IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CONGREGATION ARIEL RUSSIAN COMMUNITY SYNAGOGUE, INC., a Maryland tax-exempt nonstock corporation, and RABBI VELVEL BELINSKY, Plaintiffs, vs. BALTIMORE COUNTY and BOARD OF APPEALS OF BALTIMORE COUNTY, Defendants.	Civil No. _____ COMPLAINT

COMPLAINT

Plaintiffs CONGREGATION ARIEL RUSSIAN COMMUNITY SYNAGOGUE, INC., a Maryland tax-exempt nonstock corporation (the "Chabad"), and RABBI VELVEL BELINSKY (collectively the Chabad and Belinsky shall be referred to as "Plaintiffs"), by and through their attorneys, Storzer & Associates, P.C. and Pessin Katz Law, P.A., hereby complain of Defendants BALTIMORE COUNTY (the "County") and BOARD OF APPEALS OF BALTIMORE COUNTY (the "Board") (collectively, the County and the Board shall be referred to as "Defendants") as follows:

NATURE OF ACTION

1. This action is commenced by Plaintiffs to redress violations of their civil rights, as protected by the Free Exercise and Equal Protection Clauses of the United States Constitution, 42 U.S.C. § 1983, the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C.

§ 2000cc *et seq.* ("RLUIPA"), the Fair Housing Act, 42 U.S.C. § 3604 ("FHA"), and the Maryland Constitution caused by the Defendants' burdensome, discriminatory and unreasonable land use regulations and intentional conduct that have prohibited and continue to prohibit the Plaintiffs from using real property as a small synagogue and residence on an approximately three-acre parcel located at 8420, 8430 and 8432 Stevenson Road in Pikesville, Maryland (the "Property").

2. The Chabad has existed for fourteen years in Baltimore County without a permanent home. Desperately needing its own facilities, the Plaintiffs purchased real property in Pikesville, Maryland to use as a synagogue and home for its Rabbi. The zoning classification of the Property permits places of worship by right, and the planned synagogue meets all general land use regulation requirements.

3. However, hostile neighbors intent on preventing the Chabad from locating within their community have opposed it at every turn and devised myriad and novel strategies to prevent its existence. Further, they have delayed the approval process for two years, costing ARIEL hundreds of thousands of dollars in application fees and costs.

4. Ultimately, the Board of Appeals, in an attempt to apply what it admitted are "incredibly byzantine" zoning regulations that need to be "rewritten and clarified," used its standardless discretion to acquiesce to the desires of an owner of a neighboring 8,500 square foot "McMansion" who stated that his "dream house" turned into "a nightmare" because of a synagogue locating next to it. Such decision failed to apply any fact-based, objective criteria.

5. The Board also determined that an existing single family home would not be permitted to be used by the Rabbi as his residence, even though it is legally permitted as a single family residence and permitted in the relevant Residential Transition Area, as described below.

6. Eschewing the zoning regulations, prior practice, and any standards whatsoever, the Board simply decided that it wasn't "fair" to the neighbors to permit a synagogue to locate in their neighborhood next to them and denied the Chabad the ability to build its house of worship.

7. This delay and denial constitutes a severe and substantial burden on the Plaintiffs' religious exercise and discriminates against the Chabad and its Rabbi. Furthermore, the "byzantine" land use regulations of Baltimore County fail completely to provide a reasonable opportunity to the public to ascertain the standards that must be met in order to build a house of worship.

PARTIES

8. Plaintiff ARIEL is a tax-exempt nonstock corporation formed under the laws of the State of Maryland on July 26, 2005.

9. Plaintiff RABBI VELVEL BELINSKY is the Rabbi and Director of the Chabad.

10. Defendant BALTIMORE COUNTY is a chartered county of the State of Maryland, having offices at 400 Washington Avenue, Towson, Maryland, which, through the governing body, adopted the land use regulations in question in this matter.

11. Defendant BOARD OF APPEALS OF BALTIMORE COUNTY is a board of appeals duly appointed pursuant to the Chart of Baltimore County, Maryland, Article VI, § 601-602 to consider appeals from orders relating to zoning.

JURISDICTION AND VENUE

12. The subject matter jurisdiction of this Court is founded upon 28 U.S.C. § 1331 (federal question jurisdiction) in that this action is brought under 42 U.S.C. § 2000cc *et seq.*, 42

U.S.C. § 3604, and 42 U.S.C. § 1983. This Court also has supplemental jurisdiction over Count IX under 28 U.S.C. § 1367(a) for claims brought under Maryland law.

13. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) in that all of the events giving rise to the claims herein occurred in this district and the Defendants are subject to personal jurisdiction in this district as of the commencement of this action.

FACTUAL ALLEGATIONS

Plaintiffs' Religious Exercise

14. Plaintiff ARIEL was founded for the purpose of operating a clergy residence and Synagogue within Baltimore County, Maryland.

15. The Chabad and Rabbi Belinsky are affiliated with the Chabad-Lubavitch movement.

16. Chabad-Lubavitch is a major movement within mainstream Jewish tradition with its roots in the Chassidic movement of the 18th century. The Chabad-Lubavitch branch of Chassidism was founded in or around 1788. Today, Chabad-Lubavitch operates 3,500 locations in more than 85 countries.

17. The word "Chabad" is a Hebrew acronym for the three intellectual faculties of *chochmah* -- wisdom, *binah* -- comprehension, and *da'at* -- knowledge.

18. The word "Lubavitch" is the name of the town in Russia where the movement was originally based. The leadership of the Chabad movement was forced to move to Rostov in 1914 because of the events of the First World War, and then later to Leningrad.

19. Rabbi Yosef Yitchak Schneerson is credited with establishing the movement in the United States and nurturing its spread nationally and worldwide.

20. A part of Chabad-Lubavitch's religious mission is "[t]o create light for the sake of light, just by doing good for the sake of doing good, until all the world is filled with the serene light of G-dly wisdom 'as the waters cover the ocean floor.'"

21. Chabad-Lubavitch teaches that all Jews, regardless of their Jewish knowledge and practices, contain a divine spark. By welcoming all Jews into centers of Jewish practice and learning, Chabad-Lubavitch seeks to repair divisions between observant and non-observant Jews.

22. Chabad is a unique religious organization, and its motto is love your fellow as yourself. Plaintiffs believe that every single individual has a spark of goodness within them and they, therefore, believe and teach the importance of love and respect for each and every one of G-d Almighty's creations.

23. Plaintiffs share these religious beliefs described above.

24. Plaintiffs seek to bring the teachings of Judaism to those who may be interested in learning about it in a nonjudgmental and non-imposing manner to each person at their own pace.

25. ARIEL primarily serves a Russian-speaking population of Jews who came to the Baltimore area to escape persecution in the former USSR.

26. In the USSR, the study of Hebrew and practice of Judaism were forbidden by law.

27. In addition, ethnic Jews faced rabid anti-Semitism and persecution in the USSR.

28. Despite this persecution, the Chabad-Lubavitch movement stayed active and committed to Jews in the USSR. The sixth Lubavitcher rebbe was the only Jewish leader to remain active in the USSR, which he did until he forced to leave the country. In 1927, Rabbi Yosef Yitzvak Schneerson was forced to leave USSR and spent 3 years in Latvia and 10 years in Poland. Because of Holocaust, he moved to the United States.

29. Many Jews in the USSR fled. A number of them sought refuge in Baltimore County.

30. Rabbi Yosef Yitzvak Schneerson established the Chabad movement in the United States in 1941. After his passing in 1950, Rebbi Menachem Mendel Schneerson took over the leadership of the Chabad movement. He initiated the worldwide network of Chabad houses.

31. Serving these Russian-speaking Jewish refugees is of particular personal significance to Plaintiff Rabbi Belinsky.

32. Rabbi Belinsky was born in Leningrad to a Jewish family who had almost no knowledge of Judaism.

33. As a child, Rabbi Belinsky had a Hebrew-language textbook that he was not allowed to talk about.

34. Rabbi Belinsky sought refuge in the United States when he was 15 years old.

35. Because of his background, Rabbi Belinsky is able to relate to the experience of other Russian-speaking refugees from the former Soviet Union.

36. Rabbi Belinsky was appointed by Rabbi Shmuel Kaplan, the head Chabad rabbi of Maryland, to establish a synagogue in Baltimore County serving the community's Russian Jewish population. He commenced operations in Baltimore County in 2003.

37. Rabbis such as Rabbi Belinsky who serve as the spiritual leaders of synagogues believe that they are the "heirs of Abraham" who can inspire others to observe Jewish commandments and improve the world.

38. Most of ARIEL's programs are in Russian. It is the only Russian-language Jewish congregation in Baltimore. The nearest other Russian-language Jewish congregation is in Philadelphia.

39. Most of the refugees that Rabbi Belinsky serves did not have knowledge of Judaism or Jewish practice. It is Rabbi Belinsky's sincerely-held religious belief that it is important for these men and women to study Judaism and to reconnect with their heritage.

40. ARIEL seeks to fulfill its religious mission through the operation of a synagogue and a parsonage that will be the home of Rabbi Belinsky.

41. Members of the Chabad-Lubavitch movement also believe that Chabad centers serve to open the hearts of others and spread G-dliness.

42. Many aspects of Jewish religious observance, such as the building of Sukkahs during the Jewish festival of Sukkot, within which all meals must be eaten for eight days, the weekly observance of Shabbat including eating the mandatory eating of three meals during the day, the observance of Passover and related dietary laws, are based in the home.

43. It is important that Rabbi Belinsky's home be close to ARIEL's synagogue, since observant Jews are prohibited from driving on many Jewish holidays, including during the weekly observance of Shabbat.

44. The Plaintiffs have various programs to fulfill their religious mission, including lectures by visiting speakers, counseling, conducting life-cycle events such as bar and bat mitzvahs, weddings and funerals, social events, and teaching Hebrew and Judaism to adults, children and teens.

45. ARIEL also holds services on Friday nights to celebrate Shabbat as well as other Jewish holidays throughout the year, including Passover, Purim, Rosh Hashanah and Yom Kippur.

46. Approximately 25 congregants attend weekly Shabbat services with ARIEL.

47. More congregants attend Passover, Rosh Hashanah and Yom Kippur services, as well as the celebration of life-cycle events such as bar mitzvahs and weddings. These holidays and celebrations are held at a different location.

48. ARIEL currently shares the facilities of Chabad Lubavitch of Maryland located at 6701 Old Pimlico Road, Baltimore, Maryland, but these facilities have severely limited and restricted ARIEL's ability to conduct its religious programs.

49. Sharing the facilities of another congregation has caused great hardship for ARIEL. There is no space within the Chabad Lubavitch of Maryland's building that is designated for ARIEL's programs.

50. ARIEL must set up and take down the settings for each service and program at the host synagogue, which involves time and effort.

51. Since Shabbat services must take place at the same time for both congregations, ARIEL cannot worship in the main sanctuary of the synagogue and must find an alternate space in which to worship on Friday nights, or be forced to hold worship services at times that constitute a great hardship to ARIEL's religious exercise.

52. ARIEL cannot hold Shabbat worship services on Saturday mornings, because it lacks the space to do so.

53. ARIEL has many members who would like to participate in a Saturday morning service, but cannot do so because ARIEL lacks space.

54. Some ARIEL members have sought out Shabbat service on Saturday mornings at other congregations, and ended up leaving ARIEL for those other congregations.

55. A Bar Mitzvah, in which a Jewish boy assumes the religious responsibilities of Jewish adult, is an important lifecycle event in the Jewish religion.

56. Traditionally, Bar Mitzvahs are celebrated during the Saturday morning service.

57. Because ARIEL cannot conduct Saturday morning services, it cannot hold the traditional Bar Mitzvah services.

58. The families of children who are seeking to have a Bar Mitzvah seek out other synagogues.

59. These other synagogues often require that families become members in order for their children to become Bar Mitzvahs and the families end up leaving ARIEL.

60. The Brit Milah is another important lifecycle event in which male Jewish infants are formally welcomed into the covenant between G-d and the people Israel.

61. Brit Milah ceremonies often conflict with the host congregation's own morning services.

62. The conflict between services times extends to synagogue-based Jewish holidays such as Purim and Lag Ba-Omer.

63. On these holidays, it is customary for congregations to hold celebratory parties, which ARIEL is unable to do due to lack of space.

64. The schedules for the two congregations often conflict in other ways.

65. ARIEL is limited in the times that it can offer classes due to space limitations. ARIEL must alternate times with the other congregation and switch rooms in order to conduct its programs.

66. If the host congregation needs the space, then ARIEL must find a new location for its programs.

67. ARIEL has been unable to expand its offerings as requested by congregants because it does not have space for new classes.

68. ARIEL is often forced to rent space for its activities because these programs conflict with the host congregation's programs.

69. ARIEL is also unable to grow because of space limitations at its present location.

70. ARIEL's Hebrew School lacks sufficient space at its present location and cannot grow.

71. One Hebrew School class is currently studying in a hallway, which hinders the ability of the instructor to keep children focused.

72. ARIEL must share the host synagogue's kitchen, food storage and dining areas for the celebration of Kiddush, traditionally an important aspect of Shabbat celebration. ARIEL desires to have its own facilities for Kiddush in order to create a sense of community for its own congregation.

73. ARIEL members would benefit from having their own facilities for Kiddush where they could speak Russian and prepare foods reflective of their shared Russian Jewish background.

74. ARIEL members also hold "community Shabbat dinners" on Friday evenings during the year.

75. ARIEL must schedule these dinners around the host congregation's programming, and finding availability is difficult.

76. Sharing facilities with another synagogue has also limited ARIEL's ability to administer its religious programs.

77. ARIEL has not had adequate office space for Rabbi Belinsky or his staff.

78. Rabbi Belinsky was forced to use the closet of a conference room, which would then be needed by the host synagogue for its classes and conferences. At these times, Rabbi Belinsky would not have an office to use.

79. ARIEL has also lacked storage space for its programs.

80. ARIEL recently lost its inadequate office facilities, when Chabad Lubavitch of Maryland has informed ARIEL that as of June 1, 2016, it could no longer house the offices necessary for administration of ARIEL's programs.

81. Being forced to have its offices in one location and its programs in another has further increased the burden on ARIEL, by forcing Rabbi Belinsky, his staff and ARIEL's congregants to commute between these locations.

82. Rabbi Belinsky is less productive as a rabbi because he must commute between locations.

83. Congregants have become confused and still come to the synagogue seeking the Rabbi.

84. Some congregants are uncomfortable seeking the rabbi's guidance in an office building, and have told Rabbi Belinsky that they feel they are going to see a psychotherapist or a lawyer.

85. ARIEL's inability to grow, difficulty accommodating current members and threat of losing members to adequately-equipped synagogues has made ARIEL's fundraising very difficult.

86. ARIEL requires a new facility in order to grow, to effectively conduct its programs, and to continue its religious mission.

87. ARIEL looked at a number of properties in and around the area in which its congregants live, but most sites were unsuitable, such as having deed restrictions on the use of the sites preventing them from being used as a place of worship.

The Property and the Chabad's Proposed Use

88. On or about 2014, Rabbi Belinsky identified the subject property located at 8420, 8430, and 8432 Stevenson Road, Pikesville, Maryland (the "Property") as a potential site for the Chabad.

89. The Chabad purchased the Property for use as a synagogue and home.

90. The Property is zoned D.R.1 and RC-5, the County's "Density Residential 1" and "Rural Conservation (Rural Residential)" zoning districts.

91. Both zoning districts permit a place of worship as a permitted use.

92. The Property is approximately three acres in size, and is improved with a single family dwelling that is approximately 2,381 square feet in size, and a barn of approximately 2,000 square feet in size.

93. Several of ARIEL's congregants live nearby the Property on roads that intersect Stevenson Road.

94. The Property is also centrally located to ARIEL's congregants who do not live in the immediate area.

95. The Property is located less than 5,000 feet north of the Baltimore Beltway, Interstate 695.

96. The area surrounding the Property is primarily residential, with offices, retail uses, a post office, schools and religious uses near the Property.

97. The lot next to the Property, 8418 Stevenson Road (the "Abel House"), is

improved with a single-family home of approximately 8,500 square feet.

98. The Property is located less than 3,000 feet from Fort Garrison Elementary School, a public elementary school serving approximately 410 students in grades Kindergarten through fifth.

99. The Property is approximately 0.7 miles from the Chizuk Amuno Congregation, located at 8100 Stevenson Road, a large Jewish congregation with three daily prayer services.

100. Chizuk Amuno has the largest synagogue building in Baltimore County.

101. The Chizuk Amuno building is approximately 144,000 square feet, excluding the building's basement.

102. The Chizuk Amuno property also has a parking lot for 500 cars, an auditorium that can seat 1000, and an 1800-seat sanctuary.

103. The Chizuk Amuno Congregation also operates a Jewish museum and a religious school.

104. The Chizuk Amuno Congregation operates the Krieger Schechter Day School, which serves 281 students in grades Kindergarten through eighth.

105. The Property is approximately 1.5 miles from the Beth El Congregation, a synagogue that also operates a daycare and Sunday School.

106. The Property is approximately 0.6 miles from the Stevenson Village Shopping Center, located at 10415 Stevenson Road.

107. The "Stevenson Railroad" office complex is located across the street from the Stevenson Village Shopping Center.

108. The Property is uniquely suited for ARIEL's use.

109. The Property is currently improved with a barn and a two-story house.

110. ARIEL proposes to remove the barn.

111. ARIEL will maintain the existing house, which will be used as a home for Rabbi Belinsky.

112. ARIEL proposes to construct a building on the Property (the "Center") that will be comprised of a sanctuary and social hall with kitchen on the main floor and three classrooms and three administrative offices located in the basement.

113. The Center will be approximately 8,000 square feet, including the basement.

114. It will have a stone front facing Stevenson Road.

115. During the course of the administrative proceedings on ARIEL's application, described below, the County's Planning Department requested that ARIEL redesign the Center to have a more traditional look.

116. ARIEL honored this request by changing its architectural plans to emulate a Christian church located near the Property.

117. ARIEL's plan for the Property includes a parking lot to be located behind the Center and screened by landscaping.

118. ARIEL intends to landscape the Property to visually screen the Center and for noise reduction. This will include a landscaping buffer surrounding the entire property.

119. ARIEL will use native plant materials in the landscaping along the front of the Property.

120. ARIEL's proposed sanctuary will include 88 seats.

121. It is not anticipated that all of the seats would be filled on a regular basis.

122. The sanctuary will be divided by a *mechitza*, a partition mandated by Jewish law, which is used to separate men and women during prayer.

123. The sanctuary will be used for services on Friday nights and possibly on Saturday mornings when ARIEL expands its services to include a Saturday morning service.

124. The peak usage times for the Center would be during these services.

125. The Friday evening service occurs from approximately 7:00 p.m. to 8:00 p.m.

126. The Saturday morning service occurs from approximately 10:00 a.m. to noon.

127. ARIEL's Friday evening service is currently attended by about 25 people.

128. ARIEL is currently unable to host a Saturday morning service because of space limitations.

129. ARIEL may host small lifecycle events such as *Upshirnish*, a ceremony dedicated to the first cutting of a boy's hair at three years of age, in the Center's sanctuary.

130. ARIEL would continue to host all gatherings and services too large for the sanctuary, including Rosh Hashana and Yom Kippur services, at a separate location.

131. There will be a social hall adjacent to the sanctuary where ARIEL will be able to perform *Kiddush* blessings over wine. These blessings are the conclusion of services and an important religious duty.

132. ARIEL will also use its social hall to host informal gatherings for meals following the *Kiddush* blessings, which are commonly referred to *Oneg Shabbat* or "Sabbath Joy," and which are an important religious and cultural custom.

133. The classrooms located inside the Center will be used for Sunday School classes. Sunday School is held on Sunday mornings from 10:00 a.m. to 12:30 p.m.

134. During Sunday School children learn about the Jewish religion.

135. ARIEL seeks to increase its ability to provide Sunday School to Jewish children.

136. ARIEL will also offer classes in the Torah for adults on one or two nights per

week.

137. These classes are lectures and are held at 7:30 p.m. The classes last for one hour.

138. Approximately 10 people currently attend ARIEL's Torah classes during the week.

139. ARIEL seeks to increase its ability to provide Torah classes to adults.

140. The administrative offices would only be used during the week, since office work is not permitted on the Jewish Sabbath.

141. Not every room in the Center would be used at the same time.

142. Some people opposed to the construction of the Center have speculated that the Center could accommodate 300 people and have sought to limit ARIEL to having 25-35 people inside the Center.

143. To limit ARIEL to hosting 25-35 people in the Center would prevent Plaintiffs from fully engaging in their religious exercise.

144. The Center would benefit the local community by offering a place for Jews to engage in spiritual activity, religious learning and to receive spiritual counseling.

The County's Land Use Regulations Applicable to ARIEL's Property

145. Baltimore County regulates land use in its jurisdiction in part through the Baltimore County Zoning Regulations (the "BCZR").

146. The D.R.1 Zone, in which the Subject Property is located, provides for one dwelling unit per acre.

147. The purpose of Density Residential Zones is to "foster a greater variety in housing types within future residential developments; allow more feasible preservation of natural features

and induce the reservation of ample and more suitably designed open spaces and parks, in order to better satisfy the needs of residents without economic disadvantage to developers; allow greater flexibility in subdivision-development planning and provide for the inducement of more creative as well as more economic approaches to residential development, with the goal of desirable and distinctive identity and character of individual residential locales; provide the means to satisfy differing housing-market requirements without rezoning, and thus without disruptive changes in density potential; provide for the application of residential zoning classification in a manner more nearly in accord with comprehensive plans and comprehensive-planning goals; and provide greater certainty about dwelling types and densities within existing communities with the goal of conserving and maintaining these areas."

148. Churches and other buildings for religious worship are permitted as of right within all D.R. zones, including the D.R.1 zone.

149. Baltimore County's zoning regulations contain an extremely complicated set of procedures and requirements that a place of worship must navigate in order to engage in religious land use within the County.

150. Baltimore County's byzantine zoning regulations provide objecting residents myriad possibilities for attempting to derail religious land use development, even where such use is permitted in the relevant zoning district.

151. Such regulations create unbridled discretion on the part of County decision makers as to whether religious exercise will be permitted or not, and impose many years of review and hundreds of thousands of dollars of cost to any such applicant.

152. Furthermore, the Baltimore County Code permits another governmental entity, the "People's Counsel," to engage in yet another additional stage of government review, in this

case a County official advocating a position contrary to religious land use to another County body, the Board of Appeals.

153. The Baltimore County Code states in part:

> The county executive shall appoint a people's counsel who shall represent the interests of the public in general in zoning matters as hereinafter set forth, ...
>
> . . . .
>
> The people's counsel shall have the following powers and duties:
>
> A. He shall appear as a party before the zoning commissioner of Baltimore County, his deputy, the county board of appeals, the planning board, and the courts on behalf of the interests of the public in general, to defend any duly enacted master plan and/or comprehensive zoning maps as adopted by the county council, and in any matter or proceeding now pending or hereafter brought involving zoning reclassification and/or variance from or special exception under the Baltimore County Zoning Regulations, as now or hereafter in force and effect, in which he may deem the public interest to be involved. In defense of the zoning maps or master plan, he may appear as a party in interest before all state and federal agencies, boards, and courts on matters involving the preservation of the quality of the air, land, and water resources of Baltimore County, and/or may initiate such proceedings in the public interest. He shall have in such appearance, all the rights of counsel for a party in interest, including but not limited to the right to present his case, to cross examine, to object, to be heard, and to file and prosecute an appeal in his capacity as people's counsel from any order or act of the zoning commissioner of Baltimore County or his deputy, or of the county board of appeals to the courts as an aggrieved party pursuant to the provisions of Section 604 of this Charter to promote and protect the health, safety and general welfare of the community. The people's counsel may also prosecute an application before any state or federal court for injunctive and other relief incidental thereto, to enjoin violation of any Baltimore County zoning maps or master plan or as authorized by resolution by the county council.

(Emphases added.)

154. Despite the fact that there was no challenge to any master plan or comprehensive zoning map, or any zoning reclassification, variance or special exception involved in ARIEL's

application, the People's Counsel participated in and lengthened the proceedings, and further complicated ARIEL's attempt to use its property for religious purposes.

155. The Baltimore County zoning regulations that pertain to the development of religious land use creates substantial uncertainty, delay and expense for houses of worship.

156. Baltimore County zoning regulations unreasonably limit religious assemblies, institutions, or structures within the County.

157. The BCZR, like many other jurisdiction's zoning codes, provides for permitted, special exception, and prohibited land uses within any given zoning district.

158. However, the BCZR also overlays these general use regulations with a myriad of other regulatory zoning hurdles that provide unbridled discretion on the part of County officials and employees to prevent religious land use by applying vague and subjective criteria.

159. Such hurdles create substantial uncertainty, delay and expense for any religious land use applicant.

160. Such hurdles also permit objecting neighbors the opportunity to prevent religious land use from existing near them, even if nominally permitted under the general use regulations, by drawing out administrative proceedings over many years and costing applicants vast sums of money

161. As such, is it impossible to know whether or where religious land use may be permitted in Baltimore County.

162. The following are just some of the BCZR restrictions that have been applied to the Chabad.

163. The BCZR contains a concept known as a "Residential Transition Area" ("RTA"), which is described as a "supplemental use restriction" in the Zoning Regulations.

164. An RTA is "a one-hundred-foot area, including any public road or public right-of-way, extending from a D.R. zoned tract boundary into the site to be developed."

165. The BCZR provides that any nonresidential use permitted as of right is a "residential transition." BCZR § 1B01.1.

166. The drafters of the BCZR recognized that dissimilar uses would be located next to each other within Baltimore County.

167. Under the BCZR, a "residential transition" must include a "residential transition area" ("RTA") of a one-hundred-foot area, including any public road or public right-of-way, extending from a D.R. zoned tract boundary into the site to be developed if the residential transition is next to a parcel of land zoned D.R.1.

168. The RTA regulations limit what can be built within various setbacks and a buffer.

169. Some of those limitations include:

A. That the RTA "may contain single-family detached, semidetached or duplex dwellings";

B. That the "fifty-foot RTA buffer shall remain an upgraded, uncleared, landscaped buffer unless otherwise directed by the hearing officer, based upon recommendations of the county. It shall not contain cleared drainage areas, stormwater management ponds or accessory structures, but it may be bisected by roads, paths and trails that are designed to connect to adjoining developments.";

C. That "Parking lots or structures, either as principal or accessory use, whether permitted by right, special exception or pursuant to Section 409.8.B, shall provide a fifty-foot buffer and seventy-five-foot setback, ..."'

170. Opponents of ARIEL have argued that the phrase "cleared drainage areas,

stormwater management ponds or accessory structures" prohibits any "accessory structures" (including the existing farmhouse that will be used as the Rabbi's home) within an RTA, not just structures that are accessory to stormwater management ponds.

171. Even the People's Counsel agreed during the Board proceedings that the Rabbi's home would be a "dwelling" and is not precluded by the RTA requirements.

172. ARIEL's plan for the Property retains the single family residential home as a home for Rabbi Belinsky, which is located within the RTA.

173. ARIEL's plan complies with all aspects of the RTA under the BCZP.

174. Opponents of ARIEL have argued that the phrase "bisected by roads . . . that are designed to connect to adjoining developments" does not permit a driveway to provide access to property, leaving a use effectively landlocked.

175. ARIEL's use is subject to the following RTA restrictions:

> A new church or other building for religious worship, the site plan for which has been approved after a public hearing in accordance with Section 500.7. Any such hearing shall include a finding that the proposed improvements are planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises.

176. Thus, even though a place of worship is "permitted" by right on such property, development can be thwarted upon an argument that the use does not meet the impossibly vague and subjective standard that it is not "compatible with the character and general welfare of the surrounding residential premises."

177. The term "to the extent possible" is not defined in the BCZR.

178. The term "compatible" is not defined in the BCZR.

179. The BCZR provides no additional guidance regarding the "character and general

welfare of the surrounding residential premises."

180. Even if ARIEL's plan does not comply with all aspects of the RTA under the BCZR, it complies to the extent possible with the RTA requirements.

181. The BCZR also contains a concept known as "Final Development Plan" regulations.

182. The "Final Development Plan" regulations are not a system of deed restrictions and covenants that are common in other jurisdictions, but yet another overlay of zoning regulations on top of the general use regulations and RTA regulations.

183. As part of the subdivision process for a parcel within a D.R. Zone, the Zoning Commissioner and Director of Planning must approve a Final Development Plan for the subdivision.

184. The BCZR provides that once a property is governed by a Final Development Plan, "no use may be established and no construction may take place on any lot so created except in accordance with such a plan."

185. Amendments to Final Development Plans are governed by the BCZR.

186. ARIEL's Property is governed by a Final Development Plan, which was approved by the Deputy Zoning Commissioner for Baltimore County on February 16, 2006.

187. Originally, the prior owners of the Property, the Goldmans, had subdivided their 5.75-acre farm into three lots (the "1988 Subdivision").

188. The 1988 Subdivision was memorialized in the Health Master Subdivision of Property of Harvey Goldman & Wife, dated July 19, 1988 (the "Health Master Plan").

189. Lot 2 of the 1988 Subdivision (the "Abel House"), designated as 8418 Stevenson Road, is currently developed with an approximately 8,500 square foot residence owned by

Kenneth B. Abel and Jessamyn Abel. Mr. Abel is the principal opponent of ARIEL's house of worship.

190. Abel has stated that his "dream house" has turned into "a little bit of a nightmare" with the possibility of synagogue being built next door, which he would be able to see from several windows in his house.

191. Abel testified at length how his success as an attorney entitles him to not have a synagogue near his house. During the Board hearings he stated in part:

> In 1992, I, you know, I, I wrote a book, it's more like a pamphlet on Maryland Corporation law. I'm listed in, you know, the, I, sort of, they're a little bit markety but, you know, I'm listed in Chambers, Maryland Super Lawyers, Best Lawyers of America, you know, I'm listed in all the lawyer sort of manuals for my practice area, which is merges and acquisitions or business transactions. I do a lot of business transactions with real estate, you know, related projects and I also work a tremendous amount. I mean, you know, part of finding my dream home, like to buy that home, you know, you know, it's not like, you know, it, that's just my work, you know. I regularly bill over two thousand hours every year. I'm probably in the top five of the hundred or so lawyers at Ober Kaler in billing, you know. All I really do is work and spend time with my family. I really don't and, and, you know, I really don't do anything else so, you know, I'm not, I mean, obviously my house is expensive but, you know, in my view, like I worked for every dime to, to pay for that house.
>
> . . . .
>
> . . . . I've been a lawyer for twenty years, I told him the plan was right outside my bedroom window, why would I ever agree to that. . . .
>
> . . . . [I]t destroys my view of the property in a way that's not the same as two houses does. It's an ex, it's, it's a totally different view of, of what I would expect.

192. Abel further acknowledged that his house was not compatible with other homes in the area. Although his house is 64 feet above grade, he stated that he would not be "okay" with a house 50' above grade.

193. Abel also stated that although his house could be described as a "McMansion," he would object to another "McMansion" being built and that he would object to any house larger than 2,800 square feet in size.

194. In the 1988 Subdivision, Lot 3 was much larger than the other lots, at almost 3 acres.

195. Lot 3 on the Health Master Plan is the subject Property.

196. After the approval of the 1988 Subdivision, the Goldmans continued to own all three lots comprising the 1988 Subdivision.

197. At some point after 1988, the Health Master Plan was no longer included within the BCZR.

198. The revised BCZR does not give any indication as to how Health Master plans should be treated.

199. Baltimore County commonly treats Health Master plans as minor subdivisions.

200. The BCZR does not state that Health Master plans should be treated as final development plans.

201. The BCZR sections that reference final development plans do not reference Health Master plans.

202. In 2006, the Goldmans sought to subdivide Lot 3 shown on the Health Master Plan.

203. The subdivision of Lot 3 (the "2006 Subdivision") was ultimately approved as a subdivision of Lot 3 into three lots, and was memorialized by the filing of the Subdivision Plan with the land records of Baltimore County, Maryland at SM 78-198 on January 31, 2007.

204. The zoning officer at the time required that the Goldmans show all lots from the

Health Master Plan on the 2006 Subdivision Final Development Plan.

205. On February 16, 2006, the Deputy Zoning Commissioner for Baltimore County approved a "Final Development and Schematic Landscape Plan" for the Lot 3 Subdivision (the "Final Development Plan.").

206. Because ARIEL sought to consolidate Lots 3, 3A and 3B in order to use the Property as a house of worship, it applied to amend the Final Development Plan.

207. Amendments to the Final Development Plan of "Lot 3" should have been permitted "by simple resubmission . . . if there is no change with respect to any lot, structure or use within 300 feet of a lot or structure which has been sold since the original plans were filed."

208. There has been no change with respect to any lot, structure or use within Lot 3 since the original Final Development Plan was filed.

209. Nevertheless, the County incorrectly required ARIEL to go through a much more stringent process, an amendment "upon demand for hearing" which must be amended through "special exception procedures."

210. Furthermore, the County improperly permitted someone who was not an owner of property within the Final Development Plan to challenge ARIEL's amendment.

211. The 2006 Final Development Plan applies only to the three properties subdivided from the former "Lot 3" of the 1988 Subdivision, Lots 3, 3A and 3B. This is demonstrated by, among other things:

a. The Final Development Plan clearly identifies the "Site" as only Lot 3.

b. The Final Development Plan states: "Density Calculations: Units Allowed: 3.2007 AC x 1 = 3 Units Proposed 3"

c. The Final Development Plan states: "Parking: Required 3 x 2 = 6 Spaces

Provided = 6 Spaces"

d. The Final Development Plan states: "Proposed Average Daily Trips: 3 x 10 = 30"

e. The Final Development Plan states: "Area Calculations: Gross Area: 3.2007 AC. (Lot 3) Total Highway Widening: 0.3389 AC. Net Area: 2.8618 AC. (Lot 3)"

f. The Forest Conservation Easement only states the acreage for such easement as exists in Lot 3, and not as it extends into Lots 1 and 2.

212. Other documents indicate that the Final Development Plan applies only to the three properties subdivided from the former "Lot 3" of the 1988 Subdivision. This is demonstrated by, among other things:

a. The Subdivision Plat includes the information described above.

b. The Revised Forest Conservation Plan for the "Resubdivision of Lot 3" only addresses Forest Conservation issues for Lot 3, and includes the information described above in the Final Development Plan.

c. The Revised Forest Conservation Plan for the "Resubdivision of Lot 3" contains "Basic Site Data," "Information for Calculations," and "Afforestation Calculations" only for Lot 3.

d. The Development & Schematic Landscape Plan includes the information described above in the Final Development Plan.

213. The plans listed above do show Lots 1 and 2, but they do so in order to ensure that the subdivision of Lot 3 into three additional lots (called Lot 3, Lot 3A and Lot 3B) would not have resulted in the original parcel being subdivided into too many lots, thus not meeting density

requirements. Thus, the 2006 plans note the boundary of Lots 1 and 2 from the 1988 Subdivision.

214. Pursuant to the BCZR, property owners within a Final Development Plan are eligible to "file a demand for a hearing."

215. The regulations concerning Final Development Plans are meant to provide for disclosure of development plans to "prospective residents" within a Final Development Plan.

216. The County has previously interpreted the BCZR to only permit property owners within a Final Development Plan to initiate such proceedings.

217. Neighbor Abel lives outside of the Final Development Plan.

218. However, both the Administrative Law Judge and the Board in ARIEL's matter permitted Abel to file a demand for a hearing and participate as if his property was part of the Final Development Plan.

219. Objectors took the position that property owners outside of any final development plan boundary can demand a hearing on any proposed amendment to a final development plan.

220. This permitted Abel, through his attorney, to delay proceedings and interfere with ARIEL's ability to have a place of worship as described below.

221. The Board refused to determine the issue of Abel's ability to demand a hearing prior to the end of its proceedings.

222. It is undisputed that, had Lot 3 never been subdivided, Abel would have had no right to interfere with the use of Lot 3 for the permitted use of a place of worship.

223. The BCZR also includes "Special Regulations for Small Tracts" for lots within a subdivision tract in single ownership which is too small in gross area to accommodate six dwelling or density units in accordance with the maximum permitted density in the D.R. Zone in

which such tract is located.

224. These lots are commonly referred to as the "small lot table."

225. Under the BCZR, lots within the small lot table are exempted from the need to amend a final development plan.

226. The 2006 Subdivision was approved under the small lot table requirements.

227. Lot 3 is exempted from the need to amend the final development plan under this provision, as it is in single ownership and too small in gross area to accommodate more than six dwelling units.

228. The Property is within a "small lot table" because, under D.R.1. zoning, it cannot accommodate six dwelling units and because the Final Development Plan applies only to Lot 3 from the 1988 Subdivision.

229. In a prior decision, Zoning Commissioner John Murphy determined that the Property was subject to the small lot table.

230. Additionally, the Lot 3 Final Development Plan is also exempt from the need for amendment because it is in single ownership and is in a duly recorded subdivision plat not approved by the Baltimore County Planning Board or Planning Commission, another exemption in the BCZR.

231. Nevertheless, the County did not exempt ARIEL from a requirement to amend the Final Development Plan based on these provisions.

232. However, if an amendment of a final development plan is necessary, it may be amended through a special exception procedure, which includes a hearing before the Office of Administrative Hearings for Baltimore County.

233. As part of the hearing, the administrative law judge, acting as a Zoning

Commissioner, must determine whether the amendment would be consistent with the "spirit and intent" of the original plan.

234. The term "spirit and intent" is not defined in the BCZR.

235. Administrative law judge proceedings can be long, protracted affairs and permit full participation by objectors to development.

236. ARIEL's hearing before the administrative law judge lasted for 8 days.

237. Opponents of ARIEL have argued that a place of worship is not in the "spirit and intent" of the Final Development Plan, arguing that a use must be exactly the same as the original plan in order to be within the spirit and intent of the original plan.

238. The opponents' standard was incorrect, as Maryland courts have held that the relevant issue is whether the amendment is compatible, appropriate, and in harmony with the neighborhood.

239. By definition, under Maryland law, a use that is permitted in a zoning district is automatically "compatible" in such district.

240. Nevertheless, the opponents were permitted to delay proceedings further advancing this argument.

241. The Maryland Court of Appeals has opined that, "[i]n determining which uses should be designated as permitted or conditional in a given use district, a legislative body considers the variety of possible uses available, examines the impact of the uses upon the various purposes of the zoning ordinance, determines which uses are compatible with each other and can share reciprocal benefits, and decides which uses will provide for coordinated, adjusted, and harmonious development of the district." *Schultz v. Pritts*, 291 Md. 1, 21 (1981). Churches, as permitted uses, are automatically "compatible" with the surrounding area.

242. Similarly, in *Hayfields v. Valley Planning Council, Inc.*, 716 A.2d 311 (Md. App. 1998), the Maryland Court of Special Appeals cited *Shultz* for the proposition that, "[a] use permitted as of right may be developed, as a matter of zoning, regardless of the kind and extent of adverse impact (from a land use perspective) it will create in the particular location proposed." 716 A.2d at 322.

The Petition for Special Hearing

243. ARIEL, along with the Goldmans, filed a Petition for Special Hearing, Case No. 2015-239-SPH, with the Office of Administrative Hearings for Baltimore County pursuant to § 500.7 of the BCZR on or about April 28, 2015 seeking: 1) permission to locate the synagogue within the D.R.1 zone; 2) a finding that the plan complied with the RTA requirements for a "new church"; and 3) confirmation that the existing home on the Property could remain as a parsonage.

244. ARIEL's submitted plan included a new synagogue building with required parking, use of the existing farmhouse as the Rabbi's home, and demolition of a decrepit barn structure.

245. ARIEL's plan fully complied with the RTA requirements.

246. ARIEL's plan set the synagogue structure back in the middle of the Property and placed the parking area behind such structure to make it not visible from the road.

247. ARIEL's plan adopted the architecture of the nearby former Stevenson United Methodist Church in order to demonstrate that it was in character with the surrounding area.

248. Additionally, on June 3, 2015, Kenneth & Jessamyn Abel , the owners of the Abel House next door to the Property filed a Petition for Special Hearing, Case No. 2015-276-SPH, to seek a determination of whether ARIEL's petition was "consistent with the spirit and intent of

the original plan and of this article per Baltimore County zoning regulation Section 1B01.3.[A].(7)(b)(1) & (3)."

249. The ALJ consolidated cases 2015-239-SPH and 2015-276-SPH by order on June 25, 2015.

250. ARIEL's petition was officially deemed complete on April 30, 2015.

251. The Administrative Law Judge held 8 days of hearings on ARIEL's petition.

252. The Abels were represented by counsel at the hearings, as were other objectors within the community.

253. A lawyer who lives nearby the Property represented himself as an objector during the hearings.

254. Rabbi Belinsky testified on ARIEL's behalf.

255. ARIEL also presented the testimony of several experts, including a landscape architect, traffic engineer, architect and retired zoning commissioner.

256. The retired zoning commissioner testified that the Property qualified for the "small lot table" exemption and that amending the Final Development Plan was not necessary.

257. The various objectors did not offer any expert witnesses.

258. An architect who lives near the project and is opposed to ARIEL testified against ARIEL's petition, as did Kenneth Abel.

259. The Administrative Law Judge issued his decision on January 12, 2015**.**

260. The Administrative Law Judge found that ARIEL's plan "largely complied" with the RTA requirements.

261. The Administrative Law Judge found that ARIEL's plan is "compatible with the surrounding residential premises."

262. The Administrative Law Judge found that ARIEL satisfied the "new church" exception to the RTA requirements.

263. The Administrative Law Judge "assumed without deciding" that ARIEL was required to satisfy the requirements to amend the Final Development Plan for the Property.

264. The Administrative Law Judge's failure to decide whether ARIEL must satisfy the requirements to amend the Final Development Plan resulted in extended substantial and unnecessary delay to the proceedings.

265. The Administrative Law Judge applied BCZR § 1B01.3.A.1 to find that "the proposed amendment from a residential to institutional use constitutes such an 'inappropriate change' that should not be permitted at this juncture."

266. Thus, the Administrative Law Judge unreasonably found that ARIEL's plan was both compatible and not compatible with the surrounding uses.

267. The Administrative Law Judge noted that "[c]ompatibility is obviously involved in evaluating the 'new church' RTA exception, but a different standard applies in determining whether the FDP amendment procedures have been satisfied."

268. ARIEL filed its appeal to the Baltimore County Zoning Board of Appeals on January 14, 2016.

269. The Baltimore County Zoning Board of Appeals reviews the decision of the Administrative Law Judge under a *de novo* standard of review.

270. The Zoning Board of Appeals held hearings on May 12, 2016, May 16, 2016, May 26, 2016, June 7, 2016, June 23, 2016, July 8, 2016, August 25, 2016, September 6, 2016, October 14, 2016 and January 4, 2017.

271. Proceedings dragged on before the Board of Appeals for ten hearings.

272. The Board Chairperson stated that ARIEL's case has the "record for the longest number of days."

273. The Baltimore County Zoning Board of Appeals does not hold hearings on consecutive days.

274. Again, ARIEL presented expert testimony on behalf of its petition.

275. In addition to presenting the experts who testified on its behalf before the Administrative Law Judge, ARIEL presented the expert testimony of David Thaler, a professional engineer and expert on Baltimore County zoning.

276. The opponents of ARIEL extended and unreasonably delayed proceedings by cross-examining witnesses on irrelevant and redundant matters.

277. As described above, the Board acted contrary to law in its review of the appeal in several respects.

278. For its part, the People's Counsel introduced various documents related to ARIEL's religious exercise and the irrelevant existence of other synagogues in the County, which the Board permitted.

279. The Board noted the issue of the People's Counsel authority or lack thereof to participate in these proceedings, but permitted the People's Counsel to continue his participation.

280. The People's Counsel incorrectly referred to the proceedings as a special exception hearing.

281. On January 4, 2017, the Board rendered its final decision on Petitions for Special Hearing 15-239-SPH and 15-276-SPH (the "Final Decision").

282. The Final Decision was a final decision by the Board of Appeals.

283. The Board of Appeals issued its minutes of deliberation, which memorialized the

Board's deliberations and decision ("Minutes").

284. The Final Decision denied ARIEL's requested relief of the proposed planned synagogue; specifically that the proposal "does not meet the RTA exception standard" (the "RTA Decision").

285. The Final Decision also granted the Protestants' requested relief that the proposed synagogue was not "consistent with the spirit and intent of the original FDP" (the "FDP Decision").

286. During the public deliberations, the Board Chair stated: "I found [the applicable regulations] incredibly byzantine."

287. The other two panel members of the Board agreed with the Chair's statement.

288. Board member Garber stated that it was "not the best-written statute."

289. The Chair stated: "If it was rewritten and clarified it would be nice."

290. The Board stated that the Plaintiffs' application was the longest hearing the Board has ever had.

291. The Board found that the Rabbi's planned home, a pre-existing single family house that would be used to house the Rabbi, is an accessory structure that is not permitted in the 50' RTA buffer.

292. In another application involving a fast food restaurant, the Board has previously determined that the RTA did not apply because "[n]o housing [was] proposed to be constructed, . . ."

293. Similarly here, no housing is proposed to be constructed in the Plaintiffs' plan and the RTA regulations permit single-family dwellings.

294. The Board discriminated against the Plaintiffs in determining that the RTA bars

the already-existing home just because the Rabbi will live there.

295. The purpose of the RTA regulations is to ensure that similar housing types are built adjacent to one another or that adequate buffers and screening are provided between dissimilar housing types.

296. The BCZR explicitly states: "The RTA may contain single-family detached, semidetached or duplex dwellings."

297. The existing home planned to be used for the rabbi is a "single-family detached . . . dwelling."

298. The existing house is not a dissimilar housing type as neighboring homes, regardless of whether it is used as a residence for a rabbi.

299. The house is currently permitted to exist on the Property as a single family residence, if it is not used as the Rabbi's home.

300. During the public deliberations, the Board chair stated that a single family residence would be permitted in the RTA buffer, but a Rabbi's home is not permitted.

301. Upon information and belief, the Board has never previously determined that an existing single family residence violates the RTA regulations.

302. The RTA Decision thus discriminated against Plaintiffs on the basis of religion.

303. Plaintiff Belinsky has been denied housing on the basis of religion.

304. The Board further determined that the planned synagogue (1) did not comply, to the extent possible, with RTA use requirements; and (2) was not compatible with the character and general welfare of the surrounding neighborhood.

305. These requirements apply to a "church or other building for religious worship" pursuant to BCZR § 1B01.B(1)(G)(6).

306. These requirements do not have to be met with respect to other nonreligious institutional and assembly uses locating in an RTA, including a "country inn," a "bed-and-breakfast inn" (which may have up to 20 rooms), an "addition to an existing community building, or other structure devoted to civic, social, recreational, fraternal or educational activity," "Transit facilities and rail passenger stations," and "Assisted living facilities, Class A."

307. These other nonreligious assembly and institutional uses not subject to such requirements may be larger and have greater land use impacts than the Plaintiffs' proposed synagogue.

308. The basis for the Board's determination that proposed synagogue did not comply, to the extent possible, with RTA use requirements was that the Plaintiffs could have designed a smaller synagogue, or located elsewhere.

309. There is no standard in the BCZR that states that an RTA exception must not be granted if the proposed facility could have been "designed smaller."

310. Upon information and belief, the Board has previously found that a proposed development met the RTA exception standard even where such development could have been designed smaller.

311. In 2011, the County granted RTA exception relief to the Christian Life Church for a 2,100 seat church that was adjacent to residential uses.

312. The County determined that such a large Christian house of worship complied to the extent possible with RTA requirements and was compatible with the character and general welfare of the surrounding residential premises.

313. The Christian Life Church plan could have been designed smaller.

314. The Board discriminated against Plaintiffs in its RTA decision by basing it on the

conclusion that the development could have been "designed smaller."

315. There is no standard in the BCZR that states that an RTA exception must not be granted if the proposed use could be located elsewhere.

316. Upon information and belief, the Board has previously found that a proposed development met the RTA exception standard even where such development could have been located elsewhere.

317. The Christian Life Church could have been located elsewhere.

318. The Board discriminated against Plaintiffs in its RTA decision by basing it on the conclusion that the development could have been located elsewhere.

319. The basis for the Board's determination that the proposed synagogue was not compatible with the surrounding neighborhood was that some of the surrounding homes were smaller than the planned synagogue.

320. There is no standard in the BCZR that states that an RTA exception must not be granted if some of the surrounding homes are smaller than the proposed use.

321. Upon information and belief, the Board has previously found that a proposed development met the RTA exception standard even where the proposed structure(s) were larger than surrounding residential structures.

322. The Christian Life Church was larger than surrounding residential uses.

323. The Board discriminated against Plaintiffs in its RTA decision by basing it on the conclusion that some of the surrounding homes were smaller than the planned synagogue.

324. The Board determined that the surrounding neighborhood was limited to the properties touching the subject Property.

325. Even though Board member West stated during the deliberations that "there was a

real attempt to be consistent in design, the size is comparable to the one next door," the Board determined that the similar size of the Abel's home and others was not sufficient to establish "compatibility."

326. In making its RTA Decision, the Board did not rely on any explicit standards, either from the BCZR or otherwise.

327. The standards used by the Board in rendering the RTA Decision were wholly subjective and arbitrary.

328. One member of the Board stated "I would have to decide more than what is just on paper" and the Board "had to look outside the plan."

329. The Board has previously limited its RTA exception analysis to "the Plan" with respect to other developments.

330. The Maryland Court of Special Appeals has determined, in a case involving a church, that the appropriate analysis is a review of "the Plan."

331. The Board ignored applicable law and and engaged in wholly discretionary and subjective decisionmaking also with respect to the FDP Decision.

332. The Board's decision was contrary to law because there is no basis in the BCZR for the County to require ARIEL to amend the Final Development Plan.

333. Upon information and belief, the Board has previously determined that no amendment to an FDP was necessary for a change in use of a property subject to an FDP.

334. The Board's decision to require an amendment to an FDP for ARIEL's proposed use discriminated against ARIEL.

335. The Board erroneously treated the Final Development Plan as including all of the lots from the original Health Master Plan, even though the Final Development on its face applies

only to Lots 3, 3A and 3B.

336. The Board further acted contrary to law because the Property is exempt from the amendment procedures as the Final Development Plan was approved under the small lot table, as previously determined by the County.

337. In rendering its FDP Decision, the Board decided that it was not bound by any specific criteria in determining whether "the amendment [to the FDP] would be consistent with the spirit and intent of the original plan and of this article."

338. "Spirit and intent" is not defined in the BCZR.

339. Board member Garber suggested that the Board apply the special exception factors found in BCZR 502.1; however, he was outvoted.

340. The Minutes state in part:

> The Board discussed the question of whether the FDP amendment law, special exception procedures provided in Section 502, encompass the BCZR Section 502.1 substantive standards. Two Board Members agreed that the Special Exception factors in 502.1 do not need to be examined but only a hearing held, with one Member dissenting on this issue only.

341. Board member West stated that the "issue is one of fairness to neighbors."

342. "Fairness" is not defined in the BCZR.

343. In making its FDP Decision the Board did not rely on any explicit standards, either from the BCZR or otherwise.

344. The Board's FDP Decision was wholly subjective and arbitrary.

345. The Board concluded that, because the church use was a change in use, the FDP could not be amended to permit a synagogue.

346. This is contrary to the provisions of the BCZR, which contemplate the possibility a change in use through the amendment procedure. Section 1B01.3(7)(a)(7) states in part:

> a. Amendment prior to sale of interest in nearby property. The development plans may be amended by simple resubmission, or by the submission of appropriate documents of revision, subject to the same requirements as are applied to original plans, if there is no **change with respect to any** lot, structure or **use** within 300 feet of a lot or structure which has been sold since the original plans were filed.
>
> b. Amendment after sale of interest in nearby property or upon demand for hearing. In the case of an **amendment not allowed under Subparagraph a**, by reason of sale of property within the area, or in case of a demand for hearing by an eligible individual or group, the plans may be amended through special exception procedures, ...

(Emphases added.)

347. Upon information and belief, the Defendants have previously permitted changes in use for properties that are subject to an FDP.

348. The Board discriminated against Plaintiffs in its FDP decision by basing it on the fact that there was a change in use.

349. The Board wrongly viewed the outline of "houses" drawn on the Final Development Plan as a commitment by the landowner that nothing other than houses could be built there, which is contrary to law.

350. The Board determined that no amendment to an FDP was permissible if it created a change to the FDP.

351. This determination is unreasonable because any amendment to an FDP necessarily presupposes a change to the FDP, and discriminatory because the Board had not applied such a standard to prior applications.

352. In rendering its FDP Decision, the Board relied on Abel's "assumption" when he purchased his home that the Property would be used for residential purposes and not a

synagogue, even though a synagogue was a permitted use of the Property.

353. The Board's RTA and FDP Decisions effectively created a standard to deny a petition if neighboring property owners oppose such synagogue development.

354. The Board was informed of its obligations under federal law to decide ARIEL's application in a manner that did not violate RLUIPA.

355. The Board had the authority to place limits on ARIEL's religious land use and impose reasonable conditions on approval.

356. The County placed conditions on the approval of Christian Life Church's RTA exception.

357. Section 502.2 of the Code requires the Defendant Board to "impose such conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties" when it grants a special exception. Special exception procedures are applicable to a petition for amendment of an FDP.

358. The Board did not suggest what size or type of house of worship would be permissible on the Property.

359. By completely prohibiting ARIEL from constructing its house of worship petition for, the Board substantially burdened the Plaintiffs' religious exercise.

360. The Board raised the issue of RLUIPA in its deliberations but ignored its substantial burden provisions.

361. The Board mistakenly treated RLUIPA as only an anti-discrimination statute.

362. The effect of the Board's decision is to completely prohibit ARIEL from constructing its house of worship on the Property.

363. There is no compelling or legitimate governmental interest that requires denial of

ARIEL's application.

364. Complete denial of ARIEL's application is not the least restrictive means of achieving any governmental interest.

365. By failing to approve the Plaintiffs' petition, with or without conditions limiting its use, the Board failed to use the least restrictive means of achieving any governmental interest.

366. The Board's decision was a final decision and was not reviewable by any other administrative body.

Other County Hostility to and Differential Treatment of the Chabad

367. In order to use the Property for religious services, ARIEL sought to erect a tent structure to accommodate such religious exercise.

368. Following the decision of the Administrative Law Judge, an attorney acting on behalf of ARIEL met with the Baltimore County head of zoning and the zoning supervisor**.**

369. ARIEL's attorney told the County officials that that the Administrative Law Judge had approved ARIEL's religious use of the Property.

370. The County officials told ARIEL's attorney that ARIEL could hold services on the property using picnic tables.

371. ARIEL's attorney inquired about putting up tents on the Property.

372. The Baltimore County officials said that ARIEL could put up a tent, but only for 30 days.

373. Upon information and belief, other churches and commercial uses in Baltimore County have been permitted to erect tents without time limitations.

374. ARIEL and Rabbi Belinsky have been treated differently and worse than other

individuals and entities within Baltimore County seeking to erect tents.

375. Upon information and belief, the County has placed a "hold" on ARIEL's property within the computer system of the Baltimore County Office of Permits, Approvals and Inspections.

376. A "hold" would mean that almost all permits sought by ARIEL would have to be approved by the Director of Zoning.

377. A "hold" on ARIEL's file would therefore subject ARIEL to greater and stricter scrutiny than other applicants.

378. A "hold" on a file is a completely discretionary action taken by County zoning officials.

379. Baltimore County has previously approved a change from single family homes shown on a Development Plan to a religious use.

380. Specifically, the Christian Life Church, a Christian Church within Baltimore County, received approval from the Zoning Administrator for a change to the Development Plan applicable to a large parcel of land.

381. In 2006, the Deputy Zoning Commissioner had approved a Development Plan for the construction of 40 houses on that property, although they were never constructed.

382. Subsequently, a church purchased the property and sought the construction of a 2,100 seat church/sanctuary and more than 500 parking spaces.

383. The Church's plan did not meet all of the requirements of the RTA.

384. The Zoning Administrator approved the Christian Life Church's requests, permitting the change to the Development Plan and finding that the Church had "complied to the extent possible" with the RTA regulations, in effect granting the waivers required by the "new

church exception" to the RTA.

385. ARIEL was treated differently and worse than the Christian Life Church.

386. ARIEL has faced tremendous community opposition throughout the zoning process.

387. During community meetings between ARIEL and neighbors, neighbors told Rabbi Belinsky that they did not like Chabad, that they "don't want the Russians here," and that Orthodox Jews "belong inside the Beltway where there is an *eruv*."

388. Once, while Rabbi Belinsky was on the Property, a car pulled over on the side of the road, and after confirming that he was the Rabbi of the proposed synagogue, said, "Who are you to come into our neighborhood? We don't want you here."

389. Some in the neighborhood put up yard signs saying "Stop Synagogue Development."

390. One Jewish family in the neighborhood, who are ARIEL supporters, were asked to leave a community meeting after voicing their support.

391. During the June 7, 2016 hearing, a neighbor to the Property testifying in opposition testified, "I know a little bit about Habad. . . . But what's unusual about Habad is that they don't have, they don't always have paying members. . . . I mean, a synagogue is a synagogue but it's also a business, like every other church and this is not a criticism, this is just a general comment that we all know. Somebody has got to pay the electric bill. Somebody has got to pay the upkeep. Where's the money going to come from? One thing that I know because my relatives have availed themselves of this possibility at other Habad synagogues is that Habads are open, like I said, it's an outreach thing, they're open to other Jews coming in and using their facilities. So you can rent Habad synagogue for your bar mitzvah or your bat mitzvah, you don't

have to be a member. . . . The streets are going to clog up. All you have to do is drive around Baltimore to other places where there are small synagogues that are in, incompat, they are stuck in an incompatible way in residential neighborhoods with no means of parking or overflow parking and you will see those streets clog up."

392. Plaintiffs had a reasonable expectation that their use would be permitted on the Property.

393. The Board's denial of the Chabad's application severely impedes and prevents Plaintiffs' exercise of its religion.

394. The Board's denial of the Chabad's application ftook place within a system of formal procedures that permitted the Board to make individualized assessments for the uses for the property involved.

395. The construction of the Chabad's proposed center, at an estimated cost of $1,200,000, would affect interstate commerce. The construction's effect on interstate commerce would result from, amongst other things, the Chabad's fundraising activities related to the construction; the transfer of funds to those it engages to construct the center; the engagement of construction companies to construct the center; the employment of and payments to construction workers either by the Chabad or by companies engaged by it; the purchase of necessary materials to construct the center; the engagement of a landscaping company; the use of interstate highways for the transportation of persons and materials used to construct the center; the use of interstate communication related to the construction of the center; and other activities related to the construction of the center.

396. The Chabad's operation affects interstate commerce by or through, amongst other things, serving as a site for ongoing fundraising; its receipt of charitable donations from persons

working or living outside of the State of Maryland; the use of means of interstate communication to facilitate the Chabad's ongoing operations; the use of interstate travel related to the Chabad's ongoing operations; and the purchase of goods and services related to the Chabad's ongoing operations and maintenance.

397. The Defendants' actions described above all took place under color of state law.

398. The Board was informed of the applicability of RLUIPA to its actions.

399. The harm to the Chabad caused by the Defendants' laws and actions, which prevent it from using the Property to accommodate its religious needs, is immediate and severe.

400. Plaintiffs have cancelled religious gatherings, and have not scheduled other religious gatherings, because of the Defendants' actions.

401. Defendants' laws and actions imminently threaten to substantially burden the Plaintiffs' free exercise of religion.

402. Application of the BCZR regulations to ARIEL's proposed religious land use creates extreme expense, delay and uncertainty.

403. The Defendants' laws and actions have resulted in significant harm to the morale of ARIEL's congregation.

404. Rabbi Belinsky has personally suffered from significant loss of reputation as a result of the Defendants' actions.

405. The Plaintiffs have also suffered significant financial damages as a result of the Defendants' laws and their application to the Chabad. These include the loss of donations.

406. There are no quick, reliable and viable alternative options for the Chabad's operations.

407. The Chabad has no adequate remedy at law for the harm and damage caused by

Defendants' wrongful laws and actions.

COUNT I

Violation of Religious Land Use and Institutionalized Persons Act of 2000 – "Substantial Burdens" 42 U.S.C. § 2000cc(a)

408. Paragraphs 1 through 407 are incorporated by reference as if set forth fully herein.

409. Defendants have deprived and continue to deprive the Plaintiffs of their right to the free exercise of religion, as secured by RLUIPA, by imposing and implementing land use regulations both on their face and as applied in a manner that places substantial burden on the Plaintiffs' religious exercise without using the least restrictive means of achieving a compelling governmental interest.

COUNT II

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

410. Paragraphs 1 through 409 are incorporated by reference as if set forth fully herein.

411. Defendants have deprived and continue to deprive the Plaintiffs of their right to the free exercise of religion, as secured by RLUIPA, by imposing and implementing land use regulations both on their face and as applied in a manner that discriminates against them on the basis of religion and religious denomination.

COUNT III

Violation of Religious Land Use and Institutionalized Persons Act of 2000 — "Equal terms"

42 U.S.C. § 2000cc(b)(1)

412. Paragraphs 1 through 411 are incorporated by reference as if fully set forth herein.

413. Defendants have deprived and continue to deprive the Plaintiffs of their right to the free exercise of religion, as secured by RLUIPA, by imposing and implementing land use regulations both on their face and as applied in a manner that religious land uses them on terms that are less than equal to nonreligious assembly and institutional land uses.

COUNT V

Violation of the Fair Housing Act
42 U.S.C. § 3604

414. Paragraphs 1 through 413 are incorporated by reference as if set forth fully herein.

415. The Defendants have intentionally discriminated against the Plaintiffs by making housing "unavailable" within Baltimore County because of religion in violation of 42 U.S.C. § 3604(a).

416. Defendants' land use regulations have had the effect and continue to have the effect, whether intended or not, of excluding Plaintiffs from obtaining housing within Baltimore County by discriminating against the Plaintiffs based on religion, in violation of 42 U.S.C. § 3604(a).

417. Plaintiffs are aggrieved persons as that term is defined in the Fair Housing Act, 42 U.S.C. § 3602(i) and they have suffered harm, damage and injury as a result of Defendants' conduct.

COUNT VI

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

418. Paragraphs 1 through 417 are incorporated by reference as if set forth fully herein.

419. Defendants have deprived and continue to deprive the Plaintiffs of their right to free exercise of religion, as secured by the First Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment, by substantially burdening their religious exercise without using the least restrictive means of achieving a compelling governmental interest, and by discriminating against them on the basis of religion in a manner that is not the least restrictive means of achieving a compelling governmental interest.

COUNT VII

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

420. Paragraphs 1 through 419 are incorporated by reference as if set forth fully herein.

421. Defendants have deprived and continue to deprive the Plaintiffs of their right to equal protection of the laws, as secured by the Fourteenth Amendment to the United States Constitution, by discriminating against them in the imposition and implementation of their land use regulations.

COUNT VIII

United States Constitution
42 U.S.C. § 1983: Fourteenth Amendment
Due Process

422. Paragraphs 1 through 421 are incorporated by reference as if set forth fully herein.

423. The County's land use regulations fail to provide members of the public, including Plaintiffs and other religious organizations, a reasonable opportunity to ascertain the standards that must be met with respect to the Baltimore County Zoning Regulations' provisions regarding RTA exceptions and FDP amendments; authorize arbitrary and discriminatory enforcement by the Board with respect to review of RTA exceptions and FDP amendments; and do not provide explicit standards for the Board to avoid resolution on an ad hoc and subjective basis. The constitutional flaws in these portions of the Baltimore County Zoning Regulations resulted in an arbitrary and discriminatory application with respect to Plaintiffs.

COUNT IX

Maryland Constitution
Declaration of Rights, Article 36
Free Exercise of Religion

424. Paragraphs 1 through 423 are incorporated by reference as if set forth fully herein.

425. The Defendants' actions targeting the Chabad amount to governmental discrimination upon the basis of religious conviction.

426. Defendants have interfered with the Chabad's duty to worship God in such manner as they think most acceptable, denied the Chabad the protection of the religious liberty to which it is entitled, and have molested the Chabad in their person and their estate, on account of their religious persuasion, profession, and religious practice, without justification.

PRAYER FOR RELIEF

WHEREFORE, the CONGREGATION ARIEL RUSSIAN COMMUNITY SYNAGOGUE, INC., and RABBI VELVEL BELINSKY respectfully request that this Court grant the following relief:

1. A declaration that Baltimore County's land use ordinances, to the extent that they substantially burden, exclude, unreasonably regulate, and discriminate against the Plaintiffs' land use, are void, invalid and unconstitutional on their face and as applied to the Plaintiffs on the ground that they violate the Free Exercise Clause of the First Amendment to the United States Constitution, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the Religious Land Use and Institutionalized Persons Act, the Fair Housing Act, and the Maryland Constitution;

2. A declaration that the Board's decision is void, invalid and unconstitutional on the ground that it violates the Free Exercise Clause of the First Amendment to the United States Constitution, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the Religious Land Use and Institutionalized Persons Act, the Fair Housing Act, and the Maryland Constitution;

3. An order reversing the decision of the Baltimore County Board of Appeals and an order declaring that the Plaintiffs' application is hereby approved;

4. An order directing the Baltimore County Board of Appeals to reverse its denial of the Plaintiffs' application and to approve the application;

5. Preliminary and permanent orders enjoining the Defendants, their officers, employees, agents, successors and all others acting in concert with them from applying their laws in a manner that violates the Free Exercise Clause of the First Amendment to the United States Constitution, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the Religious Land Use and Institutionalized Persons Act, the Fair Housing Act, and the Maryland Constitution or undertaking any and all action in furtherance of these acts;

6. An award of compensatory damages against Defendants in favor of the Plaintiffs as the Court deems just for the loss of its rights under the First and Fourteenth Amendments to the United States Constitution, and the Religious Land Use and Institutionalized Persons Act, the Fair Housing Act, and the Maryland Constitution incurred by the Plaintiffs and caused by the Defendants' laws and actions;

7. An award to the Plaintiffs of full costs and attorneys' fees arising out of Defendants' actions and land use decisions and out of this litigation; and

8. Such other and further relief as this Court may deem just and appropriate.

DEMAND FOR JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial by jury in this action on all issues so triable.

Respectfully submitted by the Plaintiffs this 4th day of April, 2017.

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