

MEMORANDUM

May 18, 2026

TO: ***FOR PUBLIC RELEASE***

FROM: Darius P. Chafizadeh and Mathew T. Dudley

RE: Proposed Amendments to Zoning and Land Use Regulations for Religious Uses

FOR PUBLIC RELEASE

I. Introduction/Overview of Process

The Town of Chester (the “Town”) engaged our firm to review the Town’s draft proposed amendments to the Town’s Zoning Code in conjunction with the law governing the regulations of religious uses of land, and to recommend further amendments to the Zoning Code pursuant to that governing law. We have reviewed the draft comprehensive plan and draft local law proposing revisions to the Zoning Code and we provide this memorandum as an analysis of the current state of the law and our proposed recommendations relative to legislation that would comport with state and federal law. Our recommendations for amendments to the Zoning Code are based: (1) on our research into court decisions regarding New York State law and federal law applicable to the regulation of religious land uses; and (2) a review of zoning code provisions regulating religious land uses of other municipalities.

In sum, the zoning amendments to the Zoning Code propose that a religious use obtain a special permit from the Town Planning Board prior to development and/or enlargement of an existing facility, which we believe is the proper zoning tool to ensure development of religious uses in the Town and complies with both state and federal law. In order to ensure there is no “facial” challenge to the Zoning Code, the specially permitted use, however, must be consistent relative to other non-religious uses in the Town. Further, included in the proposed amendments are specified land use/zoning/dimensional criteria within the special permit requirements for a religious use, which should also be similar for other non-religious uses. These types of regulations are likely to comply with any facial challenge to an ordinance under state or federal law so long as they do not segregate a religious use as being more restrictive.

In reviewing a special permit application for a proposed religious use, which could be subject to an “as-applied” challenge, the Planning Board will necessarily weigh the beneficial effect on the community (that a religious use is presumed to have) against any detrimental impact on traffic congestion, property values, municipal services and the like, and resultantly, protect the

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public's health, safety and welfare. In doing so, it must act in a way that does not treat religious uses differently than non-religious uses and consider the burden of its decision on the religious exercise of that particular religious organization under settled law.

II. Summary of Case Law Research on Religious Uses

a. N.Y. State Law

In New York State, “[h]istorically, schools and churches have enjoyed special treatment with respect to residential zoning ordinances and have been permitted to expand in neighborhoods where nonconforming uses would otherwise not have been allowed.” *Cornell Univ. v. Bagnardi*, 68 N.Y.2d 583, 593 (1986) (requiring that municipal zoning codes allow dormitories as an educational use of property). Further, New York courts hold that “[w]hile religious institutions are not exempt from local zoning laws, ‘greater flexibility is required in evaluating an application for religious use than an application for another use and every effort to accommodate the religious use must be made.’” *Rosenfeld v. Zoning Bd. of the Town of Ramapo*, 6 A.D.3d 450, 450 (2d Dep’t 2004) (quoting *Genesis Assembly of God v. Davies*, 208 A.D.2d 627, 628 (2d Dep’t 1994)). Notably, zoning ordinances that do not list an educational or religious use as either a principal, accessory or specially permitted use in a given zoning district deny “the opportunity to apply for special use permits [and are] unauthorized and therefore unconstitutional.” *See Albany Preparatory Charter School v. City of Albany*, 10 Misc.3d 870, 874, 805 N.Y.S.2d 818, 821 (Sup. Ct. Albany Cnty. Nov. 30, 2005) (quoting *Trustees of Union Coll. v. Members of Schenectady City Council*, 91 N.Y.2d 161, 163-164 (1997)).¹

¹ The issue of whether a municipality can prohibit religious institutions from developing in an industrial or industrial park district appears to be unresolved by the courts in New York. In one case, *Western New York Dist., Inc. of Wesleyan Church v. Village of Lancaster*, 17 Misc.3d 798, 841 N.Y.S.2d 740 (Sup. Ct. Erie Cnty., Aug. 28, 2017), the village prohibited religious institutions in an industrial park zoning district and required a church to seek a use variance to develop in that district. The court, deciding the church’s order to show cause, mandated the village to consider an application for a special use permit rather than a use variance. *Id.*, at 800-801. However, the court noted that it was “extremely cognizant of the fact that New York case law is not fully developed on the question of a church being able to be located in either a commercial district or in an industrial park...” *Id.*, at 801. Subsequently, the village considered, and denied, the church’s application for a special use permit. Ultimately, the court affirmed that denial and, in so holding, the court explained that the village, in denying the permit, had properly utilized the balancing approach espoused by New York case law (the *Cornell Univ.* case and its progeny). *Id.*, at 823-824.

Here, under New York case law, the Town could potentially prohibit religious uses from its Industrial and Industrial Park Districts, but litigation may result if a religious institution desires to develop in such a district and that institution is denied a use variance. As in *Western New York Dist., Inc.*, a court could potentially require the Town to consider an application for a special use permit (instead of a use variance), and if so, the Town will be required to develop a record that supports any denial of that application based on the balancing factors set forth in the application New York case law.

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In 2005, the Court of Appeals, citing the seminal case of *Cornell Univ. v. Bagnardi*, “determine[d] how best to balance the needs and rights of educational and religious institutions seeking to expand their facilities in residential neighborhoods against the concerns of local residents who might be harmed or inconvenienced by the proposed construction projects.” *Pine Knolls Alliance Church v. Zoning Bd. of Appeals of Town of Moreau*, 5 N.Y.3d 407, 409 (2005) (citing *Cornell Univ.*, 68 N.Y.2d at 589)). Further, “[r]ecognizing that educational and religious institutions are presumed to have a beneficial effect on the community, [the Court] clarified the *Cornell Univ.* standard holding that this presumption can be rebutted ‘with evidence of a significant impact on traffic congestion, property values, municipal services and the like.’” *Id.*, at 412 (emphasis added) (quoting *Cornell Univ.*, at 595); *see also*, *Cornell Univ.*, at 68 N.Y.2d at 595 (“Although the special treatment afforded schools and churches stems from their presumed beneficial effect on the community, there are many instances in which a particular educational or religious use may actually detract from the public’s health, safety, welfare[,] or morals. In those instances, the institution may be properly denied.”).

As the Court of Appeals explained in the *Pine Knolls Alliance Church* decision, the Court has “invalidated ordinances that impose blanket bans on religious or educational uses in particular communities in favor of a case-by-case review, endorsing the special use permit application process as the proper procedure for addressing [educational and religious use] expansion requests.” *Pine Knolls Alliance Church*, 5 N.Y.3d at 412 (emphasis added) (citing *Trustees of Union Coll. v. Members of Schenectady City Council*, 91 N.Y.2d 161 (1997)). This procedure “affords zoning boards [or planning boards] an opportunity to weigh the proposed use in relation to neighboring land uses and to cushion any adverse effects by the imposition of conditions designed to mitigate them.” *Cornell Univ.*, 68 N.Y.2d at 596.²

The Court in *Pine Knolls Alliance Church* further explained the following:

After engaging in the appropriate balancing process, zoning officials may conclude that “a particular educational or religious use may actually detract from the public’s health, safety, welfare or morals” (*id.* at 595) and may deny a special use permit on that basis. When the negative impacts are not so extreme as to warrant outright denial, mitigating conditions may be imposed to ameliorate the harm “provided they do not, by their cost, magnitude or volume, operate indirectly to exclude such uses altogether” (*id.* at 596 [citation omitted]). In assessing a special permit application, zoning officials are to review the effect of the proposed expansion on the public’s health, safety, welfare or morals, concerns grounded in the exercise

² Municipalities have flexibility to legislate which administrative board (or Town Board) has the authority to review special permits.

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of police power, “with primary consideration given to the over-all impact on the public welfare” (*Trustees of Union Coll.*, 91 NY2d at 166). Applications may not be denied based on considerations irrelevant to these concerns.

Pine Knolls Alliance Church, 5 N.Y.3d at 412-413.

Further, in *Trustees of Union Coll.*, the New York Court of Appeals explained the following:

The decision to restrict a proposed educational [or religious] use can only be made after the intended use is evaluated against other legitimate interests, with primary consideration given to the over-all impact on the public welfare. A municipality’s pursuit of other legitimate objectives, such as historic preservation, does not diminish the importance of striking a balance between the important contribution made to society by educational [or religious] institutions and the inimical consequences of their presence in residential neighborhoods. Thus, like traditional residential zoning ordinances, those designed to further an historic preservation purpose are not immune from the deliberative process that must precede the restriction of educational [or religious] uses. Rather, proposed educational [or religious] uses must be weighed against the interest in historical preservation, as well as other legitimate, competing interests, to determine how best to serve the public welfare.

Trustees of Union Coll., 91 N.Y.2d at 166.

For example, relying on the New York Court of Appeals’ decision in *Cornell Univ v. Bagnardi*, the Federal Court of Appeals for the Second Circuit, in *Congregation Rabbinical College of Tartikov, Inc. v. Village of Pomona, NY*, 945 F.3d 83 (2d Cir. 2019),³ held that a municipality may impose a minimum lot size requirement for religious institutions. *Id.*, at 115 (noting that, in *Cornell Univ.*, the New York Court of Appeals described the requirement of a special permit application as ‘beneficial in that it affords zoning boards an opportunity to weigh the proposed use in relation to neighboring land uses and to cushion any adverse effects by the imposition of conditions designed to mitigate them.’ An apt example is a minimum lot size requirement, which can control ‘the effect the use would have on...the general plan for

³ The *Pomona* case alleged violations of federal and state law related to certain zoning ordinances enacted by the Village of Pomona.

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development of the community.” (emphasis added)).⁴ However, where a municipality imposes dimensional regulations upon a religious use, such as minimum lot size, landscape buffers or off-street parking requirements, the municipality’s zoning board of appeals [or planning board] must attempt to accommodate the religious/education use in considering any application for an area variance and cannot arbitrarily or capriciously deny the application. See *Sephardic Synagogue of Plainview v. Byrne*, 2026 N.Y. Slip. Op. 00903, __ N.Y.S.3d __ (2d Dep’t Apr. 11, 2025).

Further, the denial of a special permit to a religious institution will be arbitrary and capricious where there is “no hard evidence” that “any effort was made to find ways to mitigate...inconveniences short of outright denial.” *Jewish Reconstructionist Synagogue of N. Shore, Inc. v. Incorporate Vill. of Roslyn Harbor*, 38 N.Y.2d 283, 289-90 (1975); see also, *Gospel Faith Mission Intern. Inc., v. Weiss*, 112 A.D.3d 824, 826 (2d Dep’t 2013) (holding that “the record reflects that the Board voted to deny the petitioner’s applications without making any attempt to accommodate the proposed religious use”). Indeed, “[a] local zoning board is required to ‘suggest measures to accommodate the proposed religious use while mitigating the adverse effects of the surrounding community to the greatest extent possible.’” *St. Thomas Malankar Orthodox Church, Inc. v. Board of Appeals of Town of Hempstead*, 23 A.D.3d 666, 667 (2d Dep’t 2005) (quoting *Genesis Assembly of God*, 208 A.D.2d at 628)). Thus, “every effort to accommodate the religious use must be made.” *Young Israel of N. Woodmere v. Town of Hempstead Bd. of Zoning Appeals*, 221 A.D.2d 646, 647 (2d Dep’t 1995)).

In short, the breadth of case law in New York favors religious uses in the land use context, but permits a municipality to regulate religious uses via the special permit process and through other zoning tools (setbacks/minimum lot areas) so long as the land use regulations do not result in a religious use from being disallowed or treated differently than non-religious uses.⁵

Each application will then have to be reviewed to ensure compliance with New York State law and RLUIPA.

⁴ Importantly, minimum lot sizes (and other zoning tools – e.g., setbacks, minimum lot area) may not, in effect, completely exclude religious development within a municipality or on a specific parcel of land owned by a religious organization. Zoning restrictions also may not be passed because of animus.

⁵ The recent federal case *Lubavitch of Old Westbury, Inc. v. Incorporated Village of Old Westbury, New York*, 2025 WL 3033744 (E.D.N.Y Oct. 30, 2025) began its decision with the following quotation: “[U]nder defendant’s zoning code, a pit of manure may be located closer to the property line than a place of worship.”

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b. Federal Law – Religious Land Use and Institutionalized Persons Act (RLUIPA)

As the Federal Court of Appeals for the Second Circuit has explained, “RLUIPA bars states from imposing or implementing a ‘land use regulation’ in a manner that imposes a substantial burden on a person or institution’s religious exercise unless it is the least restrictive means of furthering a compelling state interest.” *Fortress Bible Church v. Feiner*, 694 F.3d 208, 216 (2d Cir. 2012). “The exclusion provision of RLUIPA forbids the total exclusion of religious assemblies from a jurisdiction.” *Congregation Rabbinical College of Tartikov, Inc. v. Village of Pomona, NY*, 945 F.3d 83, 125 (2d Cir. 2019).

Indeed, a municipality may violate the Equal Terms provision of RLUIPA if it excludes religious institutions from a specific zoning district, including from a commercial zoning district. *Christian Fellowship Centers of New York, Inc. v. Village of Canton*, 377 F. Supp.3d 146 (N.D.N.Y. 2019) (granting a preliminary injunction to a church preventing a village from enforcing a zoning code provision that prohibited religious institutions in the village’s commercial district).⁶ However, the case law regarding exclusion of religious institutions from an industrial or industrial park district is less clear (as there is very little case law on the subject) and appears to be fact-specific. For example, in *Wesleyan Methodist Church of Canisteo v. Village of Canisteo*, 792 F. Supp.2d 667 (W.D.N.Y. 2011), the court dismissed the plaintiff church’s complaint and upheld the defendant village’s denial of a use variance to the church, which sought to develop in an industrial district that prohibited religious institutions. In dismissing the complaint, the court held that, because the church had alternatives (such as adding new buildings to its then-current location or seeking to develop in another zoning district that permitted religious institutions), the church had not adequately pleaded that it was substantially burdened by the relevant zoning ordinance. Here, the Town could potentially exclude religious institutions from its Industrial and Industrial Park Districts (particularly because the proposed zoning code amendments would make religious institutions specially permitted uses in many other zoning districts) but doing so could potentially result in RLUIPA litigation should a religious institution desire to develop facilities in the Industrial or Industrial Park District.

Further, “using, building, or converting real property for religious exercise purposes is considered to be religious exercise under the statute.” *Westchester Day Sch. v. Village of Mamaroneck*, 504 F.3d 338, 347 (2d Cir. 2007) (citing RLUIPA). However, not every expansion project on a property owned by a religious institution can be considered religious exercise. *Id.*, at 347-348 (contemplating that the construction of a gymnasium, a headmaster’s residence or office space would not be considered religious exercise). Whether a use is “religious exercise” is a thorny

⁶ Further, zoning restrictions on religious uses must be consistent with those restrictions imposed on other similar uses (secular institutional/commercial uses) in a municipality. See *Lubavitch of Old Westbury, Inc. v. Incorporated Vill. of Old Westbury, New York*, 2025 WL 3033744 (E.D.N.Y. Oct. 30, 2025) (granting a religious institution summary judgment on its First Amendment Free Exercise Clause claim that alleged a facial challenge to the village’s zoning law, which more greatly restricted the development of religious institutions than secular uses in the same zoning district).

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issue and could lead to litigation. An analysis of whether a proposed use qualifies as “religious exercise” within the meaning of RLUIPA and the common law should be looked at very carefully.

Additionally, “Supreme Court precedents teach that a substantial burden on religious exercise exists when an individual is required to ‘choose between following the precepts or her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion...on the other hand.’” *Westchester Day Sch.*, 504 F.3d at 348 (quoting *Sherbert v. Verner*, 374 U.S. 398, 404 (1963)). The courts have, generally, interpreted “substantial burden” pretty liberally. Further, “when there has been a denial of a religious institution’s building application, courts appropriately speak of government action that directly coerces the religious institution to change its behavior, rather than government action that forces the religious entity to choose between religious precepts and government benefits.” *Id.*, at 348, *see also*, *Westchester Day Sch. v. Village of Mamaroneck*, 386 F.3d 183, 188 (2d Cir. 2004).⁷ Thus, “in most cases, whether the denial of the application was absolute is important; if there is a reasonable opportunity for the institution to submit a modified application, the denial does not place substantial pressure on [the religious institution] to change its behavior and thus does not constitute a substantial burden on the free exercise of religion.” *Westchester Day Sch.*, 504 F.3d at 348. Thus, the “rejection of a submitted plan [by a religious institution], while leaving open the possibility of approval of a resubmission with modifications designed to address the cited problems, is less likely to constitute a ‘substantial burden’ than definitive rejection of the same plan, ruling out the possibility of approval of a modified proposal.” *Westchester Day Sch.*, 386 F.3d at 188. Again, these matters become very fact-specific and an analysis will need to be performed on each and every application submitted.

In *Young Men’s Christian Assoc. of Greater Rochester v. Town of Milo*, 563 F. Supp. 3d 71 (W.D.N.Y. 2021), the plaintiff YMCA held a fundraiser on its camp property for a local art center, and subsequently, the Town’s code enforcement officer issued a notice of violation against the property/YMCA alleging that the fundraiser was not a permitted accessory use of the property and in violation of the property’s special permit. *Id.*, at 76. The court denied the defendant Town’s motion to dismiss the complaint, holding that the YMCA stated a cause of action under RLUIPA, that the accessory uses of the property were associated with YMCA’s religious use/purpose and that the Town’s implementation of its zoning ordinance (and issuance of notices of violation) substantially burdened the religious exercise of the YMCA. *Id.*, at 82-83. Similarly, in *Third Church of Christ, Scientist, of New York City v. City of New York*, 626 F.3d 667 (2d Cir. 2010), the court held that the defendant city violated the equal terms provision of RLUIPA when it issued an intent to revoke a church’s accessory use permit for use of its church facility for private, catered events where the city treated similar comparators, such as hotels, differently. *Id.*, at 672-673.

⁷ The Second Circuit in the *Westchester Day School* case initially reversed the lower court’s finding of summary judgment finding that alternatives must be explored (smaller building). After the case was remanded for trial to the District Court and a violation of RLUIPA being found by the trial court, the Second Circuit upheld the violation of RLUIPA as found by the trial court.

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In *Fortress Bible Church*, the court held that it had “little difficulty concluding that SEQRA itself is not a zoning law within the meaning of RLUIPA.” *Fortress Bible Church*, 694 F.3d at 216. However, the court held that the SEQRA review process conducted during a land use/zoning application cannot be manipulated to ‘kill’ [a] project [involving a religious use] on the basis of zoning concerns despite the fact that there were no serious environmental impacts.” *Id.*, at 218.

In short, zoning code amendments also need to be carefully scrutinized under federal law so as not to effectively disallow a potential religious use. When applied, each application must also be carefully reviewed by the relevant administrative board.

III. Summary of Recommendations to Amend the Town Zoning Code

Under the relevant case law, it is well settled that a municipality cannot wholly exclude/ban religious uses within a zoning district or effectively ban the use via a zoning amendment. Nor can a municipality not list a religious use as principal, accessory use or specially permitted use within a zoning district, which has been found to be tantamount to an outright exclusion of a religious use. Rather, as courts have repeatedly held, the proper (and legal) way to regulate such uses through the special permitting review process.

Here, the proposed Zoning Code amendments regulate religious uses of land by requiring that such uses obtain a special permit. The proposed special permit process includes the application of dimensional restrictions upon religious uses, including minimum-required lot area, maximum total building coverage and floor-to-area ratio, minimum-required street frontage and setbacks, and maximum building height. These restrictions must be analyzed in reference to a particular property to ensure the restrictions do not, in essence, curb a religious use. Also, among other things, the special permit review process also includes provisions for regulating such things as access and circulation, parking for attendance at services, and accessory uses, which also must be consistent with the zoning regulations placed on other secular uses.

In conclusion, the proposed amendments to the Zoning Code seek to comply with the state and federal law requirements for regulation of religious land uses while also ensuring that the public’s health, safety and welfare are protected from any detrimental impacts that may result from development of a religious use. Before passage, however, they must be reviewed against the backdrop of any specific use or development proposal pending at the time of their adoption.