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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

BAYONNE MUSLIMS, ABDUL HAMEED BUTT,
and KHALED ALY,

Plaintiffs,

v.

CITY OF BAYONNE, CITY OF BAYONNE
ZONING BOARD OF ADJUSTMENT, MARK
URBAN, in his official capacity, CLIFFORD
ADAMS, in his official capacity, JAN PATRICK
EGAN II, in his official capacity, VINCENT J.
LeFANTE, in his official capacity, LOUIS
LOMBARI, in his official capacity, FRANK
PELLITTERI, in his official capacity, MATT
DORANS, in his official capacity, JOSEPH
PINEIRO, in his official capacity, JAMES
O'BRIEN, JR., in his official capacity, and
NICHOLAS DiLULLO, in his official capacity,

Defendants.

Civil Action No. _____

COMPLAINT

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LOCAL CIVIL RULE 10.1 STATEMENT OF PARTY ADDRESSES

Plaintiff Bayonne Muslims has a business address of 109 East 24 Street, Bayonne, New Jersey 07002. Plaintiff Abdul Hameed Butt serves as the President of Bayonne Muslims, and has a business address of 109 East 24 Street, Bayonne, New Jersey 07002. Plaintiff Khaled Aly serves as the Vice President of Bayonne Muslims, and has a business address of 109 East 24 Street, Bayonne, New Jersey 07002.

Defendants City of Bayonne and the City of Bayonne Zoning Board of Adjustment share a business address of 630 Avenue C, Bayonne, New Jersey 07002. Defendant Mark Urban is the current Chairman of the City of Bayonne Zoning Board of Adjustment, and has a business address of 630 Avenue C, Bayonne, New Jersey 07002. Defendant Clifford J. Adams is the current Vice Chairman of the City of Bayonne Zoning Board of Adjustment, and has a business address of 630 Avenue C, Bayonne, New Jersey 07002. Defendant Jan Patrick Egan II is the current Secretary of the City of Bayonne Zoning Board of Adjustment, and has a business address of 630 Avenue C, Bayonne, New Jersey 07002. Defendants Vincent J. LeFante, Louis Lombardi, and Frank Pellitteri are the current Commissioners of the City of Bayonne Zoning Board of Adjustment, and have a business address of 630 Avenue C, Bayonne, New Jersey 07002. Defendants Matt Dorans, Joseph Pineiro, James O'Brien, Jr., and Nicholas DiLullo are the current Alternate Commissioners of the City of Bayonne Zoning Board of Adjustment, and have a business address of 630 Avenue C, Bayonne, New Jersey 07002.

The personal addresses of the parties who are natural persons are not provided at this time in order to protect their privacy.

Plaintiffs Bayonne Muslims, Abdul Hameed Butt, and Khaled Aly, through their attorneys, make the following allegations against Defendants City of Bayonne, the Bayonne Zoning Board of Adjustment (the “Zoning Board”), and the Zoning Board’s Chairman, Vice Chairman, Commissioners, and Alternate Commissioners (the “Individual Defendants”), except as to matters not within Plaintiffs’ personal knowledge, which are alleged on information and belief.

INTRODUCTION

1. Plaintiffs bring this action to challenge the Defendants’ denial of their application to build a mosque in Bayonne, New Jersey.

2. Plaintiffs applied to the Zoning Board for routine variances, which were needed to convert a decrepit, abandoned, and trash-strewn warehouse on a blighted street into a vibrant community mosque. Plaintiffs then endured years of bigotry and hate crime from those opposed to the mosque. Ultimately, the Zoning Board capitulated to the community’s anti-Muslim animus and denied the application. It did so even though it had previously granted indistinguishable variances to Christian churches. The Zoning Board violated both federal and state law to achieve its desired outcome.

3. The Zoning Board’s denial came after Plaintiffs had invested years of effort to build a mosque to serve the local Muslim community, which had prayed for years in rented space in the dark basement of a local church. That rented space was unsuitable for Islamic worship and insufficient to accommodate the congregation’s activities. Bayonne’s Muslims have no permanent place to pray in a city filled with nearly 40 houses of worship for those of other faiths.

4. Plaintiffs were conscious from the outset, however, that other Muslim groups in New Jersey attempting to build mosques have faced explosive hostility. Accordingly, to preempt

any issues, they consulted with City officials—specifically, Donna Ward, Bayonne’s Zoning Officer; Mark Smith, the City’s then outgoing Mayor; and James Davis, the City’s then incoming Mayor—about their plans. They evaluated several potential sites over five years and rejected many at the suggestion of the City officials, who cautioned that the properties were in congested areas of town or did not provide adequate parking. The site ultimately selected by Bayonne Muslims, 109 East 24th Street (the “Property”), by contrast, has ample on-site parking and is located in a part of the town with sparse traffic and plentiful street parking. Plaintiffs were assured by Ms. Ward, Mayor Smith, and Mayor Davis prior to purchasing the Property that it was suitable for their intended use, and that Plaintiffs would have no problem obtaining the variances needed to use the existing building as a mosque. Indeed, the variances needed—relief from setback and buffer requirements—were routinely granted in a congested urban city like Bayonne, especially when existing buildings were being adapted.

5. The Property lies at the end of a dead-end street. The building on the Property originally served as a factory and later as a trucking and shipping warehouse for a roofing company. Most recently, the now-abandoned building was rented by a motorcycle club, which used it for parties. Another abandoned industrial warehouse bookends the opposite end of the street, and a chemical grouting company is located another half-block away. The Property faces onto and is adjacent to yet another industrial property that is now being redeveloped. Beyond the dead-end street lie towering and massive tanks where oil companies stored gasoline in Bayonne for decades.

6. Bayonne Muslims’ plan called for adapting the existing building on the Property. While the interior would be thoroughly renovated, the plans for the exterior of the building were limited to cosmetic improvements, including painting, the removal of barbed wire, replacement

of fencing, and installation of new lighting and landscaping. The exterior would otherwise remain unchanged, which meant the surrounding properties would continue to face the same walls at the same distance as had been the case for decades.

7. As soon as it became known that a mosque was planned for the area, however, local objectors swarmed. One prominent objector, who asserted purported land use concerns at every hearing of the Zoning Board, admitted to the press that he opposed the mosque because “the reality is there are a lot of issues that come with [diversity],” that too many people are coming across the border, and that “the community won’t be safe.” He proposed that a Catholic Church instead be built at the proposed site.

8. An objector also posted a petition on Change.org, titled “Stop the Bayonne Mosque/Cultural Center,” that drew several hundred signatures. The signatories—often stating that they were local residents—openly addressed their motivations for signing the petition. One illustrative example: “Why should Bayonne bend over backwards for these warmongers.”

9. Michael Alonso, a local politician who has billed himself the leader of the “Real Republicans” in Bayonne, expressed similar bases for opposing the mosque in a television news interview: “It’s definitely not the right time, with everything that’s happening recently and all over the world. We have ISIS. We have Christians being beheaded. We have the LGBT community being targeted. This is just not the right time. . . . And at the same time, residents don’t feel safe.”

10. Objectors also coordinated their efforts online. A Facebook group started by objectors, titled “Stop the Mosque in Bayonne,” drew support from several hundred people. Its postings included a picture of a man holding a sign stating “DEMOCRACY OR SHARIA LAW,” posts about crimes by individual Muslims, and a photo of the World Trade Center Twin

Towers. The Facebook group also posted information about relevant Zoning Board meetings and pressured local politicians to oppose the mosque. Referencing the fact that Bayonne Muslims was then worshipping in the basement of a local church, the Facebook page stated: “Shame on St [*sic*] Henry’s Church for allowing this.”

11. The opposition also targeted local businesses owned by Muslims. It posted flyers and billboards throughout Bayonne encouraging boycotts of Muslim-owned businesses. These flyers targeted Judicke’s Bakery, a local shop owned by Plaintiff Khaled Aly, and Yellow Cab, a local taxi company that he co-owns. A local publication, *Bayonne Times*, published an ad encouraging the boycott: “**REMEMBER 9/11** . . . People once said ‘Never Forget,’ . . . Yellow Cab & Judicke’s bakery have already forgotten. **Boycott them all.**” (Emphasis in original.)

12. Even Muslim schoolchildren in Bayonne were not spared. Flyers placed in school mailboxes read: “No Mas! No Mosque!” (“No Mas” is Spanish for “No More.”)

13. Signs stating “SAVE BAYONNE” and “STOP THE MOSQUE” were also printed and displayed at various places in Bayonne. Opponents at hearings carried signs that declared: “IF THE MOSQUE COMES, THE MAYOR GO’S [*sic*].”

14. Even the church basement rented by Bayonne Muslims for their prayer services was targeted. A Bayonne resident spray painted the walls with graffiti, including “FUCK MUSLIMS,” “FUCK ALLAH,” “FUCK ARABS,” and “DONALD TRUMP.” The church eventually refused to continue to rent space to Bayonne Muslims—leaving the congregation with no place to gather or pray.

15. Bayonne Muslims faced similar religious hostility inside the Zoning Board hearings. Before one meeting of the Zoning Board, a group of local residents attempted to disrupt a group of Muslim attendees praying quietly in a corner by loudly reciting a Christian

prayer. At another, Joseph Basile, a local pastor, questioned Bayonne Muslims' representative: "Do all the leaders in your congregation believe in Sharia law?" Another objector argued that the request for variance relief should be denied "because people are going [to become] radical and they [will] kill people." And yet another exhorted the Zoning Board that "it is imperative that [the] beliefs [of Muslims] be more carefully reviewed or examined before being adopted into [the] community."

16. Ultimately, the Zoning Board completed its hearings and held a vote. Bayonne Muslims had sought three sets of approvals: (i) a conditional use variance; (ii) a parking bulk variance; and (iii) certain other minor and uncontroversial bulk variances. A majority of the Zoning Board—four out of its seven voting members—voted in favor of the application. The conditional use variance required a supermajority of five votes and therefore was denied. The parking and other bulk variances, however, only required a simple majority of four votes in favor, which they received. The Zoning Board's resolution nonetheless deemed those variances denied.

17. The Zoning Board's supposed denial of a parking variance was also egregious for another reason: Plaintiffs should never have been forced to apply for a parking variance in the first place. Bayonne's Zoning Ordinance states explicitly that a house of worship need provide only one parking spot for every "4 seats in the main auditorium or their equivalent." On-site parking at the Property *exceeded* that standard. But the Zoning Board nonetheless insisted on far more parking and required a variance application, which it then denied. The Zoning Board had never applied its mosque-specific parking methodology to any Christian churches in Bayonne. Indeed, many Christian churches in Bayonne provide little or no parking at all.

18. As to the conditional use variance, the Zoning Board's resolution was based on

anti-Muslim community animus. And it is untenable on its face because the no-voters purported to base their determination on factors they were legally precluded from considering. Under Bayonne's Zoning Ordinance, churches and temples are a conditionally permitted use in residential zones, which means they are permitted so long as they have at least 20,000 square feet and satisfy the 30-foot setback and buffer requirements. Bayonne Muslims sought a variance from the setback and buffer requirements because the group sought to adapt the existing structure, which did not provide for any setback and buffer. Under binding New Jersey Supreme Court precedent, which the Zoning Board acknowledged in its resolution, the Zoning Board was required to narrowly limit its consideration to the impact of granting the required variances as to setbacks and buffers only. The Zoning Board was not permitted to consider other issues—such as traffic or the appropriateness of the neighborhood for a mosque—in making that determination. The City had already resolved those issues by deeming houses of worship conditionally permitted uses in the residential zone. Nonetheless, the no-voting zoning commissioners stated that they were voting no based on factors that they could not consider. They even referenced parking—even though the majority voted to grant a parking variance.

19. The Zoning Board's misplaced focus also meant that it failed to identify any compelling governmental interest requiring denial of the setback and buffer variances as required by federal law. Nor could it. Nothing was being changed in terms of the structure of the existing building on the site. Indeed, the Property was to be used for a less intensive use—a mosque as opposed to an industrial warehouse or a motorcycle club party venue.

20. Even if the no-voters had been permitted to consider extraneous factors, however, their determinations were contrary to the unrebutted testimony of both the applicants' experts and the Zoning Board's own experts. All the experts agreed that the mosque would have no

appreciable impact on traffic in the area and that parking was plentiful during times of peak usage. The Chairman of the Zoning Board, however, rejected all of the experts' analyses because he had purportedly "passed the area several times."

21. The Zoning Board's treatment of Bayonne Muslims' application for a conditional use variance contrasts sharply with how it treated prior applications by Christian churches presenting the same issues. Under the Zoning Board's own precedents dealing with Christian churches, setback and buffer relief is granted as a matter of course if "the building setback and buffer area are preexisting conditions." The Zoning Board subjected Bayonne Muslims' application to different and uniquely harsh treatment. Indeed, the Zoning Board has granted Christian churches the same setback and buffer variances requested by Bayonne Muslims.

22. The Zoning Board Commissioners voting in favor of the application recognized that the denial was indefensible. For example, Commissioner Clifford J. Adams noted that "the inability to comply with the condition[al] use standards are all the result of existing conditions" and that the applicants sought only "variances that virtually any new religious institution being established or relocating in the City of Bayonne would require." He also acknowledged that "any increase in traffic will have a minimal impact on the surrounding area" and agreed that adequate parking was provided. Zoning Board Secretary Jan Patrick Egan and Commissioners Vincent J. LeFante and Frank Pellitteri similarly voted in favor of the application. But the minority group of no-voters—Chairman Mark Urban, then-Commissioner Edoardo Ferrante, Jr., and Commissioner Louis Lombardi—carried the day, and the mosque's opponents rejoiced. As the Muslim attendees exited the final Zoning Board meeting, opponents yelled at them: "go back to where you're from" and "you don't belong here."

23. Plaintiffs are from Bayonne and they belong in Bayonne. They bring this action

to challenge the Zoning Board's unjust denial and defend the fundamental rights afforded to them by the Constitutions of the United States and the State of New Jersey.

JURISDICTION AND VENUE

24. Plaintiffs' federal claims arise under 42 U.S.C. § 2000cc and 42 U.S.C. § 1983.

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

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

THE PARTIES

A. Plaintiff Bayonne Muslims

26. Bayonne Muslims is a not-for-profit religious congregation organized under the laws of New Jersey. Bayonne Muslims' mission is to accommodate the spiritual and religious needs of the Muslim community in Bayonne by providing facilities for religious knowledge and education. Bayonne Muslims endeavors to also provide for the spiritual and social well-being of the local community through recreational activities such as gatherings for the local youth, counseling for families, volunteering for the needy, and participating in interfaith dialogue. Members of Bayonne Muslims are active in the local community. For example, in recent years, they have spoken at memorial services for victims of the 9/11 terrorist attacks and volunteered for *Meals on Wheels* to provide a Thanksgiving Day lunch to senior citizen homes.

B. Plaintiff Abdul Hameed Butt

27. Plaintiff Abdul Hameed Butt is the President of Bayonne Muslims. He has been a

Bayonne resident since 1989. After arriving from Pakistan with a Master of Science in Chemistry, Mr. Butt worked for years as a lab technologist and a manager of a convenience store in New Jersey. He is a father of four sons, all of whom he and his wife raised in Bayonne. His two eldest sons were the first Muslim children to graduate at the top of their elementary school and high school classes in Bayonne. All four of his sons have obtained advanced degrees; three have obtained or are in the process of obtaining their PhDs, and one has a Master of Arts. As a retiree, Mr. Butt devotes much of his time to carrying out the mission of Bayonne Muslims and ensuring that the organization is able to build a religious home in the City.

C. Plaintiff Khaled Aly

28. Plaintiff Khaled Aly is the Vice President of Bayonne Muslims, and a long-time resident of Bayonne. After moving to the United States from Egypt in 1979, he began working at Judicke's Bakery in Bayonne as a dishwasher and then a baker. He purchased the bakery in 2000. Mr. Aly now owns or co-owns several other businesses in New Jersey and New York City, including Yellow Cab, a taxicab company in Bayonne. Mr. Aly's businesses employ dozens of individuals. Mr. Aly's bakery regularly donates baked goods to the Bayonne Fire Canteen and local soup kitchens, including soup kitchens organized by the local Catholic Church. He has also hosted fundraisers to help victims of fires and accidents in Bayonne. Mr. Aly met his wife in 1982 when she worked as a counter clerk at Judicke's Bakery. The couple's two daughters were born in Bayonne where they attended elementary school.

D. Defendant City of Bayonne

29. Defendant City of Bayonne is a city, chartered under the laws of the State of New Jersey, and located in Hudson County, New Jersey.

E. Defendant Zoning Board of Adjustment

30. Defendant Zoning Board of Adjustment is comprised of a Chairman, a Vice

Chairman, a Secretary, three Commissioners, and three Alternate Commissioners. The Zoning Board typically has four Commissioners, but one—Edoardo Ferrante, Jr.—recently resigned, and his replacement has not yet been named. The Zoning Board’s responsibilities include reviewing applications for construction or signage that do not meet the requirements of Bayonne’s Zoning Ordinance, ruling on applications for variances, and granting variances to allow departure from land use regulations.

F. The Individual Defendants

31. Defendant Mark Urban is the Chairman of the Zoning Board. Defendant Clifford J. Adams is the Vice Chairman of the Zoning Board. Defendant Jan Patrick Egan II is the Secretary of the Zoning Board. Defendants Vincent J. LeFante, Louis Lombardi, and Frank Pellitteri are Commissioners of the Zoning Board. Defendants Matt Dorans, Joseph Pineiro, James O’Brien, Jr., and Nicholas DiLullo are Alternate Commissioners of the Zoning Board. These Individual Defendants are all sued in their official capacities.

OVERVIEW OF APPLICABLE LAW

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

A. The Religious Land Use and Institutionalized Persons Act

33. RLUIPA was unanimously passed by the U.S. Congress and signed into law on September 22, 2000. Congress passed RLUIPA after three years of hearings, which, according to the congressional record, revealed “massive evidence” of widespread discrimination against

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

34. RLUIPA complements the protections endowed on religious exercise by the First Amendment by prohibiting, in relevant part, three types of conduct in the imposition and implementation of land use regulations. First, RLUIPA prohibits the implementation of land use regulations in a manner that imposes a substantial burden on the religious exercise of a person or religious institution, in the absence of a compelling state interest achieved by the least restrictive means.⁵ Second, RLUIPA prohibits discrimination on the basis of religion in the imposition or implementation of any land use regulation.⁶ Third, RLUIPA prohibits the imposition or implementation of a land use regulation in a manner that totally excludes or unreasonably limits

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

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

³ H.R. Rep. No. 106-219, at 19-20.

⁴ 146 Cong. Rec. S7774.

⁵ 42 U.S.C. § 2000cc(a).

⁶ *Id.* at § 2000cc(b)(2).

religious assemblies, institutions, or structures within a jurisdiction.⁷ Additionally, pursuant to 42 U.S.C. § 1988(b), prevailing plaintiffs under RLUIPA are eligible for an award of attorneys' fees.

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

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

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

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

C. The New Jersey Municipal Land Use Law

38. Under the New Jersey Municipal Land Use Law (the “MLUL”), a municipal zoning board—here, Defendant Zoning Board—is tasked with reviewing and ruling on

⁷ *Id.* at § 2000cc(b)(3)(B).

applications for variance relief from the municipality's zoning ordinance. Bayonne's Zoning Ordinance, codified in Chapter 35 of Bayonne's Revised General Ordinances, was passed pursuant to the MLUL. Under the MLUL, the Zoning Board has the power to grant two types of variances: "c" variances," which are sometimes referred to as "bulk variances," and are governed by N.J. Stat. § 40:55D-70(c); and "d" variances, which are sometimes referred to as "use variances," and are governed by N.J. Stat. §40:55D-70(d).

39. The MLUL allows local zoning boards to grant a "c" variance if the applicant demonstrates that by reason of the shape, topographic conditions, or "an extraordinary and exceptional situation uniquely affecting a specific piece of property or structure," the strict application of a zoning regulation "would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer" N.J. Stat § 40:55D-70(c)(1). An applicant can also obtain a "c" variance where the purposes of the MLUL "would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment" *Id.* § 40:55D-70(c)(2). In order to be approved, a request for a "c" variance must be approved by a simple majority of the zoning board. *Id.* § 40:55D-9(a).

40. The MLUL requires a "d" variance with respect to certain deviations from a municipal zoning ordinance, including "deviation from a specification or standard . . . pertaining solely to a conditional use" *Id.* § 40:55D-70(d). New Jersey law requires an applicant seeking a "d" variance to require proof of both "positive" and "negative" criteria. Under the positive criteria, the applicant must establish "special reasons" for the grant of the variance. *Id.* The negative criteria require proof that the variance "can be granted without substantial detriment to the public good" and that it "will not substantially impair the intent and the purpose

of the zone plan and zoning ordinance.” *Id.* A variance for conditional use under this provision “shall be granted only by affirmative vote of at least five members” *Id.*

41. Under New Jersey law, in evaluating whether to grant a “d” variance related to a conditional use, the zoning board must be mindful that the municipality has determined that the use proposed by the applicant (here, a house of worship) is allowable in the relevant zoning district (here, a residential zone) subject to the satisfaction of conditions set forth in a municipal zoning ordinance (here, a 30-foot setback and buffer). Accordingly, New Jersey law requires the standard of proof to obtain a variance from conditions imposed on a conditional use to be relevant to the nature of the specific deviation from the ordinance. In other words, in evaluating whether to grant a variance with respect to specific conditions required by the zoning ordinance, the zoning board cannot base its decision on the general notion that the specific property is not a “good fit” for the neighborhood, which determination has already been made by the zoning ordinance by allowing the use to be conducted in a particular zoning district so long as the applicant satisfies certain specified conditions.

42. The MLUL forbids decisions by zoning boards that are against the weight of substantial evidence and that are arbitrary, capricious, or unreasonable.

THE FACTS

A. Bayonne Muslims Do Not Have a Facility Where Its Members Can Worship In Compliance With Their Islamic Faith

43. Bayonne is a city that has approximately 5.8 square miles. It has nearly three dozen houses of worship devoted to the Christian and Jewish faiths, but lacks a permanent mosque.

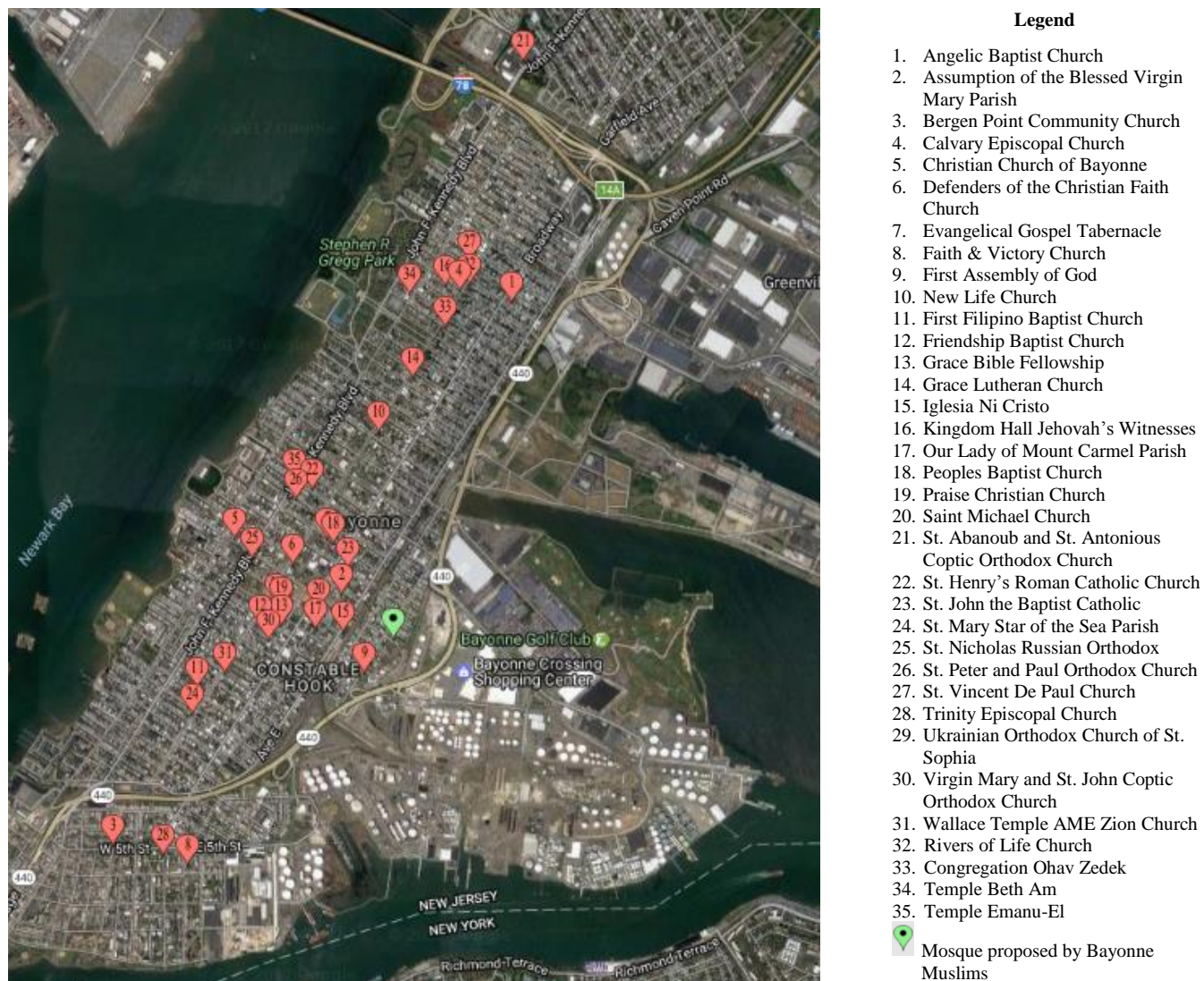


Figure 1: Churches and Temples in Bayonne

44. The Islamic faith places substantial value in mosques. Each mosque is considered to be a house of God where congregants come to share their common faith and to engage in worship. Muslims are required to pray five times a day, preferably in a mosque. The Friday afternoon prayer service, referred to as *Jumma*, is the most important service of the week where members of the community congregate to listen to a sermon delivered by an *Imam*, the leader of the Muslim congregation who leads the prayer services and addresses the congregation's spiritual needs. Muslims also come to the mosque for various other special prayer services, such

as evening prayers during the Islamic holy month of *Ramadan*, prayers on Islamic holidays such as the two *Eid* festivals that take place each year, and funeral prayers. Without a permanent mosque, a Muslim community cannot attract a permanent imam, and it lacks a stable and central location for faith-based education for Muslim children.

45. A mosque must also be constructed and designed in a manner that allows Muslims to fully experience their faith in a manner consistent with its tenants. For instance, a mosque is supposed to contain an area that is designed and devoted to *wudu*, a ritual ablution of the face, arms, and feet that Muslims must conduct prior to each prayer. A *wudu* area must provide ample space, specially designed wash basins, and access to clean water. Further, a mosque should have a single prayer hall enabling all worshippers to stand and sit in congregation and to see and hear the imam leading the prayer. Buildings designed for other uses often lack the layout and facilities necessary to operate a mosque consistent with Islamic tenets.

46. From 2008 until January 31, 2017, Bayonne Muslims rented two rooms in the basement of St. Henry's School, which is associated with the St. Henry Roman Catholic Church, in Bayonne. Bayonne Muslims used these rooms for prayer services and religious educational programming for Muslim youth. However, given its odd configuration—one room approximately 24x60 feet and an additional overflow room—the St. Henry facility was crowded and cramped. It was also dark and not structured to allow the Bayonne Muslims congregation to fully experience their faith. For instance, congregants needed to be split up in two different rooms for the *Jumma* prayer, impeding their ability to congregate as a group and to see and hear the imam. The facility also lacked a dedicated area for *wudu*, and congregants were encouraged to perform their ablution at home or work prior to attending a prayer service.



Figure 2: Bayonne Muslims Entering Basement of the St. Henry's Facility



Figure 3: *Jumma* Prayer in the Basement of the St. Henry's Facility

47. One member of the Muslim community described her feelings about being forced to pray in a basement during a Zoning Board hearing: “When I pray in that basement, I feel like I’m the most horrible person on Earth because my head can’t go up to the sky. I can’t be like everyone else because I’m persecuted for being Muslim.”

48. Without a permanent home, Bayonne Muslims could not attract a fulltime imam. Nor could Bayonne Muslims fulfill its spiritual mission or provide the additional religious and social services that the organization endeavored to provide to fully realize fundamental tenets of the Islamic faith.

49. Bayonne Muslims' lease for the St. Henry facility expired on January 31, 2017. Despite the fact that Bayonne Muslims had utilized this facility for nearly nine years without an incident—except for one case of anti-Islam vandalism discussed below—the St. Henry Roman Catholic Church refused to renew the group's lease. Today, Bayonne Muslims is without a home. Its congregants are forced to travel to neighboring cities and towns or pursue other avenues to practice their Islamic faith.

B. Bayonne Muslims Searched for a Permanent Spiritual Home for Years Before Settling on an Abandoned Factory

50. In 2012, given the space limitations and other restrictions in the St. Henry's basement, Bayonne Muslims began searching for a permanent spiritual home of their own. In doing so, the organization regularly consulted with City officials about its plans. Bayonne Muslims evaluated several sites. Because many of the listings were located in high density areas with congested traffic and little parking, City officials recommended that the organization forgo those properties and focus its efforts on less congested areas of the City.

51. For example, Bayonne Muslims considered purchasing a property at 493-495 Broadway in Bayonne. But the group was informed by Donna Ward, Bayonne's Zoning Officer, that it would not receive the requisite variances because the property provides for little parking and is located in Bayonne's congested retail area. Despite the fact that the area is home to many other houses of worship, Bayonne Muslims followed the City's recommendation.

52. Bayonne Muslims also considered purchasing 80 West 47th Street in Bayonne.

But the group was again informed by Ms. Ward that it would not be granted the requisite variances because the location did not provide any off-street parking. Bayonne Muslims again followed the City's recommendation despite the fact that most other houses of worship in the City do not provide any off-street parking whatsoever.

53. Bayonne Muslims then came across 109 East 24 Street, which is located in a non-congested part of the City with ample parking. Bayonne Muslims was informed by Ms. Ward and Mark Smith, the City's then Mayor, that the Property was suitable for the proposed mosque and that the organization would not have any problems in obtaining the requisite variances to use the building at that site as a mosque. Since Mayor Smith was going to be leaving his office, Bayonne Muslims waited to take any action until the incoming Mayor, James Davis, took office. After Mayor Davis assumed his office, Bayonne Muslims obtained a similar assurance from him. Specifically, Mayor Davis informed Bayonne Muslims that the organization should not have any issues in obtaining the requisite variances because the Property was suitable for the proposed mosque. Bayonne Muslims accordingly signed a contract to purchase the Property in July 2015 for approximately \$1 million. The sale was completed that September.



Figures 4 and 5: The Property (109 East 24 Street, Bayonne, NJ)

54. The City apparently remained confident that approvals would be granted throughout the Zoning Board process. Indeed, months before the Zoning Board decision,

Bayonne Muslims was reassured by Mayor Davis that he did not anticipate any problems with the variance approvals. At a *Ramadan* dinner in 2016, the Mayor told Bayonne Muslims' representative that the group could begin the process of obtaining construction permits for the Property even before obtaining formal approval from the Zoning Board.

C. Bayonne Muslims Announce Plan to Convert the Abandoned Warehouse into a Mosque

55. The Property is located in the Constable Hook neighborhood of Bayonne on the dead-end of East 24 Street. The Property lies approximately two blocks east of railroad tracks that separate this part of the City from the more congested area west of the railroad tracks. There is ample on-street parking available in the mornings and afternoons within a three-block radius of the Property. Further, car traffic is exceptionally light in the area. Indeed, Bayonne Muslims' and the Zoning Board's experts both agreed that, after the mosque is constructed, the Level of Service under the federal guidelines in the area would remain at the highest levels, meaning that the area would continue to have a free flow of traffic allowing motorists to drive at or above the posted speed limit and to have complete mobility between lanes.

56. Although the area is now zoned for residential use, it contains several lots where industrial activity has been "grandfathered in" because it was being conducted at the lots prior to the enactment of the Zoning Ordinance. These include the Property itself. The lots located directly across the street from the Property (south side of East 24 Street) were—at the time of the Property's purchase—also being used for industrial purposes, including by a controlled demolition company and a chemical grouting company. These lots were recently purchased by a developer that is now in the process of constructing a 181-unit residential complex. Another industrial property—an abandoned warehouse—is at the other end of 24th Street from the Property. Directly east of the building, in the dead-end zone, lay several towering tanks that

were used by oil companies to store gasoline.

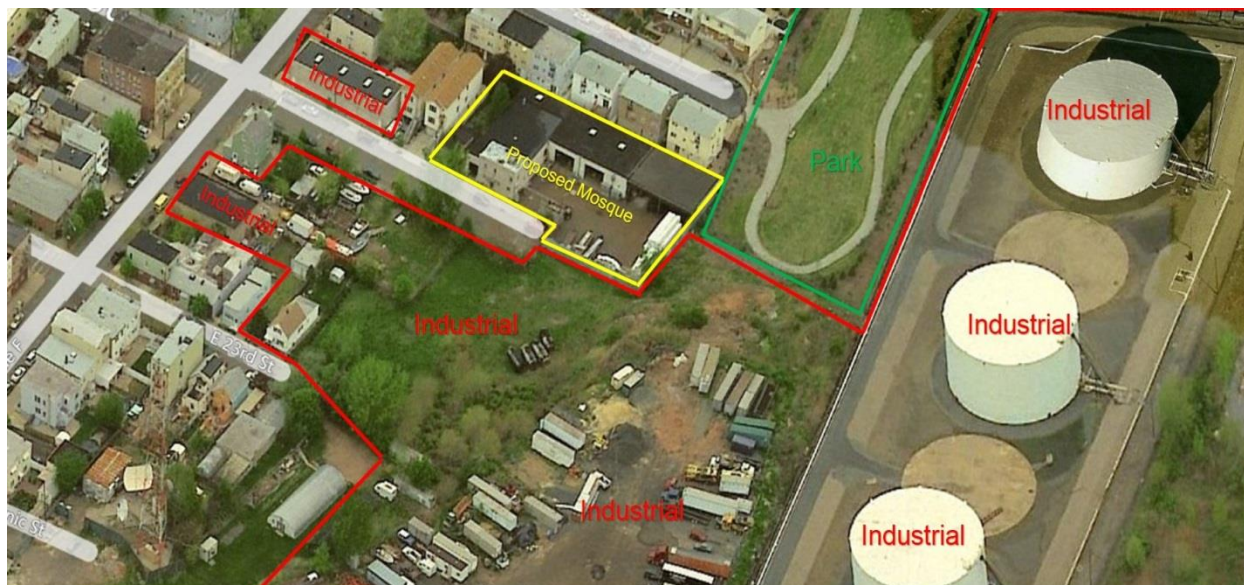


Figure 6: Overview of the Property's Surroundings

57. The Property was developed in 1966, and contains a 23,000-square foot building and parking area that is enclosed with a barbed-wire fence. The Property has been used for industrial purposes or has been vacant ever since. It was owned for decades by Bayroff, Max Corp., a manufacturer and distributor of roofing products and sheet metal, as a factory or warehouse. Most recently, the Property was used by a motorcycle club for, among other things, raucous parties to which the police were called repeatedly. The Property is currently decrepit. It is filled with waste and trash—including empty beer and tin cans, plastics, broken machinery, electronic waste and other debris—left there by its prior owners and tenants.



Figures 7 to 10: Current State of the Property

58. In August 2015, Bayonne Muslims released a plan to convert the Property into their mosque and spiritual home. Bayonne Muslims' plan called for adapting the existing building on the Property without making any structural changes to the Property's exterior. Exterior changes were limited to cosmetic improvements, including the removal of barbed wire, replacement of fencing, and installation of new lighting and landscaping. Because the exterior would remain structurally unchanged, the surrounding properties would continue to face the same walls at the same distance as had been the case for decades, albeit those walls would now be more aesthetically pleasing and well-maintained.



Figures 11 & 12: Exterior Views of the Property Proposed by Bayonne Muslims

59. Bayonne Muslims sought to renovate the interior of the Property to provide for, among other things, a prayer hall where worshipers could pray as a congregation, office space for the imam and volunteers, and an area for *wudu*.

60. Bayonne Muslims planned to use the Property for all of the activities that they conducted at the St. Henry's facility and those that they could not conduct there due to space or other restrictions. These activities include prayer service five times a day and *Jumma* prayers, weekend religious instruction for children, religious programming for women, and interfaith dialogue.

61. Bayonne Muslims' plan called for using the Property for a less intensive use than its prior industrial use, consistent with the neighborhood's zoning plan, which designates the area

for residential use where houses of worship are a permitted use subject to certain conditions. The plan would have enhanced the character of the neighborhood and provided services that the community lacks.

D. Bayonne Muslims' Plan is Met with Hostility

62. The opposition to the mosque was formed immediately after Bayonne Muslims purchased the Property and before the group could even formally announce its plan. A news article dated July 22, 2015 reported complaints from a prominent objector, "I'm concerned about the whole city being turned upside down and being radicalized. People want the diversity, but the reality is there are a lot of issues that come with that."⁸ In another article, the same objector cited then-presidential candidate Donald Trump's comments about Mexicans coming across the U.S. border, and stated, "People are coming across the border in Bayonne as well."⁹ The objector also cited terrorist attacks in Europe as a basis for opposing the mosque, stating, "We feel this doesn't belong in our community. We feel the community won't be safe."¹⁰ The objector claimed "[t]here's always the thought [of terrorism] in the back of people's minds, and I can't ignore it . . . [i]t's a known fact that a majority of major terrorist attacks are from people who attended a mosque."¹¹ The objector suggested that a Catholic church should instead be built on the Property.¹² The same objector later told the Zoning Board that his opposition to the

⁸ Joseph Passantino, *Praying for approval: Muslim group seeking community center meets opposition*, Hudson Reporter, July 22, 2015.

⁹ Jonathan Lin, *Bayonne Muslim group aims to open mosque; residents have mixed reactions*, The Jersey Journal, Aug. 21, 2015.

¹⁰ Joseph Passantino, *Neighbors say, not in our backyard: Anti-Muslim sentiments fuels protest against community center*, Hudson Reporter, Jan. 13, 2016.

¹¹ Talal Ansari, *These Muslims Are Praying In A Basement While Fighting To Get Their Mosque Built*, BuzzFeed News, June 30, 2016.

¹² Jonathan Lin, *Bayonne residents opposed to Islamic center to protest at City Hall*, the Jersey Journal, Jan. 14, 2016.

proposed mosque was based on land use issues, not his views about Islam or Muslims.

63. Opponents of the mosque also mobilized on the Internet. They started a petition on Change.org, titled “Fighting for an Improved Bayonne.” According to the petition, it received over 460 signatures and was delivered to the Bayonne City Council. The petition ostensibly claims that it opposes the proposed mosque because of the “difficult parking situation,” but the true motivations of some of its signatories are apparent from the comments they made under the section of the petition titled “Reasons for Signing.” Below are the reasons provided:

- “These people do not want peace. Look up your history they have been at war with Christianity and Judaism since the 6th century. Why should bayonne bend over backwards for these warmongers.”
- “This is a damned disgrace! You gotta stop this mosque before we have homegrown terrorists right here in our backyard.”
- “They gave our community the first bombing if [*sic*] the WTC in 1993. Religion of peace? Wake up!”
- “We’re being run out of our homes by these people who have nothing in common with us as a whole. The American people. I think with all the tension surrounding the Islamic culture we have every right to be concerned about the happenings being proposed for this center.”
- “We are at war with Islam. I refuse to coexist with savages who murder human beings Every mosque on [*sic*] this country should have burned down 14 years ago. When will the final straw break the camel fucker’s back? Are you going to tolerate our worst enemy until we are subjugated and all our women are wearing trash bags?

64. The mosque’s opponents included local politicians. In an interview aired on *ABC News*, Michael Alonso, candidate for State Assembly and the local school board as well as the purported leader of the “Real Republicans” group in Bayonne, claimed that he opposes the mosque because “[i]t’s definitely not the right time, with everything that’s happening recently and all over the world. We have ISIS. We have Christians being beheaded. We have the LGBT community being targeted. This is just not the right time. . . . And at the same time, residents don’t feel safe.”

65. The mosque’s opponents were also active on the social media website Facebook

where they created a group page titled “Stop the Mosque in Bayonne,” which has over 300 followers. The group posted a picture of a man holding a sign stating “ZONING LAWS MATTER!” in an apparent pejorative reference to the Black Lives Matter movement. The group also openly states that it “take[s] a stance against the rise of mosques which are advancing this second society within our own.” According to the group, “[m]ost importantly, we take a stance against the usurpation of our WESTERN way of life due to the demanding concessions our governments keep agreeing to in the name of Islam.” The group prominently features an alleged quote from Winston Churchill: “The religion of Islam above all others was founded upon the sword. Moreover, it provides incentives to slaughter, and in three continents has produced fighting breeds of men filled with a wild and merciless fanaticism.” The group’s postings include a picture of a man holding a sign stating “DEMOCRACY OR SHARIA LAW,” posts about alleged acts of terrorism or crimes by individual Muslims, and a photo of the World Trade Center Twin Towers on which a commenter posted “no in bayonne go to other place [*sic*].” The group also posted information about meetings of the Zoning Board regarding Bayonne Muslims’ application, and posts about recalling the City’s Mayor and a councilman who stood accused of supporting the mosque. Referencing the fact that Bayonne Muslims was then worshipping in the basement of a local church, the Facebook page states: “Shame on St [*sic*] Henry’s Church for allowing this.”



Figure 13: Picture Posted on Facebook Group “Stop the Mosque in Bayonne”

66. Similar views were expressed on a separate private Facebook page titled “Neighbors United Against Building the Mosque,” which has more than 600 members. News reports quoted one member of the group writing, “[c]hurches are being closed and mosques are being built. There’s a lot of infiltration going on around the world. It’s a known fact a lot of these mosques are funded by oil money and terrorists. I’m concerned about safety and the quality of life here in Bayonne.”

67. The objectors also took to the Internet to raise funds to support the opposition to the mosque. Mr. Alonso started a page on GoFundMe.com titled “Stop the Mosque in Bayonne.” The website states: “Help STOP the MOSQUE. Located within 6 miles of ground Zero, a proposed mosque needs to be stopped. . . . The radical Islamic community has gathered money from all over the world and this must be stopped. . . . Don’t let the biggest Mosque be built in Hudson County. 3 Miles from NYC – Never Forget.”

68. The opposition also openly encouraged boycott of Muslim-owned businesses in Bayonne. These efforts targeted two local businesses in particular: Judicke’s Bakery, the business that Plaintiff Khaled Aly purchased after having first worked there as a dishwasher, and Yellow Cab, a local taxi company that he co-owns. The opposition encouraged a boycott by

publishing an ad in the *Bayonne Times* stating, “**REMEMBER 9/11** . . . People once said ‘Never Forget,’ . . . Yellow Cab & Judicke’s bakery have already forgotten. **Boycott them all.**”

(Emphasis in original.) The opposition also posted billboards throughout the City, stating “**BOYCOTT . . . YELLOW CAB . . . JUDICKE’S.**” And objectors handed out flyers to local businesses and residents encouraging boycott of Judicke’s Bakery and Yellowcab.





BOYCOTT YELLOW CAB	
	If you need a ride ... Take Uber  or call a taxi you can trust.
Campbell's 201-339-8300 Archie's 201-858-8800	For a FREE Ride go to: www.uber.com/invite/gw6av
May 30, 2016 Remember the Fallen. They Fought for Our Freedom.	
	 MEMORIAL DAY
REMEMBER 9/11 People once said "Never Forget" Vincent Cusegilo, Councilman Gullace, Yellow Cab & Judicke's bakery have already forgotten. Boycott them all.	
	 <small>© AP</small>

Figure 14: *Bayonne Times* Ad Encouraging Boycott of Yellow Cab and Judicke’s Bakery

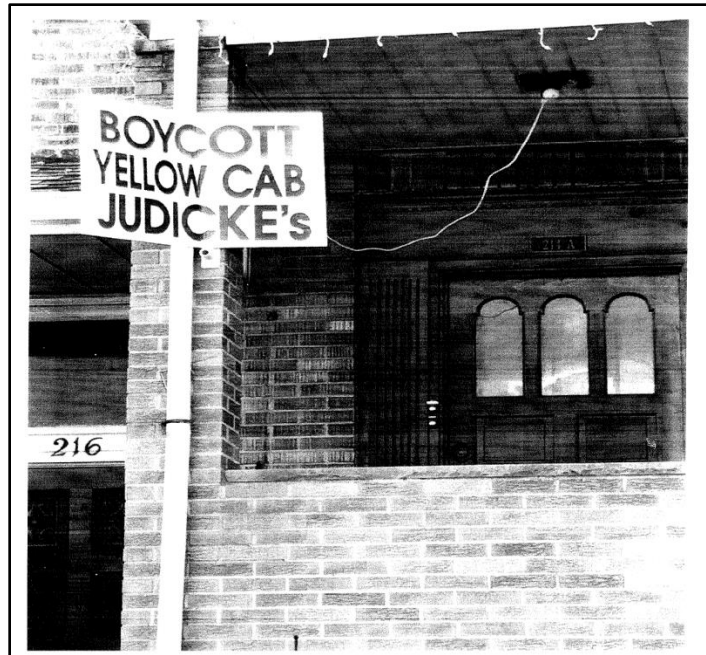


Figure 15: Billboard Encouraging Boycott of Yellow Cab and Judicke's Bakery

69. The opposition even targeted Muslim schoolchildren in Bayonne. A teacher at the Bayonne High School told *Press TV* that students at the high school were targeted with flyers in school mailboxes stating "No Mas! No Mosque!"

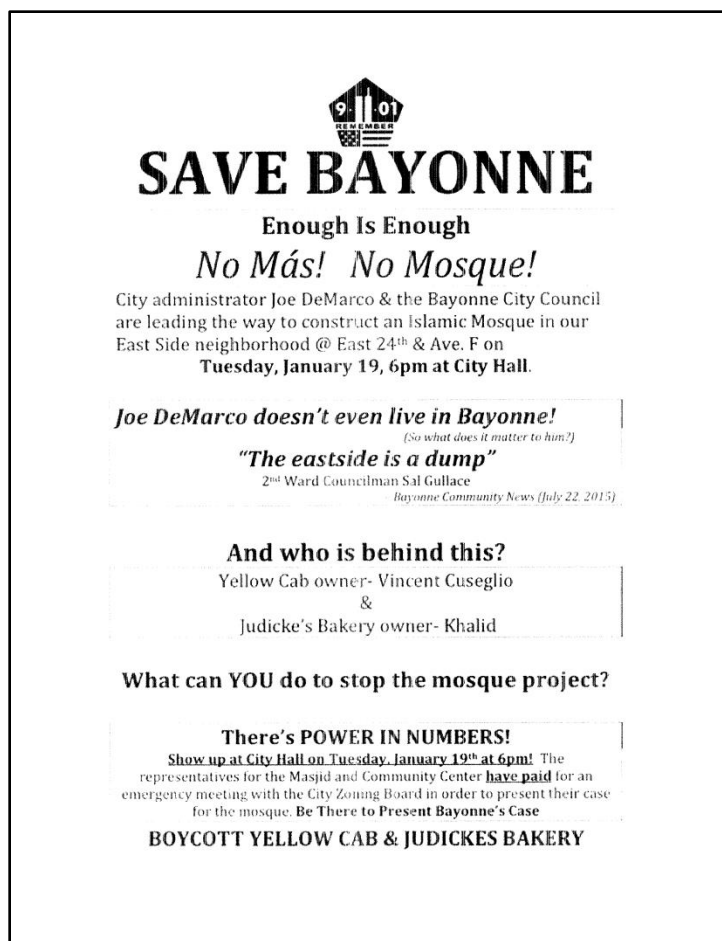


Figure 16: “No Más! No Mosque” Flyer

70. The opposition also circulated numerous other flyers throughout Bayonne that sought to spread misinformation about Bayonne Muslims. For instance, a flyer titled “EMERGENCY MEETING STOP THE MOSQUE” listed several “facts” that were false. The flyer claimed that “[t]housands of Muslims will be descending onto the Eastside 5 Times a day, 7 Days a week, 24/7, Creating Massive Gridlock and parking problems.” (Bayonne Muslims’ services have never attracted “thousands” of worshipers at the same time, nor have any of their programs caused any gridlock or parking problems.) The flyer claimed that the soil at the Property “has NOT been proven safe from dangerous contamination.” (An environmental assessment of the Property confirmed that there are no conditions present that need to be evaluated for any potential environmental risks.) And the flyer claimed that the Property would

“cause more FLOODING Because the proposed Mosque Property is in a designated FEMA FLOOD ZONE.” (The Property is not located in a FEMA flood zone.) Another flyer titled “STOP THE MOSQUE” falsely claimed that Bayonne Muslims has ties to the Muslim Brotherhood. (There are no such ties.)

71. The basement of St. Henry’s school that was utilized by Bayonne Muslims for prayer services was also targeted by a mosque opponent. It was vandalized by a 20-year-old Bayonne resident who spray painted the walls and windows with graffiti, including “FUCK MUSLIMS,” “FUCK ALLAH,” “FUCK ARABS!” and “DONALD TRUMP.” The vandal was identified and eventually pled guilty to criminal mischief, bias intimidation, and criminal trespass. He was sentenced to probation.



Figure 17: Graffiti at the St. Henry’s Facility

E. The Objectors Refuse Meetings with Bayonne Muslims to Address Any Legitimate Land Use Concerns

72. Seeking to defuse local opposition and promote understanding, Bayonne Muslims held two open houses to discuss their plans. The first was held at the Trinity Episcopal Church in Bayonne on June 5, 2016. The second was held at St. Henry’s School on October 24, 2016. Both meetings were advertised on social media and a local online newspaper. Additionally,

Bayonne Muslims sent letters to the neighbors in the area of the Property inviting them to the first meeting, and placed an ad in a local print newspaper publicizing the second meeting. Most of the vocal objectors, however, refused to attend either meeting.

73. Bayonne Muslims also took other steps to try and address local opposition. They even agreed to meet with the objectors at the bar owned by one of the lead objectors where the opposition regularly met. The objectors initially agreed to that meeting, but then cancelled it and refused to meet. Plaintiff Khaled Aly also invited one of the vocal objectors whose backyard faces the rear wall of the proposed mosque to his house so that he could address her concerns, but she declined the invitation.

F. Bayonne Muslims Face Animus and Hostility During Zoning Board Hearings

74. Bayonne Muslims submitted its application for variance relief to the Zoning Board in August 2015. The Zoning Board held three hearings on the application: January 19, 2016; January 23, 2017; and March 6, 2017.

75. Each of the hearings was attended by crowds of opponents to the mosque who expressed hostility directly to local Muslims. For example, at the March 6, 2017 hearing where the Zoning Board denied Bayonne Muslims' application, a local policeman stationed at the hearing site told a representative of Bayonne Muslims to "go back to where you're from." Another objector to the mosque shouted "you don't belong here." Objectors also lined up outside the hearings and at demonstrations with signs stating their opposition to the mosque.



Figure 18: Signs Held by Mosque Opponents¹³

76. Inside the Zoning Board hearings, objectors questioned witnesses about and offered their opinions on matters having no relevance to land use or the variances being sought.

For example:

- Joseph Basile, a local pastor, questioned Bayonne Muslims' representative about Sharia law, inquiring "[d]o all the leaders in your congregation believe in Sharia law? . . . Would you be willing to see Sharia law be imposed on the people of your congregation."
- An objector asked Bayonne Muslims' witness whether "the community center [has] reached out to the Bayonne police department in anticipation of possibly needing extra police officers on a Friday night?"
- An objector asked Bayonne Muslims' witness whether the objector would be allowed "[t]o come to the mosque to pray to Jesus Christ."

¹³ Image sourced from *The Star Ledger*. See http://www.nj.com/hudson/index.ssf/2016/01/bayonne_residents_against_planned_islamic_center_t.html

- An objector claimed that the mosque should not be approved because his Christian relatives in Egypt have been victims of hate crimes by Muslims: “if you approve on this, you don’t know what’s going to happen inside, what’s preached. In Egypt right now, they are struggling with the preaching inside the mosques, in Egypt. Because people are going radicals [*sic*] and they kill people. . . . [M]y uncle got slaughtered in the middle of the road January 3rd, because he’s Christian. And I got my cousin, he’s handicapped, right now, he have two kids. He got shot by a Muslim brotherhood because he’s Christian.”
- An objector implored the Zoning Board to evaluate Muslims’ beliefs carefully because, according to her, the Koran (the Muslim holy book) contains passages directing Muslims to kill: “If those beliefs pose any direct threat to any people or community, those beliefs must first be questioned and carefully examined and considered, particularly if the text or teachings of said religions clearly instruct any one person to harm, injure, or kill another human life in any name. I would now like to quote from . . . the Koran. . . .”



Figures 19 and 20: Objectors Questioning Bayonne Muslims’ Witnesses at Heavily Attended Meetings of the Zoning Board¹⁴

77. Some residents of Bayonne courageously called out the religious bigotry that they witnessed in the Zoning Board process. A young Muslim testified about the divisiveness that he experienced at the Zoning Board hearings:

[I]’m a Bayonne kid. I wasn’t born here, I came here in the third grade. And this town gave me an opportunity. . . . I was blessed because of the education I got here. I was fortunate, I got a job You want to know the first thing I did, . . . I bought a house in Bayonne, in the town that I love. . . . I never felt this divisiveness. This wasn’t part of how I grew up. No one thought of me as a Muslim kid or an Egyptian kid. I was just Ali, you know. I was captain of the swim team for Bayonne High School, I won a

¹⁴ Images sourced from *Hudson County View* television news report.

county championship. I probably swam with some of your kids, they're my friends. We grew up here together. And we're not here to infringe your property rights or hurt your feelings or, you know, be scared or scare you. We're here to be your friends, open yourself up to the opportunity and watch what kind of friendship we can develop with you.

78. A non-Muslim resident of the City, also stood to speak before the Zoning Board with her baby on her shoulder. She spoke plainly about the bigotry she observed at the hearings: "we've heard a lot tonight [from objectors] that this isn't a religious issue. I would love to take that on the face of it and believe it, but I actually think that a huge part of this contingent showed their true colors before the meeting even began." She pointed out that the objectors began reciting the Lord's Prayer when they observed some Muslims quietly praying in a corner. She noted, "they did that, I believe, in my humble opinion as a direct and very disrespectful assault on people who weren't bothering them at all." And she concluded: "[Bayonne Muslims] planned well, they've accommodated all of the concerns necessary. And they are entitled to the same religious freedom and the right to assembly that every other taxpaying, law abiding citizen here is entitled to."

G. The Zoning Board Denies Bayonne Muslims' Request for Variance Relief

79. The Zoning Board voted on Bayonne Muslims' application for variance relief at the March 6, 2017 hearing. The final site plan application submitted by Bayonne Muslims sought (i) a request for variance relief with respect to the 30-foot setback and buffer requirements that Bayonne Muslims needed to satisfy to obtain a conditional use variance, (ii) a request for variance relief with respect to parking, and (iii) a request for variance relief with respect to certain minor curb cut and parking setback requirements. The Zoning Board voted 4-3 in favor of Bayonne Muslims' application, but nonetheless denied each of the requested reliefs.

The Zoning Board issued a written resolution denying relief on April 17, 2017.¹⁵

1. Denial of Conditional Use Variance

a. The Zoning Ordinance's Requirement

80. Under Bayonne's Zoning Ordinance, houses of worship are a conditional use in residential zones if the applicant satisfies three criteria: (i) 20,000 square feet in the area; (ii) a 30-foot setback from the property line; and (iii) a 30-foot buffer from each adjacent property consisting of plantings at least 5 feet.¹⁶ The Property satisfied the first criteria, but did not provide the required setback and buffer. Accordingly, Bayonne Muslims sought a variance with respect to these requirements. A variance with respect to a conditional use requirement is considered a "d" variance, which requires at least five votes for approval.¹⁷

b. The Evidence Considered by the Zoning Board

81. Bayonne Muslims provided the Zoning Board with substantial evidence as to why the conditional use variance with respect to setback and buffer should be granted. For instance, John McDonough, Bayonne Muslims' planning expert, testified that the variance should be granted because, among other things, the existing building does not currently provide any buffer and setback and it is being converted from a high intensity use—where buffer and setbacks are more important—to a less intensive use that is "much cleaner, neater" Further, the neighbors would see no change from the walls they had been looking at for decades, other than cosmetic improvements. In rendering its decision, the Zoning Board did not rely upon or cite any evidence or testimony related to the setback and buffer issue that was contrary to that offered by Bayonne Muslims.

¹⁵ The Zoning Board's resolution denying relief is attached hereto as Exhibit A.

¹⁶ Zoning Ordinance §§ 35-5.3(d)(2), 35-5.28(1).

¹⁷ N.J. Stat. § 40:55D-70(d).

c. *The Zoning Board's Decision*

82. The Zoning Board refused to grant the conditional use variance requested by Bayonne Muslims. The Zoning Board voted 4-3 in favor of the variance, which fell one vote short of the five-vote requirement. The three members of the Zoning Board who voted against the requested relief articulated the following reasons for their votes:

- Chairman Mark Urban: “If the number of people that want to come to their center that night exceeds the maximum occupancy, I don’t see them turning anybody away. . . . [T]hat brings with it added traffic, added pedestrian traffic. And there is just definitely not enough parking in the area to handle all of what this applicant wants to bring. . . . [I] passed the area several times and I have to differ with the traffic survey. I didn’t see no hundred spots. Parking is going to be an extreme issue there.”
- Then-Commissioner Edoardo Ferrante, Jr.: “Very, very, very quaint, residential area is on the east side. The question is can it fit at this spot. And it is my opinion that it cannot. It cannot fit. This is just a bad spot. . . . This little dead end street is not suited for such a big, high density use.”
- Commissioner Louis Lombardi: “The approval of this community center, I do believe would be negative impact to this neighborhood, being that it is a dead end street. And whatever increase of traffic there may be it is already too much.”

83. The Zoning Board’s decision was based on a capitulation to community animus. It is demonstrably illegal and discriminatory. For example, the Zoning Board’s discretion in evaluating whether to grant a conditional use variance is limited to assessing “special reasons” offered and the “negative criteria” associated with the setback and buffer requirements specifically (*see* paragraph 40, *supra*). But the Zoning Board denied the variance based on factors having no relevance to the setback and buffer requirements. Specifically, the Zoning Board cited traffic and parking in the area and the appropriateness of a mosque in the neighborhood. In doing so, the Zoning Board ignored the fact that the Zoning Ordinance has already decreed that the proposed mosque is appropriate for R-2 zoning districts, where the Property is located. The Zoning Board is not authorized to countermand that determination.

84. Further, the Zoning Board’s purported concerns with regard to traffic were

contradicted by the unrebutted testimony of both Bayonne Muslims' planning and traffic experts and the Zoning Board's own expert. The Zoning Board's expert agreed with Bayonne Muslims' expert's conclusion that the area surrounding the Property would not suffer from any traffic delays stemming from the proposed mosque because it has ample reserve capacity to handle any increase in traffic flowing to and from the Property. As discussed below, the Zoning Board's purported concerns as to parking were equally invalid and, in any event, a majority vote granted a parking variance if one were needed at all.

85. The discriminatory nature of the Zoning Board's decision is further demonstrated by the fact that the Zoning Board has routinely issued conditional use variances to houses of worship of other faiths that did not satisfy the setback and buffer requirements in comparable circumstances.

86. For example, in 2012, the Zoning Board granted a setback and buffer variance to the Iglesia Ni Cristo, which—similar to Bayonne Muslims—sought to convert an existing commercial building into a house of worship without making any changes to the structure. In evaluating the variance request, the Zoning Board noted that the applicant's architect had testified “that with regard to the buffer requirements . . . nothing further could be done to address these variance issues.” The Zoning Board ruled that “the applicant has satisfied the criteria for conditional use variance as set forth in *Coventry Square vs. Westwood Zoning Board of Adjustment*, 138 NJ 285 (1994), in that the building setback and buffer area are preexisting conditions which have no affect [*sic*] on the proposed project. The variance cannot be cured because it is an existing structure.” The Zoning Board found that granting the variance sought by the Iglesia Ni Cristo “will not have a substantial negative impact on the public good nor would it substantially impair the intent and purpose of the Zoning Ordinance.” According to the

Zoning Board, granting the variance “would advance the purposes of land use law and ordinance by improving safety and quality in the neighborhood.” Further, “[t]he granting of the conditional use variance . . . is consistent with the City of Bayonne economic plan to transition from an industrial based economy to a service sector economy with an emphasis on revitalization.” Moreover, according to the Zoning Board, “[t]he proposal is consistent with the State plan to revitalize deteriorating areas, conserve natural resources and promote economic growth for all citizens in the Hudson County strategic revitalization plan”¹⁸

87. By granting a setback and buffer variance to the Iglesia Ni Cristo but denying such variance relief to Bayonne Muslims, the Zoning Board treated Bayonne Muslims differently and less favorably than it treated Iglesia Ni Cristo.

88. In 2011, the Zoning Board also granted a variance to the Virgin Mary and St. John Coptic Orthodox Church in connection with an application to expand its existing structure to include a 15,000-square foot addition adjacent to the existing building. The Zoning Board observed that the applicant did not satisfy any of the three requirements for a conditional use variance: a lot of at least 20,000 square feet, setbacks of 30 feet from any property line, and a 30-foot landscape buffer strip along each adjacent property line with plantings of at least 5 feet. The Zoning Board noted that the applicant’s architect testified that “there was not a standard size Church that could be built in the City of Bayonne at the present time in the residential zone because of the setback requirements” and that “the setbacks would make this facility impossible to develop.” Further, the architect informed the Zoning Board “that with regard to buffer requirements, there is nothing that could be done to address the variance issues at the property.”

¹⁸ The Zoning Board’s resolution granting variance relief to Iglesia Ni Cristo, along with a later resolution providing added information about this 2012 application, is attached hereto as Exhibit B.

The Zoning Board granted the Virgin Mary and St. John Coptic Orthodox Church's request for a conditional use variance. It found "that the application for this Church is an inherently beneficial use and that the applicant has made its best efforts to alleviate the issues with regard to this application." According to the Zoning Board, the application "satisfie[d] the special reasons because this use would promote the public health, welfare and safety, morals and general welfare as set forth in the MLUL. It promotes a desirable visual environment. There is an identifiable need for this use at this site making it particularly suitable which results in an efficient use of land" Further, the Zoning Board found "that the applicant has satisfied the criteria for a conditional use variance set forth in *Coventry Square vs Westwood Zoning Board of Adjustment*, 138 NJ 285 (1994) in that the building setback and buffer areas are designed to bring the application as close to compliance as the site allows the applicant."¹⁹

89. By granting a setback and buffer variance to the Virgin Mary and St. John Coptic Orthodox Church but denying such variance relief to Bayonne Muslims, the Zoning Board treated Bayonne Muslims differently and less favorably than it treated the Virgin Mary and St. John Coptic Orthodox Church.

90. Similar to the Iglesia Ni Cristo and Virgin Mary and St. John Coptic Orthodox Church, the setback and buffer areas with respect to the Property are preexisting conditions that have no bearing on the proposed project. Further, Bayonne Muslims' plan also sought to improve the fabric of the neighborhood without negatively affecting the neighboring properties. Indeed, Bayonne Muslims planned to use the Property for a less intensive use (a mosque) as opposed to highly intensive uses being conducted there before (e.g., industrial factory,

¹⁹ The Zoning Board's resolution granting variance relief to the Virgin Mary and St. John Coptic Orthodox Church is attached hereto as Exhibit C.

motorcycle club party venue). Yet, the Zoning Board failed to give Bayonne Muslims the treatment and benefit that it had afforded to Christian churches.

91. Commissioner Adams, who voted in favor of Bayonne Muslims' application, took an approach consistent with the Zoning Board's treatment of prior Christian church applications. Commissioner Adams noted that "[t]he inability to comply with the condition[al] use standards are all the result of existing conditions that cannot be easily remediated. These require variances that virtually any new religious institution being established or relocating in the City of Bayonne would require."

92. Further, contrary to RLUIPA, the Zoning Board's decision imposed a substantial burden on Bayonne Muslims' right to practice their religion. In doing so, the Zoning Board did not—nor could it—identify any compelling governmental interest with respect to the setback and buffer requirements. Indeed, the Zoning Board's resolution and the comments made by the no-voting commissioners are devoid of any reason justifying denial of the variance related to the setback and buffer requirements. The supposed interests identified by the Zoning Board no-voters are irrelevant and do not constitute compelling governmental interests. The Zoning Board also did not achieve any governmental interest it has in these requirements by the least restrictive means, as required by RLUIPA.

93. The Zoning Board's violation of RLUIPA is not unsurprising given that its chair candidly admitted on the record during a hearing on Bayonne Muslims' application that the board had no knowledge of a December 2016 letter sent by the United States Principal Deputy Assistant Attorney General for the Civil Rights Division to States, counties, and municipalities regarding the importance of compliance with RLUIPA.

2. *Denial of Parking Variance*

a. *The Zoning Ordinance's Requirement*

94. Bayonne's Zoning Ordinance sets forth a parking space requirement for each particular use. For a "church and temple," the ordinance requires 1 parking space for every "4 seats in the main auditorium or their equivalent." Zoning Ordinance § 35-17.6(b)(2). Even though this provision uses the phrase "church or temple," it applies equally to other houses of worship such as mosques pursuant to the Zoning Ordinance's definitions clause. Defendants agree that the clause applies to mosques. For mosques, the ordinance requires 1 parking space for every 4 prayer mats in the mosque's prayer hall.

95. The Zoning Ordinance does not require any house of worship to provide additional parking spaces for rooms other than the auditorium or its equivalent located in the house of worship. For instance, although churches typically contain office space that is utilized by priests, the Zoning Ordinance does not require any additional parking spaces for such an area. This is only logical given that at the time a major prayer service is conducted in a church's auditorium, the priest likely will not be using the office space and will instead be either participating in or leading the prayer service.

b. *The Evidence Considered by the Zoning Board*

96. In its initial application, filed in August 2015, Bayonne Muslims specified that the group was contemplating 216 prayer mats in the prayer hall. Under the 1:4 ratio set forth in the Zoning Ordinance, Bayonne Muslims was required to provide 54 off-street parking spaces. Bayonne Muslims' site plan application provided for 37 off-street parking spaces.²⁰ Bayonne Muslims thus sought a variance from the parking ratio set forth in the Zoning Ordinance.

²⁰ Bayonne Muslims' expert initially calculated the number of parking spaces available at the Property to be 36, but that number was later revised to be 37.

97. Bayonne Muslims believed—based on the Zoning Board’s track record with respect to similar applications by other houses of worship and representations made to Bayonne Muslims by Ms. Ward, Mayor Smith, and Mayor Davis—that the Zoning Board would grant a variance with respect to the 1:4 ratio.

98. Moreover, with 37 off-street parking spaces, the proposed mosque provided on-site parking that equaled or exceeded that provided by all but one other house of worship in Bayonne.

99. Further, the ample on-street parking available during peak hours that the mosque would be used—Friday afternoons during the *Jumma* service—far surpassed on-street parking available in parts of the City where many other houses of worship are located.

100. Bayonne Muslims’ application for a parking variance was supported by expert testimony. On September 30, 2015, Bayonne Muslims submitted a traffic impact study by an expert retained by the group that described the traffic and parking patterns in the area surrounding the Property. The study found over 50 on-street parking spaces within an approximately one-block radius of the Property during Friday afternoons. The study concluded that the substantial on-street parking in the area would more than account for the shortfall in off-street parking required by the Zoning Ordinance.

101. Nonetheless, Bayonne Muslims’ request for variance relief received uniquely harsh treatment from the Zoning Board. The Zoning Board hired its own expert to evaluate the study submitted by Bayonne Muslims. The Zoning Board had never previously hired its own expert to evaluate traffic impact or parking studies submitted by applicants seeking variance relief, including by Christian churches that have provided substantially less off-street parking than that provided by Bayonne Muslims and that are located in heavily congested parts of the

City.

102. For over a year, the Zoning Board's expert advanced contrived and novel positions with respect to the study submitted by Bayonne Muslims' expert. Bayonne Muslims' expert responded to each of the critiques by the Zoning Board's expert, only to be met again with additional contrived concerns. Bayonne Muslims was forced to incur substantial costs to address these issues, which included paying the fees incurred by the Zoning Board's expert in evaluating Bayonne Muslims' expert submissions.

103. On November 28, 2016, Bayonne Muslims' expert submitted a revised study that addressed the concerns raised by the Zoning Board's expert. The report stated that to lessen the effect of parking in the area, Bayonne Muslims had agreed, among other things, to (i) limit the number of prayer mats in the prayer hall at the Property to 135 as opposed to 216 as originally proposed, (ii) not use the other rooms at the Property simultaneously during the use of the prayer hall, (iii) not conduct any activities within the Property during the time of prayer services, (iv) conduct two *Jumma* services on Friday as opposed to one as initially proposed, (v) add a third *Jumma* service should future attendance increase, and (vi) not hold the prayers associated with the two *Eid* festivals at the mosque. Bayonne Muslims also separately represented to the Zoning Board and its expert that it was willing to arrange for valet parking service at the Property, which would allow for more cars to be parked in the Property's parking lot, and to arrange for a shuttle van to transport congregants who could not find parking at the Property to and from a nearby municipal parking lot.

104. Bayonne Muslims' expert's November 28, 2016 report also stated that the organization met the spirit and intent of the parking requirements set forth in the Zoning Ordinance. As set forth in the report, Bayonne Muslims will be providing 3 more parking spaces

than required by the Zoning Ordinance—37 parking spaces for 135 prayer mats in the prayer hall—and the organization is agreeing not to use any other rooms in the Property at the time the prayer hall is utilized. The report also stated that a more recent survey of a 4-block radius of the Property that was conducted on a Friday afternoon found over 100 vacant parking spaces, which would easily suffice to absorb any increase in parking demand that is not already met by the parking provided at the Property.

105. In a January 18, 2017 memorandum provided to the Zoning Board, the Zoning Board's expert agreed with the key conclusions set forth in the November 28, 2016 report submitted by Bayonne Muslims' expert. The Zoning Board's expert acknowledged that "the two Friday prayer service structure is intended to decrease the . . . parking impacts associated with the services by spreading out the Friday prayer event over a longer period while offering prayer service attendees the option of which service they would like to attend." The Zoning Board's expert also noted with approval Bayonne Muslims' expert's finding that "over 100 parking spaces [can be found] within a convenient walking distance from the site." At the January 23, 2017 hearing, the Zoning Board's expert confirmed that he "can concur with the majority of the testimony that that [Bayonne Muslims' expert] has offered."

106. However, despite Bayonne Muslims' agreement not to utilize any other area in the proposed mosque at the time prayer service was being held in the prayer hall, the Zoning Board's expert contended that a variance as to parking was required because the proposed mosque also had other areas such as office space, which, under the Zoning Ordinance, requires 1 parking space per 400 square feet. The Zoning Board's expert aggregated the number of parking spaces required for each of the other areas under the Zoning Ordinance. The expert concluded that the proposed mosque required 62 parking spaces, as opposed to 34 calculated by Bayonne

Muslims' expert.

c. The Zoning Board's Decision

(i) The Zoning Board's Calculation of Parking Spaces Required

107. The Zoning Board adopted its expert's calculations and ruled that Bayonne Muslims must provide 62 parking spaces accounting for *all* rooms and spaces in the Property, despite the plain text of the Zoning Ordinance and even though none of the rooms and spaces will ever be simultaneously utilized. As such, even though Bayonne Muslims provided 37 parking spaces for 135 prayer mats in the prayer hall, which more than satisfies the 1:4 parking ratio set forth in the Zoning Ordinance, the Zoning Board found that Bayonne Muslims required a variance as to parking.

108. The Zoning Board's calculation of the number of parking spaces required under the Zoning Ordinance has no basis in its text. The Zoning Ordinance is clear that houses of worship must provide 1 parking space for every four seats (or prayer mats in the case of a mosque) in the main auditorium or its equivalent. It contains no requirement that houses of worship must also provide parking spaces for other rooms. Further, such a requirement would be inappropriate particularly where the applicant has agreed to not utilize the other rooms when the auditorium or its equivalent (here, the prayer hall) is in use.

109. The Zoning Board has never previously utilized this methodology—the aggregation of parking spaces required with respect to each room in a house of worship—to calculate parking needed by any other house of worship.

110. Rather, for other houses of worship, the Zoning Board departed downwards from the 1:4 parking ratio in calculating the number of parking spaces required under the Ordinance before even considering variance relief. For example, with respect to the August 2011 application by the Virgin Mary and St. John Coptic Church to construct an addition to the

church, the Zoning Board observed that the new addition would have “a new sanctuary with 281 seats on the first floor, offices and classrooms on the second floor, a children’s multi-purpose room on the third floor and a fellowship hall in the basement.” According to the Zoning board, “[t]he proposed building also includes a lobby [and] library” Yet, the Zoning Board found that the applicant must provide only 58 parking spaces under the Zoning Ordinance, which is *13 fewer* than the parking spaces required under the 1:4 ratio if it is applied only to the 281-seat sanctuary on the first floor. The Zoning Board did not require the applicant to provide any additional parking spaces for the numerous other spaces and areas in the new addition, e.g., classrooms, multipurpose room, fellowship hall, lobby, library. Moreover, as detailed below, the Zoning Board then allowed variance relief below the 58-space requirement.

111. Similarly, with respect to a 2012 application by Iglesia Ni Cristo to convert an existing commercial facility into a church, the Zoning Board noted that the church’s congregation consists of 290 members. Despite the fact that under the 1:4 ratio, the church would have been required to provide 73 parking spaces, the Zoning Board found that the church required 53 parking spaces. Again, as detailed below, the Zoning Board then allowed variance relief below the 53-space requirement.

112. The Zoning Board treated Bayonne Muslims differently from Iglesia Ni Cristo and the Virgin Mary and St. John Coptic Orthodox Church because it utilized a calculation methodology with respect to Bayonne Muslims’ application that was less favorable than the methodology utilized in connection with applications by Iglesia Ni Cristo and the Virgin Mary and St. John Coptic Orthodox Church.

(ii) The Zoning Board’s “Denial” of a Parking Variance

113. To the extent a variance as to parking was required, the Zoning Board’s decision to deny such relief does not comply with New Jersey and federal law. Under New Jersey law, a

variance as to parking is considered a “c” variance, which requires approval by a majority of the Zoning Board.²¹ The Zoning Board’s final resolution purported to deny the variance request despite the fact that 4 out of 7 commissioners voted in favor of the application. This denial is irreconcilable with the recorded vote.

114. The Zoning Board also had no evidentiary basis to deny the requested relief. Bayonne Muslims demonstrated that the Property is affected by an extraordinary and exceptional situation in that the parking area is a preexisting condition and there is ample parking—more than 100 parking spaces within a 4-block radius—during the peak hour that the Property would be utilized. Bayonne Muslims further demonstrated that the strict application of the zoning regulation would result in exceptional and undue hardship since the organization would effectively be barred from exercising its First Amendment rights. Moreover, Bayonne Muslims established that the purposes of the MLUL in promoting the public morals and general welfare would be advanced by a deviation from the Zoning Ordinance requirement and that the benefits of the deviation would substantially outweigh any detriment.

115. Indeed, the majority of the Zoning Board commissioners agreed that Bayonne Muslims satisfied the criteria necessary for a parking variance. For instance, Commissioner Clifford Adams observed that “the exclusive use [of the prayer hall] during worship service in fact reduces the parking deficiency, since the other areas of the center that are included in the overall parking requirement will not be used.” Commissioner Vincent LeFante similarly noted, “I don’t know where you go in Hudson County and find a parking spot, nowhere. So no matter where, if you take this application and bring it somewhere else, that’s going to come up as an issue. You’re still going to have to come in front of the board for a variance because there is no

²¹ N.J. Stat. § 40:55D-9(a).

parking in the city, there just isn't any place. I don't think it's going to have a negative impact on this application and the town."

116. The Zoning Board's decision to not grant a variance as to parking—assuming one was even required—was also discriminatory in that the Zoning Board treated Bayonne Muslims differently and less favorably than other houses of worship and refused to grant a variance that it had routinely granted to Christian churches.

117. Specifically, as noted above, in 2011, the Virgin Mary and St. John Coptic Orthodox Church sought a variance as to parking in connection with its expansion project. As also noted above, the church was required to provide 58 spaces, as calculated by the Zoning Board. The applicant provided *zero* parking spaces. The Zoning Board noted that the applicant's traffic expert had testified "that there were a number of spots within the immediate vicinity of this facility by count" and that "there would be no negative impact as to a result of the parking required for this site." Further, the expert testified "that nearby parking lots are available to accommodate the peak parking demands of the proposed Church at meeting hour times" The Zoning Board also noted that the applicant's architect testified that "the applicant used its best efforts to pursue off street parking" and "that the applicant would accept as a condition a written parking agreement" with a nearby lot that would provide parking for the church's congregants.

118. The Zoning Board granted the variance request, finding that the "the applicant has demonstrated that the proposed variances present an opportunity for improved zoning and planning that will benefit the community and will effectuate the goals of the City as reflected in the zoning ordinance and the 2000 Master Plan." The Zoning Board specifically noted that "[t]here are a number of potential impacts from the proposed project upon adjacent properties,

such as . . . parking issues.” However, the Zoning Board was satisfied with “the condition that the applicant provide an agreement for parking [that] will help alleviate this impact.” The agreement that the applicant eventually struck with a local parking lot provided for substantially less parking than the 58 parking spaces calculated by the Zoning Board. As to Bayonne Muslims, the Zoning Board refused to grant a variance despite the organization’s agreement to abide by numerous conditions detailed above.

119. Further, in 2012, the Zoning Board granted a parking variance to the Iglesia Ni Cristo. As noted above, the Zoning Board found that the church was required to provide 53 parking spaces under the Zoning Ordinance, but permitted it to provide only 37. Despite the fact that Bayonne Muslims sought a variance that was substantially similar to Iglesia Ni Cristo (assuming that the Zoning Board’s calculation as to Bayonne Muslims was correct), the Zoning Board denied it a parking variance.

120. The Zoning Board treated Bayonne Muslims differently and less favorably than Iglesia Ni Cristo and the Virgin Mary and St. John Coptic Orthodox Church because it gave these two churches a parking variance but denied the same variance to Bayonne Muslims.

121. The Zoning Board’s parking determination as to Bayonne Muslims also does not comport with RLUIPA. The Zoning Board did not achieve any compelling governmental interest implicated in its ruling, nor did it act using the least restrictive means. The Zoning Board had at its disposal several less restrictive means given the various accommodations Bayonne Muslims had already offered—e.g., granting a variance subject to the condition that Bayonne Muslims cannot use any other room in the Property at the time prayer services are conducted inside the prayer hall, granting a variance subject to a condition that *Jumma* prayer services be split, or granting a variance subject to the condition that Bayonne Muslims provide

for a shuttle van to transport congregants to and from a municipal parking lot where they could park their cars. It chose instead to prohibit Bayonne Muslims from building a mosque.

3. *Denial of Curb Cut Width and Parking Area Set-Back Variances*

122. Under Bayonne's Zoning Ordinance, the driveway curb cut cannot exceed 10 feet in width.²² Bayonne Muslims required a variance with respect to this requirement because the driveway curb cut at the Property—which is a preexisting condition—is 30 feet. The Zoning Ordinance also requires that no parking area be located closer than 5 feet from any street right-of-way.²³ Bayonne Muslims required a variance with respect to this requirement because the parking area at the Property is 3 feet away from the right-of-way on East 24 Street.

123. At the Zoning Board hearings, Bayonne Muslims demonstrated that these variances should be granted. For instance, Bayonne Muslims' planner John McDonough testified that the "applicant is working with the land that's been given. Essentially, this is going to be an improvement over the existing condition. The applicant is going to have a nice channelized access to the site. . . . And overall, the end product from a physical planning standpoint is going to be site betterment." The Zoning Board did not question Bayonne Muslims' experts and representatives about either of these two variances, and there was no testimony or evidence offered that contradicted or undermined the testimony provided by Bayonne Muslims' representatives and experts.

124. Nonetheless, the Zoning Board denied the requested variance reliefs. Its decision does not comply with New Jersey law. Specifically, the variance requests were deemed denied despite the fact that Bayonne Muslims only needed a simple majority vote with respect to these

²² Zoning Ordinance § 35-17.5(a).

²³ Zoning Ordinance § 35-17.5(c)(2).

variances, which they received. Further, to the extent approval by a super majority was required—and it was not—Bayonne Muslims should have been granted these variances because the organization satisfied the criteria for a “c” variance under the MLUL. The Zoning Board’s decision also does not comply with RLUIPA because there is no compelling governmental interest—and the Zoning Board did not identify one—in requiring a 10-foot curb cut and a 5-foot parking setback. And even if there was a compelling governmental interest in these requirements, the Zoning Board could have addressed such an interest through less restrictive means than denying Bayonne Muslims’ application for a mosque.

H. Individualized Assessment and Impact on Interstate Commerce

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

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

that will affect interstate commerce.

FIRST CAUSE OF ACTION

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

127. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 126.

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

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

130. Plaintiffs have suffered damages as a result of the improper actions of Defendants in violation of RLUIPA.

131. Plaintiffs are entitled to declaratory and injunctive relief.

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

SECOND CAUSE OF ACTION

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

133. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 132.

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

135. Defendants have violated RLUIPA, by implementing land use regulations in a manner that intentionally discriminates against Plaintiffs on the basis of religion. Among other things, Defendants exercised their zoning powers to deny Plaintiffs' application to build a mosque because it would have been a Muslim house of worship and on the basis of community opposition grounded in anti-Muslim animus. Defendants also treated Plaintiffs' application differently from prior applications advanced by houses of worship of other faiths on the basis of religion. Such disparate treatment of Plaintiffs' application violates the anti-discrimination provision in Section 2(b)(2) of RLUIPA.²⁴

136. Plaintiffs have suffered damages as a result of the unlawful actions of the Defendants in violation of RLUIPA.

137. Plaintiffs are entitled to declaratory and injunctive relief.

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

THIRD CAUSE OF ACTION

Violation of the Religious Land Use and Institutionalized Persons Act of 2000 42 U.S.C. § 2000cc(b)(3)(B) – “Total Exclusion” or “Unreasonable Limitations” (Against all Defendants)

139. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 138.

140. Section 2(b)(3)(B) of RLUIPA prohibits municipal governments from imposing or implementing land use regulations in a manner that totally excludes or unreasonably limits

²⁴ 42 U.S.C. § 2000cc(b)(2).

religious assemblies, institutions, or structures within a jurisdiction.

141. Defendants have violated RLUIPA, by imposing and implementing land use regulations, *to wit*, Zoning Ordinance §§ 35-5.28(1) and 35-17.6(b)(2). In the aggregate, these regulations require houses of worship to provide (a) a lot that is at least 20,000 square feet in area, (b) a 30-foot setback from any property line, (c) a 30-foot landscaped buffer strip along each adjacent property line consisting of plantings at least 5 feet, and (d) 1 parking space for every 4 seats in the main auditorium or its equivalent, as well as—to the extent the Court interprets the Zoning Ordinance as such—additional parking spaces for areas other than the main auditorium or its equivalent even where the applicant has agreed to not use such areas at the time the auditorium or its equivalent is being utilized. In their totality, these regulations totally exclude or unreasonably limit religious assemblies, institutions, or structures within Bayonne.

142. Plaintiffs have suffered damages as a result of the improper actions of the Defendants in violation of RLUIPA.

143. Plaintiffs are entitled to declaratory and injunctive relief.

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

FOURTH CAUSE OF ACTION

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

145. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 144.

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

147. In committing the acts alleged above, the Defendants were acting under color of state law.

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

149. Defendants discriminated against Plaintiffs by denying Plaintiffs' application for a conditional use variance and other variances based on discriminatory animus towards Plaintiffs' religion.

150. Plaintiffs have suffered injury as a result of the illegal and unconstitutional actions of the Defendants.

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

152. Plaintiffs are entitled to injunctive relief.

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

FIFTH CAUSE OF ACTION

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

154. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 153.

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

of religion.

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

157. Defendants discriminated against Plaintiffs by denying Plaintiffs' application for a conditional use variance and other variances based on discriminatory animus towards Plaintiffs' religion.

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

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

SIXTH CAUSE OF ACTION

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

160. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 159.

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

162. In committing the acts alleged above, the Defendants were acting under color of state law.

163. The actions of the Defendants have violated and continue to violate Plaintiffs'

rights under the Equal Protection Clause by intentionally treating Plaintiffs differently from other entities on the basis of religious belief. Among other things, Defendants implemented the City's Zoning Ordinance in a manner that intentionally discriminated on the basis of Plaintiffs' religion and was different and substantially more burdensome than the implementation of the City's Zoning Ordinance as to other religious organizations.

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

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

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

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

SEVENTH CAUSE OF ACTION

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

168. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 167.

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

170. Defendants' actions have violated and continue to violate Plaintiffs' rights under the State Equal Protection Clause by intentionally treating Plaintiffs differently from other entities on the basis of religious belief. Among other things, Defendants implemented the City of Bayonne's Zoning Ordinance in a manner that intentionally discriminated on the basis of

Plaintiffs' religion and was different and substantially more burdensome than the implementation of the City of Bayonne's Zoning Ordinance as to other religious organizations.

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

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

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

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

EIGHTH CAUSE OF ACTION

**New Jersey Municipal Land Use Law
Arbitrary, Capricious, or Unreasonable Land Use Decision
(N.J.S.A § 40:55D-1, *et seq.*; *Coventry Square vs. Westwood Zoning Board of Adjustment*, 138
N.J. 285 (1994)
(Against Defendant Zoning Board)**

175. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 174.

176. N.J.S.A. § 40:55D-1, *et seq.*, and New Jersey common law prohibit a municipal zoning board from exercising its land use powers in a manner that is arbitrary, capricious, or unreasonable and not supported by substantial evidence.

177. The actions of Defendant Zoning Board in hearing and denying Plaintiffs' application for variance relief were arbitrary, capricious, and unreasonable and not supported by substantial evidence. Moreover, the legal rules applied by the Zoning Board to guide its deliberations were arbitrary, capricious, and unreasonable as a matter of law in that they were inconsistent with the MLUL and case law thereunder.

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

Zoning Board.

179. Under N.J.S.A. § 40:55D-1, *et seq.*, and New Jersey common law, Plaintiffs are entitled to declaratory and injunctive relief against Defendant Zoning Board.

**NINTH CAUSE OF ACTION
(PLEADED IN THE ALTERNATIVE)**

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

180. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 179.

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

182. Section 35-17.6(b)(2) of Bayonne's Zoning Ordinance requires that for a church or temple, the applicant must provide 1 parking space for "4 seats in the main auditorium or their equivalent." On its face, the Zoning Ordinance does not require any house of worship to provide parking spaces for other rooms or spaces contained in the house of worship. Accordingly, the Zoning Board's parking determination requiring more parking from Bayonne Muslims than required by the 1:4 ratio violated the terms of the Zoning Ordinance.

183. In the alternative, to the extent Section 35-17.6(b)(2) is interpreted to require a house of worship to provide parking spaces for rooms or spaces other than the auditorium (or its equivalent) contained in the house of worship, the statute violates the Due Process Clause of the Fourteenth Amendment because it fails to provide members of the public, including Plaintiffs, a

reasonable opportunity to ascertain the number of parking spaces required for a particular use, including mosques. The constitutional flaws in Section 35-17.6(b)(2) resulted in an arbitrary and discriminatory application with respect to Plaintiffs. In committing the acts alleged above, the Defendants were acting under color of state law.

184. Plaintiffs are entitled to a declaratory judgment that Section 35-17.6(b)(2) of Bayonne's Zoning Ordinance violates the Due Process Clause of the Fourteenth Amendment if it is interpreted to require a house of worship to provide parking spaces for rooms other than the auditorium (or its equivalent).

**TENTH CAUSE OF ACTION
(PLEADED IN THE ALTERNATIVE)**

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

185. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 184.

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

187. Section 35-17.6(b)(2) of Bayonne's Zoning Ordinance requires that for a church or temple, the applicant must provide 1 parking space for “4 seats in the main auditorium or their equivalent.” On its face, the Zoning Ordinance does not require any house of worship to provide parking spaces for other rooms or spaces contained in the house of worship. Accordingly, the Zoning Board's parking determination requiring more parking from Bayonne Muslims than

required by the 1:4 ratio violated the terms of the Zoning Ordinance.

188. In the alternative, to the extent Section 35-17.6(b)(2) is interpreted to require a house of worship to provide parking spaces for rooms or spaces other than the auditorium (or its equivalent) contained in the house of worship, the statute violates the Article I, Paragraph 1 of the New Jersey Constitution because it fails to provide members of the public, including Plaintiffs, a reasonable opportunity to ascertain the number of parking spaces required for a particular use, including mosques. The constitutional flaws in Section 35-17.6(b)(2) resulted in an arbitrary and discriminatory application with respect to Plaintiffs.

189. Plaintiffs are entitled to a declaratory judgment that Section 35-17.6(b)(2) of Bayonne's Zoning Ordinance violates Article I, Paragraph 1 of the New Jersey Constitution if it is interpreted to require a house of worship to provide parking spaces for rooms other than the auditorium (or its equivalent).

PRAYER FOR RELIEF

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

- a) An Order finding and declaring that the Zoning Board's April 17, 2017 resolution denying Bayonne Muslims' application for variance relief violates RLUIPA as to Plaintiffs and is, therefore, null and void;
- b) An Order finding and declaring that Zoning Board's April 17, 2017 resolution denying Bayonne Muslims' application for variance relief is unconstitutional under the First and Fourteenth Amendments to the U.S. Constitution and is, therefore, null and void;
- c) An Order finding and declaring that the Zoning Board's April 17, 2017 resolution denying Bayonne Muslims' application for variance relief is unconstitutional under the New Jersey Constitution and is, therefore, null and void;
- d) An Order finding and declaring that the Zoning Board's April 17, 2017 resolution denying Bayonne Muslims' application for variance relief is arbitrary, capricious, and unreasonable under the New Jersey MLUL and is, therefore, null and void;

- e) To the extent Section 35-17.6(b)(2) of Bayonne's Zoning Ordinance is interpreted to require a house of worship to provide parking spaces for rooms or spaces other than the auditorium (or its equivalent), an Order finding and declaring that Section 35-17.6(b)(2) is unconstitutional under the U.S. and New Jersey Constitutions and is, therefore, null and void;
- f) Preliminary and final injunctions restraining Defendants from impeding Plaintiffs' efforts to develop a mosque and community center at 109 East 24 Street, Bayonne consistent with submissions made to the Zoning Board as of March 6, 2017;
- g) Preliminary and final injunctions ordering Defendants to grant, forthwith and no more than 10 days from the date of the Court's Order, both preliminary and final approval to Plaintiffs' site plan and related submissions made to the Zoning Board as of March 6, 2017;
- h) Appointment of a federal monitor to oversee Defendants' implementation and compliance with this Court's remedial orders, as well as Defendants' continuing compliance with federal law in all decisions of the City of Bayonne and the Zoning Board for a period of five years;
- i) An Order mandating training for each and every one of Defendants' officials and agents engaged in the implementation of land use regulations as to the requirements and obligations imposed on state and municipal actors by RLUIPA, the U.S. Constitution, and the New Jersey Constitution;
- j) Compensatory damages in an amount to be determined at trial and other appropriate relief to be determined at trial; and
- k) An award of reasonable attorney's fees under 42 U.S.C. § 1988 in an amount to be determined by the Court.

Dated: May 25, 2017

Respectfully submitted,

By: s/ Matthew Funk

Matthew Funk (NJ Bar # 04392210)

Adeel A. Mangi

Muhammad U. Faridi

Peter Shakro

(*pro hac vice* applications to be submitted)

PATTERSON BELKNAP WEBB & TYLER LLP

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New York, New York 10036

Telephone No.: (212) 336-2000

Facsimile No.: (212) 336-2222

*Attorneys for Plaintiffs Bayonne Muslims, Abdul
Hameed Butt, and Khaled Aly*

CERTIFICATIONS

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

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

Dated: May 25, 2017

By: s/ Matthew Funk

Matthew Funk (NJ Bar # 04392210)

Adeel A. Mangi

Muhammad U. Faridi

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*Attorneys for Plaintiffs Bayonne Muslims, Abdul
Hameed Butt, and Khaled Aly*

Exhibit A

**RESOLUTION
ZONING BOARD OF ADJUSTMENT
CITY OF BAYONNE**

APPLICANT: **BAYONNE MUSLIMS A NJ NONPROFIT CORP.**
APPLICATION NO.: **Z-15-018**
PREMISES: **109 East 24th Street**
 Block 443, Lot 5.01

WHEREAS, BAYONNE MUSLIMS A NJ NONPROFIT CORP., (applicant), has applied to the Zoning Board of Adjustment in the City of Bayonne (Board) seeking preliminary and final major site plan approval, conditional use and variance relief, to construct a Muslim Community Center on property located at 109 East 24th Street in City Block 443, Lot 5.01; and

WHEREAS, the applicant, represented by William J. Finnerty, Esq., appeared before the Board at a special meeting held on January 19, 2016 and a regular meeting on January 23, 2017. Ronald Shaljian, Esq. appeared at a special meeting on March 6, 2017; and

WHEREAS, the applicant submitted proof of notification by mail and personal services, at least ten (10) days prior to the date set forth for public hearing to property owners within 200 feet of the extreme limits of the property, in accordance with the Zoning Ordinance of the City of Bayonne as amended and supplemented in accordance with N.J.S.A. 40:55D-1 et. seq. has been completed and the application has been deemed complete for review; and

WHEREAS Waheed Akbar, secretary of applicant, Jose Santos, AIA, Joseph Staigar, PE, traffic engineer, Paul Anderson, PE and John McDonough, PP, presented testimony in support of the application for variances from the Zoning Ordinance; and

WHEREAS, the applicant submitted evidence that it has made the application in conformity with the City of Bayonne Ordinance and has complied with all procedural requirements of the Ordinance including the giving of notice and the payment of fees; and

WHEREAS, after carefully considering the evidence, proofs and testimony of the applicant presented at the hearing in this matter the Board has made the following findings of fact and conclusions of law:

1. The Zoning Board of Adjustment has jurisdiction to act upon the application with a majority vote required for approval of all matters with the exception of a “use” variance under the provisions of N.J.S.A. 40:55D-70(d) for which five affirmative votes are required; and
2. The site is located on the easterly terminus of East 24th Street between Avenue E and Route 440. The property is presently developed with a two-story masonry building and associated parking area that appears to be used as a storage yard for materials and construction vehicles. The applicant is seeking preliminary and final major site plan approval and proposed to complete interior and exterior renovations to the existing building and to complete stormwater, circulation, landscaping and lighting improvement to the property in order to utilize the site as a religious community center and gathering space; and
3. The property is located in the R-2 District and houses of worship are permitted as a conditional use subject to the conditions set forth in §35-528-1 of the City Zoning Ordinance which requires a lot of at least 20,000 square feet in area, setbacks of 30 feet from any property line and a 30 foot landscape buffer strip along each adjacent property line with plantings of at least 5 feet be provided. The subject property does not meet the preceding three conditions and therefore a d-3 conditional use variance is required. In addition, a parking variance is required as the proposal will require sixty-two (62) parking spaces whereas thirty-six (36) parking spaces are provided. Existing non-conformities include front and rear yard setbacks, side yard setback and maximum lot coverage. This project also requires preliminary and final major site plan approvals; and
4. Waheed Akbar, secretary of applicant, described their current site as 1,500 square feet of usable space in the former St. Henry’s School which is insufficient for their present needs. Mr. Akbar spoke about the purpose of the new facility, including daily prayer service, weekend religious classes for children; youth get togethers on Fridays, Women’s religious classes, monthly family gatherings, interfaith dialogue, outreach

services, soup kitchen and health awareness seminars and workshops. He testified the facility would be open seven (7) days a week by volunteers as there is no staff at the present time. Mr. Akbar described the prayer services as being several times per day, every day with fifteen (15) to twenty (20) people at the morning service; noon, and mid-afternoon, with evenings between twenty-five (25) and thirty (30) people. He testified that on Fridays there are approximately one hundred twenty-five (125) to one hundred forty-five (145) worshipers. During Ramadan up to seventy-five (75) people can be expected at a prayer service. There is a festival after Ramadan that is held at 16th Street Park and will not be at this facility. Mr. Akbar testified that many of their members walk or use public transportation to get to their present worship site, not all drive. Mr. Akbar testified that on holidays when people are off from work there is an increase of people at services, up to one hundred fifty (150) at the most. The bi-monthly family nights will begin at 5:30 pm to 7:30 pm; the afterschool religious instruction for twenty (20) to thirty (30) children with Saturday up to fifty (50) to sixty (60) children, all dropped off and picked up. On Fridays there would be approximately fifteen (15) to twenty (20) high school/college students that would be there for religious instruction. On women's community night he advised there would be fifteen (15) to twenty (20) worshipers. He further testified as to their soup kitchen being open to the community as a whole. They have doctors that volunteer their time for health screenings. They have no registration process but accept donations at the door and do have monthly pledges. Mr. Akbar described their present location at St. Henry's and their relationship with the neighbors at this site; and

5. Jose Santos, AIA, testified as to the building design and total square footage being 8,690 square feet. The first floor is comprised of 8,043 square feet and he reviewed the floor plan for the first floor containing a gathering space that can accommodate up to one hundred forty-six (146) prayer mats with an adjacent quiet room that can accommodate twenty (20) mats. He further described a woman's gathering place that can accommodate fifty (50) mats and reviewed accessory spaces, i.e., computer room, game room, multipurpose room and handicapped accessible men's and women's bathrooms with an additional available bathroom, utility room and three offices. He testified that on the second floor there is 647 square feet that is comprised of a conference room and two offices. He testified that the footprint of the existing structure will remain the same with renovations to the interior. He testified as to the building façade remaining as it is but to be painted, with a color scheme of beige, white and a blue accent band and there will be blue awnings. He reviewed the proposed signage to be one rectangular sign measuring, 4' 2"; by 9' 11". He described the extension of a portion of an existing front parapet to give a more decorative look and having a new rib panel over a covered parking area; and
6. Paul Anderson, PE described the site located in the R-2 Zone as well as the existing industrial building. He testified as to the adaptable reuse of the existing structure and described the operations stating the prayers services will not take place when the

facility is being used for other functions. He described the site access being an existing driveway, thirty (30) feet wide to be retained. He discussed the proposed replacement fence for the property as being decorative and six foot in height. Mr. Anderson reviewed other improvements proposed such as the repaving the entire parking lot as well as replacing the sidewalk along the frontage of the property. He described the lighting and landscaping proposed for the site. Mr. Anderson described the parking and the possibility of providing a valet for stacking cars; this would result in the ability to handle additional cars. He reviewed the variances needed for the driveway and parking, fence removal and replacement as well as discussed the trash and recycling for the proposed site. In Mr. Anderson's continuing testimony before the Board he reviewed two (2) changes made to the original plans submitted. The first is the removal of two center columns and the reframing of a structure to eliminate a conflict between columns in the garage area that has parking underneath. The second being the reduction of the intensity of the use by reducing the number of prayer mats from two hundred sixteen (216) to one hundred thirty-five (135). The rest of the plans remained the same; and

7. Joseph Staigar, P.E. traffic engineer, in his Traffic Impact Study dated November 28, 2016, documented the methodology, analyses, findings and conclusions of the study done by his firm and how a detailed inspection was conducted to obtain an inventory of existing roadway geometry, traffic control and location and geometry of existing driveways and intersections. Existing traffic and parking data was collected via parking survey counts during the critical Friday afternoon time period at the existing Bayonne Muslim Cultural Center location. Parking survey counts were collected on the adjacent street network surrounding the proposed site location during the critical Friday afternoon timer period. Additionally, traffic operations at the intersection of Avenue F and 24th Street were observed. An assessment was made of the traffic impacts anticipated with the relocation of the proposed cultural center. The proposed points of ingress and egress were inspected for adequacy of geometric design, spacing and/or alignment to streets and driveways on the opposite side of the street, relationship to other driveways adjacent to the development, and conformance with accepted design standards. The parking layout and on-site circulation was assessed for conformance with accepted design standards; and
8. Mr. Staigar described the existing traffic conditions in the area around East 24th Street. He further reviewed the extensive studies done by his firm at St. Henry's during peak and valley times, during multiple prayer services at the exiting Muslim cultural center. These studies found that in terms of parking and traffic impact, the proposed Muslim Community Center use is very compatible with the residential aspect of the surrounding neighborhood. The traffic volume of the surrounding roadway network can certainly handle the volume of traffic that would be generated at the proposed site and the site has enough parking to be self-sufficient. Further, the study shows that if a person would walk within a two and one-half block distance

from the proposed site, they would find well over fifty (50) empty and available parking spaces on the streets during peak traffic times; and

9. John McDonough, LA, PP, AICP, testified for the applicant in his capacity as a planner. Mr. McDonough provided an overview of the requested relief. He described the area in question and reviewed the site. Mr. McDonough described the surrounding area and the proposed conditions at the site. It was his testimony that the applicant proposes to remove an industrial use and replace it with a conditionally permitted use and he relied on Exhibit A-39, a series of pictures of the surrounding area. Mr. McDonough indicated he reviewed the plans for the required variances connected with the application. He reviewed the zoning for this area which is R-2 Residential, one and two-family homes and stated that houses of worship are permitted uses in this zone subject to conditions. The proposed use could not comply with the zone conditions and required a d-3 use variance; and
10. Mr. McDonough testified that the proposed house of worship satisfied the positive criteria because it was an inherently beneficial use that serves the general welfare in accordance with the purposes of zoning. He then reviewed the question of substantial detriment that would result from the board granting the requested relief and concluded that this would not be the case. Mr. McDonough discussed the possibility of the Board imposing conditions to minimize any detriments to the surrounding area, such as attendance caps on the hours of operations, a limit as to activities to reduce potential overcrowding, inclusive of municipal enforcement to guarantee compliance; and
11. Mr. McDonough completed his Sica vs Board of Adjustment Township of Wall NJ Super. 338 (1991) analysis by reviewing the facts as he was aware of them. The Muslim Community Center exists and has done so for a number of years in the City of Bayonne. The site in question is a former industrial site and would not require any physical change to the structure's exterior. The applicant has agreed to restrict the site by not cooking food on site and that no special events would be held at the site. He concluded his analysis by stating that on the whole, it would be a positive for the community; and
12. Mr. McDonough commented on the parking issue by reviewing Mr. Staigar's testimony and concluded that it does not conflict with the residential maximum times of peak use which will not conflict with the residential peak use times. He reviewed the improvements to the site by providing fencing, landscaping and improved parking area and access. This proposal on the whole constituted a positive addition to the community by replacing a former industrial use and the granting of the requested variances will not substantially impair the intent and purpose of the zone plan and zoning ordinance; and

13. The following are the names of the neighbors and members of the general public making comments for and against this proposal: Soraya Amin, Melanie Flora, Rosemarie Bond, Andrzej Drzewiecki, Robert Dodd, Kathy Smith, Michael Scarpa, Joe Wisniewski, Michael Smith, Mary Curtis, Isaiah Otero, Jana Almas, Pete Cresci, Zain or Cain Bhatti, Richard Doolan, Melody Carlisle, Michael Chen, Yaser Eisa, Sumer Elganbaihy, Mary Losardo, Dina Sayedahmed, John White, Milad Nakhla, Islam Osmau, Michael O'Connor, Hossein Aghabeikzadeh, Jody Markey Hussein Eid, Andrew Tadros, Jessica Berrocalabednabdi, Lea Elrahed, Omar Abouelkhair, Riham Elshazli, Rob Deselich, Sean Jaryno and Hani Hamiszontitubi; and
14. The Board makes the following findings and conclusions with respect to this application:
 - a. Under the Municipal Land Use Law a Zoning Board of Adjustment, when considering a "d" variance, cannot grant relief unless sufficient special reasons are shown and there is no substantial impairment to the Zone Plan and Zoning Ordinance. In addition, the burden of proof is upon the applicant to establish the above criteria. It the Board's responsibility, acting in a quasi-judicial manner, to weigh the evidence presented before it by the applicant and all objectors and reach a decision that is based upon the findings of fact and conclusions of law that is not arbitrary, unreasonable or capricious.
 - b. The New Jersey Courts have been willing to accept the showing of extreme hardship as sufficient to constitute special reasons. The Courts have indicated there is no precise formula as to what constitutes special reasons unless the use is determined inherently beneficial and that each case must be heard on its own circumstances. Yet, for the most part hardship is usually an insufficient criteria upon which the Board can grant the variance. In addition, special reasons have been found where a variance would serve any other purpose of zoning as set forth in N.J.S.A. 40:55d-2. However, in the last analysis, a variance should only be granted if the Board, on the basis of the evidence presented before it, feels that the public interest as distinguished from the purely private interest of the applicant would be best served by permitting the proposed use. In these instances the Board must also find that granting the variance will not create an undue burden on the owners of the surrounding properties. The Board also notes that the special reasons requirement may be satisfied if the applicant can show the proposed use is particularly suited for the particular piece of property. With regard to the question of the public good, the Board's focus is on the effect of the surrounding properties and whether such effect will be substantial. Furthermore, in most "d" variance cases, the applicant must satisfy an enhanced quality of proof and support it by clear and specific findings by this Board that the variance sought is not inconsistent with the intent and purpose of the Master Plan and Zoning

Ordinance. The burden of proof is upon the applicant to establish the above criteria; and

c. The comments of the Commissioners who voted against the application are set forth below:

- i. Chairman Urban stated that, *"applicant is a religious institution. They are considered a permitted conditional use, they have every right to be here. They have every right to expand, if they see fit. The question is basically just can the area where they have decided to expand, can it support the proposed project? The area right now is undergoing a complete renaissance. There's development going on all over the place. Sometimes we don't like to see that, but it's for the good of the City, providing it's not overdevelopment. The applicant is substantially increasing the space where they want their mosque to be. But I cannot believe that they would turn away anybody. If the number of people that want to come to their center that night exceeds the maximum occupancy, I don't see them turning anybody away. And you know what, a church wouldn't and a synagogue wouldn't. And I don't think they're going to. So that poses a big issue. They are giving the community a number of community services, which is good. But however, that brings with it added traffic, added pedestrian traffic. And there is just definitely not enough parking in the area to handle all of what this applicant wants to bring. I understand you need a place to be. And I truly can sympathize with you. But I passed the area several times and I have to differ with the traffic survey. I didn't see no hundred spots. Parking is going to be an extreme issue there. Overall, in my opinion, I believe that I can't agree with approving this application because it's going to cause a substantial detriment to the surrounding area, to the neighbors. And it's also going to diminish their quality of life"*.
- ii. Commissioner Ferrante stated, *"it's irrelevant of what type of group it is. As a zoning board member we listen to the application and we weigh whether or not we want to bypass the zoning law and grant the variance to that application. The burden of proof falls on the applicant. And, right now, we have a very small street. I would have to say that East 23rd Street, between Avenue F and the dead end and East 24th between Avenue F and the dead end, might very well be two of the smallest streets in Bayonne, quite possibly the smallest streets in town. On the east side, where I live and why I moved there, we have very few businesses. We have two candy stores, we have two local taverns and we have a laundromat. That's all we have on the east side. Very, very, very quaint, residential area is on the east side. The question is can it fit at this spot*

and it is my opinion that it cannot. It cannot fit. This is just a bad spot. There's a dozen – I hope, I really do hope, that if it does get passed, then it does. But, if it doesn't get passed, I hope that you're submitting an application for another location because there are other locations in town where this is better suited. This little dead end street is not suited for such a big, high density use. This is a residential neighborhood with no businesses. It's a tiny little street and I cannot vote yes for this application, I'll be voting no".

- iii. Commissioner Lombardi stated that, *"the approval of this community center, I do believe would be a negative impact to the neighborhood, being that it is a dead end street. And whatever increase of traffic there may be it is already too much. I will not be voting in favor of this application"*.
- d. The comments of the Commissioners who voted in favor of the application are set forth below:
 - i. Commissioner Adams stated that, *"this is a pretty simple and straight forward land use application. I can't imagine why it has attracted so much attention. The proposed use is permitted as a conditional use in the R-2 zone. The inability to comply with the condition use standards are all the result of existing conditions that cannot be easily remediated. These require variances that virtually any new religious institution, being established or relocating in the City of Bayonne would require. I find that the applicant has been cooperative in attempting to mitigate impacts to the surrounding neighborhood or the public good, by adding any additional worship service during the peak time of Friday afternoon and agreeing that no other activities would be conducted in the center during worship services, the intensity of the use is greatly reduced for those particular periods of time. The worship service exclusive use should be a condition if the application is to be approved. The applicant has also agreed that a third Friday afternoon worship service be considered, if appropriate. I find that the impact of increased traffic due to the center's proposed relocation to the site and the need for a parking variance are at the heart of this application. The applicant's traffic engineer has presented evidence that demonstrates that any increase in traffic will have a minimal impact on the surrounding area. As to the required parking variance, I find that the applicant's testimony that the exclusive use during worship service in fact reduces the parking deficiency, since the other areas of the center that are included in the overall parking requirement will not be used. This should be considered. Will there be parking impacts occurring from time to time that would not exist if this application were never filed, probably. Overall, however, I do not find that approving this application*

will result in the substantial – and I stress the word substantial – detriment to the public good, nor substantially impair the intent and purpose of the Bayonne Zoning Plan and Ordinance. With the various conditions that the applicant has agreed to throughout this hearing, however, I do intend to support the granting of the required variances”.

- ii. Commissioner Pellitteri stated that, *“like other commissioners up here said, it’s about the zoning, specifically curb cuts, street setbacks, buffer zones, setback zones and parking. Again, being born and raised in this town, I know all too well some of the issues that come along with living here. I live across from a school. And I have people parking in my driveway in the mornings, in the afternoon, while picking up their kids. I’m lucky enough not to have to deal with that, I work out of town. But when I’m home, I see it. What I want to get away from is the whole conversation about religion and whether or not people are coming from other towns, any of the EA conversations that took place, those aren’t really my concern. And as far as the enforcement goes, I believe that we do have a zoning officer that takes complaints and follows up on those complaints. So any concerns or whether there’s going to be more than 135 people or noise, I have a feeling that the area, the neighborhood, will make complaints, which they ought to do, if things are not going as planned or committee to. So all that being said, I am in favor of this application, I will be voting yes”.*
- iii. Commissioner LeFante stated, *“I don’t know where you go in Hudson County and find a parking spot, nowhere. So no matter where, if you take this application and bring it somewhere else, that’s going to come up as an issue. You’re still going to have to come in front of the board for a variance because there is no parking in the city, there just isn’t any place. I don’t think it’s going to have a negative impact on this application and the town. I’m going to vote yes”.*
- iv. Commissioner Egan stated, *“I will be voting in favor of this application, if certain reasonable conditions are listed in the resolution, and they are – and I’m going to enumerate them in no specific order. A new PVC fence around the property, solid PVC. The parking structure has got to be removed. Early testimony said they were going to use it for outdoor events, that’s not fair to the neighbors, so that would have to be removed. There would be no after school or summer camp activities. There was zero testimony about how those activities would function, so I can’t agree to that as part of the resolution. There was no testimony, so sorry, it’s a no. Same thing with the soup kitchen, there is no testimony about how that would operate, so I would have to vote against that if it’s included in the*

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resolution. The applicant said there would be no call for hired catering, that's great, want to make sure we fill that out. Also Mr. McDonough talked a little bit about it before, all non-worship activities will be done at a reasonable time, I would say end at 9 o'clock, not 11. Obviously, worship would not be included in that. No outside PA system that was – the applicant said that. And then I would need the applicant to provide a no further action letter from the correct State Department about the environmental impacts. So, having said that, if those are in the resolution then I'll be in favor of it".

- e. Accordingly, the Board finds that based upon the record before it, that the variances sought by the applicant would substantially impair the intent and purpose of the Zoning Ordinance of the City of Bayonne. The variances that the applicant needs to develop the property as proposed would have a detrimental impact upon the overall use and enjoyment of the neighboring properties. Further, the proposed benefits of the deviation do not outweigh the detriments. The proof offered by the applicant does not meet the standard that granting these variances would not have a substantial detrimental effect or substantially impair the intent and purposes of the Zone Plan and Zoning Ordinance; and
- f. The Board has considered the testimony on behalf of the applicant and finds that the applicant has not satisfied the criteria for a conditional use variance as set forth in Coventry Square vs Westwood Zoning Board of Adjustment 138 NJ 285 (1994); and
- g. The Zoning Board hereby determines that the applicant has not met its burden of proof to the satisfaction of the Zoning Board for use/bulk variances and site plan approval.

NOW THEREFORE BE IT RESOLVED that the Zoning Board of Adjustment of the City of Bayonne hereby **DENIES BAYONNE MUSLIMS A NJ NONPROFIT CORP.** (applicant) preliminary and final major site plan approval a conditional use and bulk variance relief to allow the construction of a Muslim Community Center at the property located at 109 East 24th Street in City Block 443, Lot 5.01; and

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BE IT FURTHER RESOLVED, that the Chairman of the Zoning Board of Adjustment has hereby authorized his signature to this Resolution denying approval and the Land Use Administrator is authorized to advertise the action taken by way of Resolution in a local newspaper; and

BE IT FURTHER RESOLVED, that the Land Use Administrator is authorized to send copies of this Resolution to the following City Officials: City, Clerk, Construction Official, Zoning Officer, Fire Sub-Code Official, City Planner and City Consulting Engineer.

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RECORDED VOTE:

<u>Commissioner:</u>	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Not Voting</u>	<u>Not Present</u>
Urban	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Egan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ferrante	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
LeFante	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lombardi	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pellitteri	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dorans	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pineiro	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
O'Brien	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DiLullo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

WHEREAS, the application having received only four (4) votes is hereby

DENIED.

The above resolution was adopted by
 the City of Bayonne Zoning Board of
 Adjustment at a regular meeting held
 on April 17, 2017.


 MARK URBAN, Chairman

RNC/lg

Exhibit B

**RESOLUTION
ZONING BOARD OF ADJUSTMENT
CITY OF BAYONNE**

APPLICANT:	IGLESIA NI CRISTO (CHURCH OF CHRIST)
APPLICATION NO.:	Z-11-015
PREMISES:	274-292 Avenue E Block 446, Lot 2

WHEREAS, IGLESIA NI CRISTO (Applicant), has applied to the Zoning Board of Adjustment in the City of Bayonne (Board) for variances from the requirements of the Zoning Ordinance for preliminary and final major site plan approval as well as use and bulk variances to allow the renovation of an existing building located at 274-292 Avenue E, in City Block 446, Lot 2 for use as a church and church purposes; and

WHEREAS, William M. Feinberg, Esq., appeared before the Board on behalf of the applicant at a regular meeting held on Monday, March 19, 2012; and

WHEREAS, evidence was submitted that the applicant had made the application in conformity with the Ordinance and has complied with all procedural requirements of the Ordinance including the giving of notice and the payment of fees; and

WHEREAS, Brother Vincent Florida and Raymond Frank, A.I.A., presented testimony in support of the application for the variances from the Zoning Ordinance; and

WHEREAS, after carefully considered the evidence, proofs and testimony of the applicant presented at the hearing in this matter the Board has made the following findings of fact and conclusions of law; and

Resolution
Iglesia Ni Cristo (Church of Christ)
Z-11-015

April 16, 2012
Page 2

1. The Zoning Board of Adjustment has jurisdiction to act upon the application with a majority vote required for approval of all matters with the exception of a variance under the provisions of N.J.S.A. 40:55D-70(d) for which five affirmative votes are required; and
2. The subject application is for the conversion of an existing one-story commercial building on the east side of Avenue E, between 23rd and 24th Streets into a church facility. The proposed plan is to convert the building into a church hall. There are no changes proposed to the structure; and
3. The property is located in the TDD Transit Development District and churches are permitted as a conditional use in this district subject to the conditions as set for in Section 35-5.28(1) of the City Zoning Ordinance. The subject property does not meet the conditions and therefore a d-3 conditional use variance is required. N.J.S.A. 40:55D-70(d)3, provides that special reasons for variance is required if there is a deviation from the specifications or standards solely pertaining to conditional use; and
4. Brother Vincent Florida, resident minister of the church, testified that his congregation consists of 290 members. He indicated that approximately half of the parishioners reside in the City of Bayonne with the other half residing in the City of Jersey City. Brother Florida described the plans to convert the building into a church. He described how the property met the church's needs and the proposal for the site. He described the hours of the church's services. He also agreed that the church would replace the sidewalks; and
5. Raymond Frank, A.I.A., testified with regard to the conversion of the existing structure to a church. In his testimony he described the surrounding area and described the project and what improvements would be contained within the facility. He indicated the sidewalk and street trees would be part of this project. He responded to the City Planner's comments. He commented about the Engineering Report, the stormwater issues with regard to the MUA and he indicated that there were no environmental issues to the best of the applicant's knowledge; and
6. Raymond Frank, A.I.A., further testified that he reviewed the plans for the site and reviewed the zone and variances connected with this application, inclusive of the parking. He said the variances requested were related to lot size, setback and buffer. He further indicated that this was not a standard size church, rather a community oriented facility geared towards the local community it was going to serve. He indicated that with regard to the buffer requirements that nothing further could be done to address these variance issues. It was his testimony that the positive criteria and the negative criteria had been satisfied. He compared the application with other potential uses for the facility. He indicated the proposed use advances the public

Resolution
Iglesia Ni Cristo (Church of Christ)
Z-11-015

April 16, 2012
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welfare and satisfies the positive criteria for the use variance sought. The application furthers the purpose of Zoning by providing sufficient space and appropriate location for a variety of uses in order to meet the needs of all New Jersey residents and is in line with the policies of the State by reusing existing space in a developed urban area. He further testified that the applicant had satisfied the negative criteria because there were no substantial detriments to the character of the neighborhood, the building was existing and vacant at the present time; and

7. The Board makes the following findings and conclusions with respect to this application:
 - a. The Zoning Board of Adjustment has the authority to interpret the provisions of the Zoning Ordinance but an interpretation should not be used to change the plain meaning and intent of the Ordinance as enacted by the City Council; and
 - b. For the reasons set forth above, granting the proposed variances will not have a substantial negative impact on the public good nor would it substantially impair the intent and purpose of the Zoning Ordinance. To the contrary, granting the proposed variances would advance the purposes of the land use law and ordinance by improving safety and quality in the neighborhood; and
 - c. The Board has considered the testimony on behalf of the applicant and finds that the applicant has satisfied the criteria for conditional use variance as set forth in Coventry Square vs. Westwood Zoning Board of Adjustment 138 NJ 285 (1994), in that the building setback and buffer area are preexisting conditions which have no affect on the proposed project. The variance cannot be cured because it is an existing structure. In addition, the Board has reviewed the City of Bayonne Zoning Ordinance and Master Plan and the materials marked into evidence that are incorporated herein by reference; and
 - d. The granting of the conditional use variance will not impair the intent and purpose of the Zone Plan and Zoning Ordinance because it is consistent with the City of Bayonne economic plan to transition from an industrial based economy to a service sector economy with an emphasis on revitalization. The application is consistent with the City's circulation plan to minimize traffic and parking conflicts and land use plans to preserve neighborhood quality. The proposal is consistent with the State plan to revitalize deteriorating areas, conserve natural resources and promote economic growth for all citizens in the Hudson County strategic revitalization plan to redirect investment to the Hudson County Urban Core; and

Resolution
Iglesia Ni Cristo (Church of Christ)
Z-11-015

April 16, 2012
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- e. The Board finds that the applicant has met its burden of proof in supporting the use variance.

NOW THEREFORE BE IT RESOLVED that the Zoning Board of Adjustment of the City of Bayonne hereby **GRANTS IGLESIA NI CRISTO** (Applicant) variations from the requirements of the Bayonne Zoning Ordinance to allow the renovation of an existing building for use as a church and church purposes located at 274-292 Avenue E in City Block 446, Lot 2 subject to the conditions listed in Schedule A attached hereto and made a part hereof.

BE IT FURTHER RESOLVED, that the Chairman of the Zoning Board of Adjustment has hereby authorized his signature to this Resolution granting site plan approval with variances and the Land Use Administrator is authorized to advertise the action taken by way of Resolution in a local newspaper; and

BE IT FURTHER RESOLVED, that the Land Use Administrator is authorized to send copies of this Resolution to the following City Officials: City, Clerk, Construction Official, Zoning Officer, Fire Sub-Code Official, City Planner and City Consulting Engineer.

Resolution
Iglesia Ni Cristo (Church of Christ)
Z-11-015

April 16, 2012
Page 5


RECORDED VOTE:

<u>Commissioner</u>	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Not Voting</u>	<u>Not Present</u>
Urban	[X]	[]	[]	[]	[]
Adams	[X]	[]	[]	[]	[]
Apfelbaum	[X]	[]	[]	[]	[]
Egan	[]	[]	[]	[]	[X]
LeFante	[X]	[]	[]	[]	[]
Ferrante	[X]	[]	[]	[]	[]
Macre	[]	[]	[]	[]	[X]
Fitzgerald	[X]	[]	[]	[]	[]
Joskowitz	[]	[]	[]	[]	[X]
Weicker	[X]	[]	[]	[]	[]

WHEREAS, the application having received seven (7) aye votes is hereby

X APPROVED _____ DENIED

The above Resolution was adopted by the
Zoning Board of Adjustment of the City of
Bayonne at a regular meeting held on April
16, 2012.



MARK URBAN
Chairman

Resolution
Iglesia Ni Cristo (Church of Christ)
Z-11-015

April 16, 2012
Page 6

SCHEDULE "A"
IGLESIA NI CRISTO
Z-11-015

1. The applicant shall comply with the recommendations as submitted Don Schlachter, P.E., City Engineer dated March 14, 2012, except as those recommendations have been specifically modified as reflected in the minutes of the proceedings before the Board on this application; and
2. The applicant, at the direction of the City Engineer and City Planner has agreed to:
 - Replace the deteriorated sidewalk along Avenue E
 - Provide a landscaping plan for required buffers and front yard on Avenue E including new street trees;
 - To apply for and obtain required sign permits
3. The applicant shall maintain the property specifically including all landscaping in accordance with the approved plan; and
4. The applicants shall establish and maintain an Escrow Account with the City of Bayonne to pay for the professional review and inspection fees related to this application and construction required in conjunction therewith; and
5. The applicants shall submit cost estimates to the City Engineer to determine the cost of the Performance Bond and Inspection Escrow fees; and
6. Approval of this application is further conditioned on full compliance with all applicable Federal, State and Local Ordinances, rules and regulations and all required permits and approvals and certificates; and
7. Approval of this application is further conditioned upon the payment of all taxes, fees and required escrow deposits to the City of Bayonne. The applicants shall pay any additional fees or escrow deposits which may be due and owing within 30 days from the date of the adoption of this resolution; and
8. All documents required to be prepared by the applicant by virtue of the terms or provisions of any condition set forth in this resolution shall, before execution, be submitted to and approved by the Board Attorney and Engineer; and
9. The applicants shall comply with all of the conditions of approval within 190 days and shall submit an Affidavit of Compliance to the Planning Board showing the condition that each satisfies; and

Resolution
Iglesia Ni Cristo (Church of Christ)
Z-11-015

April 16, 2012
Page 7

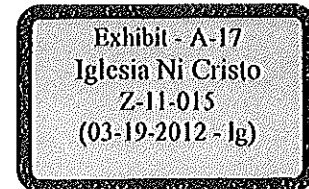
10. If any other governmental agency grants a waiver or variance of a regulation, then this Board shall have the right to review that issue as it relates to this approval granted by this Board and modify to amend same; and



City of Bayonne
DEPARTMENT OF PUBLIC WORKS
DIVISION OF ENGINEERING
MUNICIPAL BUILDING
630 AVENUE C
BAYONNE NJ 07002
TEL. 201-858-7182
FAX 201-858-6185
dschlachter@baynj.org
MEMORANDUM



TO: Lillian Glazewski, Land Use Administrator
FROM: Don Schlachter, City Engineer
DATE: 14 MAR 12
RE: **Iglesia Ni Cristo**
280 Avenue E
Block 446 Lot 2



The referenced application is for the use of the existing building and parking as a church.

The documents reviewed include:

- Application dated 31 AUG 11;
- Applicant's narrative statement;
- Deed dated 06 APR 11;
- Tax Exempt Status Certification dated 30 AUG 11;
- Land Survey prepared by McCutcheon Associates, P.A. dated 04 MAR 11;
- Architectural plans prepared by Raymond Frank, Architect entitled "Conditional Use Plan for the Church of Christ (Iglesia Ni Cristo)" consisting of five sheets dated 07/01/11 with latest revision date of 01/30/12;

After review of the referenced documents and an examination of the site and the surrounding area, I offer the comments set forth below.

GENERAL

1. The application proposes no improvement to the site or the City's infrastructure.
2. The existing sidewalk along the entire frontage of the project site is to be replaced with the exception of the most northerly driveway apron, which appears to have been recently reconstructed. Tree wells, 4' x 4', are to be installed as required and trees planted therein.
3. The adequacy of the existing building-mounted lighting fixtures, with respect to the City ordinances, must be demonstrated.

STORMWATER/SEWER/GRADING

1. The project anticipates no changes to the existing drainage system. The system is to be inspected for condition and cleaned or repaired, as necessary, to be fully functional. A certification should be provided from the project engineer that the system is adequate and functional.
2. This office defers to the BMUA as to the form of any system certification.

TRAFFIC/DRIVEWAYS/CIRCULATION

1. The project anticipates using the existing parking lot in its current configuration. The 37 parking spaces, as shown on the drawings and as striped in the field exist as 9' x 18' conforming spaces. The aisle widths appear adequate for proper operation.
2. There are remnants of angled parking spaces that were striped in the area behind the building. It appears that use of this space for parking stalls will result in an increase to the available parking count by about 9 spaces. Testimony should be provided regarding the use of this area to increase the parking space count. The spaces to be used in this area are to be striped.
3. Although not dimensioned on the drawing, it appears that the driveway apron widths are consistent with the parking access aisle widths and can remain as they are.

Should the Board approve this application; the following will be considered part of the approval resolution:

- a. The applicant shall comply with all comments above as well as those of the City Planner, the Office of Planning and Zoning, and the Bayonne Municipal Utilities Authority.
- b. The applicant shall obtain the approvals of all other agencies having jurisdiction and as they may apply including, but not limited to, such agencies as the BMUA, the Bayonne Fire Department, the County of Hudson, Hudson County Soil Conservation District, NJDEP, etc.
- c. Two (2) sets of the final plans as approved by the Board, including all required revisions, shall be submitted to the City Engineer in addition to those sets required by the Office of Planning and Zoning.
- d. The applicant must submit a unit price construction cost estimate for review by this office. This estimate will be the basis for determining the amount of the Performance Bond and Inspection Escrow.
- e. The applicant must provide the City Engineer and the City Planner with written notice of the start of construction no less than 72 hours in advance and shall contact this office to discuss the scheduling of a preconstruction meeting.
- f. The City Engineer's office must be notified in advance of the installation of all site improvements so inspections may be coordinated.
- g. The applicant shall immediately replenish any escrow account that has been depleted. It is the applicant's responsibility to check with the Office of Planning and Zoning as to the status of the escrow account balance and maintain a positive balance therein.
- h. In the event this application requires a road-opening permit, the applicant must complete any and all openings as soon as possible. It is the applicant's responsibility to ascertain if the street that requires a road opening is scheduled for repaving by checking with the City Engineer or the Director of Public Works. All road openings **must** be completed prior to any paving of a road by the City.

I trust this provides information that is useful in your review of the proposed project. I intend to be at the Board's meeting at which this application is to be presented should you have any questions about the foregoing.

cc: John Fussa, PP, City Planner

**RESOLUTION
ZONING BOARD OF ADJUSTMENT
CITY OF BAYONNE**

APPLICANT: IGLESIA NI CRISTO

APPLICATION NO.: Z-13-014

PREMISES: 274-292 Avenue E
Block 446, Lot 2

WHEREAS, IGLESIA NI CRISTO (CHURCH OF CHRIST) (Applicant), has applied to the Zoning Board of Adjustment in the City of Bayonne (Board) for preliminary and final major site plan approval and variance relief, amending the approval of April 16, 2013, allowing the existing Church to permit additional alterations to the exterior of the building that was converted into a church from a commercial space located at 274-292 Avenue E in City Block 446, Lot 2; and

WHEREAS, William M. Feinberg, Esq., appeared before the Board on behalf of the applicant at a regular meeting held on Monday, November 18, 2013; and

WHEREAS, Teodorico Samson, resident minister and Raymond Frank, A.I.A., presented testimony in support of the application for the variances from the Zoning Ordinance; and

WHEREAS, evidence was submitted that the applicant had made the application in conformity with the Ordinance and has complied with all procedural requirements of the Ordinance including the giving of notice and the payment of fees; and

WHEREAS, after carefully considering the evidence, proofs and testimony of the applicant presented at the hearing in this matter the Board has made the following findings of fact and conclusions of law; and

1. The Zoning Board of Adjustment has jurisdiction to act upon the application with a majority vote required for approval of all matters with the exception of a variance under the provisions of N.J.S.A. 40:55D-70(d) for which five affirmative votes are required; and
2. The subject application is to construct several exterior alterations to an existing one story property. The Board approved the applicant's use and bulk variances on March 19, 2012 that permitted the applicant to convert an existing commercial building to a church. The applicant seeks to amend this approval to permit additional improvements; and
3. Raymond Frank, AIA, testified with regard to the existing structure. He indicated it was presently a religious facility and that the structure was to remain the same, inclusive of all non-conformities that are a part of this property. Mr. Frank reviewed the treatment of the facade and discussed the proposed changes of constructing a gabled roof, two steeples, new exterior entry stairs, ADA accessible lift and to refinish the exterior building façade; and
4. Teodorico Samson, resident minister of the Church testified that his congregation consists of two hundred and nineteen (219) members and that the proposed addition is to make the church more in keeping with the traditional house of worship for his faith; and
5. Anthony Rodriguez, P.P., Consulting City Planner, indicated the Church use was well established in the neighborhood and the proposed expansion should have limited impact because it is limited in nature. Mr. Rodriguez advised the Board that the proposed building alterations would not require additional variance relief; and
6. The Board makes the following findings and conclusions with respect to this application:
 - a. The Zoning Board of Adjustment has the authority to interpret the provisions of the Zoning Ordinance but an interpretation should not be used to change the plain meaning and intent of the Ordinance as enacted by the City Council; and
 - b. The Board had previously considered the testimony on behalf of the applicant and found that the applicant has satisfied the criteria for conditional use variance as set forth in Coventry Square vs Westwood Zoning Board of Adjustment 138 NJ 28511, in that the building setback and buffer area are preexisting conditions which have no affect on the proposed project. The variance cannot be cured because it is an existing structure. In addition, the Board has reviewed the City of Bayonne Zoning Ordinance and Master Plan

and the materials marked into evidence that is incorporated herein by reference; and

- c. The Board finds that the applicant has met its burden of proof in supporting the requested site plan approval.

NOW THEREFORE BE IT RESOLVED that the Zoning Board of Adjustment of the City of Bayonne hereby **GRANTS IGLESIA NI CRISTO (CHURCH OF CHRIST)** (Applicant) variances along with preliminary and final major site plan approval amending the original approval to permit additional alterations to the exterior of the building that was converted into a church from a commercial space located at 274-292 Avenue E in City Block 446, Lot 2, subject to the conditions listed in Schedule A attached hereto and made a part hereof; and

BE IT FURTHER RESOLVED, that the Chairman of the Zoning Board of Adjustment has hereby authorized his signature to this Resolution granting site plan approval with variances and the Land Use Administrator is authorized to advertise the action taken by way of Resolution in a local newspaper; and

BE IT FURTHER RESOLVED, that the Land Use Administrator is authorized to send copies of this Resolution to the following City Officials: City, Clerk, Construction Official, Zoning Officer, Fire Sub-Code Official, City Planner and City Consulting Engineer.

RECORDED VOTE:

<u>Commissioner</u>	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Not Voting</u>	<u>Not Present</u>
Urban	[X]	[]	[]	[]	[]
Adams	[X]	[]	[]	[]	[]
Egan	[X]	[]	[]	[]	[]
LeFante	[X]	[]	[]	[]	[]
Ferrante	[X]	[]	[]	[]	[]
Fitzgerald	[X]	[]	[]	[]	[]
Lombardi	[]	[]	[]	[X]	[]
Weicker	[X]	[]	[]	[]	[]

WHEREAS, the application having received () AYE votes is hereby

 X **APPROVED** **DENIED**

The above resolution was adopted by the Zoning Board of Adjustment of the City of Bayonne at a regular meeting held on December 16, 2013.


Mark Urban, Chairman

RNC/lg

SCHEDULE "A"
Iglesia Ni Cristo (Church of Christ)
Z-013-014

1. The applicants shall comply with the recommendations as submitted by Anthony Rodriguez, P.P., AICP, consulting City Planner dated September 30, 2013 and Antonios Panagopoulos, P.E., consulting City Engineer dated October 10, 2013 except as those recommendations have been specifically modified as reflected in the minutes of the proceedings before the Board on this application; and
2. The applicants shall maintain the property specifically including all landscaping in accordance with the approved plan; and
3. The applicants shall establish and maintain an Escrow Account with the City of Bayonne to pay for the professional review and inspection fees related to this application and construction required in conjunction therewith; and
4. The applicants shall submit cost estimates to the City Engineer to determine the cost of the Performance Bond and Inspection Escrow fees; and
5. Approval of this application is further conditioned on full compliance with all applicable Federal, State and Local Ordinances, rules and regulations and all required permits and approvals and certificates; and
6. Approval of this application is further conditioned upon the payment of all taxes, fees and required escrow deposits to the City of Bayonne. The applicants shall pay any additional fees or escrow deposits which may be due and owing within 30 days from the date of the adoption of this resolution; and
7. All documents required to be prepared by the applicant by virtue of the terms or provisions of any condition set forth in this resolution shall, before execution, be submitted to and approved by the Board Attorney and Engineer; and
8. The applicants shall comply with all of the conditions of approval within 190 days and shall submit an Affidavit of Compliance to the Planning Board showing the condition that each satisfies; and
9. If any other governmental agency grants a waiver or variance of a regulation, then this Board shall have the right to review that issue as it relates to this approval granted by this Board and modify to amend same.

DEPARTMENT OF MUNICIPAL SERVICES

OFFICE OF PLANNING AND ZONING

CITY OF BAYONNE

630 AVENUE C • BAYONNE, NJ 07002-3898


TEL. (201) 858-6138 • FAX (201) 858-6185



MARK SMITH
MAYOR

ANTHONY R. RODRIGUEZ, P.P., AICP
CONSULTING CITY PLANNER

TO: City of Bayonne Zoning Board of Adjustment

FROM: Anthony Rodriguez, P.P., AICP, Consulting City Planner 

RE: Application #Z-13-014
Application of Iglesia Ni Cristo (Church of Christ)
Amended Site Plan and Conditional Use Variance Application
280 Avenue E, Block 446, Lot 2



DATE: September 30, 2013

This application is for a site consisting of one (1) parcel located in the TDD Transit Development District and within the Transit Development Overlay (TDO) District on Avenue E between East 22nd Street and East 23rd Street. The application, if approved, will permit the applicant to construct several exterior alterations to the existing one story building on the property. The Board granted the applicant use variance and bulk variance approvals on March 19, 2012 that permits the applicant to convert the existing commercial building to a church. The applicant seeks an amended approval to permit the proposed building improvements.

1. **Technical Review Committee (TRC):** The applicant did not appear before the TRC.
2. **Summary of Application and Prior Approvals:** The applicant is requesting an amendment to a prior conditional use variance and bulk variance approval to permit the following building alterations on the property:
 - Construct a new gabled seam metal roof system over the existing flat roof. The proposed gabled roof will be approximately 31 feet in height, whereas the existing flat roof is 16 feet in height;
 - Construct two steeples consisting of site-built towers and pre-fabricated spires along the northerly building façade. The steeples are proposed to be 40 feet in height;
 - Construct new exterior main entry stairs along the northerly building façade to provide access from the existing parking area;
 - Install an ADA-accessible lift to provide access to the building from the existing entrance on Avenue E; and
 - Refinish the existing building facades with stucco and provide decorative moldings with a stucco finish along the new main entrance on the northerly building façade.

The Board granted the applicant the following variances to use the existing on-site commercial building as a church in the resolution of approval adopted by the Board on April 16, 2012:

- A. Use variance approval pursuant to §40:55D-70.d(3) of the Municipal Land Use Law (MLUL) to permit the existing commercial building to be converted to and used as a church where the applicant did not meet all of the ordinance provisions governing religious institutions (§35-5.28(1)). The existing site exhibits existing non-conformities that prevent the applicant from meeting the required setback and buffering

requirements of this section.

B. Bulk variance approval pursuant to §40:55D-70.c to permit a shortfall in required parking to serve the proposed use. There are 37 spaces existing on the site, whereas the approved use requires 53 spaces pursuant to §35-17.6 of the City Zoning Ordinance.

3. **Approvals and Relief Required:** The subject property is located within the TDD (Transit Development) District. The applicant seeks amended approval from the Board due to the proposed change in the existing building footprint. The proposed building alterations will not require additional variance relief.

4. **Planning Comments**

- A. If amended approval is granted by the Board, the applicant shall comply with the conditions of approval of the prior resolution of approval. The applicant shall also comply with any new conditions of approval resulting from the grant of amended approval by the Board.
- B. The applicant shall revise the zoning table on Sheet A-000 of the plans to reflect the bulk and yard standards of the Transit Development District (TDD). The current zoning table provides bulk and yard standards for the Transit Development Overlay (TDO) District. However, religious institutions are not permitted in the TDO District. The applicant shall revise the building height and floor area ratio standards to reflect the requirements of the TDD district.
- C. The maximum Floor Area Ratio (FAR) permitted in the TDD Zone is 3.0, whereas the existing property exhibits an FAR of 3.15. This is an existing non-conformity that will remain unchanged by the subject application, but was not noted in the applicant's prior application (Z-11-015).
- D. The applicant shall revise zoning table on Sheet A-000 of the plans to note the correct number of parking spaces required for the proposed use. The zoning table notes that 52 parking spaces are required for the church use. However, Sheet A-101 of the plans notes that the proposed church has a maximum occupancy of 210 persons, thereby required 53 parking spaces to be provided on the site ($210/4 = 52.5$ or 53).
- E. The applicant shall provide testimony to the Board regarding the interior improvements to the building including the reconfiguration of the existing lobby to accommodate the new main entry stairs. The applicant shall also address whether the reconfiguration of the main sanctuary will result in an increase in the number of seats in the church.
- F. The applicant shall provide testimony to the Board regarding the proposed ADA-accessible lift proposed at the existing entrance along Avenue E. It appears that the lift will provide access to the foyer of the Avenue E entrance to the building. However, there is no ADA compliant means to access either the basement or the first floor of the building. The applicant shall provide testimony regarding the ADA-accessibility within the building. The applicant shall also address whether the proposed ADA-accessible lift will be enclosed. If the lift is proposed to be enclosed, the applicant will require an additional use variance pursuant to 40:55D-70.d(4) for exceeding the maximum permitted FAR of the TDD Zone.
- G. The applicant shall provide testimony to the Board regarding the proposed exterior building finishes and materials proposed for the exterior finish and main entry stairs. The plan set notes that the building's exterior will be refinished with stucco and that Exterior Insulation and Finish System (EIFS) elements will be incorporated into the building finish. The applicant should provide color renderings and/or material

samples for the Board's consideration.

H. The applicant shall submit construction plans for the review of and approval of the City Building Department and shall obtain all required building permits.

I. The applicant shall address the comments of the City Engineer and other agencies with jurisdiction.

I will be present at the public hearing to address any comments regarding this report and the proposed project.

cc: Robert F. Sloan, Clerk
Lillian Glazewski, City Land Use Administrator
Richard Campisano, Esq., Board Attorney
Antonios Panagapoulos, P.E., Consulting Engineer
Michael Feuer, Construction Official
Joseph Coughlin, Fire Sub-Code Official
Donna Ward, Zoning Officer
William M. Feinberg, Attorney for Applicant

1373 Broad Street, Suite 306, Clifton, New Jersey 07013
(973) 614-0005 * fax (973) 614-0025 * www.tandmassociates.com



BAZB-R0650

October 10, 2013
Email / Mail

Chairman & Board Members
City of Bayonne Zoning Board
630 Avenue C
Bayonne, New Jersey 07002

Attn: Lillian Glazewski, Land Use Administrator

**Re: First Engineering Review
Iglesio Ni Cristo (Church of Christ)
274-291 Avenue E
Block 446, Lot 2
Application #Z-13-014**



Dear Chairman and Board Members:

As requested, we have reviewed the plans and application for the referenced project. The plans were reviewed for engineering related items. The following materials have been submitted:

- A. Site Plan entitled Zinc – Jersey City Locale, 280 Avenue E, Bayonne, New Jersey”, as prepared by Raymond Frank, AIA, consisting of five (5) sheets, and dated June 21, 2013.
- B. Application and associated information filed on September 3, 2013.

The site is the current location of an existing 1-story commercial building. The Applicant is proposing exterior alterations on the building that has historically housed religious gatherings. The Applicant is proposing a roof reconstruction. The Applicant is requesting an amendment to a prior conditional use variance and bulk variance approval.

Completeness

This application is technically **complete**. The following items shall be addressed prior to having the application scheduled for a formal hearing:

1. Grading and Drainage

- 1.1. No on- or off-site improvements are proposed that would require new drainage improvements as part of this application.
- 1.2. The applicant will be responsible to ensure that no drainage problems exist at the site and correct them as needed.

2. Parking

- 2.1. No parking improvements are proposed. The Applicant was previously granted a parking variance for the existing 37 spaces. The TDO Zone standards require 52 spaces.

3. General

- 3.1. The Applicant shall provide testimony regarding the ADA compliance from the rear parking lot entrance to the handicap lift.

BAZB-R0650



October 10, 2013
Page 2 of 2

Le: Zoning Board
City of Bayonne
630 Avenue C

Re: First Engineering Review
Iglesio Ni Cristo (Church of Christ)
274-291 Avenue E
Block 446, Lot 2
Application #Z-13-014

- 3.2. The Applicant should provide testimony regarding trash storage for the building.
- 3.3. It is recommended that the Applicant provide a color rendering of the proposed improvements for the Board hearing.

4. Construction Issues

- 4.1. All structures and ADA requirements are subject to review by the Construction Code Official.

5. Other Agency Approvals

- Fire Official
- Town Police Department
- Applicable Town Building Permits.
- All other agencies having Jurisdiction.

Should the Board decide to grant approval of the minor site plan application request, same should be conditioned upon: submittal of revised plans addressing the review comments indicated above; payment of all fees, charges, escrows, liens, taxes, etc. as may be owed the City; posting of performance guarantees; The Applicant's engineer providing an estimate for the cost of improvements to the City in order that performance guarantees and inspection fees can be calculated; proof of all permits, approvals, and/or waivers of such agencies having jurisdiction thereof and such other terms and conditions as required by the Board.

We reserve the right to present additional comments pending the testimony of the Applicant before the Board and the receipt of the revised plans. Should you have and questions regarding this matter, please contact this office.

Very truly yours,
T&M ASSOCIATES


ANTONIOS PANAGOPOULOS, P.E., C.M.E.
CITY OF BAYONNE
ZONING BOARD ENGINEER

AP:CMH

cc: Anthony Rodriguez, PP, Board Planner
Suzanne Mack, PP, City Planner
Richard Campisano, Esq., Board Attorney
Raymond Frank, AIA

Exhibit C

**RESOLUTION
ZONING BOARD OF ADJUSTMENT
CITY OF BAYONNE**

APPLICANT:	VIRGIN MARY AND ST. JOHN COPTIC ORTHODOX CHURCH
APPLICATION NO.:	Z-10-003
PREMISES:	20-24 West 20th Street Block 220, Lot 29

WHEREAS, VIRGIN MARY AND ST. JOHN COPTIC ORTHODOX CHURCH, (Applicants), have applied to the Zoning Board of Adjustment in the City of Bayonne, for variances from the requirements of Zoning Ordinances to allow preliminary and final major site plan approval along with use and bulk variances to construct an addition to the Church located at 20-24 West 20th Street in City Block 220, Lot 29 for use of a Church and Church purposes; and

WHEREAS, William J. Finnerty, Esq., appeared before the Board on behalf of the applicant at regular and special meetings held on February 28, 2011, April 27, 2011, May 16, 2011, June 29, 2011 and July 18, 2011; and

WHEREAS, evidence was submitted that the applicant made the application in conformity with the ordinance and complied with all procedural requirements of the ordinance including the giving of notice and the payment of fees; and

WHEREAS, Amir Ghaly, a Board Member of the Church, Father Bishoy Khalil, Pastor, Michael Elkin, AIA, Gregory Peregoy, P.E., traffic engineer and Ronald Reinertsen, P.P., of Pennoni and Associates presented testimony in support of the application for the variances from the Zoning Ordinance; and

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Virgin Mary and St. John Coptic Orthodox Church
Z-10-003

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WHEREAS, after carefully considered the evidence, proof and testimony of the applicant presented in this matter, the Board has made the following findings of fact and conclusions of law:

1. The Zoning Board of Adjustment has jurisdiction to act upon the application with a majority vote required for approval of all matters with the exception of a variance under the provisions of N.J.S.A. 40:55D-70(d) for which five affirmative votes are required; and
2. The subject application is to expand the existing church located at West 20th Street to include an additional 15,000 square foot three-story addition adjacent to the existing structure. The proposed addition is planned to include a new sanctuary with 281 seats on the first floor, offices and classrooms on the second floor, a children's multi-purpose room on the third floor and a fellowship hall in the basement. The proposed building also includes a lobby, library, rest rooms and an elevator; and
3. The existing church building will remain and the existing 140 seat sanctuary is proposed to be used for children's services. The existing building also includes a basement with rest rooms, kitchen, storage and video rooms; and
4. The property is located in the R-2 District and churches are permitted as a conditional use subject to the conditions set forth in §35-5.28-1 of the City Zoning Ordinance which requires a lot of at least 20,000 square feet in area, setbacks of 30 feet from any property line and a 30- foot landscape buffer strip along each adjacent property line with plantings of at least 5 feet be provided. The subject property does not meet the preceding three conditions and therefore a d-3 conditional use variance is required. A d-6 height variance is also required in the R-2 District when buildings exceed two and one-half stories, which this proposal does. In addition, a parking variance is required as the proposal will require 58 parking spaces whereas zero parking spaces are provided along with rear yard setback and lot coverage variances. This project also requires preliminary and final site plan approvals; and
5. Amir Ghaly, a board member of the church, testified that the present location has been occupied by the church since August of 2008. Mr. Ghaly indicated there are approximately four to five hundred worshipers on a given Sunday and that services are held on Fridays and Saturdays where approximately one hundred people attend. There is also a small service on Wednesdays from 5:00 p.m. to 7 p.m. with a limited amount in attendance. In addition, the Church holds liturgy and Sunday school teachings for the youth. Mr. Ghaly indicated that the majority of worshipers attend service either by walking or taking public transportation; and

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6. Father Bishoy testified that services are conducted in both English and Arabic because of the bi-lingual aspects of the congregation. There are approximately six hundred families on the church's mailing list and three hundred families that regularly attend services. Father Bishoy indicated the services are Friday, Saturday and Sundays along with a Sunday school. He confirmed by a survey of the church membership that the majority of members did not use automobiles for transportation to the church's services; and
7. Michael Elkin, AIA of Elkin / Sobolta & Associates, testified with regard to the existing structure. He testified regarding the proposed structure and how it would function for services. In his testimony he described the surrounding area of the project. He described the projects improvements to the facility inclusive of the upper floors. He responded to the City's planning comments, reviewed the street elevations, the brick veneer that will be incorporated into the project and indicated the building will be fully sprinkled and described where the windows would be located. He testified that because of the height, there would be a variance necessary and indicated the applicants willingness to work with the City Planner to lower the height although it could never be lowered sufficiently to eliminate the variance requirement. He testified with regard to the setbacks and issues as to the size and how the applicant could not comply with the ordinance requirements. The side yard setback adjoining the property to the east would be 7 feet. He indicated that landscaping would be impossible on this side of the building and that the applicant may be able to put some street trees on the street frontage of the property. He also indicated the applicant would be seeking a drop-off area, with City Council approval, so that the flow of traffic in the area would function smoothly on the days of services; and
8. Mr. Elkin testified regarding the applicant's revised plans. The architectural design was revised to eliminate the original dome element and reduced the total building height from 42 feet 9 inches to 41 feet, 9 inches. The roof has been modified to incorporate a sloped eve design at the top floor. The total size of the addition has been reduced to approximately 13,288 square feet including the basement with a floor area ratio. The proposed front yard setback has been increased to 8.1 feet. The proposed rear yard setback has been increased to 10 feet. It was Mr. Elkin's testimony that the applicant had modified its proposal in an attempt to comply with the City of Bayonne Zoning Ordinance. However, the proposed modifications could not bring the proposed structure into conformity. The Church had reduced the size of the proposal as much as it could while still realizing the goals established for the expansion; and
9. Craig Peregoy, P.E., Traffic Engineer of Joseph Staigar Engineering, LLC, testified with regard to his traffic and parking impact statement. He described the West 20th Street areas as a one way westbound roadway and the land uses

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in the area. The intersections and traffic control devices were described. He observed the Church operation and the number of strollers left in front of the Church at the time of services. He advised the Board as to his parking analysis and that there were a number of spots within the immediate vicinity of this facility by his count. He indicated there would be no negative impact as a result of the parking required for this site. He noted in his report that traffic volumes are fairly light and the levels of service were adequate. The respective intersections had ample reserve capacity and easily accommodate the existing traffic flow. It was his conclusion that the applicant's assessment shows the proposed development will not generate negligible peak hour traffic volumes that will be accommodated by the surrounding roadway network adequately and the site traffic would not impact the adjacent intersections. He also indicated that nearby parking lots are available to accommodate the peak parking demands of the proposed Church at meeting hour times; and

10. Ronald Reinertsen, P.P., of Dunelli and Associates, testified for the applicant in his capacity as a planner. He indicated he reviewed the plans for the site and the zoning variances connected with this application, inclusive of the parking. He said the bulk variances requested were related to the lot size, setback and height. He further indicated there was not a standard size Church that could be built in the City of Bayonne at the present time in the residential zone because of the setback requirements. He indicated the Church was an inherently beneficial use that serves the general welfare. He described the area and the zone and indicated that there are a number of mixed uses in the area. He indicated that Religious Institution Act required that any Board considering a variance application had to comply with the least restrictive means to conform to governmental regulation of religious institutions. He talked about the impact on the retail area. It was his opinion that this application would be less auto dependent than the Zoning Ordinance parking requirements set forth. He discussed the positive criteria under in Coventry Square vs Westwood Zoning Board of Adjustment 138 NJ 285(1994) and indicated there was no substantial detriment to the area or substantial impact to the Zoning Ordinance. He indicated the height was about design. He discussed the comparison between religious institutions required setbacks and an R-2 setback and said if this property would be developed as a home it would be much closer to the neighbor. He stated there was no substantial detriment to the public good. It was his testimony the setbacks would make this facility impossible to develop; and
11. Mr. Reinertsen discussed the parking issues and indicated during his testimony that the applicant would accept as a condition a written parking agreement. He talked about how the applicant used its best efforts to pursue off street parking and indicated that with regard to buffer requirements, there is nothing further that could be done to address the variance issues at the property. In his testimony he stated that the applicant has satisfied and complied with the positive criteria and the negative criteria. He compared the

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application with other potential uses for this area. He indicated that the proposed use advances the public welfare and satisfies the positive criteria for the use variance sought. The application furthers the purposes of zoning by providing sufficient space in an appropriate location for this use. He further testified that the applicant satisfied the negative criteria because there was no substantial detriment to the character of the neighborhood. The Church is an existing building and the addition is proposed on vacant land at the present time. He also indicated there was a 35% reduction in floor space on the third floor as a result of the revised plans by the applicant; and

12. Several neighbors appeared in opposition to the application, including the neighbors to the east of the proposed Church. Leslie Trawin indicated she was concerned about the distance of the building from her current residence, the height and the effect on light, air and open space; and
13. Robert Dokus, resident, complained about garbage, unsupervised children and the effects of the project on the quality of life. He said strollers and kids block the sidewalk and caused difficulty for pedestrians to pass on the public right-of-way. He also testified that there was little parking in the municipal lots at the time of services based upon his visits to the local lots; and
14. Gayle Bambara complained about vandalism by the children presently attending the Church and stated she has a serious medical condition that is exacerbated by the noise; and
15. Emilia Cruz indicated she was concerned about her privacy because the new Church would be built so close to her window; and
16. Also appearing in opposition was Chester Bomba, a neighbor, who said there is not enough parking and the children are too noisy; and
17. The Board makes the following findings and conclusions with respect to this application:
 - a. Under the Municipal Land Use Law a Zoning Board of Adjustment, when considering a "d" variance, cannot grant relief unless sufficient special reasons are shown and there is no substantial impairment to the Zone Plan and Zoning Ordinance. In addition, the burden of proof is upon the applicant to establish the above criteria. It is the Board's responsibility acting in a quasi-judicial manner to weigh the evidence presented before it by the applicant and all objectors and reach a decision that is based upon the findings of fact and conclusions of law that is not arbitrary, unreasonable or capricious.
 - b. The New Jersey Courts have been willing to accept the showing of extreme hardship as sufficient to constitute special reasons. The

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Courts have indicated there is no precise formula as to what constitutes special reasons unless the use is determined inherently beneficial and that each case must be heard on its own circumstances. Yet, for the most part hardship is usually an insufficient criteria upon which the Board can grant the variance. In addition, special reasons have been found where a variance would serve any other purpose of zoning as set forth in N.J.S.A. 40:55D-2; however, in the last analysis a variance should only be granted if the Board on the basis of the evidence presented before it feels that the public interest as distinguished from the purely private interest of the applicant would be best served by permitting the proposed use. In these instances the Board must also find that granting the variance will not create an undue burden on the owners of the surrounding properties. The Board also notes that the special reasons requirement may be satisfied if the applicant can show the proposed use is particularly suited for the particular piece of property. With regard to the question of the public good, the Board's focus is on the effect of the surrounding properties and whether such effect will be substantial. Furthermore, in most "d" variance cases the applicant must satisfy an enhanced quality of proof and support it by clear and specific findings by this Board that the variance sought is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance. The burden of proof is upon the applicant to establish the above criteria; and

- c. The Board finds that the application for this Church is an inherently beneficial use and that the applicant has made its best efforts to alleviate the issues with regard to this application. The Church will exist, even if this application was denied. The parishioners would still attend services. The quality of life issues that were described by the neighbors will be decreased as the result of the addition by keeping the congregation inside the expanded Church. The applicant has worked with the City to address the bulk issues and the project has been reduced from the original proposal; and
- d. The application satisfies the special reasons because this use would promote the public health, welfare and safety, morals and general welfare as set forth in the MLUL. It promotes a desirable visual environment. There is an identifiable need for this use at this site making it particularly suitable which results in an efficient use of land; and
- e. The granting of this variance will not cause detriment to the public health, safety and welfare. The use will not create a negative social impact and will help revitalize a vacant site; and

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- f. There are a number of potential impacts from the proposed project upon the adjacent properties, such as traffic congestion and parking issues. The condition that the applicant provide an agreement for parking will help alleviate this impact; and
- g. The Zone Plan is satisfied because the granting of these variances will not impair the intent and purpose of the Zone Plan and Zoning Ordinance. It is consistent with the Bayonne Economic Plan to transition from an industrial based economy to a service sector economy and its overall emphasis on revitalization. It is consistent with the State Plan to conserve natural resources and promote beneficial economic growth for all citizens.
- h. The Board has considered the testimony on behalf of the applicant and finds that the applicant has satisfied the criteria for a conditional use variance as set forth in Coventry Square vs Westwood Zoning Board of Adjustment 138 NJ 285 (1994) in that the building setback and buffer areas are designed to bring the application as close to compliance as the site allows the applicant; and
- i. The Board specifically finds for the d-6 height variances that the applicant has satisfied the burden of proof. The applicant's planner gave ample testimony to justify the projects height. There are a number of structures in the area with height in excess of 35 feet inclusive of a residential condominium on the block and another religious facility. The commercial business district is adjacent to this area and there are a number of buildings exceeding the height in this area. The Board finds that the use is permitted in this zone. The applicant has proposed a structure for a house of worship that is as conforming as the site will allow without substantially depriving the neighbors of their light, air and open space; and
- j. Accordingly, the Board finds that based upon the record before it, the variances sought by the applicant would not substantially impair the intent and purpose of the Zoning Ordinance of the City of Bayonne. The variances that the applicant needs to develop the property as proposed would not have a detrimental impact upon the overall use and enjoyment of the neighboring properties. The fact that the applicant has used its best efforts satisfies the Ordinance conditions and justifies the granting of the variances in this instance. Furthermore, the proposed benefits of the deviation outweigh the detriments. The proofs offered by the applicant meet the standard that granting the variance relief would not have a substantial detrimental effect or substantially impair the intent and purposes of the Zone Plan and Zoning Ordinance. The applicant has offered sufficient proof to meet these tests; and

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- k. As has been stated by the New Jersey Supreme Court "*by definition no "c" 2 variances should be granted when merely the purpose of the owner will be advanced. The grant of approval must actually benefit the community in that it represents a better zoning alternative for the property. The focus of a ("c")(2) case then will not be on the characteristics of the land that in light of the current zoning requirements create a hardship on the owner warranting a relaxation of standards but on the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community.*" Kaufman vs. The Planning Board for Warren Township, 110 N.J. 551, 563 (1988). As has been noted by the Courts" generally speaking more is to be feared from a breakdown of the zoning plan by ill-advised grants of variances than by refusals thereof. Cummings vs. Board of Adjustment of Leona, 39 N.J. Super. 452, 460 App. Div. Certi. Denied 21 N.J. 550, (1956). In the case before the Board the applicant has demonstrated that the proposed variances present an opportunity for improved zoning and planning that will benefit the community and will effectuate the goals of the City as reflected in the zoning ordinance and the 2000 Master Plan. The benefits to the community outweigh the detriment of the variance in this matter and would not negatively affect the neighbors of such a project, nor the City as a whole. The applicant has met its burden of proof with regard to satisfying the positive and negative criteria as required to secure the "c" and "d" variances sought in this application as set forth above; and
- l. The Zoning Board hereby determines that the applicant has met its burden of proof to the satisfaction of the Zoning Board for use/bulk site plan approval and must satisfy any other conditions listed on Schedule A attached hereto and made a part hereof.

NOW THEREFORE BE IT RESOLVED that the Zoning Board of Adjustment of the City of Bayonne hereby **GRANTS** the applicant **VIRGIN MARY AND ST. JOHN COPTIC ORTHODOX CHURCH**, preliminary and final major site plan approval along with use and bulk variance relief to construct an addition to the Church located at 20-24 West 20th Street, City Block 220, Lot 29, subject to the conditions listed in Schedule A attached hereto and made a part hereof.

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Virgin Mary and St. John Coptic Orthodox Church
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BE IT FURTHER RESOLVED, that the Chairman of the Zoning Board of Adjustment has hereby authorized his signature to this Resolution granting approval with variances and the Land Use Administrator is authorized to advertise the action taken by way of Resolution in a local newspaper; and

BE IT FURTHER RESOLVED, that the Land Use Administrator is authorized to send copies of this Resolution to the following City Officials: City, Clerk, Construction Official, Zoning Officer, Fire Sub-Code Official, City Planner and City Consulting Engineer.

Resolution
 Virgin Mary & St. John Coptic Orthodox Church
 Z-10-003

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RECORDED VOTE:

<u>Commissioner</u>	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Not Voting</u>	<u>Not Present</u>
Urban	[X]	[]	[]	[]	[]
Adams	[]	[]	[]	[]	[X]
Apfelbaum	[X]	[]	[]	[]	[]
Egan	[X]	[]	[]	[]	[]
LeFante	[]	[]	[]	[]	[X]
Ferrante	[X]	[]	[]	[]	[]
Macre	[X]	[]	[]	[]	[]
Fitzgerald	[X]	[]	[]	[]	[]
Joskowitz	[]	[]	[]	[]	[X]
Weicker	[X]	[]	[]	[]	[]

WHEREAS, the application having received seven (7) aye votes is hereby

X APPROVED

DENIED

The above Resolution was adopted by the
 Zoning Board of Adjustment of the City of
 Bayonne at a regular meeting held on August
 15, 2011.


 MARK URBAN
 Chairman

Resolution
Virgin Mary and St. John Coptic Orthodox Church
Z-10-003

August 15, 2011
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SCHEDULE "A"
VIRGIN MARY AND ST. JOHN COPTIC ORTHODOX CHURCH
Z-10-003

1. The applicants shall comply with the recommendations as submitted by John Fussa, P.P., City Planner dated July 14, 2011 and Don Schlachter, P.E., City Engineer dated July 11, 2011, except as those recommendations have been specifically modified as reflected in the minutes of the proceedings before the Board on this application; and
2. The applicant shall also comply with the recommendations of City Planner Jesse Ann Mahat, P.P. in her reports dated January 19, 2011, April 25, 2011 and May 11, 2011, except as those recommendations have been specifically modified as reflected in the minutes of the proceedings before the Board on this application; and
3. The applicants shall maintain the property specifically including all landscaping in accordance with the approved plan; and
4. The applicants shall establish and maintain an Escrow Account with the City of Bayonne to pay for the professional review and inspection fees related to this application and construction required in conjunction therewith; and
5. The applicants shall submit cost estimates to the City Engineer to determine the cost of the Performance Bond and Inspection Escrow fees; and
6. Approval of this application is further conditioned on full compliance with all applicable Federal, State and Local Ordinances, rules and regulations and all required permits and approvals and certificates; and
7. Approval of this application is further conditioned upon the payment of all taxes, fees and required escrow deposits to the City of Bayonne. The applicants shall pay any additional fees or escrow deposits which may be due and owing within 30 days from the date of the adoption of this resolution; and
8. All documents required to be prepared by the applicant by virtue of the terms or provisions of any condition set forth in this resolution shall, before execution, be submitted to and approved by the Board Attorney and Engineer; and
9. The applicants shall comply with all of the conditions of approval within 190 days and shall submit an Affidavit of Compliance to the Planning Board showing the condition that each satisfies; and
10. If any other governmental agency grants a waiver or variance of a regulation, then this Board shall have the right to review that issue as it relates to this approval granted by this Board and modify to amend same.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Bayonne Muslims, Abdul Hameed Butt, and Khaled Aly

(b) County of Residence of First Listed Plaintiff Hudson County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, Email and Telephone Number)
See Attachment A.

DEFENDANTS

City of Bayonne, et al. (See Attachment A)

County of Residence of First Listed Defendant Hudson County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
Unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Religious Land Use and Institutionalized Persons Act, 42 U.S.C. 2000cc

Brief description of cause:
Religious land use and civil rights action

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

05/25/2017

SIGNATURE OF ATTORNEY OF RECORD

s/ Matthew Funk

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Bayonne Muslims, et al. v. City of Bayonne, et al.

Attachment A

Defendants

City of Bayonne
City of Bayonne Zoning Board of Adjustment
Mark Urban, Zoning Board Chairman
Clifford Adams, Zoning Board Vice Chairman
Jan Patrick Egan II, Zoning Board Secretary
Vincent J. LeFante, Zoning Board Commissioner
Louis Lombardi, Zoning Board Commissioner
Frank Pellitteri, Zoning Board Commissioner
Matt Dorans, Zoning Board Alternate Commissioner
Joseph Pineiro, Zoning Board Alternate Commissioner
James O'Brien, Jr., Zoning Board Alternate Commissioner
Nicholas DiLullo, Zoning Board Alternate Commissioner

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