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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, *et al.*, *Defendants*.	No. 16-cv-1369 (MAS) (LHG) Motion Day: June 6, 2016 **ORAL ARGUMENT REQUESTED**

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Pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, Plaintiffs the Islamic Society of Basking Ridge ("ISBR") and Dr. Mohammad Ali Chaudry respectfully submit this memorandum of law in support of their motion for partial judgment on the pleadings with respect to the third, eighth, and tenth causes of action in their Complaint as to the issue of parking.

PRELIMINARY STATEMENT

Plaintiffs sought to build a mosque in Bernards Township with capacity for 150 worshippers on a site zoned for houses of worship. Defendant Planning Board denied their application after a four-year process that involved a record 39 public hearings. That denial purported to be based on numerous land-use issues, but nearly all of them were underpinned by one finding: the Planning Board's ruling on parking. The Planning Board required ISBR's mosque to have 107 parking spaces—more than double the 50 spaces required under the 3:1 parking ratio for houses of worship set forth in the applicable township ordinance (the "Parking Ordinance" or "Township Ordinance § 21-22.1"). The Planning Board then leveraged its parking determination to generate a litany of other pretextual bases for denial, *e.g.*, quibbling over the placement of a drainage basin forced into its proposed location by the supersized parking lot. Those bases for denial are borne of the parking determination and collapse without it. But the Court need not await discovery to invalidate the Planning Board's parking determination. In their Answer, Defendants admit all of the facts necessary for the Court to strike down the parking determination on the pleadings for two independent reasons.

First, in their Answer, Defendants admit facts that constitute a violation of § 2(b)(2) of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). That section prohibits "land use regulation that discriminates against any assembly or institution on the basis of religion." 42 U.S.C. § 2000cc(b)(2). Under Third Circuit precedent, discrimination "need not be

motivated by ill will, enmity, or hostility." "All you need is that the state action meant to single out a plaintiff because of" their religion. RLUIPA applies strict liability to discrimination: a township violates the law if it acts on the basis of a plaintiff's religion to treat him differently than those of other faiths. Here, Defendants admit in their Answer that the parking determination was based on Defendants' Islamic faith. Specifically, Defendants admit that they created an individualized mosque-specific parking requirement that differed from that applied to churches and synagogues. They admit that to reach that result, they misconstrued the Parking Ordinance to find that the 3:1 ratio listed therein applied only to Christian churches and not Muslim mosques, even though the ordinance defines the word "church" to include mosques. Defendants even admit they never engaged in an individualized determination of parking need or required more parking than the 3:1 ratio for any prior house of worship applicant, including specifically identified churches and synagogues. Defendants' creation and application of a parking standard to ISBR that had never previously been applied to another religious group, paired with their admittedly and pointedly different treatment of churches and synagogues, violates RLUIPA and mandates partial judgment on the pleadings with respect to Plaintiffs' third cause of action.

Second, the parking determination was based on a section of the Parking Ordinance that is unconstitutional under both the U.S. and New Jersey Constitutions. Defendants admit that the Planning Board relied on a section of the Parking Ordinance that states: "since a specific use may generate a parking demand different from" the ratio enumerated in the ordinance, the Planning Board "may . . . require that provision be made for the construction of spaces in excess of those required" by the 3:1 ratio. Per the Planning Board, this language endowed it with unbridled discretion to require whatever number of parking spaces it wanted for ISBR's mosque.

Under settled constitutional precedents, however, ordinances must provide "explicit standards" to prevent "arbitrary and discriminatory enforcement" by entities like planning boards. Absent such explicit standards, an ordinance is unconstitutionally vague. Courts have applied these due process principles to invalidate a variety of land use provisions granting local officials expansive discretion. Courts have even invalidated ordinances that *do* list explicit standards if they are subject to different interpretations. And courts have applied these principles to invalidate sections of parking ordinances specifically. For example, in a ruling cited with discussion and approval in New Jersey, the Ohio Supreme Court severed and invalidated sections of a local parking ordinance very similar to those at issue here, which purported to give a municipality discretion to deviate upwards from the fixed parking ratio listed in the ordinance. The same result should apply here. The Court should sever and invalidate the challenged sections of the Parking Ordinance as unconstitutional pursuant to Plaintiff's eighth and tenth causes of action.

Plaintiffs' motion should be granted.

FACTS ADMITTED BY DEFENDANTS[1]

A. ISBR Proposed to Build a Mosque with 50 Parking Spaces

On April 20, 2012, ISBR submitted an application to the Planning Board for preliminary and final site plan approval to construct a 4,252-square-foot mosque on its property. (Ex. 1 ¶ 62.) Under the site plan submitted by ISBR, the proposed mosque would contain a 1,594-square-foot prayer hall, a wash room used for the Islamic pre-prayer cleansing ritual known as

[1] These facts are based on Defendants' express admissions or failures to deny Plaintiffs' allegations in their Answer (ECF No. 15). *See* Fed. R. Civ. P. 8(b)(6) ("An allegation . . . is admitted if a responsive pleading is required and the allegation is not denied."). All exhibits are attached to the supporting Declaration of Adeel A. Mangi. Exhibit 1 is a demonstrative exhibit compiled by Plaintiffs' counsel listing all allegations from Plaintiffs' Complaint (ECF No. 1) alongside the corresponding paragraph from Defendants' Answer. Unless otherwise indicated, all citations to the pleadings reference Exhibit 1 ("Ex. 1").

wudu, and a multi-purpose room, among other features. (*Id*.) The maximum occupancy for the prayer hall was estimated at 150 worshippers. (*Id.* ¶ 64.)

ISBR's original site plan application proposed to build 50 parking spaces. (*Id.* ¶ 63.) In doing so, ISBR adhered to the express terms of the Parking Ordinance, *i.e.*, Township Ordinance § 21-22.1, which sets forth the "acceptable" number of parking spaces for, among other things, houses of worship. (*Id*. ¶¶ 125-126.) Specifically, the Parking Ordinance 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, . . . [or] *(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.*

Township Ord. § 21-22.1 (emphasis added).[2] It then sets forth specific ratios for particular uses. Among other things, 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." *Id*.; (*see also* Ex. 1 ¶ 125). 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) (the "Dictionary"). (Ex. 1 ¶ 126.) "Church" is not expressly defined in the Township ordinances and, therefore, the Dictionary definition applies.

[2] The language that Plaintiffs challenge and seek to sever as unconstitutional is italicized in the block quote above. Township Ordinance § 21-22.1 is attached in its entirety as Exhibit 2.

(*Id.*) The Dictionary defines a "church" as "a place of worship of any religion (a Muslim ~)." (*Id.*) Accordingly, "'churches' include houses of worship for all religions, including mosques," and Defendants expressly admit that this is true. (*Id.*)

B. Defendants Created a New Parking Standard for ISBR Because It Is an Islamic Congregation

Defendants admit that, since it was first adopted decades ago, the 3:1 ratio set forth in Township Ordinance § 21-22.1 was applied to every single house of worship that applied for site plan approval, except for ISBR. (*Id.* ¶ 127.) The Planning Board held multiple hearings focused on ISBR's parking demand, which was in stark contrast to its routine application of the Parking Ordinance's 3:1 ratio to every other house of worship in the Township.

Notably, the Planning Board's and Township's own planners originally acceded to the use of the 3:1 ratio in connection with ISBR's application. In August 2012, upon reviewing ISBR's original site plan and proposal to build 50 parking spaces, the Planning Board's Planner, David Banisch, "did not recommend any increase in the number of spaces" beyond ISBR's application of the 3:1 ratio. (*Id.* ¶ 129.) Similarly, in his initial review letter, the Township's Planner, David Schley, expressly noted ISBR's proposal of 50 parking spaces, reflecting the application of the 3:1 ratio, without advising the Planning Board of the need for any variance relief from the Parking Ordinance. (*Id.* ¶ 130.) The Township Planner's review letter for a development proposal is designed to inform the Planning Board of any and all required variances and exceptions an applicant needs from the applicable land use ordinances. (*Id.*)

On August 7, 2012, the Planning Board began to hold public hearings on ISBR's application, which continued for three-and-a-half years through December 8, 2015. (*Id.* ¶ 65.) In total, the Planning Board held 39 hearings, more hearings with respect to a site plan application than had ever been held in the Township's history. (*Id.* ¶¶ 65, 66.) Parking was an

early focus. At the initial hearings, members of the Planning Board and community objectors challenged ISBR's representations about the expected occupancy of the mosque and thus, the parking required. (*Id.* ¶¶ 133-35.) One objector asked Dr. Chaudry, "I don't know that much about your religion, but do you encourage couples to have a number of children?" (*Id.* ¶ 131.) That objector then questioned ISBR's growth estimates. (*Id.*) Dr. Chaudry testified that ISBR had 55 members and an average of 65 attendees at its Friday afternoon *Jumma* service, which is its only weekly congregational service. (*Id.* ¶ 132.) Dr. Chaudry testified that, using the highest known growth rates, he expected a maximum of 150 attendees at *Jumma* services within five to 10 years. (*Id.*) Planning 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." (*Id.* ¶ 133.) As the hearing continued, the Planning Board was encouraged by objectors to explore novel methodologies to determine ISBR's parking demand.

Following the initial public hearings, on October 25, 2012, Board Planner Banisch issued a memorandum in which he attempted to estimate the appropriate number of parking spaces for ISBR based on the number of Muslim prayer rugs he could fit into the proposed prayer hall. (*Id.* ¶ 136.) Mr. Banisch estimated that the prayer hall could fit 168 worshippers, and then divided that number by three, still applying the 3:1 ratio set forth in Township Ordinance § 21-22.1. (*Id.*) Mr. Banisch's calculation yielded 56 parking spaces, which was not much different from the 50 provided in ISBR's original application. (*Id.*) The Planning Board did not adopt this calculation.

However, at the Planning Board's hearing on October 25, 2012, counsel for community objectors questioned ISBR's traffic engineer about a parking ratio specific to mosques set forth in the Institute of Transportation Engineers' ("ITE") publication, *Parking Generation*. (*Id.*

¶ 137-138.) According to the ITE, *Parking Generation* is created by "volunteers," is "not the result of a financed research effort," and "does not provide authoritative . . . standards on parking demand." (*Id.* ¶ 138.) The Planning Board had never applied ITE parking rates to determine the parking requirement of any house of worship in the Township. (*Id.* ¶ 139.) But for ISBR, the Planning Board directed the traffic engineers for all parties to research the ITE's parking ratio for mosques. (*Id.*)

In a December 14, 2012 letter, ISBR reiterated its position that the Parking Ordinance's 3:1 parking ratio for houses of worship should dictate the number of parking spaces it would be required to build. (*Id.* ¶ 140.) Nonetheless, in response to the Planning Board's request, ISBR's traffic engineer provided parking ratios for houses of worship set forth in a variety of industry publications, including ITE's *Parking Generation*. (*Id.*) Those ratios resulted in estimates of parking demand ranging from 36 spaces to 110 spaces. (*Id.*) The ratio from ITE's *Parking Generation* yielded the estimate of 110 spaces, the highest parking requirement listed in ISBR's letter. (*Id.*) In a response letter dated December 21, 2012, community objectors argued that the 3:1 parking ratio in the Parking Ordinance should not apply to ISBR's plans because a mosque is not a "church," and that the ITE's parking rates—yielding a requirement of 110 spaces—should apply to ISBR. (*Id.* ¶ 141.)

On January 3, 2013, the Planning Board's attorney, Jonathan Drill, and Board Planner Banisch issued a joint memorandum, advising the Planning Board as to the following two conclusions: (1) Township Ordinance § 21-22.1's 3:1 ratio applied only to Christian churches, and (2) the Planning Board was required to engage in an individualized assessment of ISBR's

parking need, and that of every other applicant. (*Id*. at ¶¶ 142-45; Exhibit 3.[3]) Despite this claim, Defendants admit that the "Board has never engaged in an individualized determination of additional parking need for any other applicant" prior to ISBR. (Ex. 1 ¶ 127.) To the contrary, the Planning Board applied the Parking Ordinance's 3:1 ratio to determine the parking demand of every house of worship in the Township before ISBR. (*Id*.)

The joint memorandum "looked outside of the Parking Ordinance for guidance on the appropriate ratio for ISBR's proposed use" and adopted the ITE's standard for mosques from *Parking Generation*. (*Id.* ¶ 145.) Defendants admit "that the Board never applied the ITE parking rates to determine the parking requirement for any other house of worship" prior to ISBR. (*Id.* ¶ 139.) The joint memorandum further stated that the reason for focusing on the ITE rates was that "all of the sources identified by ISBR, with the sole exception being ITE's publication titled 'Parking Generation' (4th Edition), are pre-2010 and do not include any differentiation between churches, synagogues and mosques, which differentiation is identified in the fourth edition of ITE's Parking Generation, which was published in 2010." (Ex. 3 at 5 (emphasis in original).) Based on the methodology utilized by the ITE, the joint memorandum "calculated a requirement of 110 parking spaces" for ISBR. (Ex. 1 ¶ 145.) By looking outside the Parking Ordinance and its 3:1 parking ratio, which applied to houses of worship before

[3] The January 3, 2013 joint memorandum is attached hereto as Exhibit 3 ("Ex. 3"). The Court can properly consider the joint memorandum on this motion because it is explicitly referenced in the Complaint and the Defendants admit its existence, the legal authority cited therein, and its core conclusion. (Ex. 1 ¶¶ 142-145.) *See In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997) (affirming a district court's consideration of a document implicitly incorporated into the plaintiff's complaint); *Pension Benefit Guar. Corp. v. White Consol. Indus.*, 998 F.2d 1192, 1196 (3d Cir. 1993) (a "court may consider an undisputedly authentic document" attached to moving papers without converting a motion to one for summary judgment).

ISBR's application, the Planning Board created a never-before-used standard to determine ISBR's parking demand.

The authors of the joint memorandum were well aware that the challenged sections of the Parking Ordinance upon which they relied to recommend a new methodology might be unconstitutional. In response to a letter from ISBR's counsel arguing that the challenged language was unconstitutional due to its failure to provide "sufficient standards to prevent arbitrary and indiscriminate interpretation or application," the authors of the joint memorandum advised the Planning Board that "the Board is not at liberty to ignore the express terms of the ordinance . . . because the Board is not the forum before which the applicant may argue illegality of an ordinance." (Ex. 3 at 4.)

Applying the joint memorandum's conclusion that a mosque should be treated differently from a "church," the Planning Board requested that ISBR's traffic engineer collect additional data regarding ISBR's actual parking demand. (Ex. 1 ¶ 146.) As a result, from January until June of 2013, ISBR presented supplemental parking studies and extensive testimony from its traffic engineer, who disagreed with the Planning Board's estimates of ISBR's parking demand. (*Id*.) Even based on his own collection of additional data and using the Planning Board's preferred ITE methodology, ISBR's traffic engineer stated to the Planning Board that ISBR's parking requirement should be no higher than 70 spaces. (*Id*.) The Planning Board again posed questions designed to elicit higher numbers. Even though the joint memorandum itself recognized that traffic engineers use parking data representing the 85th percentile of parking demand and that using 100th percentile figures would result in production of an unnecessary number of parking spaces, the Planning Board questioned ISBR's traffic engineer about the 100th percentile figures. (*Id.* ¶ 148.)

On June 4, 2013, the Planning Board heard testimony from a traffic engineer presented by community objectors who recommended that ISBR be required to provide 107 parking spaces for its mosque. (*Id.* ¶ 149.) Later in that same hearing, the Planning Board "formally voted . . . to establish the number of parking spaces" for the mosque at 107. (*Id.*; *see also* ECF No. 15-1, Planning Board's January 19, 2016 Resolution ("Resolution"), at 15 n.4.) To arrive at 107 parking spaces, the Planning Board accepted ISBR's proposed occupancy of 150 worshippers and applied to that number a multiplier supplied by the community objectors' traffic engineer. (Resolution, at 15 n.4.)

C. The Planning Board Has Never Applied the Standards Deployed for ISBR's Application to Any Other Houses of Worship

Since the enactment of Township Ordinance § 21-22.1, the Planning Board has never applied the standards it implemented for ISBR's application to any other house of worship in Bernards Township. (Ex. 1 ¶ 127.) For instance, in 1998, Millington Baptist Church ("Millington") applied to the Planning Board for preliminary and final site plan approval to construct a 67,390-square-foot church with 1,200 seats. (*Id.* ¶ 269.) In granting Millington's application in 1999, the Planning Board calculated the number of parking spaces required for Millington by using the 3:1 parking ratio set forth in Township Ordinance § 21-22.1. (*Id.* ¶¶ 269-270.) The Planning Board did not perform an individualized analysis of Millington's actual parking need. (*Id.* ¶ 270.) Defendants admit that, 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 ratio set forth in the Township ordinance." (*Id.*)

Similarly, in 1995, Chabad Jewish Center ("Chabad"), a synagogue, applied to the Planning Board for preliminary and final site plan approval to construct a 40-seat synagogue.

(*Id*. ¶ 244.) Chabad's site plan applied the "1 space / 3 seats" ratio for "houses of worship." (*Id*. ¶ 245.) In granting Chabad's application, the Planning Board did not perform an individualized inquiry into Chabad's actual parking needs. (*Id*.) Five years later, Chabad applied to the Planning Board for approval of an additional project, which included building a 200-seat sanctuary. (*Id.* ¶ 249.) Again, in granting Chabad's application, the Planning Board applied the 3:1 ratio to the number of seats in the sanctuary. (*Id.* ¶ 250.)

In 1993, Congregation B'nai Israel ("B'nai Israel"), another synagogue, applied for preliminary and final site plan approval to build a 25,808-square-foot complex, including a synagogue and a school. (*Id*. ¶ 257.) The Planning Board calculated B'nai Israel's parking requirement under the Parking Ordinance and, at B'nai Israel's request, granted downward relief from the Parking Ordinance's 3:1 ratio. (*Id.* ¶ 258.) The Planning Board did not perform an individualized analysis of B'nai Israel's actual parking need. (*Id*. ¶¶ 127, 258-259.)

D. The Planning Board's Parking Determination Impacted Critical Aspects of ISBR's Application

The Planning Board's parking determination forced ISBR to substantially redesign its original site plan application. (*Id.* ¶ 155.) Since ISBR was required to more than double its parking lot, its 4.08-acre property contained less land that could be used for other purposes. The size of the parking lot was central to the other bases for denial cited by the Planning Board.

For example, one basis for denial related to the placement and size of drainage features. The Township's "buffer" ordinance restricts the permissible uses of the 50-foot borders of ISBR's property adjacent to residential lots. (*Id.* ¶ 154.) As a consequence of the Planning Board's parking decision, ISBR had less land outside of the buffer zone on which it could fit improvements such as a drainage infrastructure. (*Id.* ¶ 155; *see also* Resolution, at 15 n.4.) In addition, the increase in parking lot size meant an increase in the property's "impervious

surface," *i.e.*, the area covered by waterproof blacktop, as opposed to a permeable surface that would allow runoff to naturally absorb into the ground. (Ex. 1 ¶ 155; Resolution, at 16.) The increase in impervious coverage required ISBR to increase the size of its "detention basins," the grass-covered drainage improvements designed to accommodate rainwater runoff from the parking lot. (Ex. 1 ¶ 155.) Since ISBR was required to more than double the size of its parking lot, the only practical placement on the property for one of the two necessary detention basins is in the eastern buffer area. (*Id.* ¶ 155.) As one Planning Board member recognized during the proceedings, "by making the vote on the parking spaces, we sort of forced this configuration of [the detention basin]. So . . . I think we put [ISBR] in this situation [by] requiring more parking places." (*Id.* ¶ 156.) Under the Township's buffer ordinance, drainage basins are permissible in buffer areas as long as they are approved by the Planning Board. (*Id.* ¶ 158.) But the Planning Board denied ISBR such approval on the ground that the placement of the detention basin "defeat[ed] the very purpose of the buffer." (Resolution, at 14.)

In its resolution denying ISBR's application, the Planning Board conceded that if it had reduced the parking requirement to even 83 spaces, let alone the 50 that would be appropriate under the Parking Ordinance, it would have gone "a long way in reducing the impervious coverage on the property, which would result in a reduction in the size of the detention basins, while also making more land area available on the property on which to locate the large basin, which would result in the basin being moved out of the buffer area." (*Id.* at 16.)

LEGAL STANDARD

"The purpose of judgment on the pleadings is to dispose of claims where the material facts are undisputed and judgment can be entered on the competing pleadings and exhibits thereto, and the documents incorporated by reference." *King v. Baldino*, 648 F. Supp. 2d 609,

614-15 (D. Del. 2009). "A motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) is assessed under the same standard as a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6)." *Regalbuto v. City of Phila.*, 937 F. Supp. 374, 376-77 (E.D. Pa. 1995), *aff'd*, 91 F.3d 125 (3d. Cir. 1996). That is, "a district court must view the facts and inferences to be drawn from the pleadings in the light most favorable to the non-moving party." *Id.*; *see also Janney Montgomery Scott, Inc. v. Shepard Niles, Inc.*, 11 F.3d 399, 406 (3d Cir. 1993). A court "may consider documents that are attached to or submitted with the complaint and any 'matters incorporated by reference or integral to the claim, items subject to judicial notice, matters of public record, orders, [and] items appearing in the record of the case.'" *Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3d Cir. 2006) (citation omitted). Judgment should be granted under Rule 12(c) "if it is clearly established that no material issue of fact remains to be resolved and that the movant is entitled to judgment as a matter of law." *Regalbuto*, 937 F. Supp. at 377; *see also Jablonski v. Pan Am. World Airways, Inc.*, 863 F.2d 289, 290-91 (3d Cir. 1988).

ARGUMENT

I. The Planning Board's Determination of ISBR's Parking Requirement Violated RLUIPA's Non-Discrimination Provision

The Planning Board based its parking requirement for ISBR on the fact that ISBR is an Islamic congregation. But for ISBR's faith, it would not have been required to incorporate plans for a parking lot more than twice the size of what would be "acceptable" for a church or synagogue. The Planning Board's discrimination on the basis of religion was explicit in this respect, and Defendants admit it.

A. Religious Distinctions Violate RLUIPA's Non-Discrimination Provision

RLUIPA is designed to provide "heightened protection" for religious exercise, particularly in the area of "land-use regulation." *Cutter v. Wilkinson*, 544 U.S. 709, 714-15

(2005); *see also Holt v. Hobbs*, 135 S. Ct. 853, 859 (2015) (noting that "Congress enacted RLUIPA . . . 'in order to provide very broad protection for religious liberty'"). Section 2(b)(2) of RLUIPA prohibits the implementation of a "land use regulation that discriminates against any assembly or institution on the basis of religion." 42 U.S.C. § 2000cc(b)(2). In order to demonstrate a claim under this provision, a "[p]laintiff must establish that (1) it is an assembly or institution, (2) subject to a land use regulation, (3) which has been imposed or implemented in a manner that discriminates on the basis of religion." *Al Falah Ctr. v. Bridgewater*, No. 11-cv-2397, 2013 U.S. Dist. LEXIS 190076, at *41 (D.N.J. Sept. 30, 2013); *see also Adhi Paraskthi Charitable v. Twp. of W. Pikeland*, 721 F. Supp. 2d 361, 385 (E.D. Pa. 2010). Once a plaintiff makes out a *prima facie* case under RLUIPA, "the government shall bear the burden of persuasion on any element of the claim." 42 U.S.C. § 2000cc-2(b).

The non-discrimination provision tailors the protections of the First and Fourteenth Amendments to land use regulations because Congress identified a significant encroachment on core Free Exercise and Equal Protection rights of religious observers. *See Chabad Lubavitch of Litchfield Cnty., Inc. v. Litchfield Historic Dist. Comm'n*, 768 F.3d 183, 198 (2d Cir. 2014) (*citing Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993)); *see also Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1239-40 (11th Cir. 2004). Courts analyzing RLUIPA's nondiscrimination provision look to Equal Protection precedent in weighing whether there has been discrimination "on the basis of religion" under RLUIPA. *Chabad*, 768 F.3d at 198.

In order to establish religious discrimination, a plaintiff's "religious affiliation must have been a substantial factor" in determining the relevant disparity of treatment. *Hassan v. City of New York*, 804 F.3d 277, 294 (3d Cir. 2015). A plaintiff may show discrimination by pointing to

(1) a facially discriminatory policy, (2) a facially neutral policy discriminatorily enforced, or (3) a facially neutral policy purposefully designed to impose disparate burdens. *Id.* To determine whether unlawful discrimination was a "motivating factor" in official conduct, courts look to "such circumstantial and direct evidence of intent as may be available." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265-66 (1977).

Invidious motive is not a necessary element of illegal discrimination. *Hassan*, 804 F.3d at 297. "All you need is that the state actor *meant* to single out a plaintiff because of the *protected characteristic* itself." *Id.* (emphasis in original). Discrimination "need not be motivated by ill will, enmity, or hostility." *Id.* at 298 (internal citations omitted); *see also Tenafly Eruv Ass'n v. Borough of Tenafly*, 309 F.3d 144, 168 n.30 (3d Cir. 2002) ("discriminatory purpose" can be inferred "without examining the responsible officials' motives"); *Cmtys. for Equity v. Mich. High Sch. Ath. Ass'n*, 459 F.3d 676, 694 (6th Cir. 2006) (distinguishing "intentional discrimination—*i.e.*, an intent to treat two groups differently—[from] an intent to harm"). Rather, in this case, Defendants "intentionally discriminated if they wouldn't have" applied different parking standards to Plaintiffs if they "had not been Muslim." *Hassan*, 804 F.3d at 298; *see also Fowler v. R.I.*, 345 U.S. 67, 69 (1953) (holding that the Free Exercise Clause forbids state action where "it plainly shows that a religious [activity of one religion] is treated differently than a religious [activity] of other sects").

Once a plaintiff shows that a municipality gave a religious organization less favorable treatment than another with respect to land use matters, RLUIPA's non-discrimination provision is violated. *Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253, 268-69 (3d Cir. 2007); *Adhi Paraskthi*, 721 F. Supp. 2d at 384. "The land-use provisions of RLUIPA are structured to create a clear divide between claims under section 2(a) (the Substantial Burdens

section) and section 2(b) (the Discrimination and Exclusion sections . . .)." *Lighthouse*, 510 F.3d at 269. The "Substantial Burden section includes a strict scrutiny provision and the Discrimination and Exclusion section does not." *Id.* "[T]his 'disparate exclusion' was part of the intent of Congress and not an oversight." *Id.*; *see also* D. Laycock & L. Goodrich, *RLUIPA: Necessary, Modest, and Under-Enforced*, 39 FORDHAM URB. L.J. 1021, 1058 (2012) ("This distinction did not happen by accident."). Under § 2000cc(b)(2), therefore, "there is strict liability; if discrimination occurred, the government does not have the opportunity to justify the conduct by showing a compelling interest." *Adhi Paraskthi*, 721 F. Supp. 2d at 384; *see also Al Falah Ctr.*, 2013 U.S. Dist. LEXIS 190076, at *46 (discussing RLUIPA's strict liability standard for § 2000cc(b)(1)); *Statement of the Department of Justice on the Land-Use Provisions of the Religious Land Use and Institutionalized Person Act* (September 2010) (If a religious institution is denied a land use benefit "that would have been given to it had it been part of a different religion or religious denomination, Section 2(b)(2) has been violated.")[4]

B. The Planning Board's Religious Discrimination Was Explicit and Is Admitted

Defendants' admissions leave no doubt that a "motivating factor"—if not the sole factor—in the Planning Board's decision to subject ISBR to a novel, individualized parking analysis was ISBR's status as an Islamic congregation. While this case presents a facially neutral law applied in a discriminatory manner, on these undisputed facts, the Court need not burden itself with searching circumstantial evidence for hints of unlawful intent. *Cf. Arlington Heights*, 429 U.S. at 266. Here, the evidence is explicit and based on Defendants' own admissions.

[4] *Available at* https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/rluipa_q_a_9-22-10_0.pdf.

The Parking Ordinance lays out a clear and "acceptable" parking requirement—the 3:1 ratio—that, by its terms, applies to all houses of worship, including mosques. (Ex. 1 ¶ 125.) Defendants admit that the Parking Ordinance's "3:1 parking ratio was applied to houses of worship which applied for site plan approval before the Islamic Society of Basking Ridge." (*Id.* ¶ 127.) Defendants further admit that the 3:1 ratio was applied to every house of worship, regardless of denomination, since the ordinance was first adopted. (*Id.*) However, per Defendants' own words in the joint memorandum, the 3:1 ratio was "not applicable to mosques . . . . By its express terms, this standard applies only to 'churches, auditoriums and theaters.'" (Ex. 3 at 2.) Defendants now admit in their Answer that this conclusion was erroneous and based on a misreading of the local ordinance. (Ex. 1 ¶ 127.) Thus, Defendants admit that the Planning Board subjected ISBR to an "individualized determination" based on an erroneous interpretation that had never been applied to any other applicant, only because the proposed establishment was not a church, but a mosque. (*Id.*)

Defendants' justification—admitted in the joint memorandum and in their Answer—for drawing a distinction between mosques and other houses of worship is that "the ITE parking rates at issue were not published in the ITE Parking Generation Manual until 2010, which was subsequent to the applications relating to the other houses of worship." (*Id.* ¶ 139.) That is, the Planning Board's basis for using the ITE rates was the fact that the ITE explicitly distinguished among mosques, synagogues, and churches as to parking requirements. (*See* Ex. 3 at 5 ("[A]ll of the sources identified by ISBR, with the sole exception being ITE's publication titled 'Parking Generation' (4th Edition), are pre-2010 and do not include any differentiation between churches, synagogues and mosques, which differentiation is identified in the fourth edition of ITE's Parking Generation, which was published in 2010.") (emphasis in original).) But the fact that a

private engineering publication draws a distinction based on religion does not give a municipality—or any government—a free pass to discriminate on the basis of religion. *See Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) ("Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect."); *see also Lukumi*, 508 U.S. at 534 ("departures from neutrality" are not permitted). This is the very form of discrimination that triggers strict liability under RLUIPA.

C. Defendants Admit That the Planning Board Treated Other Houses of Worship Differently and Better Than ISBR

Defendants' explicit religious basis for creating a brand new (and detrimental) individualized parking analysis for ISBR based on it being an Islamic congregation constitutes a violation of § 2(b)(2) of RLUIPA. *See supra* Part I.B. Defendants, however, cement the basis for a finding of religious discrimination by also admitting, in no uncertain terms, the disparities in their treatment of ISBR as compared to similar houses of worship in the Township. While a violation of RLUIPA's non-discrimination provision "may be proven without reference to a religious analogue," such evidence "is certainly germane to a selective enforcement analysis." *Chabad*, 768 F.3d at 199; *see also Arlington Heights*, 429 U.S. at 266 (both "circumstantial and direct evidence" are relevant to a determination of intent).

Defendants admit that the Planning Board treated ISBR differently from several similar houses of worship. For instance, Defendants admit that they did not engage in individualized determinations of parking need for any prior applicants. (Ex. 1 ¶ 127.) Rather, the Planning Board applied the Parking Ordinance's 3:1 ratio to a church (Millington) and two synagogues (B'nai Israel and Chabad), but not to ISBR. And they admit that the Planning Board historically applied the 3:1 ratio to synagogues despite its position with respect to ISBR's application that the word "church" in the ordinance refers only to Christian churches. (*Id.* ¶¶ 244-45, 258.) As

Defendants admit: the "3:1 parking ratio was applied to houses of worship which applied for site plan approval before the Islamic Society of Basking Ridge." (*Id.* ¶ 127.)

The law does not allow Bernards Township to treat a mosque less favorably than a Christian church or synagogue based on the faith of its members. Defendants' admission that they have done so demands entry of judgment on the pleadings as to discrimination under RLUIPA.

II. The Parking Ordinance Is Unconstitutionally Vague

The weapon utilized by the Planning Board to implement its discrimination was the limitless—and unlawful—discretion purportedly bestowed upon it by Township Ordinance § 21-22.1. That Ordinance sets forth a list of "acceptable" ratios applicable to a variety of uses, including houses of worship. Township Ord. § 21-22.1(a)(1). However, the ordinance also provides that, "[s]ince a specific use may generate a parking demand different from those enumerated [in the ratios set forth in the ordinance], documentation and testimony shall be presented to the [Planning] Board as to the anticipated parking demand." *Id.* Under the ordinance, "[b]ased upon such documentation and testimony, the [Planning] Board may . . . require that provision be made for the construction of spaces in excess of those required [by the ratios set forth in the ordinance], to ensure that the parking demand will be accommodated by off-street spaces." *Id.* This language allows the Planning Board unbridled discretion and that renders the challenged sections of the Parking Ordinance unconstitutionally vague under the U.S. and New Jersey Constitutions.

A. The Parking Ordinance Is Unconstitutional Under the U.S. Constitution

The Fourteenth Amendment to the U.S. Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. "Supreme Court precedent recognizes two independent grounds upon which a statute's language

may be so vague as to deny due process of law." *Cunney v. Bd. of Trs. of Grand View*, 660 F.3d 612, 620 (2d Cir. 2011). "First, a statute making conduct unlawful must give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them." *Trade Waste Mgmt. v. Hughey*, 780 F.2d 221, 235 (3d Cir. 1985) (citing *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972)) (quotations omitted); *see also City of Chi. v. Morales*, 527 U.S. 41, 56 (1999). A law is unconstitutionally vague if it "authorize[s] and even encourage[s] arbitrary and discriminatory enforcement." *Morales*, 527 U.S. at 56. To withstand constitutional scrutiny, municipal rules must supply a "standard that can be objectively applied to determine if the conduct at issue . . . complies with the ordinance's restrictions." *Cunney*, 660 F.3d at 622.

The Court of Appeals for the Second Circuit's decision in *Cunney*, 660 F.3d 612, applying these principles in the land use context, is instructive. In *Cunney*, a community's zoning ordinance designed to preserve views of the Hudson River prohibited buildings that "shall rise . . . more than four and one-half (4 1/2) feet above the easterly side of River Road" (a road running along the Hudson River). *Cunney*, 660 F.3d at 615-16. Despite the fact that the ordinance expressly specified the permissible limits of height for any building on River Road, the court found the ordinance to be unconstitutionally vague because it failed to specify the location of an adjacent elevation point from which the height of a building must be measured. *Id*. at 621. In the context of River Road's changes in elevation along its length, the court held that "it is remarkably unclear with respect to how the four and a half foot limitation is defined. In this latter regard, nowhere does the ordinance describe from what adjacent elevation point on River Road the height of a building must be measured to determine the building's compliance

with [the ordinance's] height restriction." *Id*. Since the elevation of River Road's surface varied relative to the ground surface of the property at issue, the court reasoned that "the ordinance provide[d] no standard that can be objectively applied to determine if the conduct at issue in this case—the construction of [the plaintiff's] house—complie[d] with the ordinance's restrictions." *Id.* at 622. The court held that the ordinance's critical constitutional shortcomings were not only that it failed "to give specific notice of how a permit applicant should design his site plan so that the proposed building complies with that restriction," but it also failed "to provide an objective standard that the Village itself can apply in determining the project's compliance once an application has been submitted and thereafter when an approved project has been built." *Id*. at 621.

Here, as in *Cunney*, the challenged language in the Parking Ordinance means that site plan applicants in Bernards Township have no specific notice of how to design site plans so that their parking provision satisfies the Parking Ordinance—the Planning Board claims discretion to demand whatever it likes regardless of whether the site plan meets the ratios set forth in the Parking Ordinance. Moreover, § 21-22.1 provides even fewer objective criteria than the ordinance in *Cunney*. The *Cunney* ordinance at least provided a numeric height limit, *see* 660 F.3d at 615-16—its constitutional failing was that it did not describe from where that height should be measured. Here, by contrast, the Parking Ordinance does not set forth *any* standards related to the circumstances in which the Planning Board "may" exercise its discretion to increase the number of parking spaces, or any criteria—let alone objective criteria—that could guide or control the Planning Board's discretion in increasing the number of parking spaces. Indeed, in ISBR's case, the Planning Board utilized its discretion to more than double the number of parking spots required.

Similar to the *Cunney* court, the Third Circuit has affirmed that clauses of this type that allow the use of subjective criteria by public officials are unconstitutional. *Bykofsky v. Middletown*, 401 F. Supp. 1242, 1250-51 (M.D. Pa. 1975), *aff'd without opinion*, 535 F.2d 1245 (3d Cir. 1976), *cert. denied*, 429 U.S. 964 (1976). In *Bykofsky*, the Third Circuit upheld a district court's ruling that an ordinance permitting a borough mayor to "promulgate a general 'regulation'" exempting certain activities from the borough's curfew if the activities were "consistent with the public interest" was unconstitutional because it "confer[red] upon the Mayor virtually unbridled discretion . . . and allow[ed] him to be guided by his own personal concept of 'public interest'. . . since there [were] no standards embodied in the ordinance for guidance." *Id.* That is similar to the unlimited discretion bestowed on the Planning Board here.

But this is an even more compelling case for invalidation based on vagueness than in either *Cunney* or *Bykofsky* for an additional reason. Under Supreme Court precedent, "a more stringent vagueness test" applies where a statute "threatens to inhibit the exercise of constitutionally protected rights." *Hoffman Estates v. Flipside*, 455 U.S. 489, 499 (1982). Put another way, statutes that affect First Amendment rights are held to a higher standard of clarity. *See Berwick Area Landlord Ass'n v. Borough of Berwick*, No. 07-cv-316, 2007 U.S. Dist. LEXIS 51207, at *10 (M.D. Pa. July 16, 2007). For example, when "an ordinary citizen . . . wants to express a constitutionally protected" right in a township but the municipal ordinance does not make clear "where he or she may set up shop," the ordinance is void for vagueness. *MAG Realty v. City of Gloucester City*, No. 10-cv-988, 2010 U.S. Dist. LEXIS 82035, at *54 (D.N.J. Aug. 12, 2010). Here, the Planning Board's abandonment of the 3:1 ratio enumerated in the Parking Ordinance in favor of an individualized assessment impacted Plaintiffs' ability to use the property for religious worship as protected by the First Amendment. As such, the Parking

Ordinance is subject to stringent application of the vagueness test under federal law and should be invalidated.

B. The Parking Ordinance Is Unconstitutional Under the New Jersey Constitution

The New Jersey Constitution similarly prohibits statutes that "fail to provide adequate notice of their scope and sufficient guidance for their application." *State v. Cameron*, 100 N.J. 586, 591 (1985). Statutory clarity is "essentially a due process concept grounded in notions of fair play." *Id.* Zoning ordinances must meet the "test of certainty and definiteness." *Damurjian v. Bd. of Adjustment*, 299 N.J. Super. 84, 95 (N.J. App. Div. 1997). In order to satisfy this test, a zoning ordinance "must be clear and explicit in its terms, setting forth sufficient standards to prevent arbitrary and indiscriminate interpretation or application by local officials." *Id.*; *see also N.J. Shore Builders Ass'n v. Twp. of Jackson*, No. A-2507-05T5, 2007 N.J. Super. Unpub. LEXIS 2987, at *14 (N.J. App. Div. July 11, 2007); *Maplewood v. Tannenhaus*, 64 N.J. Super. 80, 89 (N.J. App. Div. 1960).

New Jersey courts have explained that the requirement of "definiteness" has three purposes. First, a zoning ordinance cannot grant "unbridled discretion" to the local officials charged with its enforcement. *Lionshead Woods Corp. v. Kaplan Bros.*, 250 N.J. Super. 545, 551 (N.J. Law Div. 1991). The ordinance must provide sufficiently clear standards to prevent "determinations based upon whim, caprice or subjective considerations." *Morristown Rd. Assocs. v. Borough of Bernardsville*, 163 N.J. Super. 58, 67 (N.J. Law Div. 1978). Second, zoning ordinances must set forth "workable guidelines to one seeking approval of plans" so that the applicant can conform the proposed plan to the ordinance's requirements. *Id.* Third, a zoning ordinance must "provide a court with an understandable criterion for review" so that it may determine whether the local officials' decision was arbitrary and capricious. *Id.* at 64.

Three cases are instructive with respect to the constitutionality of Township Ordinance § 21-22.1 under New Jersey law. First, in *Damurjian*, the New Jersey Appellate Division invalidated an ordinance concerning setback requirements providing that, "if the length of the principal building, projected on the front lot line, exceeds 90 feet, the required front, each side, and rear yard requirements shall be increased one foot for each foot the building projection exceeds 90 feet." 299 N.J. Super. at 87. While this ordinance may appear at first to be quite specific, the court noted that the ordinance contained no definitions for "length of the principal building," "projected," "front lot line," or "building projection." *Id.* at 96. Further, even though the township's engineer testified that he had developed a "consistent" procedure for calculating setback requirements under the ordinance, the court held that this "trial and error" methodology did not pass constitutional muster because the ordinance itself failed to "set forth an objective and uniform method of calculating the setback required." *Id.* at 96-97. The court made clear that a "municipality cannot simply leave the entire process in the hands of its agents, no matter how well intentioned." *Id.* at 97. Here, the Parking Ordinance provides no objective standards at all and leaves "the entire process in the hands of [Bernards Township's] agents."

Second, in *Diocese of Metuchen v. Township of Piscataway*, the plaintiff challenged an ordinance governing cemeteries, which provided that "[o]ne parking space shall be provided for every 300 square feet of office space plus one (1) space for every 500 square feet of garage/maintenance area, *plus 15 spaces for any area designated as proposed mausoleum area*." 252 N.J. Super. 525, 528 (N.J. Law Div. 1991) (emphasis added). The court noted that the requirement of 15 parking spaces was the same for any mausoleum area, "regardless of the square footage of the mausoleum or the number of crypts." *Id.* at 532. The court held that the "blanket" mausoleum requirement was invalid because it was "not based upon any criteria or

standards whatsoever." *Id.* at 532-33. The court stated that "[i]n order to pass constitutional muster, the township must provide a *formula* to determine the appropriate amount of offstreet parking for particular uses." *Id.* at 533 (emphasis added). In this case, of course, there is no formula that governs the application of the discretion provided to the Planning Board under the Parking Ordinance.

The *Piscataway* court discussed and favorably cited the third case, *Associated Land & Investment Corp. v. City of Lyndhurst*, 154 N.E.2d 435 (Ohio 1958), which invalidated a parking provision very similar to the one at issue here. The zoning ordinance at issue in *Lyndhurst* specified that a business must provide "off-street parking space sufficient in capacity for the parking at one time of *at least one automobile per five persons* engaged on the premises as employees or owners." *Id*. at 439 (emphasis added). It further provided that the same business "shall have . . . parking space *reasonably adequate* for the commercial vehicles necessary to carry on the business of the occupants of the premises and for the *normal volume* of car parking by persons coming to the premises on matters incidental to the uses thereof." *Id*. (emphasis added). As such, like the Parking Ordinance at issue here, it provided a specific ratio but left municipal officials free to deviate from it, requiring additional parking at their discretion. The court found that while the section of the ordinance containing the "fixed" parking ratio was constitutionally sound, the provisions requiring "reasonably adequate" parking for the "normal volume" of cars was void because the law requires "sufficient criteria or standards to guide the administrative officer or tribunal in the exercise of the discretion vested in it . . . ." *Id.* at 439, 440. New Jersey law contains the same requirement. *Morristown*, 163 N.J. Super. at 64.

There is no material distinction between the ordinance at issue in *Lyndhurst* and that here. The provisions of the Parking Ordinance relied upon by the Planning Board to conduct an

individualized assessment of ISBR's parking needs—the first ever individualized assessment in the Township's history with respect to a house of worship—provide no measures and no standards as to how the Planning Board "may" increase parking in any situation. Township Ordinance § 21-22.1 grants the Planning Board seemingly limitless discretion to depart from the 3:1 ratio at the Planning Board's whim; and it provides no objective benchmarks to "prevent arbitrary and indiscriminate interpretation." *Damurjian*, 299 N.J. Super. at 96; *see also Piscataway* 252 N.J. Super. at 533; *Lyndhurst*, 154 N.E.2d at 440. As such, it should be invalidated under the New Jersey Constitution.

C. The Court Should Excise Only the Unconstitutionally Vague Provision

Unlike the vague clauses of Township Ordinance § 21-22.1 italicized in paragraph 357 of the Complaint and quoted above, the ratios for various uses set forth in the ordinance—including the 3:1 ratio for houses of worship—do not give the Planning Board unfettered discretion. Thus, the Court should leave those provisions in place and strike only the vague portions of the Parking Ordinance identified herein and in the Complaint. *See* Township Ordinance § 21-1.3 (providing that "[i]f 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"). Indeed, this is precisely how the *Lyndhurst* court resolved the very same issue. *See* 154 N.E.2d at 440 (excising only that portion of the parking ordinance that did not set forth specific criteria to guide the municipal body's discretion, but upholding and applying the portion setting forth specific ratios).

CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that the Court grant their motion for partial judgment on the pleadings as to the third, eighth, and tenth causes of actions of the Complaint, holding (1) that Defendants are liable to Plaintiffs under 42 U.S.C. § 2000cc(b)(2) for all appropriate relief, including damages and equitable remedies, and (2) that specified clauses of Township Ordinance § 21-22.1, as italicized in paragraph 357 of the Complaint, are unconstitutional under the U.S. and New Jersey Constitutions, and therefore Plaintiffs are entitled to application of the clear and objective 3:1 parking ratio for houses of worship contained in that ordinance.

Dated: May 6, 2016

Respectfully submitted,

By: s/ Michael F. Buchanan
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IN THE 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*.	No. 16-cv-1369 (MAS) (LHG) **DECLARATION OF ADEEL A. MANGI IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS**

ADEEL A. MANGI hereby declares:

1. I am an attorney at law of the State of New York and a member of the firm of Patterson Belknap Webb & Tyler LLP, counsel for Plaintiffs in the above-captioned matter. I am admitted to practice in this Court *pro hac vice*. I submit this declaration in support of Plaintiffs' motion pursuant to Fed. R. Civ. P. 12(c) for partial judgment on the pleadings.

2. Attached as Exhibit 1 is a demonstrative exhibit compiled by Plaintiffs' counsel listing all allegations from Plaintiffs' Complaint alongside the corresponding responsive paragraph from Defendants' Answer.

3. Attached as Exhibit 2 is a true and correct copy of Township Ordinance § 21-22.1 in its entirety.

4. Attached as Exhibit 3 is a true and correct copy of the joint memorandum issued to the Bernards Township Planning Board regarding "ISBR Application – Off-Street Parking Requirement," dated January 3, 2013 and authored by Jonathan E. Drill and David Banisch.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
May 6, 2016

Adeel A. Mangi (admitted *pro hac vice*)

EXHIBIT 1

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings:
Comparison of Plaintiffs' Allegations and Defendants' Responses

Para.	Complaint	Answer
	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").	After reasonable investigation, the defendants remain without sufficient information to admit or deny this allegation.
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."	After reasonable investigation, the defendants remain without sufficient information to admit or deny this allegation.
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."	After reasonable investigation, the defendants remain without sufficient information to admit or deny this allegation.
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.	After reasonable investigation, the defendants remain without sufficient information to admit or deny this allegation.

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegation that the plaintiffs were "conscious of the intent hostility..." The defendants admit that the plaintiffs purchased a 4.088 acre property in a zone where a house of worship was a permitted use under the Township's zoning ordinance. The defendants admit that in April of 2012, ISBR applied to the Bernards Township Planning Board for approval of its site plan. After reasonable investigation, the defendants are without sufficient information to admit or deny the allegation that the mosque can be characterized as modest. It is denied that the 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 you 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."	It is denied that the process "devolved into a Kafkaesque process..." After reasonable investigation, the defendants are without sufficient information to admit or deny the allegation in this paragraph concerning the anonymous flyer and the alleged remarks by a volunteer firefighter.

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Para.	Complaint	Answer
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.)	After reasonable investigation, the defendants remain without sufficient information to admit or deny this allegation.
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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegations concerning the motivations of the objectors. It is denied that the Board and its professional adopted the objector arguments. It is denied that the Board's demands were unreasonable. After reasonable investigation,, the defendants are without sufficient information to admit or deny allegations concerning the cost and expenses incurred by the plaintiffs.
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 . . . ."	After reasonable investigation,, the defendants remain without sufficient information to admit or deny this allegation.

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Para.	Complaint	Answer
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.	The defendants deny that issues related to parking can be characterized as a "battle." The plaintiffs' description of the Township parking ordinance is incomplete, in that plaintiffs omit that the ordinance requires one space for twenty-four linear inches of pew space. The allegation concerning ISBR's original application is admitted. It is denied that the planner expressly agreed that ISBR satisfied the parking ordinance. It is denied that objectors insisted that a different parking standard should apply to a mosque that a church. It is denied that the Board agreed with objectors and explored "one novel parking methodology after another." It is denied that the Board discarded formulations that were prepared by the Board planner. It is admitted that the Board adopted a proposal that required 107 parking spaces but denied that the proposal was adopted from an objector. It is denied that the Board ignored all of ISBR's proposals.

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Para.	Complaint	Answer
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.	It is admitted that ISBR submitted a revised plan with 107 parking spaces, though a plan containing the details required of a final site plan was never submitted. After reasonable investigation,, the defendants have insufficient knowledge concerning the allegation that objectors "Seized upon the oversized the oversized parking lot they had imposed as the basis to make new objections." It is denied that the Board "seized upon the oversized parking lot they had imposed as the basis to make new objections." The plaintiffs do not quote in their entirety the reasons for the denial of preliminary and final site plan approval. The reasons for the denial of the preliminary approval differed from the reasons for the denial of final approval. All the reasons are stated completely in the Board's Resolution, which is attached as Exhibit – A to this Answer.

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
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.	All of the allegations in this paragraph are denied
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.	All of the allegations in this paragraph are denied.
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."	The allegation that the defendants amended the local zoning law at the instigation of a suspended lawyer-objector is denied. It is admitted that the new zoning ordinance made houses of worship a conditionally permitted use. It is admitted that the new zoning ordinance required a minimum of six acres of land but it is denied that the ordinance imposed "draconian restrictions on parking and setbacks." After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegation in this paragraph concerning community members at the meeting unaffiliated with the plaintiffs.
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.	It is admitted that on December 8, 2015, the Board voted to deny the plaintiffs' application. It is admitted that a resolution was adopted on January 19, 2016. It is denied that the Board "had done its part to prevent there ever being a mosque in the Township."

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Para.	Complaint	Answer
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.'"	After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegations in this paragraph.
	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.	Admitted.
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.	Admitted.
	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.	After reasonable investigation, the defendants remain without sufficient information to admit or deny this allegation.
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.	After reasonable investigation, the defendants remain without sufficient information to admit or deny this allegation.

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Para.	Complaint	Answer
	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.	After reasonable investigation, the defendants remain without sufficient information to admit or deny this allegation.
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.	It is admitted that plaintiff Chaudry served on the Board of Education and an advisory Board to create the Community Center. It is admitted that plaintiff Chaudry was elected to the Township Committee in November of 2001 and the allegations concerning the positions plaintiff Chaudry occupied are admitted. After reasonable investigation,, the defendants were without sufficient information to admit or deny the allegation that Dr. Chaudry is 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.	After reasonable investigation, the defendants remain without sufficient information to admit or deny this allegation.
24	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.	Admitted.

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Para.	Complaint	Answer
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.	Admitted.
	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.	Admitted.
	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.	Admitted.
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.	Admitted, though there is no legal basis to join any of the 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").	Admitted.

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Para.	Complaint	Answer
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.	Admit that all individuals listed are current members of the Board, but only members Apler, Kleinert, Piedici, Plaza and Santoro participated in hearing and voted on the application.
	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.	This is the plaintiffs' description of what plaintiffs believe to be the basis of their Complaint, and as such, no response is required. To the extent the plaintiffs mean to imply in this paragraph there are facts which support their legal conclusions, the facts are denied.
	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. "[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." 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." 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."	It is admitted that the plaintiffs accurately, but incompletely, quote from the record.

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Para.	Complaint	Answer
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. 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. Third, RLUIPA prohibits discrimination on the basis of religion in the imposition or implementation of any land use regulation. Fourth, RLUIPA prohibits the imposition or implementation of a land use regulation that unreasonably limits religious assemblies, institutions, or structures within a jurisdiction. Additionally, pursuant to 42 U.S.C. § 1988(b), prevailing plaintiffs under RLUIPA are eligible for an award of attorneys' fees.	This is the plaintiffs' description of what plaintiffs believe to be the basis of their Complaint, and as such, no response is required. To the extent the plaintiffs mean to imply in this paragraph there are facts which support their legal conclusions, the facts are denied.
	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.	This is the plaintiffs' description of what plaintiffs believe to be the basis of their Complaint, and as such, no response is required. To the extent the plaintiffs mean to imply in this paragraph there are facts which support their legal conclusions, the facts are denied.
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.	This is the plaintiffs' description of what plaintiffs believe to be the basis of their Complaint, and as such, no response is required. To the extent the plaintiffs mean to imply in this paragraph there are facts which support their legal conclusions, the facts are denied.
36	The New Jersey Constitution provides protections that overlap with those guaranteed by the U.S. Constitution.	This is the plaintiffs' description of what plaintiffs believe to be the basis of their Complaint, and as such, no response is required. To the extent the plaintiffs mean to imply in this paragraph there are facts which support their legal conclusions, the facts are denied.

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Para.	Complaint	Answer
	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 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.	It is admitted that 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, except that it can also be from a zoning Board of adjustment under certain circumstances. The defendants deny the plaintiffs' conclusion that an applicant must submit site drawings preliminary architectural plans, and engineering documents in "tentative form for discussion purposes." The applicant may submit such documents but the applicant has the burden of proving through the documents that it is entitled to the approvals sought. The defendants admit that upon submission of a complete application for a site plan, the planning Board must grant or deny preliminary approval within forty-five days, except that the applicant may consent to extensions, which is what the applicant did in this case, and there are also exceptions if the proposed development is more than ten acres, which is not the case here.
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. 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.	This is admitted, except that there can be exceptions which apply in this case.

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Para.	Complaint	Answer
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.	Admitted, except that provision of an ordinance relating to health and public safety may apply at the time an applicant seeks final site plan approval.
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.	It is admitted that the New Jersey case law forbids decisions by local planning Boards that are arbitrary, capricious or unreasonable. The defendants deny the statement in this paragraph that the MLUL "limits the standard by which a land use Board can review an application to the specific land use ordinances of the relevant municipality."
	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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny this allegation.
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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny this allegation.
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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny this allegation.

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Para.	Complaint	Answer
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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny this allegation.
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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny this allegation.
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."	After reasonable investigation,, the defendants are without sufficient information to admit or deny this allegation.
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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny this allegation.
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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny this allegation.
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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny this allegation.

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Para.	Complaint	Answer
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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny this allegation.
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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny this allegation.
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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny this allegation.

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Para.	Complaint	Answer
	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	After reasonable investigation,, the defendants are without sufficient information to admit or deny this allegation.
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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny this allegation.
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. 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.	The defendants are without sufficient information to admit or deny the allegation as to when Dr. Chaudry identified a property located at 124 Church Street. It is admitted that the property in question contains a single family home and detached structure on 4.08 acres of land. It is denied that the property met either all the requirements of the Township's zoning ordinance or chapter 21, Article V, Development Regulations 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.	Admitted.

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
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.	Admitted.
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.	Except that the Liberty Corner Presbyterian Church property is partially located in a business zone described in this paragraph, the other allegations in this paragraph are admitted.
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.	It is admitted that ISBR purchased the property on November 9, 2011 for $750,000.00. After reasonable investigation,, the defendants are without sufficient information to admit or deny the remaining allegations in this paragraph.

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
	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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegations in this paragraph, except that the defendants admit that 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.	Admitted.
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.	It is admitted that on April 20, 2012, ISBR submitted its application for a preliminary and final site plan approval. It is admitted that the application proposed construction of a 4,252 square foot mosque on the property. The other allegations in the paragraph are admitted except the claims that the plans complied with the Township zoning ordinance.

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny any allegations concerning the reasons for ISBR's design choices.
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.	It is admitted that ISBR's architect estimated the maximum occupancy of the mosque's 1,594 square foot prayer hall at 150 people. The remaining allegation in this paragraph is denied.
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.	Admitted.
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.	The defendants admit that the Planning Board has never held as many hearings for any other previous applicant. The defendants deny that the Planning Board regularly approves major site plan applications or major subdivisions 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.	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation

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Para.	Complaint	Answer
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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegations in this paragraph, except that the defendants admit that Dr. Chaudry reported the act of vandalism to the police.
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	It is admitted that many community members attended the Board work session on ISBR's application on January 17, 2012. After reasonable investigation,, the defendants are without sufficient information to admit or deny the other allegations in this paragraph.
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."	All of the allegations in this paragraph are denied.

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Para.	Complaint	Answer
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."	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.
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.)	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.
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.	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.

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Para.	Complaint	Answer
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. :)	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.
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."	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.

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Para.	Complaint	Answer
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. • 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. • [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.	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.
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."	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.
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." 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."	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.
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 "infiltrating our court system." 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."	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.

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Para.	Complaint	Answer
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." 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.	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.
81	Ms. Caratzola cross-examined every witness for ISBR who testified at the Board's hearings.	Admitted.
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.	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation, except that the defendants admit that plaintiff Chaudry reported the incident to the Township Police and the police report noted attempt to convert ISBR into ISIS on the mailbox.
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."	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.

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Para.	Complaint	Answer
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 . . . ."	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.
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.	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation, except that the defendants admit the incident was 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."	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.
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.	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation, except that the defendants admit in December of 2015, the Board denied ISBR's application.

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Para.	Complaint	Answer
	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.	After reasonable investigation, the defendants are without sufficient information to admit or deny any characterization of the motivation behind the opposition by the objectors to ISBR's application to build the mosque. It is denied that any alleged discriminatory intent was adopted by the Board. After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegation in this paragraph concerning the sophistication or organization of the objectors.
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").	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.
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." 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.	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.
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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny the characterization of the BTCRD homepage. The defendants admit that ISBR's property is not located in the Liberty Corner Historic District.
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.	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.

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Para.	Complaint	Answer
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.	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.
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.	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.
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."	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.
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?"	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.
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.	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.

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Para.	Complaint	Answer
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.	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.
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.	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.
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.	The defendants deny that there was a "lead objector at the Board meetings" but admit that the BTCRD hired private counsel, Robert Simon, Esq., to represent the BTCRD in those hearings. The defendants deny the allegation that the Board had no discretion to deny the application. After reasonable investigation,, the defendants are without sufficient information to admit or deny the other allegations in this paragraph.
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.	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.

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Para.	Complaint	Answer
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 . . . "	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.
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."	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation.
	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.'"	Denied because the quote is taken out of context and is incomplete.
105	Mr. Malay also used his Twitter feed to comment on a photo depicting a human figure in an explosion. See Figure 11. 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.	Denied because the quote is taken out of context and is incomplete.

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Para.	Complaint	Answer
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."	Denied.
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."	Denied. Ms. Gaziano is not quoted accurately and the quote is not presented in its entirety.
	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.	It is denied that ISBR could never again apply for a mosque on its property. It is denied that the amending zoning ordinance imposed numerous additional harder and impossible to 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.	Denied.
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.	Denied

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Para.	Complaint	Answer
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.	It is admitted that Ms. Caratzola's proposed an amendment to the zoning ordinance. The other allegations in this paragraph are denied.
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.	Admitted.
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."	The Explanatory Statement (not a Preamble) is only quoted here in part. It is denied that anyone was denied an opportunity to speak.
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.	It is denied that the ordinance created onerous conditions. The other allegations in this paragraph are admitted.
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.	After reasonable investigation, the defendants are without sufficient information to admit or deny this allegation. To respond would require a study of available plots, which the defendants have not conducted.

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
116	On October 15, 2013, the Committee formally adopted Ordinance # 2242 by a vote of 4 to 1.	Admitted.
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.	Denied.
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.	Unknown.
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.	Denied.
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."	Denied.
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.	It is admitted that the new ordinance did not apply to ISBR's pending proposal. It is denied that the new ordinance ensured that if the Board denied ISBR's application it could not reapply with a compliant revised sit plan.

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Para.	Complaint	Answer
	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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegation that the Board process placed an immense financial strain on the plaintiffs. The defendants admit that at the Board's request, ISBR's professionals developed five sets of plans. After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegation concerning the expense of developing these plans. The defendants deny that the plans were "fully developed."
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.	It is admitted that the Board formally denied ISBR's application in a forty page Resolution dated January 19,2016 and published on January 28, 2016. The second sentence in this paragraph regarding why the application was denied is denied by the defendants.
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.	Denied.
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."	Admitted, though "House of worship" is not used in §22-22.1.

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Para.	Complaint	Answer
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"). 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.	Admitted.
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.	It is admitted that the 3:1 parking ratio was applied to houses of worship which applied for site plan approval before the Islamic Center of Basking Ridge. This is because the revised ITE standard did not exist at the time.
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.	The defendants admit ISBR'soriginal architectural plan estimated the mosque's prayer hall at 150 people. The defendants admit that the ISBR proposal was one parking space for every three prayer mats. The defendants deny that the plaintiffs properly interpreted Ord. §21-22.1
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.	It is denied that David Banisch agreed that the proposal satisfied the ordinance. It is admitted that Mr. Banisch did not recommend any increase in the number of parking spaces in his letter of August 7, 2012, though he did make such a recommendation at a later date.
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.	The defendants admit that in a letter dated August 3, 2012, David Schley noted the ISBR proposal included 50 parking spaces.

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Para.	Complaint	Answer
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.	All allegations in this paragraph admitted except the defendants deny the length of time of the questioning
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.	Admitted.
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."	Admitted.
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.	Denied.
135	Dr. Chaudry repeatedly testified that ISBR would comply with the occupancy limits set by the Township's fire code and fire officials	Admitted.
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.	It is admitted that Mr. Banisch issued a new parking memo on October 25, 2012. All other allegations in this paragraph are admitted, except that the defendants deny that Mr. Banisch ever conceded that 50 or 56 parking spaces were sufficient.

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Para.	Complaint	Answer
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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny any allegations concerning whether the objectors were satisfied.
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.	The allegations in this paragraph are admitted, except that After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegation that ISBR Traffic Engineer Ney described the parking ration recorded in the ITE report as "not a recommended standard."
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.	It is admitted that the Board never applied the ITE parking rates to determine the parking requirement for any other house of worship, but the issue was not raised in any of the other house of worship applications, and in the ITE parking rates at issue were not published in the ITE Parking Generation Manual until 2010, which was subsequent to the applications relating to the other houses of worship.. In regard to the second sentence in this paragraph, the defendants admit the allegation except that Board Attorney Jonathan Drill suggested to all Traffic Engineers that they research the parking ratio for mosques contained in the ITE's Parking Generation Manual.

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Para.	Complaint	Answer
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.	The defendants admit the allegation that in December of 2012, ISBR and the BTCRD objectors submitted letter briefs to Board Attorney Drill concerning the applicable parking standard. The defendants admit that in a letter dated December 14, 2012, ISBR took the position that the 3.1 parking ratio for churches applied to ISBR's plans. Defendants deny that the Township ordinance establishes 3:1 as the parking standard for all houses of worship. Defendants admit all other allegations in this paragraph.
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.	The defendants admit the allegation concerning the December 21, 2012 letter. The defendants admit the allegation concerning the argument of BTCRD. The defendants deny the allegation that the objectors asked the Board to rewrite the Parking Ordinance and that the Board did just that.
142	On January 3, 2013, Board Attorney Drill and Board Planner Banisch issued a new joint parking memo. 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.	It is admitted that on January 3, 2013, Mr. Drill and Mr. Banisch issued a new joint parking memo.
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 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.	The allegation concerning Drill's and Banisch's interpretation of the parking ordinance is denied. The other allegations in this paragraph are denied.

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Para.	Complaint	Answer
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.	Admitted.
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.	Admitted, except that the 110 parking space requirement will not be applied if an applicant presents evidence as to why it should not apply.
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 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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegation that ISBR Traffic Engineer Ney performed a detailed study. It is admitted that at the Board's request, Mr. Ney collected additional data. After reasonable investigation,, the defendants are without sufficient information that the data collected by Mr. Ney and his calculations were based on the ITE methodology. It is admitted that from January 2013 to June 2013, ISBR presented the supplemental parking studies and extensive testimony from Mr. Ney about his analysis. The defendants deny the allegation that based on his local parking study, Mr. Ney stated that applying the ITE methodology resulted in 60 parking spaces for ISBR (his report said 70).
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.	Denied.

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Para.	Complaint	Answer
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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny whether the objectors were "satisfied." The defendants deny the allegation that the Board was "not satisfied", as the Board was simply performing its statutory function. The defendants deny the allegation that any of its activities resulted in "inflated" parking estimates. The defendants admit that the Drill/Banisch parking memo recognized 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. It is admitted that the Board questioned Mr. Nay about the 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.	It is admitted that on June 4, 2013, the Board voted on ISBR's parking requirement and that the BTCRD objectors presented testimony from their own traffic engineer. It is admitted that Mr. Litwrnia presented a parking recommendation based upon a different metric. The characterization of the testimony is denied. After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegation as to the basis of Mr. Litwrnia's studies. It is admitted that Mr. Litwrnia recommended that ISBR should be required to provide 107 parking spaces.

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Para.	Complaint	Answer
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.	It is admitted that the Board adopted a recommendation of 107 parking spaces, but denied that it adopted in full the position advanced by Mr. Litwrnia. All of the allegations in this paragraph are denied.
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.	It is denied that the Board ignored ISBR testimony. It is admitted that Mr. Ney testified that ISBR could decrease its parking demand through ride sharing arrangements, etc. It is denied that the Board ignored Mr. Ney's recommendations.
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.	It is denied that the Board's vote was binding throughout the remainder of the application process. It is denied this compelled ISBR to reconfigure its site plans to comply with the 107 space requirement. It is denied that the Board's requirement of 107 parking spaces laid the ground work for each of the Board's bases for denying ISBR preliminary and final site plan approval.

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Para.	Complaint	Answer
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.	The allegations in this paragraph are denied.
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. 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.	The allegations in this paragraph are admitted, except the defendants deny the allegation that "every step in the Board's logic is untenable and contrary to law."

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Para.	Complaint	Answer
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 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.	It is admitted that ISBR worked for months toresolve the Board's drainage concerns. It is admitted that ISBR changed the type of drainage basins and agreed to change the locations, etc. After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegation that each of these modifications was reflected on ISBR's site plans with the Boards review and entailed considerable expense. The defendants admit the allegation that the parking spaces required by the Board meant an increase in the water proof pavement, etc. It is denied that the parking lot requirement can be considered "oversized".
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."	The defendants admit the remark attributed to Mr. Santoro.
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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegation concerning whether ISBR anticipated a problem. The allegation describing the detention basins is denied. To the extent that the plaintiff's mean to imply that the existence of detention basins and buffer zones at other locations is relevant to the approval of the plans submitted by the plaintiff, the allegation is denied.

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Para.	Complaint	Answer
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. 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 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.	It is admitted that drainage improvements are listed in the Township's zoning ordinance. Defendants deny the allegation that detention basins are among the least intensive of improvements. The other allegations in this paragraph are denied.
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.	The allegations in this paragraph are denied.
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."	After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegation that objectors were not satisfied. The allegation concerning the BTCRD presenting their own expert are admitted. The allegation concerning the BTCRD expert articulating a legal or objective basis for his testimony is denied. The Board found the testimony of the expert to be a net opinion.
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.	The allegation that the Board enlisted Planner Banisch to reinterpret the town ordinance buffer provision is denied. It is admitted that Mr. Banisch did not cite to legal president or planning treatise but it is denied that he failed to cite to any other authority. It is admitted that Mr. Banisch interpreted the ordinance in the July 20, 2014 memo. The defendants admit that the interpretation of the buffer ordinance had never been applied in connection with any other prior application, but state that this is because it had never been raised as an issue before the plaintiff's application.

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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.	The allegations in this paragraph are admitted.
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.	The defendants deny the allegation that ISBR's existing plans provided for extensive natural planted screening on the property's eastern boundary. The defendants admit that ISBR incorporated into its landscaping plan existing trees as required by the township ordinance. The defendants admit the allegation that ISBR planned a new series of evergreen trees. The defendants deny the allegation there was no inadequacy in the 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.	The defendants admit the allegations in this paragraph except the allegation that the eastern boundary would then feature an "impregnable array of all available screening devices." The defendants are without sufficient information to admit or deny this allegation.
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.	Admitted.

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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.	The defendants admit that ISBR made other small changes suggested by Board professionals, which included shifting draining features within the eastern buffer.
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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegation that changes have appeared to resolve the eastern screening concerns. The other allegations in this paragraph are admitted.
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."	After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegations.
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.	It is denied that ISBR submitted five iterations of the site plans. ISBR submitted five iterations of plan revisions but never a fully coordinated site plan set, and the plans that were submitted lacked the detail required. Theallegation concerning the number of trees is admitted. Thedefendants admit that ISBR made clear that the detention basislocation could be adjusted. The other allegations in this paragraph are admitted.

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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.	It is admitted that once ISBR submitted its last set of site plan revisions and concluded its case the BTCRD indicated it did not have any more witnesses and the period for public comment commenced. The defendants deny the allegation in the next sentence that objectors again "swarmed." After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegation concerning where the lay objector lived, although it is admitted that a power point was present. It is admitted that no time limits were imposed on any individual public commentators. It is admitted that the Board allowed further expert testimony, but denied it was in contravention of its own rules. It is admitted that Mr. Plaza is accurately quoted, but denied that there was a violation of the Board's rules. It is denied that the Board's rules were relaxed.
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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegation concerning whether ISBR restyled and reshaped the drainage basins six times. It is admitted that preliminary and final site plan approvals were denied. Final approval was denied because the plan did not have sufficient details and for the specific issues described in the Resolution which is attached to defendants' Answer as Exhibit-A. Preliminary approval was denied for the specific issues described in the resolution which is attached, attached to defendants' answer as Exhibit A.

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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.	It is admitted that the Board concluded that the basin in the eastern buffer exceeded the limited intrusions permitted by the buffer ordinance. The defendants admit that the Board concluded that the drainage basis had to be removed from the buffer. It is denied that this was based on Board planner Banicsh's standard and the characterization of the standard as "brand new" is also denied. It is denied that the Board "leaned heavily on BTCRD's expert testimony and on Mr. Banisch's interpretation of the buffer ordinance" and the characterization of the interpretation as "novel" is also denied.
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.	It is admitted the Board stated it would probably have denied specific approval for the swale but the characterization of the swale an a "narrow, grassy" swale is denied. It is also denied that the Board's explanation ignored its experts' praise for the swale.
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.	The defendants admit that the Board denied approval to the location of the detention basin but denies that the Board denied approval to the location of other drainage features. The defendants deny the characterization aspurportedly. The defendants admit the Board reasoned that"planted screening is much more aesthetically desirable alternative to a fence. The defendants admit that ISBR natural screening would be impacted by the detention basin. The defendants deny that the Board adopted Ms. Caratzola'sterminology. The defendants deny that the Board provided no explanation as to why ISBR's planted screening in the eastern buffer is in any way inadequate and the defendants deny that any facts were ignored.

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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.	The defendants deny that just because the plans submitted by ISBR showed a "straight fence" that the fence could be constructed "straight." The defendants deny that the Board speculated that the fence would have to be gerrymandered to avoid the existing tree roots. The defendants deny that the Board ignored any facts. The defendants admit the allegation that ISBR landscaping plans reflected only a straight fence in the eastern buffer. The defendants admit that the Board determined that the potential for a fence with asymmetrical fence posts violated the ordinance. The defendants deny that the resolution stated it would have approved the fence if it had been moved farther west, a solution ISBR had repeatedly offered.

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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."	The defendants deny the allegation that "for good measure the Board also manufactured an additional issue". The defendants deny that ISBR had proposed screening of the parking area from the eastern residential neighbor which is all the township's screening ordinance required. The defendants deny that ISBR represented to the Board it would even 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. The defendants admit that in its resolution, the Board decided that ISBR must have additional fencing in portions of the front yard setback are to screen the easterly neighbors because ISBR did not provide sufficient landscape screening in that area.. The defendants deny the six foot fence referred to in this allegation was unnecessary. The defendants admit that the Resolution states the Board's finding that any benefit of the fence was substantially outweighed by detrimental aesthetics" which constituted "a substantial detriment to the public record."
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.	The defendants deny that the Boards' decision to deny preliminary and final approval was based ultimately on what it deemed aesthetically displeasing and a gerrymandered fence. The defendants deny that the Board treated ISBR differently and less favorably than other religious and secular applicants and that its decisions were arbitrary, capricious and unreasonable.
178	The Board also found that ISBR's parking lot was not adequately screened from the southern and northern property lines.	Admitted.

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Para.	Complaint	Answer
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.	It is admitted that on the south side of the property, ISBR's border included a preexisting wooded area. It is admitted that beyond that border was a vacant lot. It is admitted that farther beyond that was the residence of an individual objector. It is denied that ISBR took every step to ensure adequate southern screening. It is admitted that ISBR submitted a landscaping plan showing the solid screen of new evergreen trees. The defendants admit that ISBR Engineer Khan conducted what ISBR deems was a "screening test" with two different vehicles" headlights. While ISBR Engineer Khan may have determined that the screening was adequate, the Board did not believe him.
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.	It is admitted that the Board heard no conflicting testimony but found Mr. Khan's testimony regarding the testing he did to be unpersuasive. The Board need not accept testimony, even though uncontradicted. The allegation about the Board's underlying concern is denied. It is denied that the Board ignored an "obvious point" made by Mr. Khan.
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.	It is denied that ISBR agreed to subject its screening to Board scrutiny. The other allegations in this paragraph are also denied.

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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.	It is admitted that the Board stated it could not access the adequacy of the landscaping plan because the plan lacked a cross-sectional view point. It is denied that this requirement has not been imposed on other applicants. It is denied that cross-section is not warranted.
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.	Admitted.
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.	All of the allegations in this paragraph are denied.
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.	Denied.
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.	The allegations in this paragraph are denied.
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.	It is admitted that the Board found ISBR's site plan failed to satisfy the requirements of the Township Ordinance and N.J.A.C. §7:8 concerning storm water drainage. It is admitted that the Resolution faulted ISBR for failing to include a groundwater recharge system. It is denied that the bases for denial are untenable.

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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.	It is admitted that Mr. Khan consulted with Mr. Quinn. The other allegations in this paragraph are admitted except that the defendants deny that the Board's parking lot expansion was faulty.
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.	All of the allegations in this paragraph are denied.
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.	It is denied that by early 2014 all issues relating to storm water appeared to be resolved. It is admitted that the plaintiffs accurately quote from Mr. Quinn's letter, though the characterization of his comments as "minor" is denied. It is admitted that at a public hearing on January 15, 2014, the Board reviewed Mr. Quinn's comments concerning ISBR's storm water plans. After reasonable investigation,, the defendants remain without sufficient information to admit or deny the remaining allegations in this paragraph.
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."	It is admitted that ISBR submitted a revised storm water management plan. The other allegations in this paragraph are admitted except the report did not address all issues discussed by the Board.

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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."	After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegation about whether the objectors were satisfied. It is admitted that at a public hearing on August 4, 2015, ISBR's eastern neighbor questioned whether ISBR's storm water management system needed a recharge system. It is denied that Board Engineer Quinn dismissed the objector's criticism. It is admitted that he informed the objector that engineers "took recharge off the table" because "it is did not seem to make sense." It is denied that Quinn gave any assurances to objectors.
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.	It is admitted that objectors continued to press the issue of recharge. It is admitted that at a public hearing on September 8, 2015, an objector presented expert testimony by an engineer, Paul Fox. It is denied that Mr. Fox repeated the opinions of the lay neighbor that ISBR was required to have a recharge system. It is admitted that he made other technical points regarding the ISBR storm water plan. It is admitted that the Board asked Mr. Quinn to review Mr. Fox's concerns and submit a report with his opinion on the issues.
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.	It is denied that Mr. Quinn did not change his mind on the recharge issue. After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegation that Mr. Quinn's view is based on the specific testing of the soils on ISBR's property. After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegation about whether Khan agree with Quinn's calculations.

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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.	It is denied that in his letter report dated September 28, 2015, Board Engineer Quinn rebutted Mr. Fox's views. It is denied that Mr. Quinn explained again that there was no requirement of installing a recharge system.
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."	It is admitted that Mr. Quinn stated that it might be more expedient for ISBR to comply with the ordinance requirement to provide a recharge facility rather than apply for an exception from having to provide recharge. The defendants deny the characterizations alleged by ISBR. The defendants deny that Mr. Quinn did not opine that the addition of the recharge system was required under the Township ordinance. The defendants deny the remaining allegations.
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.	Denied.
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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegations in this paragraph.

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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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegation that on October 29, 2015 ISBR's counsel sent to Board attorney Drill a proposed condition of approval regarding either providing a recharge system or performing additional soil testing to reconfirm that no recharge system was needed, that Board attorney Drill then provided the condition to Board members, and that 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.	It is admitted that there was a public hearing on November 3, 2015 and it was the Board's only opportunity to ask Board Engineer Quinn questions about his letter rebutting Mr. Fox's criticism's concerning the ISBR storm water drainage. The other allegations in the paragraph are admitted.
201	Soon thereafter, the Board denied ISBR's application, even for preliminary approval.	It is admitted that the Board denied ISBR's application, even for preliminary approval, though the characterization of "soon thereafter," is denied.
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.	It is admitted that the Resolution faulted ISBR for failing to satisfy the purported recharge requirement. It is denied that Board Engineer Quinn repeatedly opined that the recharge requirement did not apply to ISBR's property. The defendants are without sufficient information to admit or deny any allegation concerning what ISBR understood. It is denied that the Board chose not to grant preliminary approval subject to the agree upon condition because there was no agreed upon condition.

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Para.	Complaint	Answer
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.	It is admitted that the Board's main basis for denial was that ISBR decided not to submit to the Board information it submitted to Quinn. The allegation concerning the Board stating it would be inappropriate to delegate review and approval of essential elements of the development plans such as storm water drainage is admitted. It is denied that the additional information to which the Board was referring were the calculations performed by Board Engineer Quinn himself. It is denied that the Board faulted ISBR for not sharing with the lay Board highly technical engineering calculations. It is denied that the Board also expressly disclaimed an opportunity to review the updated storm water 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.	The allegations in this paragraph are denied. It is denied that the Board previously delegated authority to its engineer to approve a site plan based on his review of storm water drainage plans as differentiated from delegating review of changes to a storm water drainage plan that the Board has approved in tentative form but which needed some minor revisions.
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.	Denied.
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."	Admitted.

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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.	It is denied that ISBR satisfied all fire truck access requirements. It is denied that ISBR complied with the local ordinance regarding width of fire lanes. It is admitted that ISBR used a simulation program called AutoTurn to demonstrate the movement of the fire trucks. It is denied that the Town's largest fire truck was shown to have complete access 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.	Denied.
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.	It is admitted that the plaintiffs accurately quote the ordinance. It is denied that the ordinance should be interpreted to mean that a building must have at least one fire lane and that the fire lane must be 25 feet wide. In regard to the allegation that an applicant provides additional fire lanes which are not otherwise required to be constructed, the defendants' position was that there was something which had to be constructed. It is admitted that ISBR's plans show a fire lane in front of the public entrance to be 25 feet wide and remaining fire lanes of at least 20 feet wide. It is denied that 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).	Admitted.

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Para.	Complaint	Answer
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.	It is admitted that the Resolution stated that ISBR's fire truck access plans were deficient because the plans failed to meet the requirements of Ord. §21-46A.1(e)(1). It is denied that the Board adopted wholesale arguments proposed by lay objector. The defendants lay objectors could not present their comments until March 17, 2015. It is admitted that the National Fire Codes Protection Association Standards apply where the following is not specific. It is admitted that the ordinance provides 10 subsections with requirements such as those relating to the width of fire lanes. The allegations describing Mr. Smith's contentions are admitted.
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).	It is admitted that NFPA 1141 are located in a section titled Parking Lots that provide standards for the widths of parking aisles and parking stalls. It is denied that those NFPA provisions are designed to ensure that passenger vehicles have sufficient room to back out of parking spaces and then turned around to exit the parking lot. It is denied that the standards have no legal or logical connection to needs of access for fire department apparatus.
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. 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.	It is denied that the Township ordinance has a provision which governs the width of fire lanes. It is denied that Mr. Schley acknowledged that the ordinance governs fire lanes. The defendants admit that the provision in question requires 24 foot parking aisles for 90 degree parking stalls. It is denied that ISBR satisfied the requirements of Ord. 21:39.3, but only as to aisles which don't double as fire lanes.

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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.	After reasonable investigation,, the defendants are without sufficient information to admit or deny this allegation.
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 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.	The allegation that the defendants' own professional uniformly rejected Mr. Smith's arguments is denied. The defendants deny the allegation that Township Planner Schley confirmed that the Township's ordinance governed parking aisle width, not NFPA 1141. After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegation that Fire Official Lake testified that the subsections of the ordinance set forth specific rules concerning fire access lanes, which rendered NFPA standards inapplicable. The defendants deny that Board Attorney Drill also opined that Mr. Smith's purportedly legal interpretation was simply incorrect. The defendants deny that Mr. Drill 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.	The defendants deny that the Board ignored the fire safety advice of its Fire Official. The defendants deny that this was a faulty ruling. The other allegations in this paragraph are denied.
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.	Denied.

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Para.	Complaint	Answer
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.	It is admitted that the Board concluded that ISBR's internal traffic circulation plan failed to comply with the ordinance. It is admitted that the Board criticized ISBR's traffic circulation plan for failing to show how Sunday School children would be dropped off.
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.	All of the allegations in this paragraph are denied.
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.	It is denied that ISBR had no alternatives. It is admitted that ISBR Engineer Khan provided a written supplemental internal circulation plan and oral testimony. It is denied that Mr. Khan testified that children being dropped off would exit their cars at the rear of the building. It is denied that there was any testimony concerning what would happen if more than one car arrived at the same time. It is denied that traffic signs would ensure congregants were made aware that drop off was to be done at the location. It is admitted that the drop off location adjacent to the public entrance identified in Figure 12.
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.	It is admitted that Board members did not ask any questions at that time. The description of Mr. Plaza's remarks is admitted, except that his testimony was not accepted as traffic engineer.

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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.	It is admitted that objectors cross-examined ISBR Engineer Khan. The characterization that the cross-examination was protracted is denied. It is denied that Board member Pavlini was the only one who asked any questions about the safety concerns. After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegation about the concerns of the objectors.
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. 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.	The sentence describing the Board Resolution is admitted. It is denied, however, that the Resolution complained that ISBR Engineer Khan failed to demonstrate the drop off plan. It is denied that internal circulation of pedestrians and drop off procedures are not required to be on site plans. It is admitted that the ordinance requires a description of site features like roads and pathways but it is denied that the ordinance does not require an operational overview of parking lot operations. It is admitted that Mr. Khan laid out in writing the drop off procedures, but his report did not show the Board how it would work. It is denied that Mr. Khan also incorporated the relevant site features of his circulation plan into ISBR's next set of revised site plans.
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.	It is denied that the Board also mentioned the alleged overuse of parking aisles for pedestrians as a basis for rejecting ISBR's circulation plan. It is denied that the cited provision is inapplicable.

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Para.	Complaint	Answer
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 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.	It is denied that the Board treated ISBR differently. The allegations concerning the Chabad are not valid comparators.
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.	All of the allegations in this paragraph are denied.
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.	The allegations in this paragraph are admitted.
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.	The allegation that the ordinance limits illumination for nonresidential uses to an average of 0.9 footcandles is admitted. It is denied that given ISBR's average illumination levels were below the maximum prescribed by the ordinance, 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.	The allegation concerning the Board ordinance is admitted. The allegation concerning the lighting plan is admitted.

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Para.	Complaint	Answer
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.	It is denied that the Board has no discretion under Ord. §21:41.2. The Board still has discretion to make certain that there is no negative impact. It is admitted that the Board would be limited to setting light levels to minimize undesirable off-premises effects. The allegation that the Board's leading of the ordinance was strained is denied.
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.	It is denied that ISBR's lighting plan demonstrated adequate detail. It is admitted that ISBR submitted several different versions the lighting plan. It is admitted that ISBR prepared a lighting exhibit. It is admitted that ISBR's lighting plan demonstrated the average illumination in the driveways and parking lot was below the maximum of 0.9 footcandles. It is denied that ISBR's plan satisfied the requirements of the ordinance.
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.	It is denied that ISBR agreed to moot any possible concerns by reducing the average elimination to 0.5 footcandles. It is admitted that ISBR had previously agreed to a post-approval test of its installed lighting. The other allegations in this paragraph are admitted.

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Para.	Complaint	Answer
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.	It is admitted that the Board has approved lighting plans with average illumination levels of at least .88 footcandles for other houses of worship. The remaining allegations in this paragraph are denied.
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.	It is denied that the Board's decision to deny preliminary and final approval was based on the lighting issue. It is denied the Board did not act using the least restrictive means available to it. It is denied that the Board treated ISBR differently and less favorably than other religious and secular applicants and it is denied that the Board's 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."	After reasonable investigation,, the defendants are without sufficient information to admit or deny the allegations in this paragraph.
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.	The defendants admit that the Board voted 4-2 to grant preliminary site plan approval but by operation of law, this constituted a denial pursuant to N.J.S.A. 40:55D-9(a). It is admitted that the Board voted 6-0 to deny ISBR's application for final site plan approval.

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Para.	Complaint	Answer
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." 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." 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."	The allegations in this paragraph are admitted, but the defendants deny that it had any effect on the vote of the planning Board.
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 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."	The allegations in this paragraph are admitted, but the defendants deny that it had any effect on the vote of the planning Board.
239	Lori Caratzola celebrated on Facebook, posting an article about the denial with the words, "We did it!"	After reasonable investigation, the defendants remain without sufficient information to admit or deny this allegation.
	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.	This is a legal conclusion, which does not require a response from the defendants. To the extent the plaintiffs mean to imply in this paragraph that there are facts which support the legal theories, the allegation is denied

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Para.	Complaint	Answer
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 fulltime 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.	After reasonable investigation, the defendants remain without sufficient information to admit or deny the allegation that ISBR's funds expended on purchase of the property were transferred by means of financial institutions located outside the State of New Jersey. After reasonable investigation, the defendants are without sufficient information to admit or deny the allegation concerning the manner in which the construction of ISBR's proposed mosque will effect 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.	It is denied that the Board's refusal to treat ISBR as it treated other land use applicants reflected an approach advocated by the BTCRD's counsel. The other allegations in this paragraph are also denied.
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.	The allegations in this paragraph are denied
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.	All of the allegations in this paragraph are admitted.

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Para.	Complaint	Answer
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."	All of the allegations in this paragraph are admitted.
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.	All of the allegations in this paragraph are admitted.
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.	All of the allegations in this paragraph are admitted.
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.	The defendants deny that the Board treated Chabad differently and better than ISBR.

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
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.	It is admitted that on or around November 30, 2000, Chabad applied for approval of a two phase expansion of its synagogue. It is admitted that phase one included a 2,581 square foot addition to the clergy residence, an 18,126 square foot building for classrooms and offices, but it is denied it was a 67 space parking lot. The other allegations in this paragraph are admitted.
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.	All of the allegations in this paragraph are admitted.
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.	All of the allegations in this paragraph are admitted.
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.	All of the allegations in this paragraph are admitted.

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
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."	All of the allegations in this paragraph are admitted.
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.	All of the allegations in this paragraph are admitted.
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.	All of the allegations in this paragraph are admitted.
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.	It is denied that with respect to the Chabad's expansion application in 2000 that the Board treated Chabad differently and better than ISBR.

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
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.	All of the allegations in this paragraph are admitted.
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."	All of the allegations in this paragraph are admitted, except that the proposed facility included 745 seats.
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.	All of the allegations in this paragraph are admitted.
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.	All of the allegations in this paragraph are admitted.

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
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.	All of the allegations in this paragraph are admitted.
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.	Denied. The Board required as approval a lighting zone plan to supplement the submitted lighting plan
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.	Denied that the Board treated B'Nai Israel differently or better than ISBR
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.	All of the allegations in this paragraph are admitted, except that the 80 existing parking spaces included the grass overflow parking area and were not in addition to the grass overflow parking area.

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
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.	All of the allegations in this paragraph are admitted.
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.	All of the allegations in this paragraph are admitted.
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.	All of the allegations in this paragraph are admitted.
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.	The defendants deny that the Board treat B'Nai Israel differently or better than ISBR

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
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.	All of the allegations in this paragraph are admitted, except that as to the allegation that the Board granted preliminary site plan approval in 1999, the original Resolution was passed September 7, 1999 and then amended/corrected Resolution was passed October 3, 2000.
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.	All of the allegations in this paragraph are admitted.
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.	All of the allegations in this paragraph are admitted, except that at the time referred to Mr. Schley was the Assistant Township Planner.
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.	It is denied that the Board treated Millington differently and better than ISBR.
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.	All of the allegations in this paragraph are admitted.

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
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.	All of the allegations in this paragraph are admitted.
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.	Denied. A conforming buffer of at least 50 feet was provided for the new building.
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.	All of the allegations in this paragraph are admitted.
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.	All of the allegations in this paragraph are admitted.
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.	All of the allegations in this paragraph are admitted.

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Para.	Complaint	Answer
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.	It is denied that the Zoning Board treated Millington differently and better than the Planning Board treated ISBR.
280	Liberty Corner Presbyterian Church ("LCPC") is located at 45 Church Street in a residential zone.	Admitted, except that a small portion of the Church is in the B-4 business 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.	All of the allegations in this paragraph are admitted.

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Para.	Complaint	Answer
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.	It is denied that the Board treated LCPC differently and better than ISBR.
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.	All of the allegations in this paragraph are admitted.
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."	All of the allegations in this paragraph are admitted.
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.	All of the allegations in this paragraph are admitted.
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."	All of the allegations in this paragraph are admitted.

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Para.	Complaint	Answer
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.	All of the allegations in this paragraph are admitted.
288	The Zoning Board did not require Pingry to submit a written plan demonstrating that students could be dropped off safely.	Admitted, but the question of whether students could be dropped off safely was not an issue with this project.
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.	All of the allegations in this paragraph are admitted.

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
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.	It is denied that the Zoning Board treated Pingry differently and better than the Planning Board treated ISBR.
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.	All of the allegations in this paragraph are admitted.

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Para.	Complaint	Answer
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."	All of the allegations in this paragraph are admitted.
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.	All of the allegations in this paragraph are admitted.
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.	All of the allegations in this paragraph are admitted.
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."	All of the allegations in this paragraph are admitted.

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Para.	Complaint	Answer
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.	It is denied that the Zoning Board treated the Hospital differently and better than the Planning Board treated ISBR.
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.	It is admitted that Albrook is a private school located at 361 Somerville Road in the same residential zone as ISBR's property. It is admitted that Albrook submitted three applications to the Board seeking site plan approvals in 1987, 1994 and 1997. It is admitted that the Board approved these applications. It is denied that the Board's 1987, 1994 and 1997 approvals granted variances to Albrook concerning both parking setbacks and the required number of parking spaces. It is denied that the Board treated Albrook differently and better than ISBR. As to the last sentence in the paragraph, it is denied because ISBR did not request similar relief.

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Para.	Complaint	Answer
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." The Board did not perform an individualized analysis of Dr. Yorio's actual parking need. Instead, the Board approved Dr. Yorio's parking proposal.	Dr. Yorio's property is no longer located at 3080 Valley Road. His application was submitted on March 2, 2005. It is admitted that on August 2, 2005, the Board approved the conditional use after one public hearing on the application. It is denied that in accessing Dr. Yorio's proposed number of parking spaces, the Board applied the parking ratio set forth in the Township ordinance for medical offices. The Board applied the home office requirement of one space for 200 square feet of office space. It is admitted that the Board did not perform an individualized analysis of Dr. Yorio's actual parking need and approved his 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.	It is admitted that the allegations in this paragraph are correct.
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.	It is denied that the Board treated Dr. Yorio differently and better than ISBR.
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.	Denied.
	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.	It is denied that as a result of the new ordinance, ISBR cannot now successfully reapply to the Board for site plan approval. After reasonable investigation, the defendants remain without sufficient information to admit or deny allegations concerning expenses incurred by the plaintiffs.

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
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.	After reasonable investigation, the defendants remain without sufficient information to admit or deny this allegation.
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.	After reasonable investigation, the defendants remain without sufficient information to admit or deny this allegation.
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.	After reasonable investigation, the defendants remain without sufficient information to admit or deny this allegation.
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.	After reasonable investigation, the defendants remain without sufficient information to admit or deny this allegation.
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.	The allegations in this paragraph are denied.
	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.	The answers to the allegations in paragraphs 1 through 307 are repeated as if set forth fully at length herein.
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.	It is admitted that the plaintiffs accurately summarize Section 2(a) of RLUIPA.

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
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.	Denied.
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.	Denied.
312	Plaintiffs are entitled to declaratory and injunctive relief.	Denied.
313	Defendants are liable to Plaintiffs for damages in an amount to be determined at trial.	Denied.
	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.	The answers to the allegations in paragraphs 1 through 313 are repeated as if set forth fully at length herein.
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.	It is admitted that the plaintiffs accurately summarize Section 2(b)(1) of RLUIPA.
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).	Denied.
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.	Denied.
318	Plaintiffs are entitled to declaratory and injunctive relief.	Denied.
319	Defendants are liable to Plaintiffs for damages in an amount to be determined at trial.	Denied.

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
	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.	The answers to the allegations in paragraphs 1 through 319 are repeated as if set forth fully at length herein.
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.	It is admitted that the plaintiffs accurately summarize Section 2(b)(2) of RLUIPA.
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).	Denied.
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.	Denied.
324	Plaintiffs are entitled to declaratory and injunctive relief.	Denied.
325	Defendants are liable to Plaintiffs for damages in an amount to be determined at trial.	Denied.
	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.	The answers to the allegation of paragraphs 1 through 325 are repeated as if set forth fully at length herein.

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
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.	The defendants admit that the plaintiffs accurately summarize Section 2(b)(3)(b)of RLUIPA.
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.	Denied.
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.	Denied.
330	Plaintiffs are entitled to declaratory and injunctive relief.	Denied.
331	Defendants are liable to Plaintiffs for damages in an amount to be determined at trial.	Denied.
	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.	The answers to the allegations of paragraphs 1 through 331 are repeated as if set forth fully at length herein.
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").	The defendants admit that the plaintiffs accurately summarize the Constitutional Amendments referred to in this paragraph.
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.	The extent the plaintiffs mean to imply in this paragraph that the defendants violated the First or Fourteenth Amendments, the allegations are denied.

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
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.	Denied.
336	Defendants discriminated against Plaintiffs by denying Plaintiffs' application for site plan approval and passing Ordinance # 2242 based on discriminatory animus towards Plaintiffs' religion.	Denied.
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.	Denied.
338	Plaintiffs are entitled to a declaratory judgment that the Defendants' conduct has violated their First and Fourteenth Amendment rights.	Denied.
339	Plaintiffs are entitled to injunctive relief.	Denied.
340	Defendants are liable to Plaintiffs for damages in an amount to be determined at trial.	Denied.
	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.	The answers to the allegations of paragraphs 1 through 340 are repeated as if set forth fully at length herein.
342	Article I, Paragraph 3 of the New Jersey Constitution guarantees the free exercise of religion.	Admitted

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
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.	Denied
344	Defendants discriminated against Plaintiffs by denying Plaintiffs' application for site plan approval and passing Ordinance # 2242 based on discriminatory animus towards Plaintiffs' religion.	Denied
345	Plaintiffs have suffered injury as a result of Defendants' illegal actions.	Denied
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.	Denied
	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.	The answers to the allegations in paragraphs 1 through 346 are repeated as if set forth fully at length herein.
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.	Admitted.
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.	To the extent the plaintiffs mean to imply in this paragraph that the defendants violated the Equal Protection Clause of the Fourteenth Amendment, the allegation is denied.

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
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.	Denied.
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.	Denied.
352	Plaintiffs are entitled to a declaratory judgment that the Defendants' actions have violated Plaintiffs' rights under the Equal Protection Clause.	Denied.
353	Plaintiffs are entitled to injunctive relief mandating that Plaintiffs' application for site plan approval be granted forthwith.	Denied.
354	Defendants are liable in damages to Plaintiffs in an amount to be determined at trial.	Denied.
	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.	The answers to the allegations in paragraphs 1 through 354 are repeated as if set forth fully at length herein.
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.	To the extent the plaintiffs mean to imply in this paragraph that the defendants violated the Due Process Clause of the Fourteenth Amendment, the allegation is denied.

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
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.)	It is admitted that the plaintiffs accurately quote the ordinance.
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.	Denied.

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
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.	Denied.
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.	Denied.
361	Plaintiffs are entitled to a declaratory judgment that the portions of Township Ord. § 21-22.1 italicized above are void.	Denied.
	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.	The answers to the allegations in paragraphs 1 through 361 are repeated as if set forth fully at length herein.
363	The New Jersey Constitution, Paragraphs 1 and 5, entitles all persons to equal protection of the law ("State Equal Protection Clause").	Admitted.
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.	Denied.
365	Plaintiffs have suffered injury as a result of the Defendants' actions in violation of the State Equal Protection Clause.	Denied.

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
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.	Denied.
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.	Denied.
368	368. Defendants are liable in damages to Plaintiffs in an amount to be determined at trial.	Denied.
	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.	The answers to the allegations of paragraph 1 through 368 are repeated as if set forth fully at length herein.
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.	It is admitted that the plaintiffs accurately quote from Article I, Paragraph 1 of the New Jersey Constitution. After reasonable investigation,, the defendants are unable to admit or deny the allegation concerning what the plaintiffs refer to as New Jersey Supreme Court precedent.

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
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.)	The defendants admit the plaintiffs accurately quote from the ordinance.
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.	Denied.

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
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.	Denied.
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.	Denied.
375	Plaintiffs are entitled to a declaratory judgment that the portions of Township Ord. § 21-22.1 italicized above are void.	Denied.
	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.	The answers to the allegations of paragraphs 1 through 375 are repeated as if set forth fully at length herein.
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.	Admitted.
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.	Denied.
379	Plaintiffs have suffered injury as a result of the unlawful actions of Defendant Board.	Denied.

Exhibit 1 to Plaintiffs' Motion for Judgment on the Pleadings

Para.	Complaint	Answer
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.	Denied.

EXHIBIT 2

Chapter 21. Land Development

ARTICLE IV. Zoning

SECTION 21-22. Parking and Loading

§ 21-22.1. Parking.

[Ord. #585, § 510A; Ord. #760, §§ 34-35; Ord. #1004, § 5; Ord. #1103, § 24; Ord. #1222, § 5]

a. Required Number of Spaces.

1. 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.

RESIDENTIAL USES

Single-family detached	**Off-Street Spaces Required per Dwelling Unit**
On lots greater than 20,000 square feet	3
On lots less than or equal to 20,000 square feet	2.5*

Single-family attached	**Off-Street Spaces Required per Dwelling Unit**
(Twin houses or duplex)	2.5*

Multifamily	**Off-Street Spaces Required per Dwelling Unit**
Units with more than one bedroom or one bedroom and den	2.5*
Units with one bedroom and no den	1.5*

*NOTE: Of the number of spaces required, 0.5 space per unit may be located on-street, provided that the street is 30 feet or more in cartway width and is classified as a local street, and further provided that an on-street parking space must be located within 400 feet of the dwelling unit(s) it serves. If such parking spaces are located off the cartways, a twenty-four-

foot cartway is acceptable.

NONRESIDENTIAL USES

Commercial	**Number of Spaces**
Retail stores and all first floor areas in the B Zones	5 spaces per 1,000 square feet of gross floor area
Offices except medical offices	4 spaces per 1,000 square feet of gross floor area
Banks	5 spaces for each teller window, plus 2 spaces for each employee. For each drive-up window, queuing space for 10 vehicles, provided such that no vehicle will obstruct or interfere with any entrance or exit to the property.
Medical office	1 space for each 200 square feet, plus 1 space for each physician on duty
Hotels/motels	1 space for each sleeping room and 1 space for each 2 employees on duty, plus 2/3 the normally required parking for any restaurant and/or lounge area
Funeral homes	10 spaces per slumber room
Freestanding restaurants	1 space for every 3 seats or 1 space for every 50 square feet of gross floor area, whichever is greater
Lounge areas/taverns	1 space for every 2 seats
Neighborhood shopping center	1 space for every 200 square feet of gross floor area
Delivery restaurant*	1 space for each employee, plus 1 space for each delivery vehicle not owned by an employee, plus the greater of 1 space for every 3 seats or 1 space for every 200 square feet of gross floor area
Industrial	**Number of Spaces**
Warehousing	1 space per employee or 1 space for every 500 square feet
Manufacturing	1 space per employee or 1 space for every 500 square feet.
Institutional	**Number of Spaces**
Child-care centers (in office building)	1 per employee
Child-care centers (not in office building)	1 space for each 250 square feet of gross building floor area occupied by the child-care center. Parking shall be set back 20 feet from any residential property line.
Churches, auditoriums, theaters	1 space for every 3 seats or 1 space for every 24 linear inches of pew space
Assembly halls, dance halls community buildings	1 space for every 100 square feet of gross floor area
Hospitals, nursing homes, other medical institutions	1 space for every 2 beds
Wholesale building materials, appliance and furniture stores	1 space for every 300 square feet of gross floor area

*NOTE: The specification of parking standards for this use does not suggest that this is a permitted use in any zone, nor is it intended to encourage the granting of any use variance for this use. These requirements are included here to provide a standard in the event that a use variance is, however, granted for this use.

2. Any building containing more than one use shall meet the combined parking space requirements for all uses in the building.

3. No change in use within a building shall be allowed unless it can be shown that sufficient parking is available for the new use.

4. The floor area occupied in any building or structure as a child-care center shall be excluded in calculating any parking requirement otherwise applicable to that number of units or amount of floor space as appropriate under this section.

5. The number of compact spaces shall not exceed 30% of the total number of spaces proposed for any individual lot.

b. Location of Spaces.

1. All Zones:

(a) No portion of any parking space shall be located within a public right-of-way except as provided in Paragraph a1 above for certain residential uses.

(b) All required off-street parking shall be located on the same lot as the use requiring the parking, except that, where appropriate because of definable separate demand schedules, the parking requirement for two or more uses may be shared, in full or in part, but only if specifically approved by the Board, and further excepting that parking may be provided off the site in accordance with Subparagraph 4 hereinbelow.

2. Residential Zones:

(a) No more than one required parking space for single-family detached dwelling units on lots of 30,000 square feet or more in area shall be located in a front yard.

(b) In the multifamily development area, under the PRD form of development, one required space may be located in the paved driveway of a garage, except that the space must be at least five feet from the edge of pavement or curbline of the street, but shall not extend into any public right-of-way.

3. Nonresidential Zones:

(a) In the B-3 Zone, no parking and no access to parking shall be permitted within a front or side yard.

(b) In a nonresidential zone, no parking area shall be located closer to a property line than the distance set forth below:

Parking Setbacks

Zones	Zone Line (feet)	Side Line (feet)	Rear Line (feet)	Residential Zone Line (feet)	Front Property (feet)
E-1	100	50	50	150	150
E-2, E-3, E-4 and M-1	50	50	50	100	100
E-5	50	50	50	100	150
B-1, B-2 and B-4	10	5	5	10	10
B-3	N.A.	5	5	N.A.	10

4. Exceptions:

(a) In the B zones only, the applicant may request, and the Township may agree, to construct the required parking, whether on- or off-site, provided that the applicant pays the full cost of the construction, and further provided that all parking spaces will be located within 400 feet

of the building to be served. However, no increase in the allowable FAR shall be permitted as a result of the exercise of this option.

(b) Any owner or group of owners in any nonresidential zone may jointly sponsor the construction of off-street parking facilities, whether on- or off-site, provided that all other applicable requirements of this section and Section 21-39 are met, and further provided that no participating use is further than 400 feet from the edge of the parking area serving it.

EXHIBIT 3

MEMO

TO: Bernards Township Planning Board (the "Board")

COPY: Vincent T. Bisogno, attorney for applicant Islamic Society of Basking Ridge ("ISBR")
Robert F. Simon, attorney for objector Bernards Township Citizens for Responsible Development ("BTCRD")

FROM: Jonathan E. Drill, Esq., Board Attorney
David Banisch, PP, AICP, Board Planner

DATE: January 3, 2013

RE: ISBR Application – Off-Street Parking Requirement

Introduction and Purpose of Memo

As the Board is well aware, one of the principal issues that must be decided in the ISBR application is the off-street parking requirement applicable to the proposed development. By email dated December 3, 2012, ISBR's attorney, Mr. Bisogno, requested to know the Board's expert's views on the parking requirement prior to the resumption of the hearing on the application scheduled for January 8, 2013. By email dated December 7, 2012, I invited both Mr. Bisogno and objector BTCRD's attorney, Mr. Simon, to submit their respective positions on the issues to me and to Mr. Banisch, after which Mr. Banisch and I would prepare and submit a joint memo to the Board containing our legal and planning opinions on the issues. Mr. Bisogno submitted ISBR's position in a letter dated December 14, 2012, and Mr. Simon submitted BTCRD's position in a letter dated December 21, 2012, copies of which are attached. The within memo contains Mr. Banisch's and my planning and legal opinions as to the off-street parking issues.

Ordinance Standard v. Requirement

Our analysis begins with the Township ordinance at issue, specifically, zoning ordinance section 21-22.1.a.1, which governs the required number of off-street parking spaces that must be provided in a development. Ordinance section 21-22.1.a.1 provides:

> The development plan shall show the total number of off-street parking spaces required for the use . . . 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.

We believe that ISBR's focus on the off-street parking standard listed in the schedule for a "church" – 1 parking space for every 3 seats, which ISBR contends should be applied in this application as 1 parking space for every 3 worshippers – is misplaced and that ISBR's argument – that a mosque use must be judged under the parking standard listed in the schedule for a "church" use by reason of both mosques and churches being "houses of worship" – misses the point of the ordinance.

First, the off-street parking standard listed in the schedule for a "church" is not the off-street parking "requirement" for a proposed church. It is merely a "standard" to be considered by the Board in the course of the hearing on an application for development for a proposed church, with the actual off-street parking "requirement" for the proposed development to be determined by the Board based on "documentation and testimony . . . presented to the Board as to the anticipated parking demand" for the particular church being proposed. Contrary to the statement contained in the first full paragraph following the chart on page 3 in Mr. Bisogno's December 14th letter, the Township has not fixed the parking requirement at 1 space for every 3 seats. Second, by its express terms, the particular parking standard at issue here, "1 space for every 3 seats or 1 space for every 24 linear inches of pew space," is <u>not</u> applicable to mosques or, for that matter, to "houses of worship." By its express terms, this standard applies only to "churches," "auditoriums" and "theaters."

As a matter of law, planning boards are not free to ignore or grant variances from zoning ordinances just because the board (or, for that matter, an applicant) may disagree with the requirements of the ordinance. Kaufmann v. Warren Township Planning Board, 110 N.J. 551, 564 (1988). When off-street parking requirements are contained in a zoning ordinance, "the planning board is bound by them" in undertaking its review of a site plan application. Wawa Food Market v. Ship Bottom Planning Board, 227 N.J. Super. 29, 36 (App. Div. 1988), certif. denied, 114 N.J. 299 (1988). Further, a planning board may not substitute its judgment for that of the governing body when it comes to the language in, and the application of, the ordinance. Terner v. Spyco, Inc., 226 N.J. Super. 532, 542 (App. Div. 1988). Finally, when interpreting a zoning ordinance, the planning board must seek a reading that "justly turn[s] on the breadth of the objectives of the legislation and the common sense of the situation." New Jersey Builders, Owners & Maintenance Association v. Blair, 60 N.J. 330, 339 (1972).

Here, we believe that the objective of the ordinance is clear. The ordinance recognizes and expressly provides that "a specific use may generate a parking demand different from those enumerated [in the schedule]" so that "documentation and testimony shall be presented to the Board as to the anticipated parking demand" and, "[b]ased upon such documentation and testimony," the Board must determine the required number of off-street parking spaces that must be provided in a particular development "to ensure that the parking demand will be accommodated by off-street spaces." As such, the law and the ordinance at issue require that the Board apply the ordinance as written and require that the applicant submit documentation and testimony to the Board as to the anticipated parking demand for the proposed mosque so that the Board can determine the required number of off-street parking spaces that must be provided to ensure that the parking demand generated by the proposed mosque will be accommodated by off-street parking spaces.

ISBR argues that the language of the ordinance does not provide "certainty and definiteness" and does not contain "sufficient standards to prevent arbitrary and indiscriminate interpretation or application" and, hence, the ordinance as written is illegal. As a matter of law, however, the Board is not at liberty to ignore the express terms of the ordinance in face of a legal challenge to the ordinance because the Board is not the forum before which the applicant may argue illegality of an ordinance. House of Fire Christian Church v. Clifton Board of Adjustment, 379 N.J. Super. 526, 541 (App. Div. 2005).

Applicable Off-Street Parking Standards

As set forth above in this memo, we believe that ISBR's focus on the off-street parking standard listed in the schedule for a "church" is misplaced, that the "church" parking standard of "1 space for every 3 seats" – which ISBR has interpreted as 1 space for every 3 worshippers – is not applicable to mosques or, for that matter, to "houses of worship," and that ISBR's argument that a mosque use must be judged under the parking standard listed in the schedule for a "church" use by reason of both mosques and churches being "houses of worship" misses the point of the ordinance.[1]

As also set forth above in this memo, the law and the ordinance at issue require that the Board apply the ordinance as written and require that the applicant submit documentation and testimony to the Board as to the anticipated parking demand for the proposed mosque so that the Board can determine the required number of off-street parking spaces that must be provided to ensure that the parking demand generated by the proposed mosque will be accommodated by off-street parking spaces. While we believe that ISBR must submit documentation and testimony to the Board during the hearing

[1] Mr. Bisogno incorrectly implies in the first full paragraph on page 2 of his December 14th letter that both Mr. Banisch, the Board Planner, and David Schley, the Township Planner, have concluded that the "1 space for every 3 seats" standard should be applied in this application. While both planners use this standard to arrive at parking space calculations, they have done so to take issue with the calculations arrived at by ISBR. Neither of them has opined and/or concluded that the "1 space for every 3 seats" standard is the standard that should be applied in this application.

before the Board can determine the off-street parking requirement in this application, we also believe it is appropriate for us to offer our opinion prior to resumption of the hearing concerning the appropriate parking standard(s) that should be considered and the calculation of the off-street parking requirement under the applicable standard(s). To this end, we believe that the applicant must submit, and the Board must consider, parking standards applicable to mosques published in any authoritative source.[2]

While not conceding that any parking standard other than "1 parking space for every 3 worshippers" applies to the proposed mosque, ISBR has provided for "informational purposes" a number of different parking standards applicable to various types of houses of worship drawn from five separate sources, all of which sources apparently are considered to be authoritative by ISBR's traffic engineering expert because this expert is the person who has identified the standards. See, page 2 of Mr. Bisogno's December 14th letter (section B – "Other considerations").

We note that all of the sources identified by ISBR, with the sole exception being ITE's publication titled "Parking Generation" (4th Edition), are pre-2010 and do not include any differentiation between churches, synagogues and mosques, which differentiation is identified in the fourth edition of ITE's Parking Generation, which was published in 2010.[3] According to Parking Generation (4th Ed. 2010), the fourth edition "represents a substantial change to the third edition, which was published in 2004." See also, http://www.ite.org/emodules/scriptcontent/orders/ProductDetail.cfm?pc=IR-034C (last checked December 30, 2012). One of the substantial changes is that "16 new land use classifications have been added," two of which are "Synagogue (561)" and "Mosque (562)," which reflects the ITE's

[2] We also believe that the Board should consider any parking studies specifically related to the proposed mosque that may be submitted by the applicant or any other party, but that the applicant is not obligated to prepare and submit such a study because such a study is not specifically required as part of the documentation that the applicant must submit under the ordinance.

[3] We note that Mr. Bisogno's December 14th letter neglects to identify the 2010 publication date of the fourth edition of ITE's Parking Generation and also neglects to identify the 1971 publication date of the Highway Research Board (HRB) Special Report 125 titled "Parking Principles."

recognition that parking requirements for churches – "Churches (560) – should no longer apply to synagogues and mosques, each of which generates its own distinctive traffic patterns and numbers so each of which should now has its own distinctive parking requirements.[4]

We are of the opinion that all of the sources identified by ISBR, with the sole exception being ITE's Parking Generation (4th Edition 2010), are out of date as relates to houses of worship and do not represent the latest thinking and analysis by the traffic engineering profession.[5] [6] As such, unless ISBR presents cogent reasons to the contrary, it is our opinion that the Board should reject all standards submitted in Mr. Bisogno's December 14th letter other than the data contained in ITE's Parking

[4] Notwithstanding the implication contained in the first full paragraph on page 2 of Mr. Bisogno's December 14th letter to the contrary, as a matter of law, similar uses can be treated differently under certain circumstances. As noted in Kozesnick v. Montgomery Twp., 24 N.J. 154, 172 (1957), dissimilar treatment does not necessarily bespeak arbitrariness or capriciousness. As held in Taxpayers Association of Weymouth, 80 N.J. 6, 37 (1979) constitutional equal protection does not require that government treat all people and property identically. If involving non-fundamental rights, it requires only that differences in treatment of persons or property similarly situated be justified on a non-irrational basis. Id. If involving fundamental rights, it requires that differences in treatment be justified by a compelling government interest. Id. To begin with, while a mosque use is similar to a church use in that both are houses of worship, there are differences between them in terms of parking generation as evidenced by the data reported in the fourth edition of ITE's Parking Generation that make them dissimilar for purposes of this analysis. Further, even if the uses were considered similar for purposes of this analysis, requiring different treatment in terms of off-street parking requirements is certainly rationally related to the differing parking needs generated by each use. Finally, even assuming a fundamental right such as the constitutional right to practice one's religion is implicated here, differing parking requirements based on differing parking generation is justified by a compelling government interest, namely local government's duty to exercise its zoning and planning powers in a manner promoting the public health, safety, morals, and general welfare. See, N.J.S.A. 40:55D-2a. However, it should be noted that all houses of worship are treated the same under ordinance section 21-22.1.a.1 in that the same requirement is applied to all house of worship applicants, indeed for all uses in the Township. Specifically, the ordinance requirement is submission of documentation and testimony by all applicants for any and all uses proposed in the Township as to the anticipated parking demand.

[5] We note that Mr. Bisogno's December 14th letter fails to identify one additional parking requirement source of which we are aware, namely, the American Planning Association's publication titled "Planning and Urban Design Standards." This source was published in 2006 and includes a table titled "Recommended Parking Ratio Requirements" which lists the standard for "Religious Centers" as 0.6 parking spaces per seat. It is possible Mr. Bisogno excluded this standard and source from his letter because ISBR's traffic engineering expert does not consider this an authoritative source since it is a planning publication and not a traffic engineering publication. In any event, we are of the opinion that this parking standard should be rejected because footnote 1 of the table in which it is listed indicates that the standard comes from the third edition of ITE Parking Generation, not the fourth edition. As set forth above in the text of this memo, the fourth edition, which was published in 2010, "represents a substantial change to the third edition, which was published in 2004." As such, it is out of date as relates to "religious centers" and does not represent the latest thinking and analysis by the traffic engineering profession.

[6] We note that Mr. Simon's December 21, 2012 letter does not identify any parking requirement source other than the fourth edition of ITE's Parking Generation.

Generation (4th Edition 2010), and the applicant and Board should use the parking generation data for mosques – Mosques (562) – contained in ITE's Parking Generation (4th Edition 2010) to determine the parking requirement for the proposed mosque in this application.[7]

Calculation of the Off-Street Parking Requirement

Using the data for Mosques (562) contained in the fourth edition of ITE's Parking Generation to calculate the parking requirement in this application is the last issue for consideration.

We recognize that the fourth edition of ITE's Parking Generation is not the "be all end all" for determining the off-street parking requirement in this application. As explained in the fourth addition of ITE's Parking Generation, the data reported for a given land use classification provide averages, ranges, and statistical quality values that can help determine (1) the general nature of parking demand for a given land use and (2) where a more detailed local study is needed. This is why land uses where only one or two studies have been conducted are included in the publication. As also explained in the fourth addition of ITE's Parking Generation, the data alone presented in publication may not provide accurate off-street parking requirements without the professional judgment and evaluation by a traffic engineering expert.

Quite frankly, we believe that ISBR might do well to have a more detailed local study related to the proposed mosque prepared and submitted to the Board. As set forth above, however, ISBR is not obligated to prepare and submit such a study under the ordinance. In the absence of such a

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[7] ISBR's traffic engineering expert testified during the last hearing session that ITE's Parking Generation is an authoritative source. As held in Jacober v. St. Peter's Medical Center, 128 N.J. 475, 496 (1991), not only can an expert rely on a text in formulating an opinion if the text is a "reliable authority," but the text is admissible in its own right. A text will qualify as a "reliable authority" if it "represents the type of material reasonably relied on by experts in the field." Id. at 495. In determining reliability, the "focus should be on what the experts in fact rely on, not on whether the court thinks they should so rely." Id. at 495-96. While not necessary to establish that ITE's Parking Generation is an authoritative source, we note that references to various editions of ITE Traffic Generation are contained in the following published cases: In re Proposed Xanadu, 402 N.J. Super. 607, 635 (App. Div.), certif. denied, 197 N.J. 260 (2008); Eagle Group v. Hamilton Twp. Zoning

study, however, we believe that it is most appropriate for the Board to rely upon ITE's Parking Generation data to calculate the off-street parking requirement in this application.

As to use of the Parking Generation data, neither of us are traffic engineers but it is our understanding that most traffic engineers use the "85th percentile" data in calculating off-street parking requirements for a particular proposed development, rather than "Average Peak Period Parking Demand" data or the "33rd percentile" data, to be appropriately conservative so as to reduce the risk of actual parking generation during peak periods after development being higher than predicted and provided for. It is our further understanding that ITE does not present "100th percentile" data because use of same in calculating off-street parking requirements for a particular proposed development would result in production of an unnecessary number of parking spaces. Thus, unless ISBR presents cogent reasons to the contrary, it is our opinion that the Board should use the "85th percentile" data contained in the fourth edition of ITE's Parking Generation to calculate the off-street parking requirement for the proposed mosque.

In conclusion, using the "85th percentile" data (25.79 spaces for every 1,000 square feet of gross floor area of the mosque), and multiplying it by 4.25 (the gross floor area of the proposed mosque is 4,252 square feet), yields an off-street parking requirement of 110 spaces. It is our opinion that, unless ISBR presents cogent reasons to the contrary and/or a more detailed local study related to the proposed mosque leading to another conclusion, the Board should determine that the number of off-street parking spaces required under zoning ordinance section 21-22.1.a.1 is 110 spaces.[8]

Board of Adj., 274 N.J. Super. 551, 558 (App. Div. 1994); and New Jersey Builders Ass'n v. Bernards Twp., 108 N.J. 223, 225 (1987).

[8] Currently, ISBR's site plan reflects 50 off-street parking spaces, less than half the number we believe to be required. Unless ISBR revises the site plan to provide for 110 parking spaces, it is our opinion that ISBR will need to apply for a "c" variance to allow this substantial deviation from the off-street parking requirement.