Carson's stated qualifications for a Muslim to serve in high office in a post on social media platform Twitter: "#TenLittleIndians Ben Carson: 'I'd accept a Muslim President if he rejected Islam, owned a dog, drank beer, let his wife boss him around.'"

105. Mr. Malay also used his Twitter feed to comment on a photo depicting a human figure in an explosion. *See* Figure 11.

Figure 11: John Malay's "The Headless Imam"

An article accompanying the picture referred to Islam as "The Religion of Pieces," a pun on the characterization of Islam as the "religion of peace." Mr. Malay suggested an alternate name for the picture, "The Headless Imam," an apparent reference to suicide bombings in which the perpetrator's head is severed. Shortly after the issuance of the Planning's Board's final decision in this case, Mr. Malay removed this post from his Twitter social media account, where it had been posted for more than a year.

106. Other Board members expressed their views regarding the proposed ISBR mosque specifically. Years before a final decision, Board member Kevin Orr privately told a friend that ISBR's mosque would "never get built."

107. Board member Carolyn Gaziano ran for re-election to the Township Committee in the fall of 2012, just as the Board's hearings on ISBR's application began. During that 2012 campaign, Ms. Gaziano participated in a "Candidates Night" community meeting with her Democratic opponent, David Ferdinand. Mr. Ferdinand noted that local citizens' concerns about ISBR's proposed mosque were "more complicated" than just land use issues, and that "there is an undercurrent of worry, even anger for some people" as to ISBR's proposal. But Mr. Ferdinand concluded that ISBR's proposed mosque should be a "fait accompli" because it was a "permitted use" in the residential zone. In response, Ms. Gaziano stated that approval of the application was not a fait accompli and pledged that "we will look at every aspect of it."

G. Defendants Change the Rules to Ensure ISBR Can Never Build a Mosque on Its Property

108. While ISBR's site plan application was pending before the Board, the Township Committee took action to ensure that, upon denial of its pending application, ISBR could never again apply for a mosque on its Property. Specifically, the Township Committee amended the zoning ordinance so that a house of worship would be a "conditionally permitted use" only in certain zones throughout the Township. The Ordinance also imposed numerous additional hard or impossible-to-meet new conditions for houses of worship.

109. Changing zoning ordinances to preclude the development of a mosque was not a new strategy. In March 2011, the nearby Township of Bridgewater implemented a similar strategy to prevent an organization called the Al Falah Center from building a mosque there. Specifically, Bridgewater Township enacted an ordinance imposing limitations that included

requiring that all houses of worship, which were permitted uses in Bridgewater's residential zones, front on a narrowly drawn set of specified public roads. The Al Falah Center, due to the location of its property, could not meet that requirement, which led to years of protracted and costly litigation between Bridgewater and the Al Falah Center.

110. The seed of how a similar strategy could help exclude ISBR from Bernards Township was planted by Ms. Caratzola with the Township Committee in October 2012, within weeks after the first public hearing on ISBR's application.

111. Ms. Caratzola brought her concerns about ISBR's proposed mosque to the Township Committee, proposing an amendment to the Township's zoning ordinance that would make it more difficult to build a house of worship in a residential zone. In her presentation to the Committee, Ms. Caratzola made clear that her concerns stemmed from her attendance at the Board's hearings on ISBR's application. She also noted to the Committee that her own research showed that the Township's approach was out of step with revised ordinances in neighboring communities.

112. Not long thereafter, in January 2013, the Township Committee enlisted the Township Planner, David Banisch, to conduct a study to identify possible zoning amendments as they might relate to permitted institutional uses, like houses of worship, in the Township's residential zones.

113. On September 10, 2013, Township Committee members including Mr. Malay formally introduced an amendment to the Township's zoning ordinance. The preamble to the proposed amendment explained that its purpose was to "maintain and enhance community character, protect the integrity of existing neighborhoods and prevent the intrusion of incompatible new development with existing residential development." Notwithstanding this

purported explanation, during a Board hearing on ISBR's application the following year, when a community member asked the BTCRD's planning expert why the ordinance was changed, the Board's attorney cut off questioning about the amendment's purpose, stating that the "question is irrelevant [and] it could lead to nothing but something bad happening."

114. The proposed amendment, Ordinance # 2242, created onerous conditions for houses of worship and schools. Among other things, it doubled the required minimum lot size from three acres to six acres and significantly increased the standards for lot coverage, floor area ratio, and building and parking setbacks. The amendment also required that any house of worship have primary access from a state or county road and imposed time limits on outdoor activities and lighting.

115. Over time there have been very few, if any, available plots in the Township that would satisfy the amended zoning ordinance's criteria. ISBR's 4.08-acre plot cannot satisfy the six-acre requirement under Ordinance # 2242.

116. On October 15, 2013, the Committee formally adopted Ordinance # 2242 by a vote of 4 to 1.

117. The Township Committee passed Ordinance # 2242 for the purpose of preventing Plaintiffs from building a mosque in the Township. Moreover, Ordinance # 2242, on its face, is neither neutral nor generally applicable because it creates special zoning rules that directly target houses of religious worship.

118. Ordinance # 2242 drew criticism from local religious leaders due to both the zoning restrictions on houses of worship and the limitations on the logistics of religious exercise, such as timing of service. One member of the local clergy told the Committee during a meeting in late 2013 that the measure marked "the first time [he had] ever seen operating restrictions

imposed on houses of worship by the Township Committee." The clergyman further stated that these "operational restrictions, if put into place, would be subjecting local government's belief on what should be the way that churches are able to tend to their flock." He also voiced concern about the requirement that a new house of worship would need six acres, as opposed to the prior minimum of three acres, and that the house of worship would need access to a county or state road. He stated that few local, undeveloped tracts met those criteria.

119. The Township Committee assured local residents that existing houses of worship would be "grandfathered in" and would not be subject to the new statutory scheme. That is, only new religious groups and new houses of worship would be subjected to the more stringent standards.

120. The true purpose of the new ordinance was no secret. At that same 2013 meeting, for example, a community member stated that the ordinance was being proposed "as a reaction to the Muslim community." Another concerned citizen observed that the new ordinance was "an apartheid creating two classes." David Ferdinand, a former candidate for the Township Committee, attributed the Township's amendment to "the whole bugaboo about Islam."

121. The new ordinance did not apply to ISBR's pending proposal due to New Jersey's Time of Application law, which had been changed in 2011 to provide that applications could be adjudicated based only on the law existing at the time the application was initiated. But the new ordinance ensured that if the Board denied ISBR's application, it could not reapply with a compliant, revised site plan.

H. The Board Denies ISBR's Application

122. The lengthy Board process placed an immense financial strain on Plaintiffs. At the Board's request—and at great expense—ISBR's professionals developed five fully-developed sets of plans with engineering, architectural, stormwater management, and

landscaping details, and several interim and subsequent revised individual plan pages. Throughout, ISBR had to pay not just the fees of its own professionals, but also for the five experts advising the Board: a Board Attorney, a Board Engineer, a Board Planner, a Township Planner, and the Fire Official.

123. The Board formally denied ISBR's application in a 40-page resolution dated January 19, 2016 (the "Resolution"), which was formally published on January 28, 2016. The Board's denial of ISBR's application purported to be driven by several land use issues, but in reality, ISBR's application was denied because Defendants capitulated to and adopted the anti-Muslim animus of their community constituency.

124. To reach its conclusions, the Board misapplied the Township ordinance with respect to, among other things, parking, buffering, fencing, site lighting, and fire safety requirements. The Board also rejected the views of its own professional experts and counsel. Moreover, the Board rejected ISBR's application outright instead of granting preliminary approval with conditions for obtaining final approval. The Board's analysis on all key issues is fundamentally flawed, inconsistent with the factual record, and does not withstand scrutiny.

i. Parking

125. Township Ord. § 21-22.1 (the "Parking Ordinance") sets forth the "acceptable" number of parking spaces for a house of worship. Specifically, it provides that "Churches, auditoriums, [and] theaters" shall provide "1 space for every 3 seats or 1 space for every 24 linear inches of pew space."

126. Under the operative definitions clause, words in the Parking Ordinance that are not expressly defined have the definitions set forth in Webster's Third New International

Dictionary of the English Language (unabridged version) ("Dictionary").[21] The word "church" is not expressly defined in the Township ordinance and therefore the Dictionary definition applies. The Dictionary defines a "church" as "a place of worship of any religion (a Muslim ~)." Accordingly, "churches" include houses of worship for all religions, including mosques.

127. The Board has applied the 3:1 parking ratio for "churches" (or a more favorable application of the Township's parking requirement) to every house of worship that has applied for site plan approval while the Parking Ordinance has been in effect, including two local synagogues. The Board has never engaged in an individualized determination of additional parking need for any other applicant.

128. ISBR's original architectural plan estimated the maximum occupancy of the mosque's prayer hall at 150 people. Pursuant to Ord. § 21-22.1, ISBR proposed one parking space for every three seats, *i.e.*, 50 parking spaces.

129. In a letter to the Board dated August 7, 2012, Board Planner David Banisch agreed that this proposal satisfied the ordinance, stating, "50 parking spaces are proposed vs. 50 spaces required." Board Planner Banisch did not recommend any increase in the number of parking spaces pursuant to the Township's Parking Ordinance.

130. In a separate letter dated August 3, 2012, Township Planner David Schley likewise noted that ISBR's proposal included 50 parking spaces. As the Township Planner, his review letter for a development proposal is designed to inform the Board of any and all required variances and exceptions an applicant needs from the applicable land use ordinances. His initial letter on ISBR's application cited no variance for the number of parking spaces provided.

[21] *See* Township Ord. § 21-2.

131. On August 7, 2012, the Board's public hearings on ISBR's application began. At the Board's hearings on August 7, 2012 and September 4, 2012, Board members and community objectors challenged ISBR's representations about the expected occupancy of the mosque. They questioned Dr. Chaudry for hours about the size of ISBR's congregation and its prospects for future growth. For example, an objector asked Dr. Chaudry, "I don't know that much about your religion but do you encourage couples to have a number of children?" She then questioned ISBR's growth estimates.

132. Dr. Chaudry testified that ISBR had 55 members and an average of 65 attendees at its Friday afternoon service, which is its only weekly congregational service. Dr. Chaudry further testified that, using the highest known growth rates, he expected a maximum of 150 attendees at *Jumma* services within five to 10 years.

133. In response, Board member Richard Huckins stated, "I've read somewhere that there's like an estimate of . . . 50 to 100,000 Muslims in the State of New Jersey. . . . I find it hard to believe that you would see such a small number to just go from 55 to 150."

134. Board member Kevin Orr, in contravention of applicable rules, introduced a report that found an average of 353 attendees at *Jumma* services nationwide, which he suggested had some bearing on ISBR's attendance.

135. Dr. Chaudry repeatedly testified that ISBR would comply with the occupancy limits set by the Township's fire code and fire officials.

136. After the Board and community objectors questioned ISBR's representations about its expected attendance, Board Planner Banisch issued a new parking memo on October 25, 2012. In that memo, Mr. Banisch performed his own calculation of the number of worshippers that could theoretically fit into ISBR's prayer hall based upon his estimate of the

size of a Muslim prayer rug. Mr. Banisch's calculations yielded a maximum occupancy of 168 prayer rugs. He then divided that number by three—in accordance with the Parking Ordinance's 3:1 ratio—and concluded that 56 parking spaces were required, only slightly higher than the 50 spaces he had previously agreed were sufficient.

137. The Board and objectors were still not satisfied. At an October 25, 2012 hearing, the BTCRD's counsel questioned ISBR's traffic engineer, Henry Ney, about an Institute of Transportation Engineers ("ITE") report titled *Parking Generation*. The ITE report used a different measure of parking spaces per square footage, which for mosques was recorded as 25.79 parking spaces per 1,000 feet of gross floor area. This ITE rate was developed based on three days of data collected from three mosques located in Arizona and Canada.

138. ISBR Traffic Engineer Ney described the parking ratio recorded in this ITE report as "not a recommended standard." The ITE's *Parking Generation* report itself acknowledges that its parking data are not authoritative. The report states:

> It should be understood that the data contained in this report are collected by volunteers and are not the result of a financed research effort. The ranges of information and statistics are provided *only* as an informational guide to planners and designers regarding parking demand. This informational report does not provide authoritative findings, recommendations, or standards on parking demand.

139. Since ITE released its *Parking Generation* publication in 1985, the Board has never applied the ITE parking rates to determine the parking requirement for any other house of worship. Following that testimony, however, Board Attorney Jonathan Drill directed Mr. Ney to research the parking ratio for mosques contained in ITE's *Parking Generation*.

140. In December 2012, ISBR and the BTCRD objectors submitted letter briefs to Board Attorney Drill concerning the applicable parking standard. In a letter dated December 14, 2012, ISBR took the position that the Township ordinance's 3:1 parking ratio for churches

applied to ISBR's plans. At the Board's request, however, ISBR also provided parking ratios for houses of worship set forth in five different industry publications, including ITE's *Parking Generation*. ISBR then applied these parking ratios to the specifications of its plans. The resulting parking recommendations ranged from 36 spaces to 110 spaces. The ratio from ITE's *Parking Generation* yielded a recommendation of 110 spaces—the highest parking requirement listed in the letter.

141. In a letter dated December 21, 2012, the BTCRD objectors argued that the Township ordinance's 3:1 parking ratio for churches did not apply to ISBR's plans because a mosque is not a church. The BTCRD argued that the ratio recorded in ITE's *Parking Generation* was the appropriate standard and, therefore, 110 spaces were required. In effect, the objectors asked the Board to re-write the Parking Ordinance to ignore the Dictionary's definition of "church," which includes mosques; and the Board did just that.

142. On January 3, 2013, Board Attorney Drill and Board Planner Banisch issued a new joint parking memo.[22] The Drill/Banisch parking memo advanced two legal positions:

1) that the Parking Ordinance required the Board to engage in an individualized analysis of every applicant's parking need, regardless of the ratios set forth in the ordinance; and

2) that the Parking Ordinance's 3:1 ratio for "churches" applied only to Christian churches.

143. Under Drill and Banisch's interpretation of the Township's ordinance, the 3:1 parking ratio is a standard only for churches, and not for any other houses of worship, such as mosques or synagogues. Accordingly, Muslim and Jewish applicants are wholly subject to the

[22] January 2, 2013 Memorandum from J. Drill & D. Banisch to Bernards Township Planning Board.

Board's discretion concerning parking requirements, but Christian applicants are not. The Board has never taken this legal position with respect to any other applicant, including two synagogues.

144. The Board cited certain language in the Township's Parking Ordinance as authority for the purported requirement that the Board engage in an individualized analysis of ISBR's parking need, regardless of the ratios set forth therein. That section of the ordinance provides:

> Since a specific use may generate a parking demand different from those enumerated below, documentation and testimony shall be presented to the Board as to the anticipated parking demand. Based upon such documentation and testimony, the Board may . . . [i]n the case of nonresidential uses, require that provision be made for the construction of spaces in excess of those required hereinbelow, to ensure that the parking demand will be accommodated by off-street spaces.[23]

145. The Drill/Banisch memo then looked outside of the Parking Ordinance for guidance on the appropriate parking ratio for ISBR's proposed use. The memo ultimately incorporated the ITE's *Parking Generation* rate for mosques. Based on this rate, the Drill/Banisch memo calculated a requirement of 110 parking spaces. However, the Drill/Banisch memo also stated that ISBR had the option of presenting an alternative recommendation based on a local parking study.

146. In response to the Drill/Banisch memo, ISBR Traffic Engineer Ney performed a detailed study of local mosques in New Jersey with characteristics similar to those of ISBR, as opposed to the ITE's randomly chosen mosques in Canada and Arizona. At the Board's request, Mr. Ney collected additional data and produced additional charts. He collected data from four different mosques on six different occasions and calculated the number of parking spaces based

[23] Township Ord. § 21-22.1(a)(1).

on the ITE methodology. From January 2013 to June 2013, ISBR presented the supplemental parking studies and extensive testimony from Mr. Ney about his analyses. Based on his local parking study, Mr. Ney stated that applying the ITE methodology resulted in 60 parking spaces for ISBR.

147. The Board's own engineer, Thomas Quinn, agreed that the parking metric used by Mr. Ney was the most appropriate methodology to measure parking demand.

148. Again, however, the Board and objectors were not satisfied. The Board questioned Mr. Ney—again—about his parking recommendation with a series of hypotheticals that resulted in artificially inflated parking estimates. For example, the Drill/Banisch parking memo recognized that traffic engineers use parking data representing the 85th percentile of parking demand, and that the use of 100th percentile figures "would result in production of an unnecessary number of parking spaces." Nevertheless, the Board persisted in questioning Mr. Ney about 100th percentile figures.

149. On June 4, 2013, the day the Board voted on ISBR's parking requirement and also the last day of testimony on this issue, the BTCRD objectors presented testimony from their own traffic engineer, Alexander Litwornia. With all prior methodologies having failed to yield a defensible parking requirement substantially different from the 3:1 ratio in the ordinance, Mr. Litwornia presented a parking recommendation based on an entirely different metric—the number of attendees per car. Based on a single day of data collected from two *other* mosques, Mr. Litwornia speculated that each car traveling to ISBR's prayer services would hold 1.4 attendees and, therefore, ISBR should be required to provide 107 parking spaces.

150. Within hours of hearing Mr. Litwornia's parking recommendation for the first time, the Board adopted his position in full and required ISBR to provide 107 parking spaces.

The Board arbitrarily and unreasonably disregarded the 3:1 parking ratio in the Township ordinance and the original recommendations of Board Planner Banisch approving the application of that ratio. The Board further disregarded Mr. Banisch's subsequent recommendation based on his prayer rug calculations and the testimony of ISBR Traffic Engineer Ney, who performed comprehensive local parking studies at the Board's request based on the ITE methodologies it had earlier deemed appropriate.

151. The Board's parking determination also ignored extensive ISBR testimony about the various ways in which it could reduce its parking needs in the event that its Friday *Jumma* attendance grew in the future. Dr. Chaudry testified, for example, that ISBR was willing to split its *Jumma* prayer service, which is ISBR's largest weekly prayer service, into two separate services, in the same way that local churches do on Sundays. This would reduce the parking demand by roughly one half at each service and alleviate any speculative strain on parking. Further, ISBR Traffic Engineer Ney testified that ISBR could decrease its parking demand through ride-sharing arrangements (including the use of a nearby park-and-ride lot), valet parking, or by using the Harry Dunham Park lot for overflow, again similar to methods used by local churches. The Board ignored each of those options in favor of the most burdensome parking requirement it felt it could justify.

152. Because the Board formally voted on ISBR's parking requirement on June 4, 2013, this determination was binding during the remainder of the application review process. Accordingly, ISBR had to reconfigure its site plans to comply with the 107-space requirement. Though not an explicit basis for denying ISBR's application, the Board's requirement of 107 parking spaces laid the groundwork for each of the Board's bases for denying ISBR preliminary and final site plan approval.

153. The Board's decision to demand 107 parking spaces rather than follow the ratio set forth in the ordinance was not required by any compelling government interest and the Board did not set a parking requirement using the least restrictive means available to it. The Board treated ISBR differently and less favorably than other religious and secular applicants and its determinations were arbitrary, capricious, and unreasonable.

ii. The Eastern Buffer, Detention Basin, and Screening

154. In denying ISBR's site plan application, the Board noted that the plan included a drainage feature called a detention basin in a "buffer" along the Property's eastern boundary. Buffers are 50-foot-wide swaths of land that insulate non-residential uses from neighboring residences.[24] The Board found that "allowing . . . a large drainage improvement wholly within the buffer represents the exception swallowing the rule and defeats the very purpose of the buffer." While the Board had the authority to approve the placement of the basin, it did not do so because it determined that the basin's location impacted ISBR's ability to screen—*i.e.*, to visibly shield—the Property's parking lot from the property of the eastern neighbor. According to the Resolution, planted screening is more "aesthetically desirable" than a fence; ISBR's planted screening was inadequate, necessitating a fence; and the reason the planted screening was inadequate was because of the placement of the detention basin. The Board concluded that "[ISBR's eastern neighbors] deserve more from a new use than inadequate screening or adequate screening but by an aesthetically displeasing fence." Every step in the Board's logic is untenable and contrary to law.

155. ISBR worked for months, hand in hand with the Board's professionals, to resolve the Board's drainage concerns. Among other things, ISBR changed the types of drainage basins

[24] *See* Township Ord. § 21-28.2.

used, and agreed to change the locations, shapes, and depth of the basin in the eastern buffer and a second basin on the Property's north side. Each of these modifications was reflected on ISBR's site plans for the Board's review and each entailed considerable expense. The Board's parking determination then required ISBR to make numerous additional changes. The additional parking spaces required by the Board meant an increase in the waterproof pavement or "impervious surface" on the lot, which impacted the necessary amount of drainage infrastructure. Due to the oversized parking lot requirement, there was only one place consistent with the opinions of the Board's experts that the necessary eastern detention basin could go: the eastern buffer.

156. At least one Board member, Randy Santoro, explicitly acknowledged that the Board had itself forced ISBR to place the detention basin in the eastern buffer. As he stated on the record at a later hearing: "[B]y making the vote on the parking spaces, we sort of forced this configuration. So . . . I think we put the applicant in this situation [by] requiring more parking places."

157. Nonetheless, ISBR did not anticipate a problem with placing this detention basin in the eastern buffer. Detention basins are simply depressions in the ground with grass bottoms that can be landscaped, and they appear in buffer zones at various properties in the Township.

158. Indeed, drainage improvements like detention basins are listed in the Township's buffer ordinance, Ord. § 21-28.2, as being among the four types of "construction" permitted in a buffer with the Board's approval.[25] Detention basins are among the least intensive of the improvements permitted in buffer zones—the others are underground utilities, pedestrian and bicycle paths, and crossings of access roads. The size, shape, and configuration of ISBR's

[25] *See* Township Ord. § 21-28.2(b).

detention basins were the result of extensive discussions with the various Board professionals and were the subject of extensive discussions between them and ISBR's engineer, Adnan Khan.

159. By January 2014, Board Engineer Quinn was satisfied with the drainage plan. At the January 15, 2014 meeting of the Board, Board Attorney Drill confirmed that there were no further comments from the Board's experts or the Board members, and that the stormwater management report—including the plan for the locations and size of the detention basins—was ready for approval with minor conditions.

160. The objectors, however, were not satisfied. In May and June of 2014, the BTCRD objectors presented their own expert, who contended that a basin would be "antithetical" to a buffer and that the lot was "functionally" too small for ISBR's proposed use. Pressed to justify his opinion, however, that expert could not articulate any legal or objective basis for his testimony. Indeed, he admitted that the standards he purported to apply were "invented."

161. The Board then enlisted Board Planner Banisch to reinterpret the Township ordinance's buffer provision, Ord. § 21-28.2, an ordinance that is clear on its face. Citing no legal precedent, planning treatise, or any other authority, Mr. Banisch interpreted the ordinance's requirement in a July 20, 2014 memo. He held that the Township's ordinance allowed only "limited incursions" in buffers, and only "when a unique physical circumstance of a site may require it." This interpretation of the buffer ordinance had never been applied in connection with any prior application.

162. On September 4, 2014, the Board rejected the BTCRD's expert's view that detention basins were "antithetical" to a buffer and voted that the basins constituted permissible construction in ISBR's eastern buffer areas in accordance with the Township's buffer ordinance

subject to the Board's approval. But the Board's Chairman, Jeffrey Plaza, nonetheless expressed concerns about the eastern basin's size and its potential impact on screening from ISBR's eastern neighbors. He noted that screening would "drive the ultimate decision for Board members as to whether specific approval is given" for ISBR's drainage improvements in the buffer.

163. ISBR's existing plans, however, already provided for extensive natural planted screening on the Property's eastern boundary. ISBR had incorporated into its landscaping plan dozens of existing trees as required by the Township's ordinance related to tree preservation. And it planned a series of new evergreen trees to be planted on the eastern property boundary to create additional screening. There was no inadequacy in that planted screening.

164. On September 8, 2014, four days after the public hearing in which Mr. Plaza raised questions about the eastern screening, ISBR held a meeting with Board Planner Banisch, Township Planner Schley, and Board Engineer Quinn, among others. The planners and engineer raised no specific concerns about ISBR's natural screening on the eastern border. Nonetheless, the Board Planner gave ISBR a suggestion: to moot any concerns the Board or objectors might raise about the eastern screening, they suggested that ISBR also add a fence, which is a permitted form of screening in a buffer under the Township's ordinance. The eastern boundary would then feature an impregnable array of all available screening devices: existing trees, plenty of new evergreen trees and bushes, and a six-foot high, solid-wooden fence.

165. ISBR complied with the suggestion of the Board's planners and engineer. ISBR submitted revised plans, including a revised landscaping plan that included a six-foot fence.

166. ISBR also made other small changes suggested by the Board professionals. For example, it shifted drainage features within the eastern buffer in order to preserve existing trees.

167. These changes appeared to have resolved the eastern screening concerns. When the Board and its experts subsequently discussed whether ISBR should plant any supplemental vegetation in the eastern buffer, Mr. Plaza recommended, instead, that the issue be "delegated and deferred . . . as a condition of approval to the landscaping subcommittee" because adding any more trees threatened to choke existing trees of sunlight and nutrients. Mr. Plaza explained that "by doing it this way we will make sure that [planted screening] actually meets the purpose and it could be sustained." ISBR agreed, and to allay any other concerns about screening, ISBR agreed that the Board's landscaping committee would have the authority to demand reasonable additional screening for all property lines after construction was completed. The delegation of approval of the ultimate landscaping to a Board landscaping committee had been a commonly applied procedure of the Board for years.

168. Objectors, however, remained unsatisfied. Ms. Caratzola, who lived miles away from the Property, cross-examined ISBR Engineer Khan about whether a fence was "an acceptable aesthetically pleasing solution" for the eastern neighbor's property. No other objector used that particular "aesthetically pleasing" formulation. Mr. Khan noted in response that a fence "is one of the approved or one of the recommended screening methods in the ordinance."

169. By the time ISBR submitted the fifth iteration of its site plans in September 2014, it had screened the eastern boundary with a net addition of 37 evergreen trees and an unbroken row of three-foot-high evergreen bushes, in addition to a solid, six-foot fence. ISBR also made clear that the fence location could be adjusted to wherever the Board preferred, including further inside its Property, closer to the eastern detention basin, or even on the other side of the detention basin (*i.e.*, closer to the proposed mosque building). ISBR did not view a fence as being necessary given the natural planted screening it had provided, but it was willing to accommodate

the Board with regard to the fence its planners had requested. Board Planner Banisch acknowledged that ISBR was "trying to be fairly aggressive with their landscaping to create the best screening" possible.

170. Once ISBR submitted its last set of site plan revisions and concluded its case, and the BTCRD indicated it did not have any more witnesses, the period for public comment commenced. Objectors again swarmed. One lay objector living almost a mile and a half away gave an extensive PowerPoint presentation on why a basin should not be allowed in the eastern buffer. No time limits were imposed on any individual public commentators. The Board even allowed further expert testimony after the period for such evidence had closed, in contravention of its own rules and over ISBR's objection. Seeking to justify these rule violations, Mr. Plaza stated that this "was not a typical application in terms of both the length, the number of proceedings, the issues that have been presented with experts both in favor of the application and on behalf of objectors . . . . [So while] you might have a technical argument to make based on a very strict interpretation of our rules, I think under the circumstances, we would have the ability to relax those rules." With the rules relaxed, the objectors continued to argue that the eastern screening was somehow inadequate or improper.

171. Ultimately, after restyling, reshaping, and resituating the drainage basins six times; after reducing development to no more than 20% of the eastern buffer; and after proposing a new fence, new trees, and new bushes to screen the parking lot from the eastern property line; ISBR was denied preliminary and final approval.

172. In its Resolution, the Board concluded that the basin in the eastern buffer exceeded the "limited" intrusions permitted by the buffer ordinance. Despite the fact that the Board's parking determination had forced the basin into the buffer, and despite the Board

experts' approval of the location and size of the detention basin, the Board concluded that the drainage basin would "have to be removed from the buffer, if not entirely, then substantially," applying Board Planner Banisch's brand new standard focused on "limited" intrusions. In withholding approval, the Board leaned heavily on the BTCRD's expert testimony and on Mr. Banisch's novel interpretation of the buffer ordinance.

173. In addition to rejecting the detention basin, the Board stated that it probably would have denied specific approval for a narrow, grassy drainage swale, which would channel off-site runoff from the eastern buffer to the county's stormwater system. The Board's explanation ignored its experts' praise for the swale, which they said improved site drainage and enhanced screening along the eastern boundary.

174. The primary reason the Board denied approval to the location of the drainage features, however, was that they purportedly impacted screening. The Board reasoned that "planted screening is a much more aesthetically desirable alternative" to a fence; ISBR's natural screening would be impacted by the detention basin; and, adopting Ms. Caratzola's terminology, the Board concluded that ISBR's eastern neighbors "deserve more from a new use than inadequate screening or adequate screening but by an aesthetically displeasing fence." The Board provided no explanation for why ISBR's planted screening in the eastern buffer was in any way inadequate and ignored the fact that the fence it now deemed "aesthetically displeasing" was added at the request of its own engineer and planners.

175. Additionally, even though ISBR's final site plan showed a straight fence on the eastern property line, the Board speculated that there was a "distinct probability of causing damage to the roots of the existing trees unless the fence and the fence posts are gerrymandered [*sic*] in such a fashion to avoid all roots." The Board ignored the fact, specifically pointed out by

ISBR, that the landscaping plan deliberately exaggerated the size of trees in relation to the scale of the plan. Indeed, ISBR's landscaping plans reflected only a straight fence in the eastern buffer. Nonetheless, the Board then determined that the potential for a fence with asymmetrical fence posts violated the ordinance and, thus, required a "hardship" or "special reasons" variance, which it refused to grant. Notably, the Resolution stated that it would have approved the fence if it had been moved farther west, away from the property line—a solution ISBR had repeatedly offered.

176. For good measure, the Board also manufactured an additional issue. ISBR had proposed screening of the parking area from the eastern residential neighbor, which is all the Township's screening ordinance requires. ISBR had also represented to the Board that it would erect additional fencing in its front yard if the Board deemed it necessary and granted a variance, even though no such fence was required by the ordinance. In its Resolution, the Board decided that ISBR must have an additional fence in its front yard to screen its Property from the eastern neighbors and that this fence should be solid and six feet high. Remarkably, however, the Board then refused to approve the unnecessary six-foot solid-wooden front-yard fence it had itself just proposed, because the Township fencing ordinance prohibits solid fences in front yards and limits fence height to four feet in front yards. The Board also said that any benefit of the fence it had itself just deemed necessary was "substantially outweighed by [] detrimental aesthetics," which it said constituted "a substantial detriment to the public good."

177. The Board's decision to deny preliminary and final approval, based ultimately on what it deemed an "aesthetically displeasing" and "gerrymandered" fence, as well as a front yard fence that ISBR never sought and did not need, was not pursuant to any compelling government interest and the Board did not act using the least restrictive means available to it. The Board

treated ISBR differently and less favorably than other religious and secular applicants, and its determinations were arbitrary, capricious, and unreasonable.

iii. Southern and Northern Screening

178. The Board also found that ISBR's parking lot was not adequately screened from the southern and northern property lines.

179. On the south side of the Property, ISBR's border included a preexisting thickly-wooded area. Beyond that border was a vacant lot. And farther beyond that was the residence of an individual objector to ISBR's proposals. ISBR took every step to ensure adequate southern screening. Rather than just rely on the existing heavily-wooded area, ISBR submitted a landscaping plan showing a solid screen of new evergreen trees. ISBR Engineer Khan also performed a screening test with two different vehicles' headlights and determined that nearby houses were adequately screened even just by the trees already in place, and that a small gap in the screening of the Property from the driveway of the property to the south would be remedied by the new evergreens.

180. Although the Board heard no conflicting testimony on this point, it stated that it was unpersuaded by Mr. Khan's tests because they were "scientifically unreliable and unconvincing" and "had no controls," even though Mr. Khan tracked the height of the headlights and their visibility across the southern boundary. The Board's underlying concern was apparently that Mr. Khan admitted that, when he performed his headlight test, he could see headlights from one specific point in the driveway of the property to the south. But the Board ignored the obvious point that, as Mr. Khan noted, his headlight test was performed only with existing vegetation—before ISBR had added the screening provided on its landscaping plan, which would block the view of any headlights.

181. Moreover, ISBR had agreed to subject its screening to Board scrutiny after approval, just as many prior land-use applicants had been permitted to do. For example, commenting in June 2014 on an earlier application by the YMCA, Board Attorney Drill had explained that, when the Board "did not think there was enough [screening, it] asked the applicant if they would agree to put in more screening, the applicant agreed on the record, then [the Board] voted to approve it . . . ." And as noted above, on September 30, 2014, the Board Chairman proposed a similar arrangement for ISBR.

182. The Board also noted that it could not assess the adequacy of the landscaping plan because the plan lacked a "cross-section" viewpoint. Other applicants have not been required to show cross-sectional views of their landscaping plan. Nor is any such cross-section warranted: ISBR's landscaping plan clearly demonstrates extensive pre-existing and new proposed natural screening to the south.

183. As to the northern property line, the Board expressed concern that ISBR had not adequately screened its parking lot from Church Street—the main road in the area.

184. None of the planners for any of the parties—objectors, the Board, or ISBR—had stated concerns about screening ISBR's parking lot from Church Street, on the northerly side of the Property. Nonetheless, ISBR's site plan demonstrates that its parking lot is to the rear of its building, hidden from Church Street by the ISBR mosque itself. To the extent the Board's concern was that drivers on Church Street might fleetingly glimpse the ISBR parking lot behind the mosque from around its edges while driving past, that view was blocked by extensive front-yard vegetation shown on ISBR's landscaping plan, which showed a row of evergreen trees lining the parking lot's northeast and northwest exposures.

185. ISBR could not have planted any additional screening at the northern property line. Church Street serves as the Property's northern border, and that border is punctuated by two driveways. The Township's ordinance prohibits any construction or plantings that would impede a driver's ability to see at least 250 feet down the road when stopped 10 feet away from Church Street.

186. The Board's decision to deny preliminary and final approval based on what it deemed insufficient screening on the southern and northern boundaries was not pursuant to any compelling government interest and the Board did not act using the least restrictive means available to it. The Board treated ISBR differently and less favorably than other religious and secular applicants and its determinations were arbitrary, capricious, and unreasonable.

iv. Stormwater

187. The Board found that ISBR's site plan failed to satisfy the requirements of the Township ordinance and N.J.A.C. § 7:8 concerning stormwater drainage. Specifically, the Resolution faulted ISBR for failing to include a groundwater "recharge" system in its drainage design and for failing to submit certain supplemental calculations. These bases for denial are untenable.

188. ISBR Engineer Khan worked closely with Board Engineer Quinn over a period of years to design an appropriate stormwater management system for the Property. As part of that process, Mr. Khan dug 11 test pits on the Property—a number that the Mr. Quinn testified far exceeded standards—to test the type and permeability of the soil. Mr. Khan also held numerous meetings with Mr. Quinn and submitted five different iterations of ISBR's stormwater management report to the Board. ISBR even undertook and accomplished the redesign work needed as a result of the Board's faulty parking lot expansion.

189. Through this process, Mr. Khan and Mr. Quinn came to a consensus on a key issue: the soil on ISBR's Property was of a particularly impermeable variety. As a result, ISBR was not required to use a groundwater "recharge" system, which would facilitate replenishment of groundwater levels. Such systems are required by applicable regulations only for areas, unlike ISBR's Property, with permeable soil.

190. By early 2014, all issues relating to stormwater appeared to be resolved. In a review letter dated January 10, 2014, Board Engineer Quinn acknowledged that "the bulk of our concerns regarding the drainage calculations and design have been addressed," and he included just three minor comments on the stormwater plans. At a public hearing on January 15, 2014, the Board reviewed Mr. Quinn's remaining comments concerning ISBR's stormwater plans. Mr. Quinn informed the Board that ISBR Engineer Khan had submitted a revised report addressing his comments. Board Attorney Drill suggested that the submission by ISBR of a full report including these additional calculations be made a condition of approval. ISBR agreed. The Board members stated that they had no further questions concerning stormwater.

191. ISBR submitted a revised stormwater management report to the Board on October 9, 2014. This detailed, 226-page report addressed all the issues discussed by the Board's and ISBR's engineers to date. At a public hearing on October 30, 2014, Board Engineer Quinn confirmed that he "had been working with [ISBR]'s engineer throughout the process to tidy up the stormwater management, so what they submitted [on October 8, 2014] was a compilation of all the bits and pieces we had worked together so there were no surprises in it. There were very few items that were remaining as Mr. Khan has just indicated, so we're satisfied with [the] design at this point."

192. Objectors, however, were far from satisfied. At a public hearing on August 4, 2015, ISBR's eastern neighbor, a lay person with no engineering expertise, questioned whether ISBR's stormwater management system needed a "recharge" system. Board Engineer Quinn dismissed the objector's criticism. He informed the objector that the engineers "took recharge off the table" because "it did not seem to make sense," given the impermeable nature of the soil on ISBR's Property. Mr. Quinn assured the objector, "I am confident that the stormwater management plan complies with the regulations."

193. Objectors nonetheless continued to press the issue of recharge. At a public hearing on September 8, 2015, an objector presented expert testimony by an engineer, Paul Fox. Mr. Fox repeated the opinions of the lay neighbor that ISBR was required to have a recharge system, given the permeability of the soil on the Property suggested by a county soil map. He also made various other technical points regarding the ISBR stormwater plan. The Board then asked Mr. Quinn to submit yet another report addressing Mr. Fox's concerns.

194. Mr. Quinn did not change his mind on the recharge issue. His view, after all, was based on specific testing of the soils on ISBR's Property. Mr. Quinn also personally performed extensive calculations rebutting Mr. Fox's other criticisms of ISBR's plans, which ISBR Engineer Khan verified and agreed with.

195. In his letter report dated September 28, 2015, Board Engineer Quinn rebutted Mr. Fox's views, explaining that Mr. Fox misunderstood the type of soil that was present on ISBR's Property, a point that had been demonstrated by Mr. Khan's extensive on-site testing. Mr. Quinn explained yet again that there was no requirement of installing a recharge system for properties with the impermeable type of soil that is present on ISBR's Property. He also referenced his calculations addressing Mr. Fox's other points.

196. Nonetheless, given the insistence of the objectors on the recharge point and the fact that adding a recharge system would be "easy," Mr. Quinn observed that it might be "more expedient" for ISBR to "consider providing a recharge facility and putting the issue to rest." He did not opine that the addition of a recharge system was required. Mr. Quinn also reconfirmed that "the drainage system as designed complies with all applicable regulations."

197. In October 2015, Mr. Quinn asked Mr. Khan to submit a proposed design for a recharge system, just in case the Board ultimately required ISBR to provide such a system, contrary to Mr. Quinn's advice. Mr. Khan submitted the proposed design incorporating a recharge system.

198. However, seeking to avoid the addition of an unnecessary recharge system that could result in standing water on the Property, in October 2015, Mr. Quinn and Mr. Khan discussed the possibility that ISBR might perform additional soil testing to avoid any request by the Board to add a recharge system to its site plan. Given that the close of the proceedings was imminent, the two engineers negotiated language for a proposed condition of preliminary approval: the Board would approve ISBR's stormwater plans on the condition that ISBR would either provide a recharge system or perform additional soil testing to reconfirm that no recharge system was needed.

199. On October 29, 2015, ISBR's counsel sent the proposed condition of approval to Board Attorney Drill. Mr. Drill then provided that proposed condition to Board members. The issue of recharge appeared to be resolved.

200. At the public hearing on November 3, 2015—the final public hearing prior to the Board's deliberations on ISBR's application—the Board had its first and only opportunity to ask Board Engineer Quinn about his September 28, 2015 letter rebutting Mr. Fox's criticisms

concerning ISBR's stormwater drainage. The Board elected to forgo this opportunity. Board Chairman Plaza opined that Mr. Quinn's letter "could be taken into account by the Board at the time of deliberations" because "it was very concise and to the point." After this hearing, the record for ISBR's application was officially closed.

201. Soon thereafter, the Board denied ISBR's application, even for preliminary approval.

202. The Resolution first faulted ISBR for failing to satisfy the purported recharge requirement—a requirement that Board Engineer Quinn had repeatedly opined did not apply to ISBR's Property, that ISBR had understood to be resolved through the agreed-upon condition, and that, in any event, ISBR had satisfied in designs submitted to Mr. Quinn. The Board chose not to grant preliminary approval subject to the agreed-upon condition—a less restrictive means of ensuring that ISBR satisfied drainage requirements—or even on the condition of adding the recharge system.

203. The Board's main basis for denial, however, was that ISBR "deci[ded] not to submit to the Board the information it submitted to Mr. Quinn." (Emphasis in original.) The Board stated that "it would be inappropriate to delegate review and approval of essential elements of a development plan such as stormwater drainage, which is a matter vital to the public health and welfare." The additional "information" to which the Board was referring was the calculations performed by Board Engineer Quinn himself, which ISBR Engineer Khan had verified and agreed with. In other words, the Board faulted ISBR for not sharing with the lay Board highly technical engineering calculations—the sort of calculations Board member Mary Pavlini characterized as "Greek" to her and her fellow Board members—that were performed by the Board's own engineer and were always accessible to the Board through its engineer. The

Board had also expressly disclaimed an opportunity to review the updated stormwater calculations.

204. The Board's approach to ISBR's application was in sharp contrast to how it has treated other applicants. As detailed further below, the Board has previously delegated authority to its engineer to review stormwater drainage plans. Indeed, in multiple cases the Board has granted final site plan approval on the condition that the applicant would revise its stormwater drainage plans, and the Board has delegated the authority to review the changes to its engineer.

205. The Board's decision to deny preliminary and final approval based on ISBR's alleged failure to submit the recharge design and the calculations that were in the possession of its own engineer was not pursuant to any compelling government interest. Nor did the Board apply the least restrictive means available to it. The Board treated ISBR differently and less favorably than other religious and secular applicants and its determinations were arbitrary, capricious, and unreasonable.

v. Fire Truck Access Requirements

206. The Resolution concluded that ISBR's plans failed to satisfy fire department access requirements because its "internal circulation system will not be able to handle access and circulation of fire trucks in a safe manner."

207. In fact, ISBR more than satisfied all fire truck access requirements. Not only did it comply with the local ordinance regarding width of fire lanes, it generated and submitted to the Board an engineering drawing and fire service plan demonstrating that the Township's largest fire truck was able to access the entire site, including the fire lanes and the parking aisles of the parking lot. Using a simulation program called AutoTurn, the ISBR plan demonstrated the precise angles at which the fire truck could clear the turns in the back of the parking lot. The

Township's largest fire truck was shown to have complete access around the lot, well beyond what is required by law.

208. ISBR took this step even though the local ordinance requires fire truck access only to the structure of a building and not to every part of its parking lot and even though ISBR's site plan met all the local ordinance's requirements concerning fire lanes and their width.

209. Specifically, pursuant to Township Ord. § 21-46A.1(e)(5), "[a]ll buildings shall have fire lanes in front of their public entrance which shall be at least 25 feet in width . . ." That is, a building must have at least one fire lane, and that fire lane must be 25-feet wide. To the extent that an applicant provides additional fire lanes "which are not otherwise required to be constructed," those fire lanes must have a "minimum width of 18 feet." Ord. § 21-46A.1(e)(3). On ISBR's plans, the fire lane in front of the public entrance is 25 feet wide, and the remaining fire lanes are at least 20 feet wide. Thus, ISBR complied with the requirements of Ord. § 21-46A.1(e) concerning fire lane width.

210. On December 19, 2014, the Township's Fire Official, Janet Lake, issued a review letter acknowledging that ISBR's site plan met the requirements of Ord. § 21-46A.1(e)(5).

211. Nonetheless, the Resolution claimed that ISBR's fire truck access plans were deficient. In doing so, the Board adopted wholesale arguments proposed by a lay objector named Cody Smith for the first time on January 20, 2015—nearly three years into ISBR's application process. Mr. Smith had argued as follows: the preamble to Ord. § 21-46A.1(e) states that "Means of access for Fire Department apparatus shall be constructed in accordance with N.J.A.C. 5:21-4. The National Fire Codes Protection Association Standards will apply where the following is not specific." The ordinance then provides 10 subsections setting forth iterative requirements, such as those relating to the width of fire lanes. Mr. Smith contended one of those

provisions was not sufficiently specific in its requirements, and therefore argued that two particular NFPA provisions he had selected, NFPA 1141 §§ 5.4.1 and 5.4.2, should be deemed incorporated into the Township ordinance.

212. These NFPA 1141 sections are located in a section titled "Parking Lots" that provides standards for the widths of parking aisles and parking stalls. Those NFPA provisions are designed to ensure that parked passenger vehicles have sufficient room to back out of parking spaces and to then turn around to exit the parking lot. They have no legal or logical connection to "means of access for Fire Department apparatus," which is the topic of Ord. § 21-46A.1(e).

213. Moreover, the Township ordinance has its own provision governing the width of parking aisles that sets forth different requirements from those of NFPA 1141.[26] In a review letter dated August 3, 2012, Township Planner Schley acknowledged that Ord. § 21-39.3 contains the applicable rules governing parking aisle width. This provision requires 24-foot parking aisles for 90-degree parking stalls. ISBR satisfied the requirements of Ord. § 21-39.3.

214. Given these facts, Mr. Smith apparently argued that the provisions he had selected from NFPA 1141 applied for no reason other than because he thought ISBR's site plan did not comply with them.

215. Defendants' own professionals uniformly rejected Mr. Smith's argument based on the supposed incorporation of NFPA 1141. As noted above, Township Planner Schley confirmed that the Township's own ordinance governed parking aisle width, not NFPA 1141. Further, Fire Official Lake testified that the subsections of Ord. § 21-46A.1(e) set forth *specific* rules concerning fire access lanes, which rendered NFPA standards inapplicable. Most directly, however, in a memo dated February 11, 2015, Board Attorney Drill also opined that Mr. Smith's

[26] Township Ord. § 21-39.3 ("Standards for Parking, Loading and Access").

purported legal interpretation was simply incorrect and that NFPA 1141 was inapplicable. Mr. Drill further opined that ISBR's site plan complied with any applicable NFPA requirements.

216. Nonetheless, in its Resolution, the Board ignored the fire safety advice of its Fire Official, ignored the planning advice of its Township Planner, ignored the legal advice of its Board Attorney, and ruled that NFPA 1141 applied. Based on that faulty ruling, the Board then concluded that ISBR failed to provide for fire truck access, even though ISBR had proven that fire trucks could access all parts of its Property through fire lanes that met all local and state requirements. The Board has never applied these standards to any other applicant.

217. The Board's decision to deny preliminary and final approval based on reasons purportedly tied to fire truck access was not pursuant to any compelling government interest, given that ISBR satisfied the local ordinance and showed that even the Township's largest fire truck could access all parts of its Property. The Board did not act using the least restrictive means available to it. The Board treated ISBR differently and less favorably than other religious and secular applicants and its determinations were arbitrary, capricious, and unreasonable.

vi. Internal Traffic Circulation

218. The Board also concluded that ISBR's internal traffic circulation plan failed to comply with the Township ordinance and did not adequately guard the Township's health and safety. Specifically, the Board criticized ISBR's traffic circulation plan for allegedly failing to show how Sunday School children would be dropped off in the parking lot and, according to the Board, for making undue use of parking aisles.

219. The issue of Sunday School drop-off resulted from the Board's unprecedented and unreasonable requirement that ISBR designate fire lanes on three sides of its building and that those fires lanes all be designated "no stopping and no standing." The Township's applicable ordinance only requires fire department access on one side of a non-commercial

building like ISBR's. For good measure, the Board also blocked ISBR from staging drop-off in the spacious driveway at the Property's front because, according to the Board, cars dropping off children would stack up to such an extent that they would back up across ISBR's long U-shaped driveway and onto Church Street.

220. With no alternatives, ISBR planned for Sunday School children to be dropped off at the rear of the building. ISBR Engineer Adnan Khan provided a written supplemental internal circulation plan to the Board and also provided oral testimony detailing the new drop-off requirements. According to Mr. Khan, the children being dropped off would exit their cars at the rear of the building, step onto the sidewalk under the supervision of an easily identifiable monitor wearing a vest, and enter the building from its public side entrance. If more than one car arrived at the same time, children could be dropped off under the supervision of the monitor by the adjacent handicapped parking spaces and walk a few steps onto the sidewalk using the handicapped access aisles. Further, traffic signs would ensure congregants were made aware that drop-off was to be done in that location. The drop-off location adjacent to the public entrance is identified on Figure 12 in red text below.

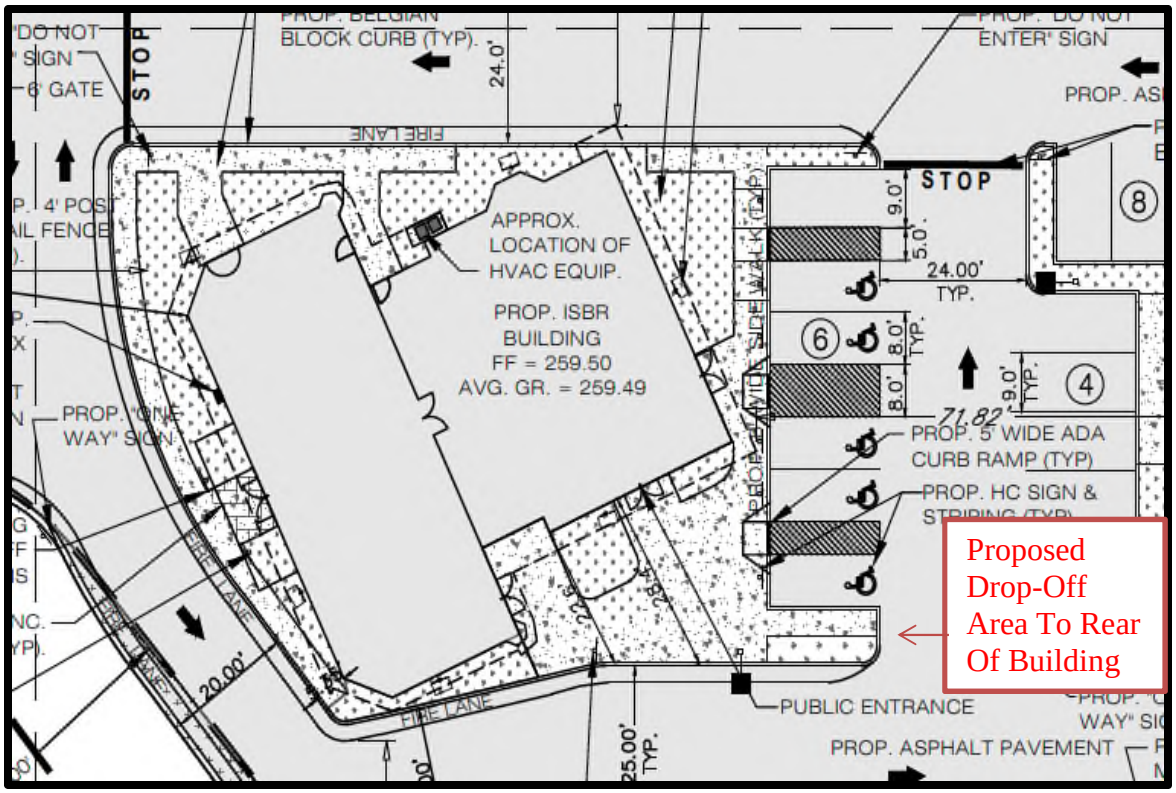

Figure 12: Extract from ISBR Site Plan with Superimposed Drop-Off Location

221. When Mr. Khan testified about this internal circulation plan and the new drop-off requirements on September 30, 2014, none of the Board members raised any concerns or asked ISBR Engineer Khan any questions about any aspect of parking lot operation. To the contrary, in response to a community member's objection that Mr. Khan was not a traffic expert, the Board's Chairman, Jeffrey Plaza, ruled that "[i]t is within the ken of an engineer" to testify to internal circulation issues, and the Board admitted Mr. Khan's testimony.

222. Objectors subsequently engaged ISBR Engineer Khan in protracted cross-examination seeking to manufacture safety concerns. At a January 2015 hearing, after Mr. Khan's cross-examination concluded, Board member Pavlini posed the only questions from anyone on the Board. Her questions elicited testimony showing that all of the objectors' concerns had been fully addressed.

223. In its Resolution, the Board claimed that ISBR's proposal was inadequate because the Board needed to see "a written plan incorporating the use of" monitors, and it would not rely on a verbal explanation of the drop-off process. The Resolution complained that ISBR Engineer Khan failed to demonstrate this drop-off plan on ISBR's site plan. Internal circulation of pedestrians and child drop-off procedures, however, are not required to be on site plans by the ordinance cited by the Board.[27] The ordinance requires a description of site features—like roads and pathways—not an operational overview of parking lot operations. Moreover, Mr. Khan ***had*** laid out in writing the drop-off procedures, including the use of a monitor wearing an identifying vest, in his May 2014 supplemental internal circulation report. Mr. Khan also incorporated the relevant site features of his circulation report into ISBR's next set of revised site plans in September 2014.

224. In passing, the Board also mentioned the alleged overuse of parking aisles for pedestrians as a basis for rejecting ISBR's circulation plan, citing Ord. § 21-39.3(a)(3)(b). This provision, however, is inapplicable since it pertains only to vehicular circulation. Moreover, ISBR minimized the use of parking aisles to the fullest extent possible given the fire lane requirements imposed by the Township.

225. The Board treated ISBR differently than similarly situated houses of worship. As detailed further below, for example, when in 2001 the Board raised concerns about traffic circulation for the Chabad Jewish Center, it determined that a traffic monitor would be needed to direct pedestrians and vehicles on certain high-traffic days. Even though the applicant had not submitted a plan to this effect, the Board nevertheless granted preliminary and final site plan

[27] Township Ord. § 21-54.6(h)(1)-(2).

approval, simply listing the traffic monitor as a condition. The Board has not required any other house of worship to document a drop-off plan in a circulation report or site plan.

226. The Board's decision to deny preliminary and final approval based on purported health and safety concerns for Sunday School students was not pursuant to any compelling government interest, given that no genuine health or safety issue existed and ISBR had submitted written report and oral testimony detailing its plans. The Board did not act using the least restrictive means available to it. The Board treated ISBR differently and less favorably than other religious and secular applicants and its determinations were arbitrary, capricious, and unreasonable.

vii. Site Lighting

227. The Resolution determined that the site lighting proposed by ISBR was lacking in detail and "too intense for the adjacent residential lots." The Board stated that it sought to reduce ISBR's site lighting to 0.3 footcandles.

228. Township Ord. § 21-41.3 limits illumination for nonresidential uses to an average of 0.9 footcandles. ISBR's detailed lighting plan proposed average illumination levels of 0.7 footcandles in the driveways and 0.81 footcandles in the parking lot. Given that ISBR's average illumination levels were below the maximum prescribed by Ord. § 21-41.3, ISBR satisfied its requirements.

229. The Resolution, however, asserted that ISBR nonetheless did not demonstrate compliance with the prior subsection of the Ordinance, § 21-41.2, which gives the Board "development plan approval" authority to ensure site lighting that "minimize[s] undesirable off-premises effects." The Board found ISBR's lighting plan too "lacking in detail" to satisfy this requirement.

230. The Board has no discretion under Ord. § 21-41.2 to generate alternative maximum illumination levels for particular applicants. Even if it did, however, it would be limited to setting lighting levels to "minimize[s] undesirable off-premises effects." Here, ISBR's lighting plan showed that the illumination levels at ISBR's boundaries were "0.0" footcandles, *i.e.*, there were no off-premises effects from its site lighting. Accordingly, even under the Board's own strained reading of Ord. § 21-41.2, it had no basis to challenge ISBR's site lighting.

231. ISBR's lighting plans also demonstrated adequate detail. ISBR submitted several different iterations of a lighting plan that demonstrated the level of proposed illumination throughout the Property. At the specific request of Board Attorney Drill, ISBR also prepared a lighting exhibit that demonstrated no illumination at ground level, 5 feet above ground level, and 10 feet above ground level at the Property line. ISBR's lighting plan demonstrated that the average illumination in the driveways and the parking lot was well below the maximum of 0.9 footcandles. Thus, ISBR's plans satisfied the requirements of Ord. §§ 21-41.2 and 21-41.3.

232. At a public hearing on January 6, 2015, ISBR agreed to moot any possible concerns by reducing the average illumination across the site to 0.5 footcandles as a condition of approval, even though its plan already showed that its illumination was under permitted levels. ISBR had previously also agreed to a post-approval test of its installed lighting by a Board committee to ensure the Property's lighting complied with the Township's ordinance and the Board's requirements. The BTCRD's counsel, nonetheless, asked the Board to require ISBR to submit yet another lighting plan demonstrating an average illumination limit of 0.5 footcandles. Board Attorney Drill advised the Board that it did not have a basis to require ISBR to submit the revised plan requested by the BTCRD's counsel because ISBR's plan already complied with the 0.9 footcandle limit of Ord. § 21-41.3. Mr. Drill stated that if ISBR did not wish to voluntarily

limit its lighting further, "I am uncomfortable telling the Board that they have the authority to tell [ISBR] if you don't do that we are going to deny your application." The Board disregarded this advice from its own attorney.

233. The Board has approved lighting plans with average illumination levels of at least 0.88 footcandles for other houses of worship. The Board has also granted approval to a house of worship on the condition that the applicant would submit a lighting plan after approval. The Board made no such allowances for ISBR.

234. The Board's decision to deny preliminary and final approval based on purported illumination intensity was not pursuant to any compelling government interest, given that ISBR met the requirements of the local lighting ordinance and that its lighting had no off-premises impact. The Board did not act using the least restrictive means available to it. The Board treated ISBR differently and less favorably than other religious and secular applicants, and its determinations were arbitrary, capricious, and unreasonable.

I. Community Reaction to the Board's Denial

235. On December 8, 2015, hundreds of residents, many residing far from the ISBR site, sought to attend the Board's final hearing on ISBR's application. The crowd in the Board's meeting room reached 140 people, leaving another 35 residents to occupy a room designated for overflow. That overflow room was also filled to capacity. A local realtor who lives three miles from the Property recounted: "I was very gratified to see the outpouring of townspeople. . . . I felt it extremely important to send a message to the board that they are accountable to their constituents; to have them look in our eyes as they voice their decision on the mosque application."

236. The Board voted 4-2 to deny ISBR's application for preliminary site plan approval. Board members Mary Pavlini and Randy Santoro voted in favor of granting

preliminary approval. The Board voted 6-0 to deny ISBR's application for final site plan approval.

237. According to local news reports, community members attending the hearing applauded with delight when the Board voted down ISBR's application. As described by a local news source, "'Party! Party! Party!' yelled one Church Street resident as she jumped up and down outside with other residents in a circle. They hugged, cheered and danced at the decision."[28] Another resident said, "Yes I'm happy. I wish them the best of luck and hope they find a property with six-plus acres to build. Or I hear they are building a mosque in Bridgewater, they can go there."[29] An ISBR neighbor stated, "I'm so glad the vote was so strong in opposition, and I'm very happy about the turnout. Never did I think this decision was in the bag at all, though to me it was obvious."

238. *The Bernardsville News* reported on online reaction to the denial. It noted that some residents claimed the denial was only about land use issues. For example, one poster stated that the "property in question is in the middle of a residential area across from the fire house." As the article recounted, however, other posts took a different tone, making comments like: "You're probably not ready for courses in Sharia Law at this point." The article noted that the "controversial proposal from Republican presidential candidate Donald Trump to prevent Muslims from entering the country was also mentioned by one writer." That online poster wrote: "We Republicans are mad as heck and not going to take it any more [*sic*]! . . . Stand behind Trump and his 'banning' of Muslims from our America!'" The newspaper also reported other

[28] A. Tarrazi, *Basking Ridge Votes No to Islamic Masque*, December 10, 2015, *available at* http://patch.com/new-jersey/baskingridge/basking-ridge-votes-no-islamic-mosque.

[29] *Id.*

comments, including: "Thank you planning board – let them build it in the Great Swamp at low tide," and "Kudos to you Bernards Twp. Let them go elsewhere."

239. Lori Caratzola celebrated on Facebook, posting an article about the denial with the words, "We did it!"

J. Individualized Assessment and Impact on Interstate Commerce

240. The substantial burdens on ISBR discussed above were imposed in the implementation of a system of land use regulations, under which a government makes, or has in place procedures or practices that permit the government to make, individualized assessments of proposed uses for property.

241. Portions of ISBR's funds expended on purchase of the Property, as well as payments to its professionals related to the Board proceedings described herein, were transferred by means of financial institutions located outside the State of New Jersey, as well as through the use of interstate wires. The construction of ISBR's proposed mosque will affect interstate commerce, including through payment to those constructing the mosque; purchase of materials necessary to build the mosque; use of interstate highways for the transportation of persons and materials used to construct the mosque; and other activities related to the construction of the mosque. If built, ISBR's mosque will affect interstate commerce by or through, amongst other things, the employment of any part- or full-time employees that will use modes of transportation affecting interstate commerce, and the purchase of goods and services related to the mosque's ongoing operations and maintenance in a manner that will affect interstate commerce.

K. ISBR Has Been Excluded from the Township Where Similarly Situated Institutions Have Not

242. The Board's refusal to treat ISBR as it treated other land use applicants reflected an approach advocated by the BTCRD's counsel in a June 12, 2014 argument to the Board. What the Board has done with respect to prior applications, he argued, "has absolutely no bearing on proofs that were to be submitted as part of [this] application for development." That argument contravened the requirements of RLUIPA, the U.S. and New Jersey constitutions, and New Jersey state law.

243. By denying ISBR's application for preliminary and final site plan approval, the Board treated ISBR differently and worse than the Board and the Zoning Board have treated similarly situated religious and secular institutions. The Board treated ISBR differently because ISBR is a Muslim congregation.

i. Comparable Religious Institutions

a. Chabad Jewish Center

244. Chabad Jewish Center ("Chabad") is located at 3048 Valley Road in a residential zone. On or around August 8, 1995, Chabad submitted an application seeking preliminary and final site plan approval to construct an addition to an existing structure and to use the building as a 40-seat synagogue. On November 7, 1995, the Board granted both preliminary and final site plan approval after two public hearings on the application and an approval period of less than three months.

245. On Chabad's site plan, it calculated its parking requirement as 17 spaces: 14 spaces using the Township's 3:1 parking ratio for churches, plus three spaces for a clergy residence. Chabad's site plan noted that it was applying the "1 space / 3 seats" ratio for a "house of worship." Chabad offered to provide three additional parking spaces over the required

number for a total of 20 spaces. At the Board's hearings concerning Chabad's application, there was no debate over the required number of parking spaces, and the Board did not perform an individualized inquiry into Chabad's actual parking needs. In the resolution approving Chabad's application, the Board stated that Chabad's parking proposal was "adequate."

246. In addition, Chabad proposed a combination of a fence and planted screening to screen its Property from the adjacent residences. At the Board's hearings concerning Chabad's application, Township Planner Peter Messina stated that the fence was an "appropriate" element of Chabad's screening.

247. Chabad's site plan included a driveway located in the 50-foot buffer area bordering the adjacent residential use. At the Board's hearings concerning Chabad's application, there was no discussion of this buffer incursion. Nor did the Board require Chabad to demonstrate that construction of the driveway in the buffer area was essential to Chabad's plan. Rather, the Board approved Chabad's plan without any discussion of the buffer incursion.

248. In sum, with respect to Chabad's 1995 application, the Board treated Chabad differently and better than ISBR, including in the following ways:

- The Board approved a parking calculation for a non-Christian house of worship using the 3:1 ratio set forth in the Parking Ordinance, and it did not perform an individualized inquiry into Chabad's parking need.
- The Board approved a fence as an appropriate screen.
- The Board permitted a buffer incursion without requiring Chabad to prove that the incursion was essential to its plan.
- The Board approved Chabad's application after two public hearings and less than three months.

249. On or around November 30, 2000, Chabad applied for approval of a two-phase expansion of its synagogue. Phase I included a 2,581-square-foot addition to the clergy

residence, an 18,126-square-foot building for classrooms and offices, and a 67-space parking lot. Phase II included a 6,318-square-foot building housing a 200-seat sanctuary and a 175-seat social hall. Chabad sought preliminary and final site plan approval for Phase I, and preliminary site plan approval for Phase II. On May 8, 2001, the Board granted both approvals after two public hearings on the application after less than six months.

250. The Board calculated Chabad's parking requirement as 94 spaces: 67 spaces for the 200-seat sanctuary, 25 spaces for the classrooms, and 2 spaces for the clergy residence. In other words, the Board applied the Township's 3:1 parking ratio for churches to the number of seats in the sanctuary. The Board did not take the 175-seat social hall into account in its parking calculation. While the social hall could have added 58 spaces to the parking calculation (175 seats/3 seats per space), Chabad represented that it would not use the social hall at the same time as the sanctuary, and the Planning Board chose not to include the social hall in its calculation.

251. The Board then granted Chabad an exception from the 94 spaces required by the Parking Ordinance and permitted Chabad to build a lot with only 69 spaces. The Board justified this decision by stating that the "applicants also testified that the sanctuary and classrooms would not be used simultaneously and that the actual maximum parking demand on-site at any one time would therefore be 69 spaces." The Board also noted that Chabad had entered into an agreement with neighboring Millington Baptist Church to use its lot for overflow parking. The Board permitted this arrangement on the condition that Chabad provide for an off-duty police officer to regulate vehicle and pedestrian traffic between the two houses of worship.

252. Chabad's lighting plan noted that the average illumination would be 0.88 footcandles. A review letter by Township Planner Peter Messina stated that the Township

ordinance permitted a maximum of 0.9 footcandles. The Board accepted Chabad's proposed site lighting without objection.

253. Chabad was not required to submit a separate plan demonstrating fire vehicle circulation throughout its parking lot. Nor was Chabad required to designate fire lanes prior to obtaining site plan approval. In a post-approval letter dated June 13, 2002, Fire Official Janet Lake stated that "[n]ew fire lanes will be designated and installed prior to occupancy of the new facility."

254. On Chabad's site plan, the parking aisles for 90-degree parking stalls were 24 feet wide. The Board did not apply NFPA 1141 to Chabad's proposal. Rather, it approved the proposed 24-foot aisles.

255. The Board resolution approving Chabad's expansion application included a number of conditions requiring significant amendments to Chabad's site plan, including the elimination of a detention basin, the addition of a trench, and changes to the landscaping plan. The Board nonetheless granted final approval to Phase I and preliminary approval to Phase II. The Board's approval delegated authority to review the anticipated site plan amendments to the Township Engineer.

256. In sum, with respect to Chabad's expansion application in 2000, the Board treated Chabad differently and better than ISBR, including in the following ways:

- The Board approved a parking calculation for a non-Christian house of worship using the 3:1 ratio set forth in the Parking Ordinance; it then permitted a downward departure from that requirement. The Board took into account alternative parking arrangements in granting that departure. The Board ultimately required only 69 parking spaces for a 27,000-square-foot complex—over six times as large as ISBR's proposed mosque. The Board did not grant ISBR such relief.

- The Board permitted Chabad to employ an off-duty police officer to ensure pedestrian safety, while in ISBR's case it did not approve the proposed use of a monitor to ensure pedestrian safety.

- The Board approved Chabad's site lighting plan with an average illumination level of 0.88 footcandles, while it faulted ISBR's plan, which proposed average illumination levels of 0.7 and 0.81 footcandles.

- The Board did not require Chabad to provide a separate fire service plan or to designate fire lanes prior to obtaining site plan approval.

- The Board applied less restrictive requirements concerning parking aisle width to Chabad.

- The Board delegated approval of Chabad's site plan amendments, including drainage and landscaping elements, to the Township Engineer, while in ISBR's case, the Board refused to do so.

- The Board approved Chabad's application after two public hearings and in less than seven months.

b. Congregation B'nai Israel

257. Congregation B'nai Israel ("B'nai Israel") is located at 40 Whitenack Road in a residential zone. In or around November 1993, B'nai Israel submitted an application seeking preliminary and final site plan approval to construct a 25,808-square-foot complex including a synagogue, religious school, and nursery school. On March 15, 1994, the Board granted both preliminary and final site plan approval after two public hearings on the application, less than five months after submission.

258. B'nai Israel's proposed facility contained at least 750 seats. The Board calculated B'nai Israel's parking requirement under the Parking Ordinance as 138 spaces; that is a less restrictive ratio than 3:1, which is provided in the Parking Ordinance. B'nai Israel requested an exception to the 138-space parking requirement and proposed a total of 80 spaces: 57 spaces in a paved lot, and 23 spaces in a gravel lot. B'nai Israel also proposed the use of valet parking in the event that attendance reached "peak capacity."

259. The Board granted the requested parking exception. It noted that "[t]he size of the proposed parking areas is constrained by the locations of the proposed septic field and of the wetlands area on the Property," and that "strict enforcement of the requirement regarding the number of parking spaces to be provided would be impracticable or would exact undue hardship." The Board suggested that B'nai Israel add a grass-covered parking lawn for overflow parking, and it granted a variance to enable B'nai Israel to locate this parking lawn within 50 feet of the rear property line.

260. At one of the public hearings concerning B'nai Israel's application, the Township Planner recommended that B'nai Israel provide an alternate service driveway on the site. B'nai Israel's engineer proposed construction of the service driveway in the westerly 50-foot buffer adjacent to the neighboring residential use. The Board approved this proposal. The Board did not require B'nai Israel to demonstrate that construction of the driveway in the buffer area was essential to B'nai Israel's plan.

261. The Board resolution approving B'nai Israel's 1993 application included a number of conditions requiring significant amendments to B'nai Israel's plans, including the addition of the service driveway, revisions to the stormwater drainage plan, and revisions to the landscaping plan. It also delegated authority to review the anticipated amendments to the Township Engineer and the Township Planner. The Board nonetheless granted final approval.

262. In addition, the Board resolution permitted B'nai Israel to submit a lighting plan after final approval was granted, subject to the approval of the Township Engineer and the Township Planner. B'nai Israel did not submit any lighting plan prior to obtaining final approval of its application.

263. In sum, with respect to B'nai Israel's application, the Board treated B'nai Israel differently and better than ISBR, including in the following ways:

- The Board permitted an exception from the required number of parking spaces. In granting this exception, the Board took into account alternative parking arrangements and the constraints on B'nai Israel's use of its land (which are similar to the constraints faced by ISBR). The Board ultimately required only 80 parking spaces for a 25,808-square-foot complex. The Board did not grant ISBR such relief.

- The Board permitted a buffer incursion without requiring B'nai Israel to prove that the incursion was essential to its plan.

- The Board delegated approval of B'nai Israel's site plan amendments, including drainage and landscaping elements, to the Township Engineer, while in ISBR's case, the Board refused to do so.

- The Board approved B'nai Israel's plan without requiring the submission of any lighting plan prior to approval.

- The Board approved B'nai Israel's application after two public hearings and four months.

264. In or around March 1998, B'nai Israel applied for preliminary and final site plan approval for a 1,892-square-foot expansion of its facility. On September 22, 1998, the Board granted both preliminary and final site plan approval after one public hearing on the application. The 1998 Board resolution noted that the previously approved parking plan was "substantially unchanged." It again granted B'nai Israel an exception from the parking requirement and permitted the 80 existing spaces, in addition to the grass overflow parking area.

265. The Board resolution approving B'nai Israel's 1998 application included a number of conditions requiring significant amendments to B'nai Israel's plans, including revisions to landscaping, lighting, stormwater, and parking. In particular, the Board required landscaping changes in the westerly buffer adjacent to a residential use. The Board granted final

approval and delegated authority to review the anticipated plan amendments to the Township Engineer.

266. After the Board granted final approval in September 1998, then-Township Assistant Planner Schley issued a review letter in April 1999. In that letter, Mr. Schley suggested additional evergreen plantings to achieve adequate screening. In other words, B'nai Israel and the Township Assistant Planner negotiated the details of the buffer landscaping and screening after the Board granted final approval of B'nai Israel's site plan.

267. On B'nai Israel's site plan, the parking aisles for 90-degree parking stalls were 24-feet wide. The Board did not apply NFPA 1141 to B'nai Israel's proposal. Rather, it approved the proposed 24-foot aisles. B'nai Israel was also not required to submit a separate plan demonstrating fire vehicle circulation throughout its parking lot.

268. In sum, with respect to B'nai Israel's 1998 application, the Board treated B'nai Israel differently and better than ISBR, including in the following ways:

- The Board permitted an exception from that the required number of parking spaces after taking into account alternative parking arrangements. The Board did not grant ISBR such relief.
- The Board delegated approval of B'nai Israel's proposed plan amendments, including drainage and landscaping elements, to the Township Engineer, while in ISBR's case the Board refused to do so.
- The Board granted final approval to B'nai Israel without settling the details of the landscaping and screening in the buffer area. The Board did not permit ISBR to negotiate the details of buffering, landscaping, or screening with the Township Engineer after approval.
- The Board applied less restrictive requirements concerning parking aisle width to B'nai Israel.
- The Board did not require B'nai Israel to provide a separate fire service plan, while it did require ISBR to do so.

- The Board approved B'nai Israel's application after one public hearing and six months.

c. Millington Baptist Church

269. Millington Baptist Church ("Millington") is located at 520 King George Road in a residential zone. In or around 1998, Millington submitted an application to the Board seeking preliminary site plan approval for construction of a 67,390-square-foot church with 1,200 seats, 21 Sunday School classrooms, and 403 parking spaces. The proposed site was located on Mine Brook Road. The Board granted preliminary site plan approval in 1999.

270. In 1999, the Board calculated the required number of parking spaces for Millington using the 3:1 parking ratio set forth in the Parking Ordinance for houses of worship. The Board did not perform an individualized analysis of Millington's actual parking need. With respect to Millington's 1998 application, the Board treated Millington differently and better than ISBR in that the Board calculated parking for a house of worship using the 3:1 parking ratio set forth in the Township ordinance.

271. In 2004, the Board held hearings concerning final approval of Millington's site plan. During these hearings, Board Attorney Stuart Koenig and Township Planner Schley both stated that Millington was not required to submit a copy of its stormwater drainage plan to the Board in order to obtain final site plan approval. The Board ultimately denied Millington's application for final site plan approval because Millington's preliminary approval had expired.

272. In sum, with respect to Millington's 2004 application, the Board treated Millington differently and better than ISBR by ruling that Millington was not required to submit stormwater plans in order to obtain final site plan approval. In ISBR's case, the Board cited ISBR's alleged failure to submit adequate stormwater plans as a basis for denial of both preliminary and final site plan approval.

273. In or around 2007, Millington submitted an application to the Zoning Board seeking preliminary and final site plan approval, together with variance relief, in connection with the construction of a youth and family ministry building alongside its existing church and education buildings. On May 7, 2008, the Zoning Board granted preliminary and final approval after four public hearings on the application.

274. In its 2007 application, Millington sought a variance concerning the required number of parking spaces for its facility. In the Zoning Board resolution granting preliminary and final site plan approval, the Zoning Board noted that 384 parking spaces were required under the Parking Ordinance, and that Millington had instead proposed 157 spaces. The Zoning Board characterized the proposed 157 spaces as "significantly fewer than the number of spaces required by Ordinance." Millington acknowledged that its on-site parking was inadequate during its Sunday morning peak use. Millington proposed the use of alternative parking arrangements to supplement its on-site parking, including use of a nearby shopping center parking lot or a shuttle service. The Zoning Board granted the requested parking variance on the condition that Millington provided 75 off-site spaces along with a shuttle service to transport congregants to the church. Even taking into account the off-site parking spaces, the Zoning Board permitted a significant downward departure from the 384 required parking spaces.

275. Millington also sought a variance concerning the minimum 50-foot buffer width required by the Township buffer ordinance. Millington requested approval of a 9.12-foot buffer for the existing structure, and a buffer of less than 50 feet between the new building and the adjacent property line.

276. Millington's site plans included a 25-by-100-foot infiltration basin within 30 feet of the adjacent property line (*i.e.*, within a 50-foot buffer area). The Zoning Board did not

require Millington to demonstrate that construction of the infiltration basin in the buffer area was essential to Millington's plan. The Zoning Board granted the requested buffer variance.

277. Millington also sought a variance concerning the parking lot screening required by the Township screening ordinance. In the Zoning Board resolution granting preliminary and final site plan approval, the Zoning Board noted that "some parking [is] not being screened in accordance with the Ordinance requirements" and that this condition would continue. The Zoning Board did not require Millington to submit a landscaping plan with a cross-sectional view of the proposed screening. It nonetheless granted Millington's requested screening variance.

278. Township Planner Peter Messina's review letter concerning Millington's plans noted that "[t]he proposed building is to be accessed through the existing church parking lot." The Zoning Board did not require Millington to submit a written plan demonstrating that pedestrians could traverse the parking lot safely.

279. In sum, with respect to Millington's 2007 application, the Zoning Board treated Millington differently and better than the Planning Board treated ISBR, including in the following ways:

- The Zoning Board granted Millington's request for a variance concerning the required number of parking spaces. In granting this variance, the Zoning Board took into account alternative parking arrangements. The Planning Board did not grant ISBR such relief.

- The Zoning Board granted Millington's request for a variance concerning the 50-foot buffer requirement and permitted Millington to construct a large infiltration basin in its buffer area. In contrast, the Planning Board did not permit ISBR to construct a detention basin in its buffer area.

- The Zoning Board granted Millington's request for a variance concerning parking lot screening, while the Planning Board cited ISBR's inadequate parking lot screening as a basis for denial of its application.

- The Zoning Board did not require Millington to submit a landscaping plan with a cross-sectional view, while the Planning Board cited ISBR's failure to do so as a basis for denial of its application.

- The Zoning Board did not require Millington to submit a written plan demonstrating that pedestrians could traverse the parking lot safely, while the Planning Board cited ISBR's failure to do so as a basis for denial of its application.

d. Liberty Corner Presbyterian Church

280. Liberty Corner Presbyterian Church ("LCPC") is located at 45 Church Street in a residential zone.

281. In or around 2000, LCPC submitted an application to the Board seeking preliminary site plan approval for an expansion of its facility. On October 3, 2000, the Board granted preliminary site plan approval, less than 10 months after submission. As a condition of approval, the Board required a number of changes to LCPC's site plan, subject to approval by the Township Engineer. The Board also permitted LCPC to construct or maintain parking facilities, driveways, and/or drainage improvements in its 50-foot buffer area adjacent to residential uses.

282. In sum, with respect to LCPC's application, the Board treated LCPC differently and better than ISBR, including in the following ways:

- The Board delegated approval of LCPC's site plan revisions to the Township Engineer, while in ISBR's case the Board refused to do so.

- The Board permitted LCPC to construct or maintain parking facilities, driveways, and/or drainage improvements in the 50-foot buffer area. In ISBR's case, the Board cited the proposed buffer incursion as a basis for denial of the application.

ii. Comparable Secular Institutions

a. The Pingry School

283. The Pingry School ("Pingry") is located at 131 Martinsville Road in a residential zone. In or around 2014, Pingry applied to the Zoning Board for preliminary and final site plan approval, together with variance relief, in connection with proposed improvements to an existing private school, including an athletic complex. On April 8, 2015, the Zoning Board granted preliminary and final site plan approval and variance relief after only two public hearings on the application.

284. As part of its application, Pingry requested several variances and exceptions, including multiple variances relating to its inability to meet the conditional use criteria set forth in Ordinance # 2242. The Zoning Board acknowledged that Pingry's conditional use was being "intensified." The Zoning Board nonetheless granted the necessary variances on the grounds that the school was an "inherently beneficial use."

285. Pingry requested a variance "permitting less screening for recreation and parking areas than is required by [Ord.] Sections 21-28 and 21-43." The Zoning Board granted that variance. As a condition of final approval, the Zoning Board also permitted Pingry to resolve landscape screening issues during a subsequent review by its landscaping committee.

286. Pingry submitted a fire service plan along with its site plan. The Zoning Board and the Township fire officials did not require Pingry's fire service plan to demonstrate that the Township's fire trucks could circumnavigate the entire parking area. Nor was Pingry required to designate fire lanes prior to obtaining site plan approval. Rather, in a letter dated March 2, 2015, Fire Official Janet Lake stated that "[f]ire lanes will be designated after the construction of roadways and access areas by the Fire Official in conjunction with the Liberty Corner Fire Company."

287. The Zoning Board did not apply the requirements of NFPA 1141 to Pingry's site plan. Rather, in a letter dated December 23, 2014, the Township Engineer acknowledged that 24-foot parking aisles were required, in accordance with Ord. § 21-39.3.

288. The Zoning Board did not require Pingry to submit a written plan demonstrating that students could be dropped off safely.

289. The Zoning Board approved Pingry's drainage plan on the condition that Pingry would make several amendments proposed by the Township Engineer. The Zoning Board further noted that, "in the event the removal of bedrock cannot be effectuated [Pingry] shall revise the drainage plans to the satisfaction of the Township Engineer." In other words, the Zoning Board recognized that Pingry may need to revise its drainage plans due to site conditions. The Zoning Board nonetheless granted final site plan approval, delegating the authority to approve any drainage plan revisions to the Township Engineer.

290. In sum, with respect to Pingry's application, the Zoning Board treated Pingry differently and better than the Planning Board treated ISBR, including in the following ways:

- The Zoning Board granted Pingry several variances in order to permit an intensification of its non-compliant conditional use, whereas the Planning Board did not approve ISBR's application for a permitted use.

- The Zoning Board granted Pingry a variance to permit inadequate screening of its parking lot. In addition, the Zoning Board permitted Pingry to work with the landscaping committee after approval to improve its screening. The Planning Board did not give ISBR this option and, instead, cited ISBR's proposed screening as a basis for the denial of its application.

- The Zoning Board did not require Pingry to provide a fire service plan demonstrating that fire trucks could circumnavigate its parking lot or require Pingry to designate fire lanes prior to obtaining site plan approval. In contrast, the Planning Board did impose such requirements on ISBR.

- The Zoning Board did not apply the requirements of NFPA 1141 to Pingry's application, whereas the Planning Board did apply those requirements to ISBR's application.

- The Zoning Board did not require Pingry to submit a written plan demonstrating safe drop-off procedures for students, while the Planning Board cited ISBR's alleged failure to do so as a basis for the denial of its application.

- The Zoning Board granted final site plan approval to Pingry, even though Pingry had yet to make several required amendments to its drainage plan. The Zoning Board further delegated approval of Pingry's drainage plan amendments to the Township Engineer. In contrast, the Planning Board denied ISBR's application on the grounds that drainage plan amendments were required, and the Board refused to delegate approval of such amendments to its engineer.

b. Basking Ridge Animal Hospital

291. The Basking Ridge Animal Hospital ("Hospital") is located at 340 South Finley Avenue in a residential zone. On or around January 29, 2013, the Hospital applied to the Zoning Board for preliminary and final site plan approval, together with variance relief, in connection with the proposed expansion of an existing animal hospital. On April 9, 2014, the Zoning Board granted preliminary and final site plan approval and variance relief after two public hearings on the application.

292. As part of its application, the Hospital requested several exceptions, including an exception from the requirement of Ord. § 21-39.3(a)(5) of having 24-foot parking aisles for 90-degree parking stalls. Instead, the Hospital proposed a 20-foot parking aisle for two of its 90-degree parking stalls, and a 12-foot parking aisle for five other 90-degree parking stalls. The Zoning Board granted this exception on the grounds that "literal enforcement would be impracticable or exact undue hardship upon the Applicant due to the size of the Site and the location and configuration of the structures lawfully thereon."

293. The Zoning Board resolution approving the Hospital's application noted that the property had an 18-foot-wide fire lane in front of the main structure. The Zoning Board did not apply the more stringent requirements of NFPA 1141 to the Hospital's application.

294. As a condition of approval, the Zoning Board allowed the Hospital to provide additional landscape screening in the 50-foot buffer area adjacent to neighboring residents, subject to consultation with neighboring residents concerning the appropriate landscaping.

295. As a condition of approval, the Zoning Board required the Hospital "to provide calculations confirming the proposed average illumination of vehicular and pedestrian areas does not exceed 0.9fc, which is the maximum permitted pursuant to Section 21-41.3 of the Land Development Ordinance."

296. In sum, with respect to the Hospital's application, the Zoning Board treated the Hospital differently and better than the Planning Board treated ISBR, including in the following ways:

- The Zoning Board permitted an exception from the Township ordinance requirements concerning parking aisle width. The Planning Board held ISBR to standards that exceeded those of the Township ordinance.

- The Zoning Board did not apply the stricter requirements of NFPA 1141 to the Hospital's application, whereas the Planning Board did apply those requirements to ISBR's application.

- The Zoning Board permitted the Hospital to work with local residents after approval to ensure the adequacy of the landscaping screen. The Planning Board did not give ISBR this option and, instead, cited ISBR's proposed landscaping screen as a basis for the denial of its application.

- The Zoning Board did not require the Hospital to provide any plans demonstrating that the Hospital satisfied the requirements of the site lighting ordinance prior to granting site plan approval. And it permitted the Hospital to use lighting up to the maximum limit contained in the ordinance. In contrast, the Planning Board faulted ISBR's plan for proposing average illumination levels of

0.7 and 0.81 footcandles, figures that conform to the Township ordinance's lighting requirements.

c. The Albrook School

297. The Albrook School ("Albrook") is a private school located at 361 Somerville Road in the same residential zone as ISBR's Property. Albrook submitted three applications to the Board seeking site plan approvals in or around 1987, 1994, and 1997. The Board approved those applications. The Board's 1987, 1994, and 1997 approvals granted variances to Albrook concerning both parking setbacks and the required number of parking spaces. With respect to Albrook's site plan applications, the Board treated Albrook differently and better than ISBR. While the Board granted Albrook a variance from the required number of parking spaces, it did not grant such relief to ISBR.

d. Dr. Kiyosha Watts Yorio

298. Dr. Kiyosha Watts Yorio's property is located at 3080 Valley Road in a residential zone. On or around March 11, 2005, Dr. Yorio submitted an application seeking conditional use approval for a home medical office in a single-family home. On August 2, 2005, the Board approved the conditional use after one public hearing on the application. In assessing Dr. Yorio's proposed number of parking spaces, the Board applied the parking ratio set forth in the Township ordinance for medical offices: "1 space for each 200 square feet."[30] The Board did not perform an individualized analysis of Dr. Yorio's actual parking need. Instead, the Board approved Dr. Yorio's parking proposal.

299. Dr. Yorio also proposed a 5-foot-high fence to screen the parking area from the adjacent residents. The Board approved this proposal as well.

[30] Township Ord. § 21-22.1.

300. In sum, with respect to Dr. Yorio's application, the Board treated Dr. Yorio differently and better than ISBR, including in the following ways:

- The Board approved a parking calculation based upon the applicable ratio set forth in the Parking Ordinance, and it did not perform an individualized inquiry into Dr. Yorio's parking need.
- The Board approved a fence as a screen.

301. Accordingly, the Township, through the Planning and Zoning Boards, has historically accorded more favorable treatment to both religious and secular institutions than was accorded to ISBR on issues including screening, buffer incursions, parking, circulation, stormwater, and lighting.

L. Defendants Have Precluded ISBR from Developing Its Land for Religious Purposes

302. As a result of the Township's new ordinance, Ordinance # 2242, ISBR cannot now successfully reapply to the Board for site plan approval on its Property as a matter of right. Further, as a result of the expenses incurred before the Board and the changes required to its site plan since its initial application, ISBR does not have funds that could be used to purchase a new property, begin the site application process anew, and then develop the property, even if a property compliant with the new ordinance could be located. Due to Defendant's discriminatory intent and bad faith, further proceedings before the Board or any agency of the Township would be futile.

303. ISBR has made and continues to make payments on a mortgage for the Property, in addition to maintenance costs arising from the Property, despite ISBR's inability to put the Property to its intended and, at the time of purchase, permitted use.

304. ISBR also continues to incur expenses, including the costs of renting space for Friday prayers and for its Sunday School, which it would no longer be incurring had the Board granted timely approval and permitted construction of the ISBR mosque.

305. ISBR has spent at least $450,000 in its efforts to obtain approval of its site plan from the Board, which is far in excess of expenses typically and customarily incurred by applicants seeking approval of site plans comparable to ISBR's.

306. Due to the delay and lack of approval, ISBR has lost commitments of donations and other donations that it would have received in the event of timely approval.

307. The Board's discriminatory denial of ISBR's application for site plan approval severely inhibits the ability of ISBR and its congregation to fully and freely practice their Islamic faith. ISBR's application would not have been denied but for the religion of its members. Further, the Board's denial of ISBR's application for site plan approval places substantial pressure on ISBR and its congregation to modify their intention to build a much-needed permanent house of worship where they can fully enjoy their right to practice their faith.

FIRST CAUSE OF ACTION

Violation of the Religious Land Use and Institutionalized Persons Act of 2000
42 U.S.C. § 2000cc(a) – "Substantial Burden"
(Against All Defendants)

308. Plaintiffs reallege and incorporate by reference paragraphs 1 through 307.

309. Section 2(a) of RLUIPA prohibits any government from imposing or implementing land use regulations in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

310. Defendants have deprived and continue to deprive Plaintiffs of their rights to free exercise of religion, as secured by RLUIPA, by imposing and implementing land use regulations that place a substantial burden on their religious exercise without a compelling governmental interest and without using the least restrictive means of achieving any interest.

311. Plaintiffs have suffered damages as a result of the improper actions of the Township Committee, the Board, the Township, and the individual Defendants in violation of RLUIPA.

312. Plaintiffs are entitled to declaratory and injunctive relief.

313. Defendants are liable to Plaintiffs for damages in an amount to be determined at trial.

SECOND CAUSE OF ACTION

Violation of the Religious Land Use and Institutionalized Persons Act of 2000
42 U.S.C. § 2000cc(b)(1) – "Equal Terms"
(Against All Defendants)

314. Plaintiffs reallege and incorporate by reference paragraphs 1 through 313.

315. Section 2(b)(1) of RLUIPA prohibits any government from imposing or implementing land use regulations in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

316. Defendants have violated RLUIPA by implementing land use regulations in a manner that treated Plaintiffs on less than equal terms than similarly situated secular organizations that have sought approval from Township agencies or officials. Among other things, Defendants denied Plaintiffs' application to build a mosque on bases that had not been applied adversely to similarly situated secular institutions. Such unequal treatment of Plaintiffs violates the equal terms provision in Section 2(b)(1) of RLUIPA. 42 U.S.C. § 2000cc(b)(1).

317. Plaintiffs have suffered damages as a result of the illegal actions of the Township Committee, the Board, the Township, and the individual Defendants in violation of RLUIPA.

318. Plaintiffs are entitled to declaratory and injunctive relief.

319. Defendants are liable to Plaintiffs for damages in an amount to be determined at trial.

THIRD CAUSE OF ACTION

Violation of the Religious Land Use and Institutionalized Persons Act of 2000
42 U.S.C. § 2000cc(b)(2) – "Non-Discrimination"
(Against All Defendants)

320. Plaintiffs reallege and incorporate by reference paragraphs 1 through 319.

321. Section 2(b)(2) of RLUIPA prohibits any government from imposing or implementing land use regulations in a manner that discriminates against any assembly or institution on the basis of religion or religious denomination.

322. Defendants have violated RLUIPA, by implementing land use regulations in a manner that intentionally discriminates against Plaintiffs on the basis of religion. Among other things, Defendants exercised their zoning powers to deny Plaintiffs' application to build a mosque because it would have been a Muslim house of worship and on the basis of community opposition grounded in anti-Muslim animus. In addition, Defendants enacted a zoning ordinance aimed at establishing standards for Plaintiffs' proposed development different than those that have been applied to similar proposed land uses by non-Muslim houses of worship and by secular property owners. Such disparate treatment of Plaintiffs' application violates the anti-discrimination provision in Section 2(b)(2) of RLUIPA. 42 U.S.C. § 2000cc(b)(2).

323. Plaintiffs have suffered damages as a result of the unlawful actions of the Township Committee, the Board, the Township, and the individual Defendants in violation of RLUIPA.

324. Plaintiffs are entitled to declaratory and injunctive relief.

325. Defendants are liable to Plaintiffs for damages in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

Violation of the Religious Land Use and Institutionalized Persons Act of 2000 42 U.S.C. § 2000cc(b)(3)(B) – "Unreasonable Limitations" (Against the Township, the Township Committee, and all individual Defendants who are members of the Township Committee in their official capacity)

326. Plaintiffs reallege and incorporate by reference paragraphs 1 through 325.

327. Section 2(b)(3)(B) of RLUIPA prohibits any government from imposing or implementing land use regulations in a manner that unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

328. Defendants have violated RLUIPA, by imposing and implementing a land use regulation, *to wit*, Ordinance # 2242, passed by the Township Committee on October 15, 2013, which revised Ordinance § 21-12.3(f). The amended ordinance provision unreasonably limits religious assemblies, institutions, or structures within the Township.

329. Plaintiffs have suffered damages as a result of the improper actions of the Township Committee, the Board, the Township, and the individual Defendants in violation of RLUIPA.

330. Plaintiffs are entitled to declaratory and injunctive relief.

331. Defendants are liable to Plaintiffs for damages in an amount to be determined at trial.

FIFTH CAUSE OF ACTION

Violation of the United States Constitution
Free Exercise of Religion: First and Fourteenth Amendments
42 U.S.C. § 1983
(Against All Defendants)

332. Plaintiffs reallege and incorporate by reference paragraphs 1 through 331.

333. The First Amendment of the United States Constitution, as incorporated through the Fourteenth Amendment, prohibits a state or any political subdivision thereof from prohibiting the free exercise of religion (the "Free Exercise Clause").

334. In committing the acts alleged above, the Board, the Township Committee, the Township, and the individual Defendants were acting under color of state law.

335. The actions of the Board, the Township Committee, the Township, and the individual Defendants have violated and continue to violate Plaintiffs' rights under the Free Exercise Clause by imposing a substantial burden upon the religious exercise of Plaintiffs and by intentionally discriminating against Plaintiffs on the basis of religious belief. The substantial burden has been imposed by the discriminatory and arbitrary denial of Plaintiffs' application for site plan approval through the discretionary enforcement of a system of regulations that allows for individualized assessments of land use proposals.

336. Defendants discriminated against Plaintiffs by denying Plaintiffs' application for site plan approval and passing Ordinance # 2242 based on discriminatory animus towards Plaintiffs' religion.

337. Plaintiffs have suffered injury as a result of the illegal and unconstitutional actions of the Board, the Township Committee, the Township, and the individual Defendants.

338. Plaintiffs are entitled to a declaratory judgment that the Defendants' conduct has violated their First and Fourteenth Amendment rights.

339. Plaintiffs are entitled to injunctive relief.

340. Defendants are liable to Plaintiffs for damages in an amount to be determined at trial.

SIXTH CAUSE OF ACTION

Violation of the New Jersey Constitution
Free Exercise of Religion: Article I, Paragraph 3
N.J.S.A. § 10:6-2
(Against All Defendants)

341. Plaintiffs reallege and incorporate by reference paragraphs 1 through 340.

342. Article I, Paragraph 3 of the New Jersey Constitution guarantees the free exercise of religion.

343. The actions of the Board, the Township Committee, the Township, and the individual Defendants have violated and continue to violate Plaintiffs' rights under the New Jersey Constitution by imposing a substantial burden upon the religious exercise of Plaintiffs and by intentionally discriminating against Plaintiffs on the basis of religious belief. The substantial burden has been imposed by the discriminatory and arbitrary denial of Plaintiffs' application for site plan approval through the discretionary enforcement of a system of regulations that allows for individualized assessments of land use proposals.

344. Defendants discriminated against Plaintiffs by denying Plaintiffs' application for site plan approval and passing Ordinance # 2242 based on discriminatory animus towards Plaintiffs' religion.

345. Plaintiffs have suffered injury as a result of Defendants' illegal actions.

346. Under N.J.S.A. § 10:6-2, Plaintiffs are entitled to declaratory and injunctive relief, as well as civil damages and fines from Defendants.

SEVENTH CAUSE OF ACTION

Violation of the United States Constitution
Fourteenth Amendment: Equal Protection
42 U.S.C. § 1983
(Against All Defendants)

347. Plaintiffs reallege and incorporate by reference paragraphs 1 through 346.

348. The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution prohibits a state or any political subdivision thereof from denying to any person within its jurisdiction the equal protection of the laws.

349. In committing the acts alleged above, the Board, the Township Committee, the Township, and the individual Defendants were acting under color of state law.

350. The actions of the Board, the Township Committee, the Township, and the individual Defendants have violated and continue to violate Plaintiffs' rights under the Equal Protection Clause by intentionally treating Plaintiffs differently from other entities on the basis of religious belief. Among other things, Defendants implemented the Township's zoning ordinance in a manner that intentionally discriminated on the basis of Plaintiffs' religion and was different and substantially more burdensome than the implementation of the Township's zoning ordinance as to other religious or secular organizations. Defendants also passed Ordinance # 2242 for the purpose of preventing Plaintiffs from practicing their religion in a house of worship within the Township.

351. Plaintiffs have suffered injury as a result of the actions of the Board, the Township Committee, the Township, and the individual Defendants in violation of the Equal Protection Clause.

352. Plaintiffs are entitled to a declaratory judgment that the Defendants' actions have violated Plaintiffs' rights under the Equal Protection Clause.

353. Plaintiffs are entitled to injunctive relief mandating that Plaintiffs' application for site plan approval be granted forthwith.

354. Defendants are liable in damages to Plaintiffs in an amount to be determined at trial.

EIGHTH CAUSE OF ACTION

Violation of the United States Constitution
Fourteenth Amendment: Due Process
42 U.S.C. § 1983
(Against All Defendants)

355. Plaintiffs reallege and incorporate by reference paragraphs 1 through 354.

356. The Due Process Clause of the Fourteenth Amendment prohibits statutes that fail to provide people of ordinary intelligence a reasonable opportunity to understand the conduct governed by the statute as well as statutes that authorize or encourage arbitrary and discriminatory enforcement. Further, under Supreme Court precedent interpreting the Due Process Clause, statutes must provide explicit standards for those who apply them to avoid resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.

357. Township Ord. § 21-22.1 provides as follows:

> The development plan shall show the total number of off-street parking spaces required for the use or combination of uses indicated in the application. The schedule below represents standards acceptable to the Township. It is the intent of this chapter to provide for parking demand by requiring off-street parking except as noted for residential development. *Since a specific use may generate a parking demand different from those enumerated below, documentation and testimony shall be presented to the Board as to the anticipated parking demand. Based upon such documentation and testimony*, the Board may:
>
> (a) Allow construction of a lesser number of spaces, provided that adequate provision is made for construction of the required spaces in the future.

> (b) *In the case of nonresidential uses, require that provision be made for the construction of spaces in excess of those required hereinbelow, to ensure that the parking demand will be accommodated by off-street spaces*. (Emphasis added.)

358. The portions of Township Ord. § 21-22.1 that are italicized above violate the Due Process Clause of the Fourteenth Amendment. These parts of Township Ord. § 21-22.1 fail to provide members of the public, including Plaintiffs, a reasonable opportunity to ascertain the number of parking spaces required for a particular use, including mosques; authorize arbitrary and discriminatory enforcement by the Board with respect to the parking spaces required for a particular use, including mosques; and do not provide explicit standards for the Board to avoid resolution on an *ad hoc* and subjective basis. The constitutional flaws in these portions of Township Ord. § 21-22.1 resulted in an arbitrary and discriminatory application with respect to Plaintiffs. Specifically, the Board did not apply the 3:1 parking ratio set forth in the ordinance and instead undertook an "individualized analysis" that resulted in the Board's finding that Plaintiffs must provide 107 parking spaces for the proposed mosque. In committing the acts alleged above, the Board, the Township Committee, the Township, and the individual Defendants were acting under color of state law.

359. The portions of Township Ord. § 21-22.1 italicized above are severable from the remainder of that provision under Township Ord. § 21-1.3, which reads as follows:

> If any section, subsection or paragraph of this chapter shall be declared to be unconstitutional, invalid or inoperative, in whole or in part, by a court of competent jurisdiction, such section, subsection or paragraph shall, to the extent that it is not unconstitutional, invalid or inoperative, remain in full force and effect, and no such determination shall be deemed to invalidate the remaining sections, subsections or paragraphs of this chapter.

360. Plaintiffs are entitled to a declaratory judgment that the portions of Township Ord. § 21-22.1 italicized above violate the Due Process Clause of the Fourteenth Amendment

and that the portions of Township Ord. § 21-22.1, as italicized above, are severable from the remainder of the ordinance.

361. Plaintiffs are entitled to a declaratory judgment that the portions of Township Ord. § 21-22.1 italicized above are void.

NINTH CAUSE OF ACTION

New Jersey Constitution
Article I, Paragraphs 1 & 5: Equal Protection
N.J.S.A. § 10:6-2
(Against All Defendants)

362. Plaintiffs reallege and incorporate by reference paragraphs 1 through 361.

363. The New Jersey Constitution, Paragraphs 1 and 5, entitles all persons to equal protection of the law ("State Equal Protection Clause").

364. Defendants' actions have violated and continue to violate Plaintiffs' rights under the State Equal Protection Clause by intentionally treating Plaintiffs differently from other entities on the basis of religious belief. Among other things, Defendants implemented the Township's zoning ordinance in a manner that intentionally discriminated on the basis of Plaintiffs' religion and was different and substantially more burdensome than the implementation of the Township's zoning ordinance as to other religious or secular organizations. Defendants also passed Ordinance # 2242 for the purpose of preventing Plaintiffs from practicing their religion in a house of worship within Bernards Township.

365. Plaintiffs have suffered injury as a result of the Defendants' actions in violation of the State Equal Protection Clause.

366. Under N.J.S.A. § 10:6-2, Plaintiffs are entitled to a declaratory judgment that the Defendants' actions have violated Plaintiffs' rights under the State Equal Protection Clause.

367. Under N.J.S.A. § 10:6-2, Plaintiffs are entitled to injunctive relief mandating that Plaintiffs' application for site plan approval be granted forthwith.

368. Defendants are liable in damages to Plaintiffs in an amount to be determined at trial.

TENTH CAUSE OF ACTION

Violation of the New Jersey Constitution
Article I, Paragraph 1: Protection Against Injustice
N.J.S.A. § 10:6-2
(Against All Defendants)

369. Plaintiffs reallege and incorporate by reference paragraphs 1 through 368.

370. Article I, Paragraph 1 of the New Jersey Constitution provides that "[a]ll persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness." Under New Jersey Supreme Court Precedent, this provision seeks to protect against injustice and safeguard the principles of due process.

371. Township Ord. § 21-22.1 provides as follows:

> The development plan shall show the total number of off-street parking spaces required for the use or combination of uses indicated in the application. The schedule below represents standards acceptable to the Township. It is the intent of this chapter to provide for parking demand by requiring off-street parking except as noted for residential development. *Since a specific use may generate a parking demand different from those enumerated below, documentation and testimony shall be presented to the Board as to the anticipated parking demand. Based upon such documentation and testimony*, the Board may:
>
> (a) Allow construction of a lesser number of spaces, provided that adequate provision is made for construction of the required spaces in the future.

> (b) *In the case of nonresidential uses, require that provision be made for the construction of spaces in excess of those required hereinbelow, to ensure that the parking demand will be accommodated by off-street spaces*. (Emphasis added.)

372. The portions of Township Ord. § 21-22.1 that are italicized above violate Article I, Paragraph 1 of the New Jersey Constitution. These parts of Township Ord. § 21-22.1 fail to provide members of the public, including Plaintiffs, a reasonable opportunity to ascertain the number of parking spaces required for a particular use, including mosques; authorize arbitrary and discriminatory enforcement by the Board with respect to the parking spaces required for a particular use, including mosques; and do not provide explicit standards for the Board to avoid resolution on an *ad hoc* and subjective basis. The constitutional flaws in these portions of Township Ord. § 21-22.1 resulted in an arbitrary and discriminatory application with respect to Plaintiffs. Specifically, the Board did not apply the 3:1 parking ratio set forth in the ordinance and instead undertook an "individualized analysis" that resulted in the Board's finding that Plaintiffs must provide 107 parking spaces for the proposed mosque.

373. The portions of Township Ord. § 21-22.1 italicized above are severable from the remainder of that provision under Township Ord. § 21-1.3, which reads as follows:

> If any section, subsection or paragraph of this chapter shall be declared to be unconstitutional, invalid or inoperative, in whole or in part, by a court of competent jurisdiction, such section, subsection or paragraph shall, to the extent that it is not unconstitutional, invalid or inoperative, remain in full force and effect, and no such determination shall be deemed to invalidate the remaining sections, subsections or paragraphs of this chapter.

374. Plaintiffs are entitled to a declaratory judgment that the portions of Township Ord. § 21-22.1, as italicized above, violate Article I, Paragraph 1 of the New Jersey Constitution, and that the portions of Township Ord. § 21-22.1, as italicized above, are severable from the remainder of the ordinance.

375. Plaintiffs are entitled to a declaratory judgment that the portions of Township Ord. § 21-22.1 italicized above are void.

ELEVENTH CAUSE OF ACTION

New Jersey Municipal Land Use Law
Arbitrary, Capricious, or Unreasonable Land Use Decision
(N.J.S.A § 40:55D-1, *et seq.*; *Medici v. BPR Co.*, 107 N.J. 1 (1987))
(Against Defendant Board)

376. Plaintiffs reallege and incorporate by reference paragraphs 1 through 375.

377. N.J.S.A. § 40:55D-1, *et seq.*, and New Jersey common law, *see, e.g.*, *Medici v. BPR Co.*, 107 N.J. 1 (1987), prohibit a municipal land use board from exercising its land use powers in a manner that is arbitrary, capricious, or unreasonable and not supported by substantial evidence.

378. The actions of Defendant Board in hearing and denying Plaintiffs' application for preliminary and final site plan approval were arbitrary, capricious, and unreasonable and not supported by substantial evidence. Moreover, the instructions and legal rules supplied to the Board to guide its deliberations were arbitrary, capricious, and unreasonable as a matter of law in that they provided legal standards that were inconsistent with the MLUL and case law thereunder.

379. Plaintiffs have suffered injury as a result of the unlawful actions of Defendant Board.

380. Under N.J.S.A. § 40:55D-1, *et seq.*, and New Jersey common law, *see, e.g.*, *Medici v. BPR Co.*, 107 N.J. 1 (1987), Plaintiffs are entitled to declaratory and injunctive relief against Defendant Board's Resolution denying their application.

PRAYER FOR RELIEF

Plaintiffs pray for judgment in their favor and the following relief:

a) An Order finding and declaring that the Board's January 19, 2016 resolution denying ISBR's application for preliminary and final site plan approval violates RLUIPA as to Plaintiffs and is, therefore, null and void;

b) An Order finding and declaring that the Board's January 19, 2016 resolution denying ISBR's application for preliminary and final site plan approval is unconstitutional under the First and Fourteenth Amendments to the U.S. Constitution and is, therefore, null and void;

c) An Order finding and declaring that the Board's January 19, 2016 resolution denying ISBR's application for preliminary and final site plan approval is unconstitutional under the New Jersey Constitution and is, therefore, null and void;

d) An Order finding and declaring that the Board's January 19, 2016 resolution denying ISBR's application for preliminary and final site plan approval is arbitrary, capricious, and unreasonable under the New Jersey MLUL and is, therefore, null and void;

e) Preliminary and final injunctions restraining Defendants from impeding Plaintiffs' efforts to develop a mosque at 124 Church Street consistent with the site plans and related submissions made to the Board as of November 3, 2015;

f) Preliminary and final injunctions ordering Defendants to grant, forthwith and no more than 10 days from the date of the Court's Order, both preliminary and final approval to Plaintiffs' site plan and related submissions made to the Board as of November 3, 2015;

g) Appointment of a federal monitor to oversee Defendants' implementation and compliance with this Court's remedial orders, as well as Defendants continuing compliance with federal law in all decisions of the Board and Township Committee for a period of five years;

h) An Order mandating training for each and every one of Defendants' officials and agents engaged in the implementation of land use regulations as to the requirements and obligations imposed on state and municipal actors by RLUIPA, the U.S. Constitution, and the New Jersey Constitution;

i) An Order declaring that the portions of Township Ord. § 21-22.1 that are italicized in paragraph 357, above, are invalid and unconstitutional

under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution;

j) An Order declaring that the portions of Township Ord. § 21-22.1 that are italicized in paragraph 371, above, are invalid and unconstitutional under Article I, Paragraph 1 of the New Jersey Constitution;

k) Compensatory damages in an amount to be determined at trial and other appropriate relief to be determined at trial; and

l) An award of reasonable attorney's fees under 42 U.S.C. § 1988 in an amount to be determined by the Court.

JURY DEMAND

Plaintiffs demand a trial by jury on all claims for which one is available.

Dated: March 10, 2016

Respectfully submitted,

By: s/ Michael F. Buchanan

Michael F. Buchanan (NJ Bar # 049041992)

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Attorneys for Plaintiffs

CERTIFICATIONS

In accordance with Local Civil Rule 11.2, I hereby certify that this matter is not the subject of any other action pending in any court, or of any pending arbitration, or administrative proceeding.

In accordance with Local Civil Rule 201.1(d)(1) & (2)(A), I certify that this matter is not subject to compulsory arbitration or to mediation because this action is based on an alleged violation of a right secured by the Constitution of the United States, and because the relief sought does not consist of only money damages not in excess of $150,000, exclusive of interest and costs, and any claim for punitive damages.

Dated: March 10, 2016

By: s/ Michael F. Buchanan

Michael F. Buchanan (NJ Bar # 049041992)

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