UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YESHIVA OHR SHRAGA VERETZKY, Plaintiff, *v.* TOWN OF HIGHLAND ZONING BOARD OF APPEALS and TOWN OF HIGHLAND, Defendants.	24 Civ. 8477 (CS)

STATEMENT OF INTEREST
OF THE UNITED STATES OF AMERICA

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The United States, by its attorney Jay Clayton, United States Attorney for the Southern District of New York, and Harmeet K. Dhillon, the Assistant Attorney General for Civil Rights of the United States Department of Justice, respectfully submits this Statement of Interest, pursuant to 28 U.S.C. § 517, to address the motion of defendants the Town of Highland Zoning Board of Appeals ("ZBA") and the Town of Highland (collectively, the "Town" or "Defendants") to dismiss the claims of plaintiff Yeshiva Ohr Shraga Veretzky ("Yeshiva" or "Plaintiff"), under the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §§ 2000cc *et seq*. ("RLUIPA"), and other land use claims as unripe and therefore nonjusticiable.

PRELIMINARY STATEMENT

Congress enacted RLUIPA to combat a widespread pattern of religious discrimination in local land use decisions. RLUIPA prohibits state or local governments from, *inter alia*, imposing or implementing a land use regulation in a manner that imposes a substantial burden on religious exercise; 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"; and "unreasonably limit[ing] religious assemblies, institutions, or structures within a jurisdiction." 42 U.S.C. § 2000cc(a)(1), (b)(1), (b)(3)(B).

From February 2023 through March 2024, the Yeshiva sought a special use permit to use its property as a "place of worship" from the Town Planning Board. In written letters, detailed site plans, legal memoranda, and seven public meetings, the Yeshiva consistently and continuously stated to the Planning Board that the property would be used for religious education in the summer months and as a religious retreat during the rest of the year. Notwithstanding the Yeshiva's clear and consistent statements about the intended use of its property, the Planning Board referred the Yeshiva's special permit application to the ZBA for an interpretation as to

whether the use of the property would be religious. Over two more months, the Yeshiva continued to represent that the property would be used for religious purposes in letters to the ZBA and in three ZBA public meetings. In July 2024, the ZBA issued a final interpretation declaring that the Property was to be used as a "children's camp," a prohibited use throughout the Town. The ZBA's final decision ended the Yeshiva's ability to obtain a special use permit to operate its religious facility anywhere in the Town.

The Yeshiva has filed an Amended Complaint against Defendants, asserting claims under RLUIPA, the First and Fourteenth Amendments to the Constitution, and parallel state constitutional law claims. Defendants have moved to dismiss the Yeshiva's Amended Complaint, arguing, among other things, that this is "a premature case, where a land developer jumps the gun and starts litigation before giving a municipality a chance to make a final determination on a project." Mem. of Law in Support of Defs.' Mot. to Dismiss Pl.'s Am. Complaint, dated May 29, 2025 ("Defs.' Br.") at 1. The United States respectfully submits this Statement of Interest to address the application of ripeness principles to the Yeshiva's RLUIPA claims, and in particular, respectfully submits that those claims are ripe for adjudication before this Court. The United States expresses no view on the merits of the Yeshiva's RLUIPA claims, nor on any legal question presented other than this issue.

INTEREST OF THE UNITED STATES

The United States' authority to file this Statement of Interest stems from 28 U.S.C. § 517, which provides:

> The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.

Id. Defendants' motion raises a significant question regarding the application of prudential

ripeness to RLUIPA claims. The United States frequently files Statements of Interest in cases concerning the applicability and interpretation of federal law in which it has enforcement interests. *See, e.g.*, *Garrett v. City Univ. of New York*, 24 Civ. 9710 (VSB), ECF No. 28 (S.D.N.Y. May 12, 2025) (statement of interest filed in Title VII challenge alleging that university employer created a hostile work environment based on plaintiff's religious identity); *Lost Lake Holdings LLC v. Town of Forestburgh*, 22 Civ. 10656 (VB), ECF No. 181 (S.D.N.Y. Mar. 7, 2025) (statement of interest filed in Fair Housing Act challenge alleging that town discriminatorily obstructed and delayed construction of housing development); *Brooklyn Ctr. for Indep. of Disabled v. Bloomberg*, 980 F. Supp. 2d 588, 641 n.9 (S.D.N.Y. 2013) (noting statement of interest filed in Americans with Disabilities Act challenge to municipal emergency planning procedures).

The United States is responsible for enforcing RLUIPA and accordingly has an interest in the interpretation of the statute. *See, e.g.*, *United States v. Village of Airmont*, 20 Civ. 10121 (NSR) (AEK) (RLUIPA Consent Decree entered October 20, 2023); *United States v. Village of Suffern*, 06 Civ. 7713 (WWE) (RLUIPA Consent Decree entered June 16, 2010); *United States v. Village of Airmont*, 05 Civ. 5520 (LAK) (RLUIPA and Fair Housing Act Consent Decree entered May 9, 2011). The United States further has an enforcement interest arising from the President's January 29, 2025 Executive Order on Combating Anti-Semitism, Section 2 of which provides: "It shall be the policy of the United States to combat anti-Semitism vigorously, using all available and appropriate legal tools, to prosecute, remove, or otherwise hold to account the perpetrators of unlawful anti-Semitic harassment and violence." Exec. Order No. 14188, 90 Fed. Reg. 8847 (Jan. 29, 2025).

BACKGROUND[1]

A. The Town of Highland Zoning Laws

Chapter 190 of the Town's municipal code ("Town Code") regulates land use. ECF No. 12 ("Am. Compl.") ¶ 19; *see* Town Code, Chapter 190, *available at* https://ecode360.com/13926123. The Town Code divides the Town into five zoning districts. *Id.* § 190-8. The Yeshiva-owned property at issue in this case is within the Town's Agricultural Residential R-2 Zoning District. Am. Compl. ¶ 20.

The Town Code restricts certain types of land use within each zoning district, and indicates on a "District Schedule of Use Regulations" which land uses in each zone are categorized as a "permitted use" and which uses require a "special use permit." Town Code, § 190-12(A); Am. Compl. Ex. A. A "special use permit" is defined as "an authorization of a particular land use which is permitted in a zoning ordinance or local law," subject to requirements imposed by local zoning laws to ensure that the proposed use is "in harmony with" those laws and "will not adversely affect the neighborhood." N.Y. Town Law § 274-b(1). As relevant here, a property owner who seeks to use a property as "a place of worship" (which is undefined under the Town Code) in any of the Town's zoning districts much first obtain a special use permit. Am. Compl. ¶¶ 20, 21 & Ex. A. On the other hand, if a land use is *not* listed in the District Schedule of Use Regulations, it is a "prohibited use" in all zoning districts. Town

[1]This Statement of Interest assumes the truth of the allegations in the Amended Complaint, as required at the motion to dismiss stage. *Cheng v. United States*, 132 F.4th 655, 658 (2d Cir. 2025); *see also Sherman v. Town of Chester*, 752 F.3d 554, 560 (2d Cir. 2014) (applying Rule 12(b)(6) standard to determine whether land use claims were prudentially ripe under *Williamson County*). Contrary to Defendants' claims, prudential ripeness is a not a function of the Court's subject matter jurisdiction and is therefore not subject to Rule 12(b)(1). *See BMG Monroe I, LLC v. Village of Monroe*, 93 F.4th 595, 600 (2d Cir. 2024) ("*Williamson County*'s prudential-ripeness doctrine 'is not, strictly speaking, jurisdictional.'") (quoting *Horne v. Dep't of Agric.*, 569 U.S. 513, 526 (2013)).

Code § 190-12(B). For example, a "children's camp" is an unlisted use and is therefore a prohibited use in all of the Town's zoning districts. *Id.* §§ 190-12, 190-41(H). A property owner seeking to use a property for a prohibited use must obtain a "use variance" from the ZBA, which is "the authorization by the zoning board of appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations." N.Y. Town Law § 267(1)(a).

The Town of Highland Planning Board ("Planning Board") is a five-member board appointed by the Town Board and is authorized to issue special use permits. Town Code §§ 190-67, 190-73(A)–(D). The ZBA is a separate five-member board appointed by the Town Board and, as relevant here, has the authority to issue variances, *id.* §§ 190-64, 190-65(A), 190-66(B), and to issue "interpretations" upon a request or referral by the Planning Board, the Town Board, or the Town Code Enforcement Officer to decide "any question involving the interpretation of any provision of [Chapter 190 of the Town Code]." *Id.* §§ 190-65(B), 190-66(A), (C).

B. The Yeshiva's Search for Property to Be Used for Religious Education

The Yeshiva is a New York State religious corporation which has religious schools and related facilities in Brooklyn, New York, and Lakewood, New Jersey. Am. Compl. ¶¶ 8. 14. To provide spaces for its rabbis and students to continue their religious education during the summer, the Yeshiva has leased facilities in Sullivan County for several years. *Id.* ¶ 14. At some point, the Yeshiva initiated a search for real property that could be used for religious education of its students during the summer and as a religious retreat during other months of the year. *Id.* ¶ 16. The Yeshiva learned of a 40.2-acre site located at 211 Mail Road, Barryville, New York, in Sullivan County (the "Property"), which previously operated as a commercial hotel under a special use permit granted by the Planning Board. *Id.* ¶ 17; *see also* Ex. B at 6, Ex. C. In February 2023, while the Property was still under prior ownership, the Yeshiva filed a

preliminary application with the Planning Board to obtain a special use permit for the Property as a place of worship. *Id.* ¶¶ 2, 16–18. The Yeshiva closed on the sale of the Property in November 2023. *Id.* ¶ 51.

C. The Yeshiva's Special Use Permit Application Before the Planning Board

The Yeshiva's February 2023 special use permit application sought to adapt the Property's existing buildings and to construct four new single-story buildings for its proposed use to provide religious education in the summer and to serve as a religious retreat during other times in the year. Am. Compl. ¶¶ 23–24 & Exs. B–C. The Yeshiva contemplated that rabbis, teenagers, and young adults from the Yeshiva's Brooklyn and New Jersey facilities would reside at the Property to engage in religious studies. *Id.* ¶¶ 25–26. Regular activities would include studying the Talmud (the body of Jewish religious teaching and commentary), learning with rabbis, and prayer. *Id*. ¶¶ 24–28, 33, 113.

Minutes of Planning Board meetings in March 2023, June 2023, August 2023, and October 2023 indicate that representatives of the Yeshiva repeatedly stated that the Property would be used for religious purposes. *Id.* ¶¶ 36, 40, 43, 47; Ex. D at 3; Ex. F, at 2–3; Ex. G, at 2–3; Ex. H, at 2. Written letters, memoranda, and comments to the Planning Board submitted both by the Yeshiva and the Town Engineer affirmed their mutual understanding that the Property was to be used for religious educational use. *Id.* ¶¶ 38–39, 40–41, 43, 46; Exs. E–H.

On November 17, 2023, counsel for the Yeshiva submitted to the Planning Board a memorandum which again affirmed that it was seeking approval to use the Property as a religious educational retreat throughout the year, including the summer months. *Id.* ¶¶ 50, 52 & Ex. I. The Yeshiva's engineer submitted additional application materials which responded to multiple technical comments from the Town Engineer. *Id.* ¶¶ 53–54 & Exs. J–K. The Yeshiva's November 2023 submissions to the Planning Board, in addition to its prior submissions,

constituted a complete special use permit application. *Id.* ¶ 55. Because the Town Engineer had not expressed a view on the Yeshiva's November 2023 submissions as of the Planning Board's November 29, 2023 meeting, the Planning Board's consideration of the Yeshiva's special permit use application was adjourned to its next meeting on December 20, 2023. *Id.* ¶ 56.

According to the minutes of the December 20, 2023 Planning Board meeting, the Board deemed a technical study submitted by the Yeshiva to be "not acceptable" and indicated that a State Environmental Quality Review Act ("SEQRA") filing had not been made. *Id.* Ex. M. The Yeshiva alleges that the meeting minutes do not accurately reflect that, in addition to the discussion noted above, at least one Planning Board member "expressed hostility" about the Yeshiva to the Town Engineer, and one member "accus[ed] its Rabbi . . . of being prejudiced." *Id.* ¶ 60.

The Planning Board rescheduled the hearing on the special use permit application to January 24, 2024. *Id.* Ex. M. Before the next Planning Board meeting, and in response to reports that Planning Board members "questioned whether the application was for a religious use," counsel for the Yeshiva submitted a letter to the Board on January 12, 2024, which affirmed that the special use permit application for the Property was, in fact, for a religious use. *Id.* ¶¶ 66–68 & Ex. P.

Counsel for the Yeshiva appeared before the Planning Board on January 24, 2024, and restated that the proposed use of the Property would be for a religious educational use during the summer months, and as a religious retreat for the remainder of the year. *Id.* ¶ 72. According to the Yeshiva, however, the Planning Board minutes incorrectly state that the special use permit application "has not stated specifically the use intended." *Id.* ¶ 73 & Ex. Q. At this meeting, the Planning Board's counsel proposed that the Board refer the Yeshiva's application to the ZBA to

determine whether the proposed use of the Property was religious. *Id.* ¶ 74 & Ex. Q. The Planning Board approved the proposal, which the Yeshiva contends was "obviously prearranged" because there was no "virtually no discussion" before the proposal was approved. *Id.* The Yeshiva further asserts that, even though the Planning Board voted to refer the property use question to the ZBA, the meeting minutes inaccurately state that the Yeshiva was free to apply to the ZBA for a hearing if the Planning Board could not determine the proposed use of the Property. *Id.* ¶ 75 & Ex. Q. After counsel for the Yeshiva sent two letters asking the ZBA to accept the Planning Board's referral without further delay, *id.* ¶¶ 76–77 & Exs. R–S, the Planning Board finally confirmed on March 20, 2024 that it had referred the use-interpretation question to the ZBA. *Id.* ¶ 79 & Ex. T.

D. The ZBA's Interpretation of the Proposed Use of the Property

At an April 16, 2024 meeting of the ZBA, the Yeshiva's counsel reiterated the assertions made in his past submissions to the Planning Board that, under applicable case law, its proposed summer religious educational use met the criteria for "religious use." *Id.* ¶ 80 & Ex. U.

The ZBA then held a public hearing on the Yeshiva's application on May 20, 2024. *Id.* ¶¶ 80–81 & Exs. U, V. According to the Yeshiva, counsel for the ZBA asked how the Yeshiva's proposed use of the Property during the summer months could be distinguished from a summer camp. *Id.* ¶ 83. The Yeshiva informed the ZBA that the Property's proposed use was for religious education, and the fact that students would stay at the Property during the summer for that education was not dispositive of the proposed-use question. *Id.* During the public comment portion of the hearing, several commenters expressed concerns about increased traffic at the Property, possible impacts on pedestrians, and the number of people who would be at the Property at any given time, but none of the comments addressed whether the Property's proposed use was religious in nature. *Id.* ¶ 84 & Ex. V. There was also a "vocal group" "who used the

public hearing as an opportunity to speak out forcefully against the Yeshiva receiving a special use permit from the Planning Board." *Id.*

At a third ZBA meeting on June 20, 2024, the Yeshiva discussed in detail the Property's planned configuration for religious study, described the groups of students from the Yeshiva who would come to the Property during the summer and when they would be on site, and described the number of staff who would be at the Property. *Id.* ¶¶ 86–87 & Ex. W. The ZBA did not discuss how it would respond to the Planning Board's request for an interpretation of the proposed use of the Property. *Id.* ¶ 88.

At a fourth meeting on July 18, 2024, the chairperson of the ZBA read aloud a written document with the heading, "Interpretation." *Id.* ¶ 89 & Ex. X. The Interpretation was unanimously approved by all five members of the ZBA, and stated:

> The proposed use of the Subject Property is most properly characterized as a 'Children's Camp' under the Town of Highland Zoning Code. While the use of property as a 'Children's Camp' is expressly prohibited in the Town of Highland, the final determination upon this application shall be made by the Planning Board. Whether the other uses of the Subject Property during the remaining months of the year can be deemed proper accessory uses to a 'Children's Camp,' in the absence of a permissible primary use, is moot.

Id. Ex. X at 4–5.

E. The Instant Action

The Yeshiva filed this action against Defendants in November 2024 (ECF No. 1), and amended its complaint in March 2025 (ECF No. 12). In Count I of its Amended Complaint, the Yeshiva asserts an RLUIPA claim on the following three theories: (1) Defendants' interpretation of the Zoning Code and of the uses permitted as a "place of worship" imposed a substantial burden on the Yeshiva, 42 U.S.C. § 2000cc(a)(1); (2) Defendants' interpretation imposed or implemented "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," *id.* § 2000cc(b)(1); and

(3) Defendants' interpretation deprived the Yeshiva of its right to the free exercise of religion, by imposing or implementing a land use regulation that "unreasonably limits religious assemblies, institutions, or structures within a jurisdiction," *id*. § 2000cc(b)(3)(B). Am. Compl. ¶¶ 98–120. The remaining counts of the Amended Complaint assert that Defendants deprived the Yeshiva of its rights under the First and Fourteenth Amendments of the Constitution in violation of 42 U.S.C. § 1983, *id*. ¶¶ 121–133, and allege parallel claims under the New York State Constitution. *Id*. ¶¶ 134–151. Defendants moved to dismiss the Amended Complaint, maintaining *inter alia* that the Yeshiva's claims are unripe because it failed to first obtain a "final decision" on its proposed use of the Property before filing suit. Defs.' Br. at 8–11.

ARGUMENT

PLAINTIFFS' RLUIPA CLAIMS AGAINST DEFENDANTS ARE RIPE FOR ADJUDICATION

The Yeshiva's RLUIPA claims are ripe for review because local law grants the ZBA exclusive jurisdiction to consider referrals from the Planning Board to interpret whether the use of a property conforms to the uses allowed by local law. Here, the ZBA clearly exercised that authority and (inaccurately) determined that the Property was to be used as a "children's camp," a use that is prohibited by the Town of Highland's zoning code. The Planning Board is bound by the ZBA's determination that the Yeshiva's proposed use was for a children's camp, a prohibited use, and therefore cannot grant a special use permit to the Yeshiva. A use variance application would not allow the ZBA to re-consider its interpretation and would not further develop an already developed record of the facts and circumstances supporting the Yeshiva's position that its use of the property qualifies as a place of worship. The Court should reject Defendants' exhaustion argument, which would only delay the proceedings and improperly force the Yeshiva

to seek a variance upon the false premise that it is seeking to use the Property as a "children's camp," when in fact it seeks to use the Property for religious education.

A. Ripeness and Futility Principles in Land Use Litigation

The Yeshiva's land use claims are prudentially ripe because Defendants have reached a final decision on the use of the Property. Under *Williamson Community Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172, 186 (1985), *overruled in part on other grounds by Knick v. Township of Scott*, 588 U.S. 180 (2019), a land use claim is ripe when "the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue" that "inflict[s] an actual, concrete injury." *Village Green at Sayville, LLC v. Town of Islip*, 43 F.4th 287, 294, 298 (2d Cir. 2022) (quoting *Williamson County*, 473 U.S. at 186, 193). The "finality" requirement ordinarily requires plaintiffs to "submit[] at least one meaningful application to the relevant municipal entity." *Village Green*, 43 F.4th at 296 (quoting *Murphy v. New Milford Zoning Commission*, 402 F.3d 342, 348 (2d Cir. 2005)). The purpose of the finality doctrine is "to avoid entangling [the Court] in abstract disagreements over matters that are premature for review because the injury is merely speculative and may never occur." *Id.* at 293 (citation omitted). As the Second Circuit has made clear, "the finality requirement is relatively modest," and "nothing more than *de facto* finality is necessary." *Ateres Bais Yaakov Academy v. Town of Clarkstown*, 88 F.4th 344, 351 (2d Cir. 2023) (quoting *Pakdel v. San Francisco*, 594 U.S. 474, 479 (2021)).

In *BMG Monroe I, LLC v. Village of Monroe* ("*BMG Monroe*"), 93 F.4th 595 (2d Cir. 2024), the Second Circuit affirmed the "futility exception," explaining that "a property owner is excused from obtaining a final decision if pursuing an appeal to a zoning board of appeals or seeking a variance would be futile"—"for example, when a zoning agency lacks discretion to grant variances or has dug in its heels and made clear that all such applications will be denied."

Id. at 601 (cleaned up) (quoting *Murphy*, 402 F.3d at 349). The determination as to whether a jurisdiction has "dug in its heels," moreover, cautions against the view that the finality requirement is to be "mechanically applied." *Murphy*, 402 F.3d at 349. "Additionally, 'government authorities . . . may not burden property by imposition of repetitive or unfair land-use procedures in order to avoid a final decision.'" *Sherman v. Town of Chester*, 752 F.3d 554, 561 (2d Cir. 2014) (cleaned up) (quoting *Palazzolo v. Rhode Island*, 533 U.S. 606, 621 (2001)). A "plaintiff alleging discrimination in the context of a land-use dispute is not subject to the final-decision requirement" if "he can show that he suffered some injury independent of the challenged land-use decision." *Sunrise Detox V, LLC v. City of White Plains*, 769 F.3d 118, 123 (2d Cir. 2014). Thus, "a plaintiff need not await a final decision to challenge . . . the manipulation of a zoning process out of discriminatory animus to avoid a final decision." *Id.* (quotation marks omitted)).

B. The Yeshiva's RLUIPA Claims Are Ripe

1. The ZBA's Decision Was Final

For ripeness purposes, "[t]he municipal entity responsible for the relevant zoning laws must also have an opportunity to commit to a position." *Village Green*, 43 F.4th at 297. This matter is ripe for review because the ZBA unanimously committed to a position that "[t]he proposed use of the Subject Property is most properly characterized as a 'Children's Camp' under the Town of Highland Zoning Code," which "is expressly prohibited in the Town of Highland." Am. Compl. Ex. X. Requiring the Yeshiva to complete the special use permit application process and obtain a "final determination" before the Planning Board, as Defendants assert (Defs.' Br. at 11), is irreconcilable with the scope of the Planning Board and the ZBA's authority under Town law. Once the ZBA determined that the Property's proposed use was a prohibited use in all Town zones, Town Code §§ 190-12, 190-41(H), the Planning Board had no

authority to grant a special use permit for the Yeshiva to operate a children's camp in the Town. Am. Compl. Ex. A. Under Town law, the ZBA has the sole authority to adjudicate questions of interpretation relating to the proposed use of a property under the Town Code. Town Code §§ 190-65(B), 190-66(A), (C). Planning boards "are without power to interpret the local zoning law, as that power is vested exclusively in local code enforcement officials and the zoning board of appeals." *Smith v. Town of Thompson Planning Board*, 223 N.Y.S.3d 356, 359 (3d Dep't 2024) (quotation marks omitted).

Three federal district courts have reached the same ripeness conclusion in similar cases considering ZBA interpretations of proposed uses. First, in *Congregation Kollel, Inc. v. Township of Howell*, Civ. No. 16-2457, 2017 WL 637689 (D.N.J. Feb. 16, 2017), plaintiffs wanted to build a Jewish educational facility in a New Jersey township. *Id.* at *1–2. The property was located in a zone which permitted "educational facilities" as of right. *Id.* at *2. Plaintiffs proposed to build a classroom building where Jewish studies would be conducted, a dormitory building, and seven attached townhouses for faculty housing, and sought to have the educational and housing structures be deemed a permitted use as a combined "educational facility." *Id.* at *2–3. The township's director of land use denied the application and determined that, while the non-residential component of the project was permitted, the student and faculty housing were not, and stated that plaintiffs had to apply for a variance before the township's Board of Adjustment. *Id.* at *3. The Board upheld the decision on appeal and agreed with the director's interpretation of the property's proposed use. *Id.* at *4. Plaintiffs then brought RLUIPA claims (among others) in federal court; the defendants moved to dismiss, contending that the suit was not ripe because plaintiffs had not sought a variance. *Id.* at *1. The district court disagreed and

held that plaintiffs' claims were ripe because the Board had "rendered a definitive decision that Plaintiffs' proposed use of an 'Educational Facility' is not a permitted use." *Id.* at *10.

Second, in *Khal Anshei Tallymawr, Inc. v. Township of Toms River*, Civ. No. 21-2716, 2021 WL 5757404 (D.N.J. Dec. 3, 2021), plaintiff sought to build a shul (a small synagogue) for its congregants in a New Jersey township. *Id.* at *2. Changes to the township's zoning code, however, removed "churches and places of worship" as a conditional use from several zones, including the zone where plaintiff's property was located. *Id.* Plaintiff applied for a zoning permit to build a shul and to have it deemed as a "permitted conditional use" in the zoning district. *Id.* The zoning officer denied the application on the ground that the shul was not a permitted use, and the township's Zoning Board of Adjustment upheld the denial. *Id.* at *3. Plaintiff then filed suit in federal court, asserting RLUIPA, constitutional, and state law challenges to the township's zoning regulations. *Id.* at *3. Although defendants moved to dismiss on ripeness grounds because plaintiff had not sought a variance, the district court disagreed. *Id.* at *1, 7. The district court held that "the factual record does not need additional development," and "[b]ecause the Board already found the proposed use was prohibited in the proposed zone, this is not a case where a variance application would have clarified the record." *Id.* at *7.

Finally, in *Bais Brucha Inc. v. Township of Toms River*, Civil Action No. 21-3239, 2024 WL 863698 (D.N.J. Feb. 29, 2024), another set of plaintiffs purchased a property in the same New Jersey township to build a shul and encountered the same prohibition against "churches and places of worship" as a conditional use. *Id.* at *1–2. After the plaintiffs' zoning application was denied on the ground that the shul was an unpermitted use, and the Board upheld the denial, plaintiffs filed suit in federal court, asserting RLUIPA and other claims. *Id.* at *2–3. Defendants moved to dismiss on ripeness grounds, arguing that plaintiffs could have, among other things,

filed for variances seeking relief from the ordinances at issue. *Id.* at *4. The district court disagreed, holding again that "a variance application would not significantly develop the record" where the "ZBA already determined that Plaintiffs' proposed use was not permitted." *Id.* at *6.

2. The Yeshiva Was Not Required to Apply for a Variance

The Yeshiva is not required to apply for a use variance for its RLUIPA claims to be ripe. Defendants fail to explain why, as a prerequisite to challenging the ZBA's erroneous interpretation in federal court, the Yeshiva must first accept the ZBA's erroneous use interpretation and seek permission to depart from the zoning law to operate a children's camp—contrary to the Yeshiva's repeated representations made over sixteen months to Town officials regarding its plans to establish a religious retreat on the Property. The use variance process urged by Defendants would not assess the correctness of the ZBA's interpretation and whether it infringed on the Yeshiva's religious freedom, and thus would not "aid[] in developing a full record" before this Court, as Defendants suggest. Defs.' Br. at 9. Moreover, to date, the Yeshiva has developed a detailed, factual record of its extensive efforts to have the Property use deemed as a "place of worship." For nearly a year and a half, the Yeshiva submitted multiple written submissions to the Planning Board and the ZBA about using the Property as a place of worship, Am. Compl. Exs. B, C, E, I–K, P, R–S; met with the Planning Board and ZBA multiple times to discuss using the Property as a place of worship, *id.* Exs. D, F, G, H, L–O, U–W; and received a referral from the Planning Board to the ZBA, which concluded that the Property—contrary to the evidence presented to the ZBA by the Yeshiva—would be used as a summer camp, not a place of worship. *Id.* Exs. T, X. Because a variance application would not significantly develop the

record, it was not required. *See, e.g., Congregation Kollel, Inc.*, 2017 WL 637689, at *10; *Khal Anshei Tallymawr, Inc.*, 2021 WL 5757404, at *7; *Bais Brucha Inc.*, 2024 WL 863698, at *6.

3. A Variance Application Would Be Futile

It also would have been futile for the Yeshiva to reappear before the ZBA under Town Code §§ 190-65(A), 190-66(B) to request a use variance that would allow the Property to be used as a summer camp or a "children's camp" in the R-2 Residential Agricultural Zone. As a preliminary matter, the Yeshiva is not actually seeking to operate a "children's camp," so trying to obtain such a variance does not achieve its goal of operating a "place of worship." In any event, use variances are highly restricted and cannot be granted "without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship." Town Code § 190-66(B)(2)(b); *see also* N.Y. Town Law § 267-b(2)(b). To demonstrate "unnecessary hardship," the Yeshiva must demonstrate to the ZBA's satisfaction "that for each and every permitted use under the zoning regulations for the particular district where the property is located": (1) the Yeshiva "cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence"; (2) the "alleged hardship relating to" the Property "is unique, and does not apply to a substantial portion of the district or neighborhood"; (3) the use variance, if granted, "will not alter the essential character of the neighborhood"; and (4) "the alleged hardship has not been self-created." Town Code § 190-66(B)(2)(b)(1)–(4).[2] Defendants do not explain how the Yeshiva could show that the Property—

[2] Indeed, the standard for obtaining a use variance is considerably more difficult than for an "area" variance because an area variance only releases a landowner "from the duty to follow the strict letter of the zoning ordinance so that the land may be put to a permitted use. On the other hand, a use variance, if granted, will result in the use of land in a manner inconsistent with the basic character of the neighborhoods." *Conley v. Town of Brookhaven Zoning Bd. of Appeals*, 353 N.E.2d 594, 683 (N.Y. 1976) (citations omitted).

which previously operated as a commercial hotel under a special use permit—"cannot realize a reasonable return" for "each and every permitted use" in the R-2 Residential Agricultural Zone. Am. Compl. Ex. A. In that zone, uses permitted as of right include one- to two-family dwellings, manufactured homes, agricultural uses, commercial logging, forestry management, and quarrying, to name a few. *Id.* The fact that the Yeshiva could theoretically realize a financial return through other, non-religious use of the property cannot bar it from pursuing its intent to use the Property as a place of worship. *Id*.

4. The Decisions Defendants Rely Upon Are Inapposite

Defendants cite a number of cases for their contention that Plaintiff's failure "to seek a meaningful variance, which the Second Circuit has made clear is a perquisite [sic] to ripeness," deprives this Court of subject matter jurisdiction. Defs.' Br. at 11–12 (citing cases). However, the stark differences between the cases cited in Defendants' brief and the facts alleged in the Amended Complaint highlight why Defendants' insistence on a variance has no application here; none of these cases involved a ZBA's conclusive and binding interpretation that the plaintiff's proposed religious use is a prohibited use.

In *BMG Monroe*, for instance, the plaintiff-developer proposed a residential development plan to the Village and Town of Monroe, which did not conform with the defendants' zoning codes. 93 F.4th at 598. The plaintiff was granted an initial variance from the zoning codes as long as plaintiff's construction plans complied with "a strict architectural code" and "critical architectural criteria." *Id.* at 599. Later, the Village and Town Planning Boards granted preliminary and final conditional approvals for the property, which emphasized that their approvals were conditioned on plaintiff's compliance with specific architectural requirements. *Id.* at 599–600. However, the Village building inspector denied plaintiff's applications for

construction permits, citing a failure of the proposed construction plans to comply with the architectural requirements upon which the Village and Town had conditioned their approvals. *Id.* at 600. Following a partial appeal which the ZBA denied, plaintiff filed suit in federal district court, but its claims were dismissed as unripe. *Id*. The Second Circuit upheld the dismissal on the ground that plaintiff "needed to apply for a second variance from the zoning regulations based on the updated rear elevation, roof pitch, and siding materials" and could not "sidestep that requirement merely by asserting that the Village Planning Board did not appear to be receptive to granting another variance." *Id.* at 604 (emphasis omitted).[3] In contrast, this case challenges the ZBA's final interpretation that the Yeshiva's proposed religious use was really a "children's camp" and thus not allowed by the Town's zoning code. This interpretation cannot be remedied by an *area* variance—as in *BMG Monroe*—and a use variance, even if granted, would only permit the Yeshiva to operate a type of facility that it does not intend to operate.

Defendants' remaining cases also do not support their position. *See, e.g., Village Green*, 43 F.4th at 296–98 (plaintiff's Fair Housing Act claims were ripe for review where Town Board made a final decision to deny plaintiff's application to remove covenants and restrictions that accompanied Town's rezoning of plaintiff's lot); *Murphy*, 402 F.3d at 352–53 (plaintiffs' RLUIPA and other claims were unripe, where defendant zoning commission issued cease-and-desist order finding that plaintiffs' weekly prayer meetings violated single-family zoning regulations; plaintiffs could have appealed the order to the Zoning Board of Appeals and requested variance relief); *BT Holdings, LLC v. Village of Chester*, 15 Civ. 1986 (CS), 2016 WL 796866, at *4 (S.D.N.Y. Feb. 23, 2016), *aff'd*, 670 Fed. Appx. 17 (2d Cir. 2016) (unpublished)

[3] As noted by the district court, an area variance was the type of variance necessary to address those issues. *See BMG Monroe I, LLC v. Vill. of Monroe*, No. 20 Civ. 1357 (NSR), 2022 WL 1094538, at *6 n.5 (S.D.N.Y. Apr. 12, 2022), *aff'd*, 93 F.4th 595 (2d Cir. 2024).

(plaintiff's unconstitutional taking challenge was unripe because plaintiff never submitted a formal application for site plan approval to the Planning Board).[4] Because the cases holding that a variance application is necessary to establish ripeness do not apply where a ZBA has issued a final, definitive interpretation that the proposed use of a property—notwithstanding the applicant's repeated and consistent representations to the contrary—is prohibited in any zoning district, Defendants' argument that a "meaningful variance" is necessary is misplaced and unsupported.

C. The Yeshiva's RLUIPA Claims Are Ripe Because It Has Suffered Concrete Harm

The Yeshiva's land use claims are also ripe because it suffered "an injury independent of the challenged land-use decision," *Sunrise Detox V, LLC*, 769 F.3d at 123, that was "concrete and particularized" and not "merely speculative and may never occur." *Village Green*, 43 F.4th at 299 (quotation marks omitted). The Yeshiva has alleged multiple concrete and particularized injuries caused by Defendants' actions: (1) it has expended additional funds to find an alternate

[4] In a recent decision issued after Defendants' opening brief and the Yeshiva's opposition, Judge Briccetti dismissed for lack of ripeness certain land use claims asserted by a group of developer plaintiffs against the Town of Forestburgh, its ZBA, and other Town officials and employees. *Lost Lake Holdings LLC v. Town of Forestburgh*, 22 Civ. 10656 (VB), 2025 WL 1899026 (S.D.N.Y. July 9, 2025). To the extent Defendants seek to rely on that decision, it is inapposite to the facts alleged in the Amended Complaint. In *Lost Lake Holdings*, plaintiffs purchased a property that the Town Board previously allowed the previous owner to develop as a resort and gated community. *Id.* at *1. Plaintiffs submitted several building permit applications to construct single-family homes on the same site. *Id.* at *3. The Town's building inspector permitted construction to begin on one lot, but denied permit applications for two other lots based on alleged deficiencies in Plaintiffs' applications. *Id.* On administrative appeal, the ZBA affirmed the denials and the Town Board subsequently adopted the ZBA's findings and determination. *Id.* at *3–4. After the Town Board issued stop work orders and reopened a SEQRA process for the property, plaintiffs filed suit in this Court. *Id.* at *4–5. The Court held that plaintiffs' land use claims were unripe because they did not seek a variance from the previously-approved project proposals, and found there were no procedural hurdles barring such a variance. *Id.* at *8. *Lost Lake Holdings* therefore is similar to, and relied on *BMG Monroe*, insofar as both courts found there were still remaining "avenues" (variances) where the municipal authority could "clarify or change its decision." *Id.* at *7 (quoting *BMG Monroe*, 93 F.4th at 604). As explained, *supra* at Section B.3, here a variance application would be futile.

location for its religious educational facilities; (2) it has paid carrying costs for a Property that it cannot use for its intended purpose; and (3) it has incurred costs and expenses associated with extended proceedings before the Planning Board and the ZBA to show that its proposed use for the Property for religious education was a permissible use. Am. Compl. ¶¶ 125, 132. Compelling the Yeshiva to undergo a futile variance process will not address these harms.

These alleged injuries are also similar to harms asserted by plaintiffs in other RLUIPA cases where defendants have unsuccessfully asserted a lack of ripeness. In *Congregation Kollel, Inc.*, the district court held that plaintiffs' RLUIPA claims were ripe because "Defendants' alleged discriminatory conduct has caused an immediate and tangible injury." 2017 WL 637689, at *10. Given that defendants had prevented plaintiffs from erecting religious structures on their property, "to subject Plaintiffs to an additional variance process would only seek to amplify the harm." *Id.* In *Khal Anshei Tallymawr, Inc.*, the district court held that plaintiff's challenge to the zoning board of adjustment's denial of a permit was ripe because plaintiff alleged "immediate injury" in the form of "financial losses and inability to exercise its religion due to the permit denial, and that it would continue [to] suffer these injuries during the Board's review of a variance application." 2021 WL 5757404, at *7. Finally, in *Bais Brucha Inc.*, the district court similarly held that plaintiffs' RLUIPA and other claims were ripe because plaintiffs had sufficiently alleged an "immediate injury," where the allegedly discriminatory conduct prevented plaintiffs from building a shul on their property much earlier, they had to acquire additional property, and they were forced to pay rental costs, increased construction costs, and various professional fees. 2024 WL 863698, at *6.

CONCLUSION

For the reasons set forth above, the Government respectfully submits that Plaintiff's RLUIPA claims are ripe for adjudication before this Court.

Dated: New York, New York
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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Civil Rule 7.1(c), the undersigned hereby certifies that, measured by the word processing program used to prepare this brief, that this brief complies the word-count limitation of the rule, which is a maximum of 8,750. Excluding the caption, any index, table of contents, table of authorities, signature blocks, or any required certificates, but including material contained in footnotes or endnotes, there are 6,884 words in this brief.

Dated: New York, New York
July 29, 2025

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