

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

THE ST. JOSEPH'S POLISH ROMAN  
CATHOLIC CONGREGATION and ST.  
VINCENT DE PAUL PLACE, NORWICH,  
INC.

Plaintiffs,

v.

CITY OF NORWICH ZONING BOARD OF  
APPEALS, CITY OF NORWICH, TIANNE  
PHOENIX CURTIS, in her official capacity as  
Zoning Enforcement Officer, JAMES  
TROEGER, in his official capacity as Building-  
Housing Code Enforcement Official, and  
JAMES ROBERTS, in his official capacity as  
Captain of the Fire Marshal's Office

Defendants.

CIVIL NO. 3:13-cv-00781 (WWE)

September 15, 2013

**SECOND AMENDED COMPLAINT**

Plaintiffs The St. Joseph's Polish Roman Catholic Congregation (the "Church") and St. Vincent de Paul Place, Norwich, Inc. ("St. Vincent") (collectively, the "Plaintiffs"), by their undersigned attorneys for their Complaint against Defendants City of Norwich Zoning Board of Appeals (the "Board"), City of Norwich (the "City"), Tianne Phoenix Curtis, in her official capacity as Zoning Enforcement Officer (the "ZEO"), James Troeger, in his official capacity as Building-Housing Code Enforcement Official ("Troeger"), and James Roberts, in his official capacity as Captain of the Fire Marshal's Office ("Roberts") (collectively, the "Defendants"), allege as follows:

### **NATURE OF THE ACTION**

1. This action is brought by Plaintiffs to redress violations of their civil rights, as protected by the First and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983, the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.* (“RLUIPA”), Article I of the Connecticut Constitution, and Connecticut’s Religious Freedom Act, § 52-571b, caused by Defendants’ substantially burdensome, discriminatory and unreasonable land use regulations, and intentional conduct that has deprived, and continues to deprive, Plaintiffs of the free exercise of their religion.

2. Plaintiffs allege that the Board’s denial of Plaintiffs’ application for a use variance – which satisfied all applicable criteria under the City of Norwich Zoning Ordinances (the “Zoning Ordinances”) – was based on a misapplication of federal, state, and local laws to prevent the operation of St. Vincent from the only ready and feasible location available to it, known as 120 Cliff Street a/k/a 1 Clairmont Avenue, Norwich, Connecticut. In particular, the Board’s denial of Plaintiffs’ use variance application has (1) left St. Vincent with nowhere else to go to provide free food to the poor and homeless in accordance with Plaintiffs’ religious beliefs and (2) illegally forced Plaintiffs to modify their religious behavior. Plaintiffs further allege that in denying their use variance application, the Commission bowed to the pressure of the baseless complaints of neighborhood opponents and improperly credited their anecdotal statements at the public hearing over expert and other testimony and evidence submitted by or on behalf of Plaintiffs.

3. Plaintiffs further allege that Defendants have treated Plaintiffs arbitrarily and unequally as compared to similarly situated religious institutions and nonreligious assemblies in

the City, some of which are located in the same zoning district as St. Vincent, and which provide free food to the poor and homeless. Although the City and its agents have not required these other religious institutions to obtain zoning approval to provide free food to the poor and homeless, they have arbitrarily and discriminatorily imposed such a requirement on Plaintiffs.

4. Plaintiffs also allege that the Board's decision to deny the use variance application is the product of a tainted proceeding involving: (1) at least one member of the Board who had an illegal conflict of interest by virtue of his interest in a personal sense and by his conduct towards St. Vincent, the Church, and their supporters in violation of § 8-11 of the Connecticut General Statutes and (2) at least one voting member of the Board who predetermined his decision regardless of the evidence and testimony provided by St. Vincent and the Church. In addition, the Board's decision is arbitrary, capricious, contrary to law, and not supported by substantial evidence in the record.

#### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action is brought under 42 U.S.C. § 2000cc *et seq.* and 42 U.S.C. § 1983. This Court also has supplemental jurisdiction of Counts VI, VII, VIII, and IX under 28 U.S.C. § 1367(a) for claims brought under Connecticut statutes.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because the underlying events occurred in this district, and Defendants are subject to personal jurisdiction in this district as of the commencement of this action.

**PARTIES**

7. Plaintiff Church is a non-profit corporation, incorporated in 1904, existing under the laws of the State of Connecticut, with its principal place of business at 120 Cliff Street, Norwich, Connecticut. It is a parish of the Roman Catholic Diocese of the City of Norwich (the “Diocese”).

8. Plaintiff St. Vincent is a non-profit corporation existing under the laws of the State of Connecticut. St. Vincent is a ministry of the Diocese. It was established in 1979 and was incorporated in 1989.

9. Defendant Board is a zoning board of appeals authorized by Chapter XV, Sec. 9 of the City Charter. The Board consists of five regular members and three alternate Board members, all of whom are appointed by the City Council.

10. Defendant City is a municipality located in the State of Connecticut established pursuant to Special Act 1951, No. 573, which act constituted the Norwich city charter (the “City Charter”). At all times relevant hereto, the City was and is responsible for the establishment, enforcement, and implementation of land use and zoning regulations in the City.

11. Defendant ZEO is the City official charged with administering and enforcing the Zoning Ordinances. The ZEO is sued in her official capacity.

12. Defendant Roberts is the City’s Captain of the Fire Marshal’s Office and is authorized to enforce, among other things, provisions of the State Fire Code. He is sued herein in his official capacity.

13. Defendant Troeger is the City's Building-Housing Code Enforcement Official and is authorized to enforce, among other things, provisions of the Building Code. He is sued herein in his official capacity.

### **FACTUAL ALLEGATIONS**

14. The Church has been located at 120 Cliff Street since 1904.

15. In 1908, the Diocese established St. Joseph School (the "School"), a religious elementary school dedicated to providing a religious education to its students.

16. By 1925, the Diocese constructed a building to be used by the School, located at 120 Cliff St. a/k/a 1 Clairmont Avenue in a building separate from but adjacent to the church building (the "Property"). Between the school building and church building is a forty-six (46) car parking lot.

17. The Church holds fee simple title in the Property.

18. At its peak in 1992, approximately 300 students were enrolled at the School, with twenty (20) staff members. It operated Monday through Friday, with teachers arriving between 7:00 a.m. and 7:30 a.m. and classes beginning at 8:00 a.m. The School served breakfast and lunch to its students. Recess was a daily activity held in the parking lot supervised by teachers. The school day ended at 2:30 p.m. each day. Teachers often remained for after-school functions and evening programs.

19. The School closed in 2010, but the former religious school building has since been used by the Diocese, St. Vincent, and the Church in connection with their religious practices, including the preparing and serving of meals to parishioners and others.

20. The church building and the Property are located in the Multifamily District MF (the "MF District") established under the Zoning Ordinances.

21. For decades, the Church has aided the homeless and poor in Norwich. In 1979, the City adopted a resolution to honor the Church for its then 75 years of providing an "effective force in enriching community life through its religious, cultural, educational, and social programs."

22. In 1979, to continue the tradition of serving the homeless and poor, St. Vincent was established as a ministry of the Diocese to serve the needy of Norwich.

23. St. Vincent's service to the poor is a form of religious exercise that is central to the faith of St. Vincent, the Church, and the Diocese.

24. Plaintiffs believe that their Catholic faith requires them to provide free food and related services to anyone in need. St. Vincent is a welcoming community that strives to provide food, advocacy, and companionship for anyone in need, regardless of race or religion. St. Vincent serves anyone who walks through its doors. Patrons include the unemployed, working poor, underemployed, disabled, homeless, veterans, children, senior citizens, persons newly released from institutions, and residents of recovery houses.

25. St. Vincent serves breakfast and lunch to its patrons through its soup kitchen Monday through Saturday. Breakfast is served at 8:00 a.m. and is available until 10:00 a.m. Lunch is served at 11:30 a.m. and is available until 1:00 p.m. Members of the clergy and others lead prayer each day before meals. Over the past five years, St. Vincent, has served, on average, 79,362 meals each year.

26. Three days per week (Monday, Wednesday, and Saturday), St. Vincent distributes food bags to residents for consumption off-site through its food pantry program. The food pantry is open on Monday and Wednesday from 1:30 p.m. until 3:30 p.m. and on Saturday from 9:00 a.m. until 11:00 a.m. Patrons may pick up food items from the food pantry once per week. Over the past five years, St. Vincent, on average, has welcomed 7,104 household visits to its food pantry each year. Of these 7,104 visits, 1,148 were made by households with children under the age of eighteen years.

27. St. Vincent receives some of the food it provides from the United States Department of Agriculture and the Federal Emergency Management Agency.

28. In addition to feeding the homeless and poor, St. Vincent provides shower services to its patrons on Monday through Saturday from 8:00 a.m. until 11:00 a.m. Approximately eight to twelve patrons use the shower facilities each day. Upon information and belief, this shower is the only publicly available shower in the City.

29. St. Vincent has a case worker on-staff to provide patrons with information concerning job openings, apartment rentals, and community events, among other things.

30. St. Vincent is closed on Sunday.

31. Members of St. Vincent practice their religion by volunteering in the soup kitchen and food pantry and providing other support for St. Vincent's patrons. Providing free food and services to the poor and needy through St. Vincent is a central tenet of Plaintiffs' Catholic faith.

32. From approximately 2000 until 2012, St. Vincent leased a building in downtown Norwich, Connecticut, located at 10 Railroad Place, where it practiced its religion by providing the poor and homeless with free food and other services.

33. In 2009, due to rising costs, St. Vincent began to search for an alternative property to purchase or lease. Despite these efforts, St. Vincent was unable to find a property that would provide a ready and feasible alternative for it to locate and continue to serve the needy. The Zoning Ordinances prohibits the use of some properties for religious uses that St. Vincent examined. Beyond the Zoning Ordinances, exorbitant costs, the need for extensive, time-consuming, and expensive repairs and renovations, and environmental and contamination issues have precluded each of these properties from being ready and feasible alternatives.

34. Some properties are not ready and feasible alternatives because they are too far from the downtown Norwich area, where the majority of St. Vincent's patrons live, most of whom do not have access to automobiles, public or otherwise, or other forms of transportation. For this reason, it is critically important that St. Vincent remain within walking distance of the downtown Norwich area so that its patrons can continue to have access to its services and programs.

35. On July 5, 2012, St. Vincent's landlord informed it of serious structural issues with the building at 10 Railroad Place that would require extensive renovations to address these problems.

36. On July 7, 2012, because of the safety concerns related to these structural issues, St. Vincent was constructively evicted from its lease of the building and forced to vacate 10 Railroad Place.

37. 10 Railroad Place is no longer available for lease. Previously, the landlord demanded that St. Vincent sign a long-term lease agreement at exorbitant and unaffordable costs when renovations were completed. The landlord further informed St. Vincent that if it wished to



return to the building, St. Vincent would have to lease the entire building. St. Vincent previously operated out of only one of the two suites in the building.

38. With no other options and hundreds of people to serve, St. Vincent sought to relocate to the building owned by the Church and formerly operated by the Diocese as a religious school at the Property.

39. Moving to the former religious school building was the only ready and feasible option to allow St. Vincent to remain open.

40. The Property is located approximately 0.37 miles from the building at 10 Railroad Place that was previously leased by St. Vincent.

41. Because the majority of St. Vincent's patrons do not have access to automobiles, and thus walk to St. Vincent, the proximity of the school building to the 10 Railroad Place building was necessary for the success of any such move.

42. Because many of St. Vincent's patrons are residents of the Cliff Street area and its surrounding neighborhoods, the school building location provides them with ready pedestrian access to St. Vincent's services. Similarly, St. Vincent's religious mission is facilitated by this location's proximity to the poor and needy.

43. The Cliff Street neighborhood is home to other non-residential uses, including other community service programs. The Katie Blair House, operated by Bethsaida Community, Inc. is adjacent to the church and the former religious school building. It provides supportive living and behavioral services to women striving to become independent members of the community. Its offices are on the first floor of this building, and the second floor of the building, is utilized by Patricia's Place, which provides additional housing to its clients. Reliance House,

Inc., based on the nearby Broadway Street, operates its Outreach to Homeless Programs on Cliff Street to provide, among other things, shelter, food, and clothing to those in need.

44. On July 9, 2012 St. Vincent received a temporary zoning permit from the City, signed by Peter Davis, City of Norwich Director of Planning and Neighborhood Services, authorizing St. Vincent to use the Property for six-months. The temporary zoning permit stated that St. Vincent could remain at the Property beyond six months if it obtained a special permit.

45. On July 13, 2012, premised on the temporary zoning permit, St. Vincent received a temporary certificate of occupancy from the City's Department of Planning & Development Building Inspection Division, signed by Troeger, allowing it to occupy the building at the Property for six-months. The temporary certificate of occupancy noted that an accessibility modification would be required in the future, specifically requiring the installation of handicapped accessibility to the first floor pantry area. Troeger's letter references an August 6, 2012 letter from Daniel Tierney, Deputy State Building Inspector, to approve an accessibility exemption for St. Vincent through the expiration of the temporary permits.

46. The temporary certificate of occupancy restricts St. Vincent's use of the four-story building to the basement and two rooms on the first floor. St. Vincent's soup kitchen operates from the basement. Its food pantry operates in the two rooms on the first floor. This limited space is not adequate for St. Vincent to practice its religion. The two rooms do not provide St. Vincent with enough space for its food pantry program, and it sometimes is forced to reject food donations because it does not have space to store it. Rejecting food donations compounds St. Vincent's ability to exercise its religion in these difficult economic times by providing free food to increasing numbers of mouths. Further compounding St. Vincent's ability

to exercise its religion is the immediate injury that St. Vincent has suffered in obtaining grant funding, discussed *infra*, as a result of the variance denial.

47. Since its move to the Property, St. Vincent has continued to search for an alternative property where it could move to serve the poor. Like before, exorbitant costs, the need for extensive, time-consuming, and expensive repairs and renovations, environmental and contamination issues, and the distance from downtown Norwich have precluded each of these properties from being ready and feasible alternatives.

48. On September 14, 2012, with no other options, Jillian Corbin, Executive Director of St. Vincent, submitted an application to the City of Norwich Commission on the City Plan (the "Commission") on behalf of St. Vincent for a special permit to locate permanently at the Property pursuant to § 8.1.2(b) of the Zoning Ordinances (SP # 12-03), as directed by the City and its agents. Section 8.3.2 of the Zoning Ordinances allow by special permit in the MF District "religious uses," among other uses.

49. St. Vincent sought to install an elevator to provide handicapped accessibility, as required by the State of Connecticut Building Code (the "Building Code") to continue to occupy the Property and serve disabled food pantry patrons. Upon information and belief, this would cost approximately \$125,000 or more to purchase and install.

50. The public hearing on the special permit application took place over multiple evenings, opening October 16, 2012 and concluding on November 20, 2012.

51. At the public hearing, St. Vincent presented evidence that serving the poor and homeless is a form of religious exercise that is central to its Roman Catholic faith and the Roman Catholic faith of the Church.

52. St. Vincent also presented evidence that the use of the building as a soup kitchen and food pantry is a less intense use than the School that previously operated there.

53. Further, St. Vincent presented evidence that its use of the Property would be consistent with the 100-plus year religious history of the site that has characterized the Cliff Street area. St. Vincent also presented evidence that it offers educational programs, consistent with the neighborhood's history of educational use.

54. St. Vincent submitted into the record the approved City of Norwich Public Safety Committee Minutes of the September 12, 2012 meeting. The minutes detail the statements of Sgt. Peter Camp of City of Norwich Police Department. Sgt. Camp stated that he had evidence that there has been no uptick in crime in or around the Cliff Street neighborhood since St. Vincent moved there. He also stated that a garbage complaint had actually been caused by a resident in the neighborhood. Sgt. Camp added that St. Vincent's patrons are behaving "better because they are in a neighborhood. It is as though they are trying to respect the neighbors."

55. St. Vincent presented evidence that it had nowhere else to go and that a denial of the special permit application would force it to terminate its operations – and its religious practice – of serving food to the poor and homeless.

56. A group of neighbors from Cliff Street opposed the special permit application. These neighbors alleged that St. Vincent's patrons were engaging in criminal activity, generating increased foot traffic, and decreasing the value of properties in the neighborhood. The neighbors' claims were not substantiated. No expert evidence was offered to oppose the special permit application.

57. On December 18, 2012, one week before the Christmas holiday, the Commission opened its regularly scheduled meeting.

58. The meeting began by observing a moment of silence for the lives lost in the tragedy at Sandy Hook Elementary School in Newtown, Connecticut.

59. Thereafter, the Commission voted to approve an application for a special permit for the sale of firearms in downtown Norwich.

60. The Commission, however, denied St. Vincent's application for a special permit to feed the poor by a vote of 5-0. It found that the proposed use of the Property is not consistent with the character of a residential neighborhood.

61. Under applicable state law and the Norwich City Charter, the Commission could have approved the special permit application subject to certain conditions, but chose not to do so. Section 17.2.3 of the Zoning Ordinance authorizes the Commission to approve an application subject to certain conditions on its own initiative; that is, an applicant does not have to request that the Commission approve an application subject to certain conditions for it to do so.

62. Likewise, the Commission could have allowed St. Vincent to remain at the Property until it found somewhere else to go, but chose not to do so.

63. As a result of the Commission's denial of the special permit application, on January 4, 2013, St. Vincent and the Church filed a lawsuit against the City, the Commission, Troeger, and Roberts, in the District of Connecticut to redress violations of their civil rights, among other things (Docket No. cv-13-00017 (WWE)) (the "First Lawsuit").

64. On January 7, 2013, three days after St. Vincent and the Church filed the First Lawsuit, Troeger stated publicly that he would issue a notice of violation to St. Vincent,

condemn the facility as an illegal use, and order St. Vincent to vacate the Property when its temporary certificate of occupancy expired on January 12, 2013.

65. On January 14, 2013, the Court (Eginton, J.) issued an order preventing Defendants from halting St. Vincent's operations.

66. The same day that the Court issued its Order, and ten days after St. Vincent and the Church brought the lawsuit, Troeger, in fact, issued a Notice of Violation to St. Vincent for its alleged violation of the Building Code, deeming as illegal its occupancy of the former religious school building.

67. The same day, the City, acting through the ZEO, issued a Notice of Violation to St. Vincent for its alleged violation of the Zoning Ordinances, deeming as illegal its occupancy of the Property. The Notice of Violation includes an error in the citation to the applicable Zoning Ordinances.

68. The next day, January 15, 2013, the City, acting through the ZEO, issued an identical Notice of Violation to the Church for its alleged violation of the Zoning Ordinances, deeming as illegal its occupancy of the Property. It contains the same citation error.

69. As a result of the Notices of Violation, St. Vincent and the Church, pursuant to § 18.4 of the Zoning Ordinances, may become liable for civil penalties from the date of issuance of the notices and may also be subject to criminal penalties, if enforcement is pursued further.

70. The City or its agents have informed Plaintiffs that they may seek penalties pursuant to § 18.4 of the Zoning Ordinance for Plaintiffs' alleged violation of the ordinance.

71. On January 29, 2013, Plaintiffs appealed the Notices of Violation to the Board (Board Docket A#13-01). On February 1, 2013, Plaintiffs also petitioned the Board for a use

variance allowing it to operate the soup kitchen and food pantry at the Property (Board Docket V#13-03), as is customary and generally expected in connection with an appeal of a zoning order, so that the Board could consider it at the same time as the appeal of the Notices of Violation. *See* CONN. GEN. STAT. § 8-6a; CITY OF NORWICH CHARTER, Chapter XV, § 10.

72. On February 6, 2013, after St. Vincent and the Church appealed the Notices of Violation to the Board, the City, acting through the ZEO, issued yet another order to St. Vincent; a “Supplemental Notice of Violations,” but only to St. Vincent, which it characterized as “intended to supplement and to clarify any ambiguities” in the previous Notice of Violation issued to St. Vincent. This “supplemental” order included an error in the citation of the applicable section of the Zoning Ordinances.

73. On February 11, 2013, Defendants moved to dismiss the First Lawsuit alleging that it was not ripe because, on February 1, 2013, St. Vincent and the Church submitted an application for a use variance, in keeping with the spirit and intent of City of Norwich Charter, Chapter 15, § 10 and § 8-6a of the Connecticut General Statutes.

74. On March 12, 2013, the Board opened the public hearing on St. Vincent and the Church’s appeal of the Notices of Violation (A#13-01).

75. During this session of the public hearing, St. Vincent and the Church presented evidence that, among other things, (1) the Notices of Violation issued to St. Vincent and the Church cited the wrong section of the Zoning Ordinances and (2) the ZEO completely disregarded RLUIPA when issuing them.

76. At this session of the public hearing, Ms. Corbin testified that the Notices of Violation have immediately and severely affected St. Vincent’s ability to practice its religion by

serving the poor and homeless by inhibiting its ability to receive grant funding and move forward with much needed renovations, as explained *infra*.

77. At the this same March 12, 2013 date, the Board closed the public hearing as to the appeal of the Notices of Violation, but tabled its deliberation and vote until its next regularly scheduled meeting to be held the following month (April 9, 2013).

78. On March 12, 2013, after the Board closed the public hearing on the appeal of the Notices of Violation, the Board opened the public hearing to consider St. Vincent and the Church's application for a use variance (#V13-03).

79. During this session of the public hearing, Plaintiffs presented evidence that serving the poor is a form of religious exercise that is central to their Roman Catholic faith.

80. Plaintiffs presented evidence that the Church for decades has provided religious, cultural, and educational programs from the Property and in the Cliff Street area.

81. Plaintiffs presented evidence that St. Vincent's use of the Property is less intense of a use than the former religious school that operated there just two years prior.

82. Plaintiffs presented evidence that eleven other religious institutions in the City provide free food, some of which are located in the same zoning district as set forth in the Official Zoning Map of the City of Norwich as St. Vincent (the MF District; § 8.3 *et seq.* of the Zoning Ordinances). Neither the City nor its agents have required these religious institutions to obtain zoning approval to serve free food to the poor and homeless for consumption on-site and/or off-site. Nor, upon information and belief, have the City or its agents issued any order to these other religious institutions in connection with their operation.



83. Central Baptist Church located at 2 Union Street in the MF District, the same district as St. Vincent, provides free meals to the poor and homeless every Friday from 5:30 p.m. to 6:30 p.m. It also provides breakfast to the poor and homeless each Sunday morning from 8:30 a.m. to 10:00 a.m. During Lent, Central Baptist hosts Friday lunches, with the food prepared by St. Vincent. Central Baptist Church provides a food pantry through its Norwich Clergy Association from which individuals can pick up food items for consumption at their homes once per month. The food pantry operates on Thursday from 9:00 a.m. to 12:00 p.m. Central Baptist provides these services in a building that is separate and apart from its church building.

84. Central Baptist began its operation of providing free food and other services to the poor and homeless in 2011. It did not obtain zoning approval to do so, nor did the City require that it do so. Neither the City nor its agents have issued Central Baptist a notice of violation or any other order alleging Central Baptist to be in violation of the Zoning Ordinance for its operation. As of March 2013, Central Baptist had served 13,000 meals to the poor and needy.

85. At the March 12, 2013 public hearing, a representative of Central Baptist Church, David Warfield, explained the services that Central Baptist Church provides. He stated that neither the City nor its agents have required Central Baptist Church to obtain approval for such uses.

86. St. Mark Lutheran Church, located at 248 Broadway in the MF District, the same district as St. Vincent, provides free meals to the poor and homeless on the first and third Sundays of each month.

87. United Congregational Church, located at 87 Broadway in Norwich's Chelsea Central District ("CC District"), provides free meals to the poor and homeless on the fifth Sunday of each month.

88. The Salvation Army, located at 262 Main Street in the CC District, provides free meals to the poor and homeless on the second Sunday of each month. It also operates a food pantry from which individuals can pick up food items once per month. The food pantry operates on Tuesday from 10:00 a.m. to 11:45 a.m. and 1:00 p.m. to 1:45 p.m., Wednesday from 1:00 p.m. to 1:45 p.m., and Thursday from 10:00 a.m. to 11:45 a.m. and 1:00 p.m. to 1:45 p.m.

89. Lee Memorial United Methodist Church, located at 294 Washington Street in Norwich's R-40 Residence District (the "R-40 District") provides free meals to the poor and homeless on the fourth Sunday of each month.

90. First Haitian Baptist Church, located at 356 Central Ave. and in the MF District, the same district as St. Vincent, operates a food pantry from which families with children can pick up food items once per week. The food pantry operates on Friday from 12:00 p.m. to 1:30 p.m.

91. St. Peter and Paul Church, located at 181 Elizabeth St. and in the MF District, the same district as St. Vincent, operates a food pantry from which individuals referred from a social service agency can pick up food items. The food pantry operates on Thursday from 9:00 a.m. to 11:00 a.m.

92. Tabernacle of Deliverance and Praise Ministries, located at 230 Hunters Road and in the R-40 District, operates a food pantry for individuals to pick up food items. The food pantry operates on the second and fourth Thursdays of each month from 10:00 a.m. to 1:00 p.m.

and on the third Saturday of each month from 10:00 a.m. to 1:00 p.m. This food pantry is temporarily closed.

93. Catholic Charities, Diocese of Norwich, Inc., located at 331 Main St. and in the CC District, operates a food pantry for families with children to pick up food items once per month. The food pantry operates on Monday from 9:30 a.m. to 11:30 a.m., Wednesday from 4:30 p.m. to 6:30 p.m., Thursday from 1:30 p.m. to 4:30 p.m., and Friday from 9:30 a.m. to 11:30 a.m.

94. Family Church of God, located at 63 Church St. and in the CC District, operates a food pantry from which families with children can pick up food items once per week. The food pantry operates on Wednesday from 10:00 a.m. to 12:00 p.m.

95. Madonna Place, located at 240 Main St. and in the CC District, operates a food pantry for families with children to pick up food items, depending on need and supply. The food pantry operates from Monday through Friday from 9:00 a.m. to 9:30 a.m.

96. At the March 12, 2013 public meeting, Plaintiffs presented evidence that the majority of its patrons live within approximately 0.50 miles of the Property.

97. Members of the Board raised concerns that St. Vincent would seek to use the Property as a homeless shelter. They questioned whether St. Vincent's desire to install an elevator was a pretext for operating a shelter. In fact, at least one member of the Board believed that Plaintiffs' use variance application sought approval to operate a homeless shelter from the Property.

98. During the public hearing, counsel for Plaintiffs stated that St. Vincent is not seeking permission to use a homeless shelter, but rather a soup kitchen, food pantry, and related services, which would operate only in the morning to the early afternoon.

99. Plaintiffs presented evidence that St. Vincent has nowhere else to go and that denial of the use variance application would force St. Vincent to close and terminate its operations, and thus its religious practice.

100. Thereafter, the first session of the public hearing was closed and continued to April 9, 2013 to allow St. Vincent and the Church time to continue their presentation in support of the use variance application and for others to voice their support or opposition.

101. The following day, March 13, 2013, the District Court dismissed the First Lawsuit concerning the Commission's denial of the special permit application for lack of ripeness. Plaintiffs appealed to the Second Circuit the District Court's order (Docket No. 13-1302).

102. Upon information and belief, on April 9, 2013, moments prior to the Board's opening of its regularly scheduled meeting to deliberate and vote upon Plaintiffs' appeal of the Notices of Violation (A#13-01), two members of the Board, Raymond Dussault ("Dussault") and Paul Kramarewicz ("Kramarewicz"), stated in public in City Hall that they would not support Plaintiffs' application for a use variance, to be heard later that evening, regardless of the evidence presented by Plaintiffs.

103. Dussault is an alternate member of the Board, but was seated as a voting member regarding the appeal of the Notices of Violations. Dussault was not originally seated as a voting member of the Board on the use variance application, but attended and participated in each session of the public hearing on same.

104. Kramarewicz is a regular member of the Board.

105. Counsel for Plaintiffs did not learn of the statements made by Kramarewicz and Dussault until the days following the April 9, 2013 meeting.

106. The Board opened the April 9, 2013 meeting and commenced its deliberations on the appeal of the Notices of Violation (A#13-01), with Dussault and Kramarewicz participating as voting members of the Board.

107. During deliberations of the appeal of the Notices of Violation, Dussault and Kramarewicz improperly began to discuss the merits of St. Vincent and the Church's application for a use variance (#V13-03).

108. In particular, during deliberations on the appeals of the Notices of Violation, Dussault and Kramarewicz stated that they did not believe that St. Vincent and the Church had adequately demonstrated a hardship warranting a use variance, and, at that point, attempted to vote against the granting of a variance, even though there was not a motion on that issue at that point in time.

109. The public hearing on the use variance application, however, was scheduled to resume later that evening so that St. Vincent and the Church could present additional evidence and testimony, including that about hardship. In fact, St. Vincent and the Church had not even begun their presentation about hardship at the first public hearing session.

110. Thereafter, the Board unanimously voted to uphold the Notices of Violation issued to St. Vincent and the Church. Both Dussault and Kramarewicz voted.

111. Later that evening, after upholding the Notices of Violation, the Board opened the second session of the public hearing on Plaintiffs' use variance application (#V13-03).

112. During this session of the public hearing, Plaintiffs stated that they would welcome a conditional approval of the use variance application rather than a flat rejection of it, and also submitted into the record a letter to this effect.

113. Plaintiffs, through counsel, submitted evidence that a critical factor in any RLUIPA “substantial burden” analysis is whether there are quick, reliable, and financially feasible alternatives that a religious institution may utilize to meet its religious needs in the event a land use agency denies a request for zoning approval. Plaintiffs provided the Board with oral and written evidence of thirteen properties that St. Vincent examined for potential purchase or lease since 2009. Plaintiffs also provided evidence as to why each property was not a ready or feasible alternative capable of accommodating St. Vincent due to, among other things, cost, the need for extensive, costly, and time-consuming renovations, environmental contamination concerns, and the distance from the downtown Norwich area.

114. Dussault stated that in his view, two to three of the locations that St. Vincent had examined and ruled out as possibilities were ready and feasible alternatives for St. Vincent to relocate. There is no evidence in the record that Dussault ever examined any of these properties or is otherwise qualified to speak to this issue. Nor is there any evidence that Dussault has knowledge of St. Vincent’s finances or whether St. Vincent could afford the two to three properties that Dussault believed were ready and feasible alternatives.

115. Plaintiffs presented evidence that a denial of the use variance application would force Plaintiffs to modify their Roman Catholic religious practice by, in effect, terminating their religious practice, in violation of RLUIPA. Plaintiffs presented further evidence that the Board must make an accommodation of St. Vincent’s Roman Catholic religious use under RLUIPA

because a flat denial of their application would substantially burden their religious beliefs, and would not be the “least restrictive means” of furthering any alleged compelling governmental interest, as required by RLUIPA.

116. Dussault and Kramarewicz repeatedly stated that the former religious school building should be used as a school, not as a soup kitchen or food pantry.

117. Special counsel to the Board stated on the record that limiting Plaintiffs’ use of the religious school building to a school use would run afoul of RLUIPA.

118. The Board, as required by § 19.1 of the Zoning Ordinances, received an advisory report from the Commission regarding the use variance application. The Commission provided a negative recommendation regarding Plaintiffs’ use variance application. The Commission made this recommendation for all of the reasons stated by Peter Davis, the City’s Director of Planning & Neighborhood Services, in a memorandum dated March 25, 2013. In this memorandum, Mr. Davis states in part that St. Vincent is a “social service” and allowing St. Vincent to operate at 120 Cliff Street – or anywhere else downtown – would be inconsistent with the City’s Plan of Conservation and Development (“POCD”), which states that social service uses need to be lessened in the downtown area of Norwich. Mr. Davis’ memorandum also states that St. Vincent and the Church should use the 120 Cliff Street property for some other religious or nonreligious use: “there are many other as-of-right and special permit uses in the multi-family zoning ordinance which the applicant has failed to consider and/or apply for . . . .”

119. Mr. Davis’ memorandum erroneously states that St. Vincent and the Church have “not offered to reduce the scope or intensity of the proposed activities.” In fact, St. Vincent and the Church informed the Board through testimonial and documentary evidence that while they

hoped the Board would grant their application for all of their proposed uses, they were willing to accept conditions and reduction in the proposed scope of activities. Mr. Davis' March 25, 2013 memorandum predates the Board's April and May 2013 regularly scheduled meetings at which the Board considered Plaintiffs' use variance application. Mr. Davis was not present at the Board's March, April, or May 2013 meetings. Mr. Davis did not supplement his March 25, 2013 memorandum based on evidence received by the Board at its March or April 2013 meetings.

120. The Board received into the record Mr. Davis' memorandum and the minutes of the Commission voting to provide a negative recommendation to the Board regarding Plaintiffs' application for a use variance for all of the reasons stated in the memorandum.

121. In providing this negative recommendation, the Commission has made it clear that it will never permit St. Vincent to operate anywhere downtown. The City's Director of Planning & Neighborhood Services has also made it clear that he will never support St. Vincent locating downtown, because it allegedly would be inconsistent with the POCD. Requesting permission from either the Commission or Mr. Davis to operate a soup kitchen, food pantry, or related services at 120 Cliff Street would be futile because it would result in certain denial.

122. St. Vincent has operated downtown since at least 2000 and the majority of the population it serves, mostly individuals without access to automobiles or public transportation, live downtown.

123. During an intermission of the public hearing on the use variance application, counsel for Plaintiffs was informed by Deacon Thomas Casey ("Deacon Casey"), who was appointed by the Bishop of the Diocese to help found St. Vincent in 1979, of a confrontation he had with Kramarewicz in City Hall moments prior to the Board's April 9, 2013 meeting.



124. In particular, upon information and belief, prior to the opening of the April 9, 2013 meeting, Kramarewicz confronted Deacon Casey and accused him of firing his wife, and called him obscenities in front of witnesses.

125. Upon information and belief, Kramarewicz then took his seat with the Board and told other members of the Board that Deacon Casey fired his wife and was an obscenity. Thereafter, the Board commenced its April 9, 2013 meeting.

126. As the public hearing on the use variance application resumed after the intermission, upon Plaintiffs' request made by their counsel to the Board's special counsel, Kramarewicz recused himself and left the room.

127. As a result of Kramarewicz's recusal, alternate member Dussault was seated as a voting member on the use variance application.

128. St. Vincent and the Church continued their presentation in support of the use variance application and discussed the unusual hardship of the Property. First, the Property is part of a religious campus that has existed for more than 100 years. The former religious school building where St. Vincent seeks to operate has always been used for a religious use.

129. Second, the former religious school building, with a working cafeteria and kitchen is particularly suited to serving St. Vincent's demand. The location of the school building (within approximately 0.50 miles of the majority of St. Vincent's patrons, most of whom do not have access to automobiles or public transportation) also creates an unusual hardship.

130. Third, denial of the use variance application will force Plaintiffs to modify their religious behavior, imposing a substantial burden on their religious exercise in violation of RLUIPA.

131. Fourth, St. Vincent's religious and educational use at the Property predates the enactment of the Zoning Ordinances and constitutes a non-conforming use.

132. The Board allowed members of the public to speak in support of or against the use variance application.

133. Deacon Casey spoke in support of St. Vincent and the Church's use variance application. Others also spoke in support of approving the application for a use variance.

134. Some neighbors spoke in opposition to the approval of the use variance application, providing anecdotal, lay, and unconfirmed testimony that St. Vincent's use of the Property is not harmonious with the character of the neighborhood.

135. Expert and other evidence provided by or on behalf of Plaintiffs contradicts the anecdotal, lay, and unconfirmed testimony of the neighbors.

136. The Commission received no expert evidence in opposition to the use variance application.

137. The Board closed the public hearing on the use variance application, but tabled its deliberations until its next regularly scheduled meeting.

138. Upon information and belief, as Deacon Casey, and others from St. Vincent and the Church, and Dussault, exited the meeting room, Kramarewicz confronted Deacon Casey on a staircase in Norwich City Hall.

139. Upon information and belief, Kramarewicz in front of a number of witnesses screamed vulgarities at Deacon Casey, made discriminatory statements about his being a Catholic Deacon, confronted him in a challenging manner, and made threatening remarks.

140. On April 24, 2013, counsel for Plaintiffs wrote to special counsel to the Board, informing him of the statements made by Kramarewicz and Dussault that they would not vote in favor of the use variance application, regardless of the evidence presented. Counsel for Plaintiffs requested that the letter be added to the Record and that appropriate steps be taken to remedy the situation.

141. On April 29, 2013, St. Vincent and the Church filed a federal lawsuit against the City, the ZEO, and the Board (Docket No. 3:13-cv-00624 (JBA)), alleging that (1) the City, acting through the ZEO, issued the Notices of Violation to St. Vincent and the Church in retaliation of the First Lawsuit (regarding the denial of the special permit application); (2) the Notices of Violation issued to St. Vincent and the Church have imposed a substantial burden to their religious exercise; and (3) pursuant to § 8-8 of the Connecticut General Statutes, the Board's decision to uphold the Notices of Violation was arbitrary, capricious, contrary to law, not supported by substantial evidence in the record, and the product of a tainted proceeding (the "Second Lawsuit").

142. On May 14, 2013, the Board opened its regularly scheduled meeting to deliberate and vote on the use variance application.

143. Prior to commencing deliberations, special counsel to the Board addressed on the Record the letter sent by Plaintiffs' counsel regarding the statements made by Kramarewicz and Dussault. Special counsel to the Board stated on the Record that he had reviewed the issue with Dussault and that it was Dussault's decision whether or not to recuse himself.

144. Dussault claimed that he never made the statements. He further claimed that

Plaintiffs had lied about his making such statements. He accused Plaintiffs of fabricating this story in an attempt to attain a “specific goal” in an appeal to court.

145. Dussault refused to recuse himself. Thereafter, deliberations began. Dussault was the first to offer his opinion as to the merits of the use variance application.

146. Dussault stated that he had doubts about whether Plaintiffs had demonstrated a hardship. Dussault later added that he believed that St. Vincent is a commercial use. He also stated his belief that St. Vincent’s impact on the Cliff Street neighborhood is “overwhelming.”

147. Dussault stated that the former religious school building should continue to be used as a school. This statement was made after special counsel to the Board said on the record that limiting the use of this building to a school use could violate RLUIPA.

148. Another member, Dorothy Travers, of the Board stated that the Property should be used for its original use – as a school – and that St. Vincent should go somewhere else. This statement was also made after special counsel to the Board said on the record that limiting the use of this building to a school use could violate RLUIPA.

149. A member of the Board, Joe East, stated that although Plaintiffs presented evidence concerning properties they had explored for purchase or lease, the Board could not consider such evidence when deciding the use variance application. This statement was made following evidence submitted by Plaintiffs, through counsel, that a critical consideration in any RLUIPA “substantial burden” provision analysis is whether there are quick, reliable, and financially feasible alternatives that a religious institution may utilize to meets its religious needs in the event a land use agency denies a request for zoning approval. Because he believed that he could not consider the availability (or lack thereof) of quick, reliable, and financially feasible

alternatives, Mr. East voted to deny the use variance application, stating that his vote was based in part on the negative recommendation of the Commission.

150. Although the Board addressed some of Plaintiffs' arguments to demonstrate hardship, it did not discuss Plaintiffs' claim that the Property constitutes an unusual hardship in that it is part of a religious campus, and has been so for nearly a century.

151. One member of the Board, Henry Olender, spoke in favor of approving the use variance application. He stated that St. Vincent and the Church should be able to exercise freely their religion at the Property. He is the only member of the Board who mentioned Plaintiffs' religious exercise.

152. Mr. Olender stated that the City must work together with Plaintiffs rather than terminating Plaintiffs' religious exercise altogether.

153. Mr. Olender inquired of his fellow members as to whether the Board could, at a minimum, afford Plaintiffs additional time for St. Vincent to find a ready and feasible location for Plaintiffs to practice their religion. The rest of the members of the Board refused this request.

154. Chairman Marc Benjamin stated that he did not believe that St. Vincent's and the Church's use variance application should have been submitted to the ZBA, but should instead be handled by a court. The Chairman stated that his vote to deny the use variance was based in part on the Commission's negative recommendation.

155. The Board voted to deny the use variance application by a vote of 4-1 (the "Decision").

156. The Board could have voted to approve the use variance subject to certain conditions, but chose not to do so.

157. The Board could have voted to give St. Vincent additional time to operate at the Property until it found a ready and feasible alternative location to relocate, but chose not to do so.

158. Denial of the use variance application has created a greater sense of apprehension among St. Vincent's patrons, many of whom rely on its services for survival. These patrons fear that without the previously denied special permit or a use variance, St. Vincent will be forced to terminate its operations, leaving them without food.

159. Denial of the use variance application has created an even greater sense of apprehension among St. Vincent's members. St. Vincent's staff fears that without a use variance, they will no longer be able to serve the homeless and poor in accordance with their religious beliefs.

160. As a nonprofit organization with a limited budget, St. Vincent relies on grants from other charitable organizations to maintain its services to serve the poor and homeless to fulfill its religious beliefs.

161. Denial of the use variance application has severely hindered St. Vincent's ability to counteract the damage already inflicted by the prior denial of a special permit and prevents it from accessing charitable funds on which it relies to feed the poor and homeless.

162. In 2012, the grant money that St. Vincent received from other charitable organizations accounted for nearly one-quarter of its entire budget.

163. Without the support of its grantors, St. Vincent cannot perform its religious mission of providing food and assistance to the impoverished.

164. St. Vincent continuously seeks grants from a number of funders since nearly one-quarter of its revenue depends on their awards.

165. Organizations offering grant money, some of which have provided funding to St. Vincent in the past, generally require an applicant to be in compliance with the Zoning Ordinances for the location of their operations so as to receive grants.

166. Certain charitable organizations which regularly grant money to St. Vincent, including the Liberty Bank Foundation, the R.S. Gernon Trust, and the Edward and Mary Lord Foundation, require an applicant to provide information about where and when activities will take place.

167. Some charitable organizations have informed St. Vincent that (1) it must first resolve its alleged non-compliance with the Zoning Ordinances to receive funding or (2) its alleged noncompliance with the Zoning Ordinances will adversely affect the amount of funding that it receives, if any.

168. Without funding, St. Vincent is unable to move forward with much needed facility renovations, including the installation of an elevator to accommodate disabled patrons. Because St. Vincent is unable to obtain the necessary funding to purchase and install an elevator, some of its disabled patrons have already stopped coming to St. Vincent altogether due to the lack of handicapped accessibility. Likewise, the absence of such access prevents St. Vincent from attracting and serving new disabled patrons requiring handicapped accessibility.

169. Plaintiffs are therefore unable to fulfill their religious mission “to provide food, companionship, and advocacy to anyone in need, regardless of race or religion,” such as the disabled requiring handicapped accessibility.

170. St. Vincent must install a commercial dishwasher that can handle the demand of its services, and which costs between \$10,000 and \$15,000, but is unable to do so without funding. It is unable to raise funds to do so because it is without a permanent location. Without a commercial dishwasher that can handle its demand, St. Vincent must resort to using paper goods at a cost of approximately \$800 per month, an expense that would disappear with the acquisition of a commercial dishwasher.

171. St. Vincent has two clothes washing machines and two dryers, but is unable to use them in the limited space in the religious school building where it is confined (the basement and two rooms on the first floor). St. Vincent previously offered its patrons clothes washing and clothes drying services at 10 Railroad Place. Providing this service is a form of Plaintiffs' religious exercise.

172. The limited space where St. Vincent is confined does not provide it with adequate space to store food to be served to its patrons. St. Vincent is forced to store some food off-site or must reject food donations due to a lack of storage space.

173. The Board's denial of the use variance application compounds the damage already inflicted separately by the Commission in its own decision to deny the special permit application, substantially burdening and preventing Plaintiffs from the free exercise of their religion. The City, through the actions of the Board, has rendered Plaintiffs' religious exercise impracticable.

174. The harm to Plaintiffs caused by Defendants' laws and actions, which prevents Plaintiffs from exercising freely their religion, is immediate and severe.

175. This action is ripe for review.



**COUNT I**

**Violation of RLUIPA's Substantial Burden Provision**

**42 U.S.C. § 2000cc(a)**

176. Paragraphs 1 through 175 are incorporated by reference as if set forth fully herein.

177. Congress requires that the Court construe RLUIPA “in favor of broad protection of religious exercise, to the maximum extent permitted by the terms of [RLUIPA] and the Constitution.” 42 U.S.C. § 2000cc3(g).

178. With no ready and feasible alternative location, the Decision will prohibit St. Vincent’s operation and, thus, force St. Vincent, the Church, and the Diocese to not only modify their religious conduct, but preclude them entirely from continuing such religious exercise.

179. If not enjoined, the Decision will leave St. Vincent and the Church with no ready and feasible alternative to perpetuate the mission of the Diocese, continue St. Vincent’s existence as an operating entity, and allowing Plaintiffs to exercise freely their religion; at best, St. Vincent will undergo substantial delay, uncertainty, and expense to one day continue its operations, preventing Plaintiffs’ free exercise of religion.

180. The Decision is arbitrary, irrational, and bears no substantial relation to the public health, safety, and welfare.

181. By imposing and implementing the City’s land use and zoning laws in this manner, and by the conduct described above, Defendants have imposed and will continue to impose a substantial burden on the religious exercise of Plaintiffs in violation of 42 U.S.C. § 2000cc(a)(1).

182. The imposition of this substantial burden on the religious exercise of Plaintiffs by Defendants is not in furtherance of a compelling governmental interest, nor is it the least restrictive means of furthering any alleged interest, as required by 42 U.S.C. § 2000cc(a)(1).

183. This substantial burden on the religious exercise of Plaintiffs is imposed by Defendants in the implementation of a system of land use regulations under which Defendants make and have in place formal and informal procedures or practices that permit them to make individualized assessments of land uses, as contemplated by 42 U.S.C. § 2000cc(a)(2)(C).

184. The substantial burden on Plaintiffs' religious exercise will affect commerce among the several states, as contemplated by 42 U.S.C. § 2000cc(a)(2)(B).

185. The substantial burden on the religious exercise of Plaintiffs is imposed on a program or activity that receives Federal financial assistance, as contemplated by 42 U.S.C. § 2000(a)(2)(A).

#### **Prayer for Relief**

186. By virtue of the foregoing conduct, Defendants have violated Plaintiffs' rights under 42 U.S.C. § 2000cc(a), and Plaintiffs are accordingly entitled to such relief as the Court finds to be appropriate, including but not limited to, a declaration that the denial of Plaintiffs' use variance application is void, invalid, and unconstitutional as applied, an order that the Board grant Plaintiffs' application for a use variance, temporary, preliminary, and permanent injunctive relief to enjoin Defendants from preventing St. Vincent from continuing to operate at the Property based on the Board's denial of the use variance application, compensatory damages, and attorneys' fees and costs, pursuant to 42 U.S.C. § 1988.

**COUNT II**

**42 U.S.C. § 2000cc(b)(2)  
Violation of Religious Land Use and Institutionalized  
Persons Act – “Nondiscrimination”**

187. Paragraphs 1 through 175 are incorporated by reference as if set forth fully herein.

188. By imposing and implementing the City’s land use and zoning laws and regulations in the manner described above, and by the conduct described above, Defendants are treating St. Vincent and the Church on less than equal terms with comparable and similarly situated religious institutions, which institutions Defendants freely permit to engage in the similar practice of providing free food meals, food, and other services to the poor and homeless. Such conduct has deprived and will continue to deprive Plaintiffs of their right to the free exercise of religion.

189. The Board’s was motivated by illegal and improper animus, hostility, and impermissible considerations, including religion and intent to inhibit constitutionally protected rights.

190. The Board’s differential treatment lacks any rational basis, much less a compelling governmental interest.

**Prayer for Relief**

191. By virtue of the foregoing conduct, Defendants have violated Plaintiffs’ rights under 42 U.S.C. § 2000cc(b), and Plaintiffs are accordingly entitled to such relief as the Court finds to be appropriate, including but not limited to, a declaration that the denial of Plaintiffs’ use variance application is void, invalid, and unconstitutional as applied, an order that the Board

grant the use variance application, temporary, preliminary, and permanent injunctive relief to enjoin Defendants from preventing St. Vincent from continuing to operate at the Property and from the Church being allowed to have St. Vincent conduct its operations there based on the Board's denial of the use variance application, compensatory damages, and attorneys' fees and costs, pursuant to 42 U.S.C. § 1988.

### **COUNT III**

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

192. Paragraphs 1 through 175 are incorporated by reference as if set forth fully herein.

193. By imposing and implementing the City's land use and zoning laws and regulations in the manner described above, and by the conduct described above, Defendants are treating Plaintiffs on less than equal terms with comparable and similarly situated nonreligious institutions, which institutions Defendants freely permit to engage in the similar practice of providing free food meals, food, and other services to the poor and homeless. Such conduct has deprived and will continue to deprive Plaintiffs of their right to the free exercise of religion.

194. The Board was motivated by illegal and improper animus, hostility, and impermissible considerations, including, but not limited to religion, intent to inhibit constitutionally protected rights, and bad faith.

195. The Board's differential treatment lacks any rational basis, much less a compelling governmental interest.

**Prayer for Relief**

196. By virtue of the foregoing conduct, Defendants have violated Plaintiffs' rights under 42 U.S.C. § 2000cc(b), and Plaintiffs are accordingly entitled to such relief as the Court finds to be appropriate, including but not limited to, a declaration that the denial of Plaintiffs' use variance application is void, invalid, and unconstitutional as applied, an order that the Board grant the use variance application, temporary, preliminary, and permanent injunctive relief to enjoin Defendants from preventing St. Vincent from continuing to operate at the Property and from the Church being allowed to have St. Vincent conduct its operations there based on the Board's denial of the use variance application, compensatory damages, and attorneys' fees and costs, pursuant to 42. U.S.C. § 1988.

**COUNT IV**

**Violation of the United States Constitution –  
First Amendment Free Exercise of Religion  
42 U.S.C. § 1983**

197. Paragraphs 1 through 175 and 177 through 185 are incorporated by reference as if set forth fully herein.

198. Defendants have deprived and continue to deprive Plaintiffs of their right to the free exercise of religion, as secured by the First Amendment to the United States Constitution, as made applicable to the States by the Fourteenth Amendment, by imposing and implementing the City's land use and zoning laws and regulations in the manner described above, and by the conduct described above.

199. Defendants' implementation, imposition, and application of the City's land use laws and regulations is not neutral and generally applicable, but instead discriminates unfairly against Plaintiffs.

200. Defendants have imposed a substantial burden on Plaintiffs' free exercise of religion without any compelling reason, and without using the least restrictive means, including but not limited to granting a use variance with reasonable conditions.

201. Defendants have imposed a substantial burden on Plaintiffs' free exercise of religion without any rational basis.

202. By singling out Plaintiffs for unequal, adverse treatment, and bowing to pressure from neighborhood opponents, Defendants have deprived Plaintiffs of rights, remedies, privileges, and immunities guaranteed to every citizen of the United States, in violation of 42 U.S.C. § 1983, including, without limitation, the right to the free exercise of religion guaranteed by the First and Fourteenth Amendments to the United States Constitution.

203. Defendants, acting through and in concert with each other, under the color of law and in their respective official capacities, and in furtherance of a custom or policy of the City, have deprived Plaintiffs of their constitutionally protected rights, which has caused Plaintiffs immediate and irreparable injury.

#### **Prayer for Relief**

204. Plaintiffs are accordingly entitled to such relief as the Court finds to be appropriate, including but not limited to a declaration that the denial of St. Vincent's use variance application is void, invalid, and unconstitutional as applied, an order that the Board grant the use variance application, temporary, preliminary, and permanent injunctive relief to

enjoin Defendants from preventing St. Vincent from continuing to operate at the Property and from the Church being allowed to have St. Vincent conduct its operations there based on the Board's denial of the use variance application, compensatory damages, and attorneys' fees and costs, pursuant to 42. U.S.C. § 1988.

**COUNT V**

**Violation of the United States Constitution –  
Fourteenth Amendment Equal Protection  
42 U.S.C. § 1983**

205. Paragraphs 1 through 175, 188 through 190, and 193 through 195 are incorporated by reference as if set forth fully herein.

206. Plaintiffs are a "class of one" and are protected by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

207. Defendants have arbitrarily and selectively interpreted and enforced the Zoning Ordinances and land use laws, and have singled out Plaintiffs for arbitrary and selective enforcement by denying Plaintiffs' use variance application to operate at the Property and providing services and programs substantially similar to those that the City permits other similarly situated religious institutions to conduct.

208. Defendants lack any rational basis in their differential treatment.

209. Further, this differential treatment was based on impermissible considerations, including, but not limited to religion, intent to inhibit constitutionally protected rights, and bad faith.

210. By singling out Plaintiffs for unequal, adverse treatment, and bowing to the pressure from neighborhood opponents, Defendants have deprived, and continue to deprive,

Plaintiffs of their rights, remedies, privileges, and immunities guaranteed to every citizen of the United States, in violation of 42 U.S.C. § 1983, including, without limitation, the right to equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

### **Prayer for Relief**

211. Plaintiffs are accordingly entitled to such relief as the Court finds to be appropriate, including but not limited to a declaration that the denial of St. Vincent's use variance application is void, invalid, and unconstitutional as applied, an order that the Board grant the use variance application, temporary, preliminary, and permanent injunctive relief to enjoin Defendants from preventing St. Vincent from continuing to operate at the Property and from the Church being allowed to have St. Vincent conduct its operations there based on the Board's denial of the use variance application, compensatory damages, and attorneys' fees and costs, pursuant to 42. U.S.C. § 1988.

### **COUNT VI**

#### **Violation of the Connecticut Religious Freedom Act Connecticut General Statutes § 52-571b**

212. Paragraphs 1 through 175, 177 through 185, and 198 through 203 are incorporated by reference as if set forth fully herein.

213. Defendants have deprived and continue to deprive St. Vincent of its right to the free exercise of religion, as secured by Connecticut General Statutes § 52-571b, by imposing and implementing a land use regulation that discriminates against St. Vincent on the basis of its religious beliefs and burdens St. Vincent's religious exercise in a manner that neither furthers a



compelling governmental interest nor uses the least restrictive means to achieve any alleged interest.

### **Prayer for Relief**

214. Plaintiffs are accordingly entitled to such relief as the Court finds to be appropriate, including but not limited to a declaration that the denial of Plaintiff's use variance application is void, invalid, and unconstitutional as applied, an order that the Board grant the use variance application, temporary, preliminary, and permanent injunctive relief to enjoin Defendants from preventing St. Vincent from continuing to operate at the Property and from the Church being allowed to have St. Vincent conduct its operations there based on the Board's denial of the use variance application, compensatory damages, and attorneys' fees and costs, pursuant to 42 U.S.C. § 1988.

### **COUNT VII**

#### **Violation of the Connecticut State Constitution Freedom of Worship; Religious Liberty Article I § 3**

215. Paragraphs 1 through 175, 177 through 185, 198 through 203, and 213 are incorporated by reference as if set forth fully herein.

216. Defendants have deprived and continue to deprive Plaintiffs of their right to freedom of worship and religious liberty, as secured by Article I, Section 3 of the Connecticut Constitution by imposing and implementing the City's land use and zoning laws and regulations in the manner described above, and by the conduct described above.

217. Defendants have caused, and continue to cause, Plaintiffs to suffer immediate and irreparable injury.

**Prayer for Relief**

218. Plaintiffs are accordingly entitled to such relief as the Court finds to be appropriate, including but not limited to a declaration that the denial of St. Vincent's use variance application is void, invalid, and unconstitutional as applied, an order that the Board grant the use variance application, temporary, preliminary, and permanent injunctive relief to enjoin Defendants from preventing St. Vincent from continuing to operate at the Property and from the Church being allowed to have St. Vincent conduct its operations there based on the Board's denial of the use variance application, compensatory damages, and attorneys' fees and costs, pursuant to 42 U.S.C. § 1988.

**COUNT VIII**

**Violation of the Connecticut State Constitution  
Equal Protection of Laws  
Article I § 5**

219. Paragraphs 1 through 175, 188 through 190, 193 through 195, and 206 through 210 are incorporated by reference as if set forth fully herein.

220. Defendants have arbitrarily and selectively interpreted and enforced the Zoning Ordinances and land use laws, and have singled out Plaintiffs for arbitrary and selective enforcement by denying St. Vincent's use variance application to operate at the Property and providing services and programs substantially similar to those that the City permits other similarly situated religious institutions to conduct.

221. By singling out Plaintiffs for unequal, adverse treatment, and bowing to the pressure from neighborhood opponents, Defendants have deprived and continue to deprive Plaintiffs of their rights, remedies, privileges, and immunities guaranteed to every citizen of the

State of Connecticut, in violation of Article I, § 5 of the Connecticut Constitution, including, without limitation, the right to equal protection of the laws.

**Prayer for Relief**

222. Plaintiffs are accordingly entitled to such relief as the Court finds to be appropriate, including but not limited to a declaration that the denial of St. Vincent's use variance application is void, invalid, and unconstitutional as applied, an order that the Board grant the use variance application, temporary, preliminary, and permanent injunctive relief to enjoin Defendants from preventing St. Vincent from continuing to operate at the Property and from the Church being allowed to have St. Vincent conduct its operations there based on the Board's denial of the use variance application, compensatory damages, and attorneys' fees and costs, pursuant to 42 U.S.C. § 1988.

**COUNT IX**

**Connecticut General Statutes  
Section 8-8**

223. Plaintiffs 1 through 175 are incorporated by reference as if set forth fully herein.

224. Legal Notice of the Board's Decision to deny Plaintiffs' application for a use variance was published in *Norwich Bulletin* on May 16, 2013.

225. As the property owner, the Church, and the operator, St. Vincent, and both the Church and St. Vincent as applicants, Plaintiffs are statutorily and classically aggrieved by the Board's decision for purposes of taking this appeal because they have specific, personal, and legal interests in the decision and their interests are specially and injuriously affected by the decision. St. Vincent and the Church's ability to freely exercise their religious beliefs has been immediately, severely, and irreparably harmed.

226. The Board's action in denying Plaintiffs' use variance application was illegal, unlawful, arbitrary, capricious, contrary to the substantial evidence in the record, the product of a tainted proceeding, and an abuse of the powers vested in the Board under the statutes of the State of Connecticut, the City Charter, and the Zoning Ordinances for one or more of the following reasons:

- a. At least one member of the Board, Kramarewicz, had an illegal conflict of interest, in violation of § 8-11 of the General Statutes and tainted the proceedings prior to his recusal;
- b. A voting member of the Board, Dussault, illegally predetermined his decision regardless of the evidence and testimony presented by St. Vincent and the Church;
- c. The Property and former religious school building create an unusual hardship warranting the issuance of a use variance;
- d. The Property and former religious school building constitute non-conforming religious and educational uses that pre-date the enactment of the Zoning Ordinances;
- e. The Board failed to consider RLUIPA;
- f. The Board failed to properly apply RLUIPA;
- g. The Board's decision is not supported by substantial evidence in the record.

**Prayer for Relief**

227. Plaintiffs pray that the Court:

- a. Sustain the appeal and render judgment in favor of Plaintiffs;
- b. Based upon the law and the administrative record, reverse the Decision and direct the Board to grant the use variance subject to conditions of approval offered by Plaintiffs;
- c. Award costs as provided by § 8-8(1) of the General Statutes; and
- d. Grant such other relief as in law or equity may apply.

PLAINTIFFS,

THE ST. JOSEPH'S POLISH ROMAN  
CATHOLIC CONGREGATION AND  
ST. VINCENT DE PAUL PLACE,  
NORWICH, INC. AND

By /s/ Brian Smith

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 15, 2014, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

/s/ Brian Smith

Brian R. Smith