

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

In the Matter of

THE JEWISH THEOLOGICAL SEMINARY OF AMERICA
and RAMAH DAY CAMP IN NYACK,

Petitioners-Plaintiffs,

**VERIFIED PETITION
AND COMPLAINT**

For a Judgment Pursuant to Article 78 of the Civil Practice
Law and Rules and a Declaratory Judgment Pursuant
To Section 3001 of the Civil Practice Law and Rules

Index No.:
Date Filed:

- against -

TOWN OF CLARKSTOWN and TOWN OF
CLARKSTOWN ZONING BOARD OF APPEALS,

Respondents-Defendants.

Petitioners-Plaintiffs The Jewish Theological Seminary of America and Ramah Day Camp in Nyack (“Camp Ramah”), by and through their attorneys, Whiteman Osterman & Hanna LLP and Ira M. Emanuel, P.C., as and for their Verified Petition and Complaint respectfully allege as follows:

PRELIMINARY STATEMENT

1. Religious uses of land have long been protected under the New York Constitution and common law. And, as the Court of Appeals has held,

A church is more than merely an edifice affording people the opportunity to worship God. Strictly religious uses and activities are more than prayer and sacrifice and all churches recognize that the area of their responsibility is broader than leading the congregation in prayer. Churches have always developed social groups for adults and youth where the fellowship of the congregation is strengthened with the result that the parent church is strengthened. We find evidence of this in the Old Testament. When a member of the congregation cements friendships with other members of the congregation, the church benefits and

becomes stronger. It is a religious activity for the church to provide a place for these social groups to meet, since the church by doing so is developing into a stronger and closer knit religious unit. To limit a church to being merely a house of prayer and sacrifice would, in a large degree, be depriving the church of the opportunity of enlarging, perpetuating and strengthening itself and the congregation

(*Community Synagogue v Bates*, 1 NY2d 445, 453 [1956]).

2. These are the very kinds of religious services and offerings provided at Camp Ramah.

3. The Court of Appeals' wisdom, however, was lost on the Town of Clarkstown Zoning Board of Appeals.

4. Accordingly, Petitioners respectfully submit this Verified Petition and Complaint seeking to annul a determination of Respondent Town of Clarkstown Zoning Board of Appeals (the "Town ZBA") that denied Camp Ramah's application to modify its special permit which currently allows religious uses on the property at issue from April 1 to November 1 by allowing the very same religious uses year-round.

5. The historical religious use of the property is well documented. In 1894, Dr. Louis Klopsch, the owner and editor of the Christian Herald Newspaper, formed the Christian Herald Children's Home, a year-long camp for poor children from New York City.

6. Upon information and belief, the Christian Herald Children's Home operated at the Property until 1961, when The Jewish Theological Seminary of America acquired the property.

7. Since The Jewish Theological Seminary of America's acquisition of the property, Camp Ramah has continued to maintain the historical religious use of the premises. Specifically, Camp Ramah has operated "Ramah Day Camp in Nyack," a summer camp "where Judaism is integral to daily activities."

8. Additionally, Camp Ramah furthers its religious mission to bring together families in the Jewish tradition by holding weekend retreats, synagogue services, and Jewish youth group functions from April 1 to November 1 in accordance with an amendment to its special permit that was granted by the Town ZBA in 2009.

9. The April 1-to-November 1 timeline was self-imposed by Camp Ramah because, at the time the application was submitted, its dormitory was not proposed to be winterized to accommodate overnight guests during the winter months.

10. Camp Ramah subsequently improved its heating facilities and now seeks to amend the condition on its previously granted special permit to continue year-round the same religious uses it has always offered.

11. Camp Ramah is not seeking to change its religious use of the property. Rather, it merely seeks to do what every other religious organization is permitted to do in the Town—use its property to facilitate its religious mission and promote the religious exercise of the Jewish community year-round.

12. Notwithstanding the ministerial nature of the request, the Town ZBA denied Camp Ramah's application, irrationally determining that the proposed modification "goes far beyond those activities" that are permitted under its current special permit.

13. The Town ZBA, in doing so, transcended its lawful authority to regulate land uses by arbitrarily limiting the activities and time during which Camp Ramah can pursue its religious mission.

14. The Town ZBA even purports to tell Camp Ramah what activities may be provided as a part of the religious exercise offered at the Camp and what may not. This blatant intrusion

into Camp Ramah's religious exercise directly contravenes the New York Constitution and decades of New York common law that have safely guarded religious practice in this State.

15. It is not for the Town ZBA to decide what may be involved in Camp Ramah's religious practice. That determination is left solely to Camp Ramah.

16. Indeed, the Town ZBA's determination fails to reasonably accommodate Camp Ramah's religious use of its property and places a substantial burden on its exercise of religion. For example, under the ZBA's determination, Camp Ramah would be barred from holding a prayer service during Jewish Holidays such as Passover, Rosh Hashana, Yom Kippur, Succot, and Hanukkah which, in many years, fall at least partially on weekdays and, for some, outside of the April 1-to-November 1 time limit.

17. So too would weeknight prayer meetings be prohibited under the Town ZBA's brand new arbitrary and unconstitutional interpretation of Camp Ramah's prior special permit approval.

18. Additionally, in conclusory fashion, the Town ZBA concluded that Camp Ramah's proposed modification will result in adverse physical and environmental impacts and would overburden the property without setting forth any reasoning to justify such determination, despite the fact that it had twice granted a negative declaration to the proposed activities under SEQRA.

19. In sum, the Town ZBA's denial of Camp Ramah's request to modify its special permit was irrational, arbitrary and capricious, and contrary to law. It also violates Camp Ramah's free exercise rights under the New York Constitution. Accordingly, the Town ZBA's determination should be annulled.

PARTIES

20. Petitioner-Plaintiff The Jewish Theological Seminary of America is an institution of Jewish higher education that trains clergy for ordination and service in the Conservative movement of the Jewish faith. The Jewish Theological Seminary of America owns property located at 303 Christian Herald Road, Valley Cottage, New York 10960 and more particularly identified as Town of Clarkstown Tax Map No. 59.12-1-11& 59.16-1-2, f/k/a Tax Map No. 136, Block C, Lot 7 & 10.01 (the "Property"), on which Camp Ramah operates.

21. Petitioner-Plaintiff Ramah Day Camp in Nyack ("Camp Ramah") rents the Property from The Jewish Theological Seminary on an annual basis. Camp Ramah was adversely affected by the Town ZBA's determination to deny a modification of its special permit that is challenged in this proceeding.

22. The Town of Clarkstown is a municipal corporation duly organized under the laws of the State of New York.

23. The Town of Clarkstown Zoning Board of Appeals is a town zoning board of appeals duly organized under the laws of the State of New York. The Town ZBA issued the determination that is challenged in this proceeding.

VENUE

24. The venue for this proceeding is proper in Rockland County pursuant to CPLR 506 (b) because it is the county where the Town ZBA made the determination complained of.

BACKGROUND

A. The Historical Religious Use of the Property

25. Camp Ramah's current and proposed year-round use of its property for religious retreats, synagogue, Jewish multi-generational family retreats, and youth group functions furthers its mission to inspire commitment to Jewish life and develop the next generation of Jewish leaders.

26. Camp Ramah is part of the National Ramah Commission and is "the camping arm of Conservative Judaism."

27. There are nine overnight Ramah camps and four Ramah day camps (including Nyack) nationwide. Ramah also operates camps and summer programs in Canada and Israel.

28. The Jewish Theological Seminary of America is the owner of a 39-acre parcel of property located at 303 Christian Herald Road, Valley Cottage, New York, and more particularly identified as Town of Clarkstown Tax Map No. 59.12-1-11& 59.16-1-2, f/k/a Tax Map No. 136, Block C, Lot 7 & 10.01 (the "Property"). The Property is located in a Conservation Density Residence District ("R-160") zoning district under the Town of Clarkstown Code.

29. Camp Ramah's mission is to create "a setting where Judaism is integral to daily activities."

30. In furtherance of this mission, Camp Ramah includes daily educational and religious components in its curriculum.

31. Specifically, the Camp starts each morning with a prayer and offers, among other programs, daily classes on Jewish religion, literary and folk traditions, famous Jewish women, conversational Hebrew language ("Ulpan"), and how to read the Torah. Camp Ramah also offers children a Hebrew language immersion program. It is Camp Ramah's deeply-held belief that, to

truly practice Judaism, one needs to do more than merely attend prayer services. One must acquire an understanding of Jewish moral teachings, history, ritual, and culture.

32. Additionally, all food served at Camp Ramah is Kosher, in keeping with Jewish religious dietary laws.

33. In addition to regular day camp use, Ramah Camps across the country host a wide variety of Jewish living and learning experiences year-round.

34. The purpose of the year-round programs is to bring different generations of Jewish families together to learn skills for a life committed to God, Torah, Israel, and *tikkun olam* (acts of kindness performed to perfect or repair the world).

35. Ramah Camps, including the Ramah Day Camp in Nyack, cannot accomplish this mission of strengthening familial bonds through Jewish faith solely through the summer camp because it is only offered to children.

36. Ramah Camps across the country also host weekend and day retreats to other not-for-profit organizations and congregations to expose non-Jewish groups to information about Judaism with the hope of fostering greater tolerance of Judaism.

37. Thus, regardless of the underlying activity, the central theme of all programs offered at Ramah Camp at the Property is to promote Judaism.

38. The historical religious use of the Property, however, precedes The Jewish Theological Seminary of America's ownership.

39. The Property was purchased by Dr. Louis Klopsch, the owner and editor of the Christian Herald Newspaper, in the late 19th Century.

40. Under Dr. Klopsch's leadership, The Christian Herald Newspaper's mission, like Camp Ramah's was to encourage familial bonding through religious scripture. Additionally, The Christian Herald Newspaper developed a large charitable enterprise to assist the poor.

41. In or around June 1894, Dr. Klopsch formed the Christian Herald Children's Home, a 12-day overnight year-long camp for poor New York City children at the Property.

42. Like Camp Ramah, The Christian Herald Children's Home summer camp provided food, outdoor activities, arts and crafts, and religious services to its attendees, all in furtherance of its religious mission.

43. In or around 1961, The Jewish Theological Seminary of America acquired the Property and continued the religious uses through Camp Ramah.

B. Camp Ramah's Initial Special Permit and 2009 Modification of Such Permit

44. Shortly after the Jewish Theological Seminary of America acquired the Property in 1961, Camp Ramah applied for and obtained a special permit for the "erection, maintenance and use of a camp staff house (For occupancy by camp staff for a maximum period of nine weeks per annum)" (Appeal No. 371, January 1, 1962).¹

45. This proposed structure, now commonly known as "the Motel," was intended to house Camp Ramah staff during the camp's 9-week operation and consisted of 12 rooms with 6 bathrooms. The occupancy and use of the Motel are not at issue here.

¹ On or about March 5, 2019, Camp Ramah submitted a Freedom of Information Law ("FOIL") request to the Town of Clarkstown Clerk seeking, among other things, all documents, communications and materials relating to the Town ZBA appeals and decisions relating to the Property. To date, the Town Clerk has failed to provide Camp Ramah with the requested information. Upon receipt of such information, Camp Ramah will supplement the record.

46. Until 2007, the Rockland County Department of Health permitted Camp Ramah to operate under Chapter 1, subpart 7.2 of the New York Sanitary Code, which required that 40 square feet of living space be provided per person (30 square feet if bunk beds were used).

47. However, in or around 2007, the Rockland County Department of Health amended its regulations to require Camp Ramah to provide 125 square feet of living space for each person, in accordance with the Temporary Housing Section of the Sanitary Code (Chapter 1, subpart 7.1).

48. Consequently, Camp Ramah needed to add a new dormitory to comply with the new requirements.

49. Thus, in or about October 2008, Camp Ramah applied for site plan approval from the Planning Board and a Floor Area Ratio (“FAR”) Variance from the Town ZBA to construct a new dormitory.

50. Simultaneously, Camp Ramah sought to modify its special permit condition limiting use of the Property to nine weeks during the summer to use from April 1 to November 1 “to allow use of the Camp for weekend retreats and for synagogue family and Jewish youth group functions during the periods in the Spring and Fall before and following the regular summer camp season.”

51. Camp Ramah self-imposed the April 1-to-November 1 time restriction based upon its lack of winterized buildings and inability to provide adequate or sufficient heat to the buildings during the winter. Indeed, the Town ZBA’s determination contained no discussion regarding the time limitation.

52. On or about March 9, 2009, the Town ZBA “grant[ed] the requested modification of the existing Special permit to permit use of the camp from April 1 through November 1.” It also granted the FAR variance needed for the new dormitory. In connection with the variance grant, it

ordered the Building Inspector to issue Camp Ramah a building permit subject to compliance with the Town Code, and directed Camp Ramah to return to the Town of Clarkstown Planning Board for Preliminary and Final Site Plan review. A copy of the Town ZBA's March 2009 Decision is attached hereto as **Exhibit A**.

53. Although Camp Ramah sought the modification of the special permit condition for a specific purpose—to allow use of the Camp for weekend retreats and for synagogue family and Jewish youth group functions from April to November—the Town ZBA's broad modification of the special permit contained no such restrictions.

54. Thus, it was Camp Ramah's understanding that the 2009 Special Permit eliminated both the nine-week restriction for use of the Property and the requirement that the housing on the Property be used solely by camp staff.

55. In accordance with the Town ZBA's determination, Camp Ramah sought and obtained final site plan approval, which was granted on January 7, 2010.

C. The Request to Modify the Special Permit to Allow Year-Round Use of the Dormitory for Student Housing

56. In or around 2012, Camp Ramah agreed to rent the newly constructed dormitory to the Rockland Country Day School to house its international students from late August through the middle of June.

57. After a smoke detector was triggered in the dormitory in March 2013, the Clarkstown Fire Inspector determined that the use of the dormitory to house the Rockland Country Day School Students outside the months of April 1 through November 1 violated the terms of its special permit.

58. Camp Ramah thereafter sought to modify its special permit to allow year-round use of the new dormitory building to house Rockland Country Day School Students in addition to the

already permitted synagogue and youth group usage during the warmer months.² A copy of Camp Ramah's application for Appeal No. 4108 is attached hereto as **Exhibit B**.

59. The application was first heard on April 16, 2018. The public hearing was continued to May 7, then again to July 16. During that time, the community vociferously opposed Camp Ramah's application.

60. In particular, community opposition toward Camp Ramah's application was based upon false notions about what the 2009 permit allowed and how the Property would be used if the modification was granted. These falsities about Camp Ramah's application were spread on Facebook and by the public at the Town ZBA meetings on the application.

61. For example, one resident characterized Camp Ramah's application as "a real estate venture" in which Camp Ramah was "seeking to rent out its facilities to others in need of a boarding house." A copy of this Facebook post is attached hereto as **Exhibit C**.

62. Another resident falsely claimed that Camp Ramah "only ha[s] permits to use [the dormitory] in the summer months." A copy of this Facebook post is attached hereto as **Exhibit D**.

63. Camp Ramah was also accused by a member of the community of seeking to delay the ZBA proceedings "to allow the Camp to continue its illegal use of the Property." A copy of this Facebook post is attached hereto as **Exhibit E**.

² This application was originally filed in April 2013 (Appeal No. 3888). After a public hearing on this application closed, Camp Ramah agreed to withdraw this application on August 14, 2013. In October 2013, Camp Ramah filed a joint application with the Rockland Country Day School for the same relief sought in Appeal No. 3888 (Appeal No. 3925). After Camp Ramah's application in Appeal No. 3925 was rejected by the Town ZBA's attorney, Camp Ramah was advised to file a new application, and, in February 2018, it filed a new application for the same relief sought in Appeal Nos. 3888 and 3925.

64. In addition to Facebook posts, residents appeared in droves at the Town ZBA hearings on Camp Ramah's application and perpetuated their unfounded falsehoods about Camp Ramah's current and proposed use of the Property, including that:

- a. Camp Ramah wanted to transfer the Property to a Yeshiva;
- b. Camp Ramah was only concerned about profits; and
- c. The expansion of the special permit to permit year-round religious use of the Property could lead to the housing of 375 students per year.

A copy of these public comments are attached hereto as **Exhibit F**.

65. On or about July 16, 2018, after granting a negative declaration under SEQRA, certifying that the proposed special permit modification would not have any adverse environmental impacts, the Town ZBA denied Camp Ramah's request. The Chairman of the Town ZBA, however, noted that Camp Ramah could seek a different modification of the permit. A copy of the Town ZBA's decision in Appeal No. 4108 relating to this application is attached hereto as **Exhibit G**.

66. Following the denial of Camp Ramah's application under Appeal No. 4108, Rockland Country Day School found alternative, less convenient, housing for its students.

D. Camp Ramah Seeks to Modify the Special Permit Condition to Permit Year-Round Religious Use of its Property.

67. Shortly after the Town ZBA's denial of Camp Ramah's application under Appeal No. 4108, the Town Attorney and Town ZBA Attorney requested a meeting with Camp Ramah's attorney to express their concern with Camp Ramah's viability in light of the recent denial of Camp Ramah's special permit modification application. At that meeting, the Town ZBA Attorney and the Town Attorney encouraged Camp Ramah to re-apply for more narrow relief related to its religious use of the property.

68. As a result, Camp Ramah submitted a new and narrower application for relief limited to an expansion of its current religious use of the property from April 1 to November 1 to year-round use. A copy of this application is attached hereto as **Exhibit H**.

69. Specifically, Camp Ramah requested “in addition to the regular day camp use, use of the Camp for retreats and for synagogue, Jewish youth group, and similar functions throughout the year, with overnight occupancy limited to 72 beds” (Ex. H, at 4).

70. This was the precise language that the Town Attorney and Town ZBA Attorney told Camp Ramah to use in the narrower application. It mirrors the language provided by Camp Ramah in seeking the 2009 Permit to describe its intended use and emphasizes that the offerings furthered Camp Ramah’s religious mission and was merely a continuation of what Camp Ramah had been doing from April 1 to November 1 since 2009 without any issues.

71. Indeed, the purpose of the requested modification was to “allow Ramah to sustain and expand its religious offerings throughout the year to those who cannot attend the Summer programs.” Particularly, Camp Ramah desired to offer family programs to “emphasiz[e] the importance of the family unit in Jewish theology and culture.” (Ex H, Emanuel Ltr Aug 27, 2018, at 4).

72. In support of its application, Camp Ramah included information of current and prospective programs offered at other Ramah Camps throughout the country to illustrate the types of programs that have been offered in further of its religious mission. These programs include:

- a. A Passover retreat providing an opportunity for multi-generation families to spend the holiday together learning and exploring Jewish life, culture, texts and history with communal Seders;
- b. Jewish Women’s Getaways for women ages 18 or older that combines creativity through art, relaxation through yoga and massages and the celebration of the Shabbat to foster friendships through faith;

- c. Family-Friendly Shabbats;
- d. Father and Son weekends where men spend time exploring the challenges and joy of raising men and *mensch*s;³
- e. Teen Weekends to instill a sense of joy, compassion and pride in being Jewish while nurturing a young person's innate desire to make a difference in the world around them; and
- f. Solar Eclipse Shabbat Celebration.

(Ex. H, Emanuel Ltr, at 4-5).

73. Despite the Town ZBA's conclusion, Camp Ramah does not intend to replicate *all* of the programs offered by other Ramah Camps. Rather, Camp Ramah sought to give an illustration of the programs that are commonly offered by Ramah Camps nationwide to facilitate the strong development of the Jewish community.

74. Although some of the activities may appear secular in nature when offered on their own, as demonstrated by their description, each of these activities when combined with the other offerings at Ramah Camps further the religious purpose of strengthening familial relationships and friendships through Judaism.

75. On or about November 9, 2018, Town ZBA Chairman Kevin F. Hobbs requested that Camp Ramah provide more information "regarding its proposed modification and expansion of *Existing Off-Season Use*." The request took the form of a seven-page, single-spaced, series of interrogatories. A copy of Chairman Hobbs' letter is attached hereto as **Exhibit I**.

76. The Chairman defined "Existing Off-Season Use" as "the use approved by modification to the Special Permit in 2009" or "the use of the Site from April 1 to November 1 so as to allow use of the Site for weekend retreats and for synagogue family and Jewish youth group

³ Plural, from Yiddish, meaning "a person of integrity and honor".

functions, as well as any weekend or other non-day camp use of the Site during the Summer” (Ex I, at 1 n 1).

77. The information requested by the Town ZBA included, among many other things: (1) the capacity of beds intended to be used for overnight accommodations, (2) whether the dormitory was properly winterized to accommodate overnight accommodations during the winter, (3) expanded information about proposed events to be held at the Property, and (4) information related to parking and traffic.

78. On or about November 19, 2018, Camp Ramah responded to the Chairman’s request for information by clarifying that (1) the application only seeks to extend the current use on the Property for the additional five months of the year, (2) the dormitory constructed in 2009 is properly winterized and has a maximum capacity of 72 people, (3) the proposed events to be held at the Property, and (4) there have been no governmental notices indicating traffic generation or activity have exceeded current approvals. A copy of Camp Ramah’s response is attached hereto as **Exhibit J**.

79. Nevertheless, the Town ZBA requested still more information regarding Camp Ramah’s application at a January 14, 2019 meeting. In particular, Darcy Casteleiro, a Member of the Town ZBA, raised concerns that the Property would be used for bar and bat mitzvah rentals, notwithstanding that those sacred religious celebrations unquestionably further Camp Ramah’s religious mission.

80. Camp Ramah provided all the requested information at the January 2019 ZBA meeting in 72-page response, which included exhibits. A copy of this response is attached hereto as **Exhibit K**.

81. Specifically, Camp Ramah included itineraries and descriptions of most of the activities and retreats offered on the Property since 2011. These activities include:

- a. Weekend Shabbatons where we provide education programs about Jewish traditions, song, and text and observe the Shabbat together;
- b. Weekend family retreats where we provide, among other things, a family Shabbat dinner and programs to foster relationships between attending families; and
- c. Weekend teen retreats where we offer, among other things Junior congregation services.

(Ex K, Attachments to Emanuel Ltr, Jan 22, 2019).

82. Moreover, with respect to Ms. Casteleiro's concerns, Camp Ramah responded that "[a] bar/bat mitzvah is a religious coming of age rite, the celebration of which is completely consistent with Ramah's religious mission of educating young Jewish boys and girls" (Ex K, Emanuel Ltr, Jan 22, 2019, at 2).

83. Camp Ramah clarified that bar and bat mitzvahs and other rentals of the Property were only offered during the late spring and fall months, consistent with its 2009 special permit.

84. During this time, community opposition to Camp Ramah's narrow application remained strong. That opposition was primarily based on three stated misconceptions: (a) that the new request was the same as the old request, and therefore could only be considered upon unanimous consent of the Town ZBA; (b) that Camp Ramah was not operating a religious facility, but, rather, a catering hall or hotel; and (c) that existing traffic congestion at the intersections of Mountainview Avenue and N.Y.S. Route 59 (almost two miles away) and of Christian Herald Road and N.Y.S. Route 303 (one mile away) would be exacerbated by the proposed year-round use.

85. Members of the Town ZBA also raised concerns about the use of the Property by groups not specifically affiliated with Camp Ramah. They wondered how such use differed from that of a hotel or resort. Camp Ramah responded that offering programs grounded in Jewish beliefs to non-Jews would help to reduce inter-faith conflicts, which is also in furtherance of its religious mission. Such conflicts, unfortunately, have increased in recent years, and appear to have inflamed some of the community opposition to Camp Ramah's applications. Camp Ramah emphasized that all groups using the Property must do so in accordance with programs presented and operated by Camp Ramah.

86. On February 11, 2019, the Town ZBA announced its intention to deny Camp Ramah's application, but would file a final written determination thereafter. The Town ZBA's denial of Camp Ramah's application was ultimately issued in a written decision dated March 27, 2019 and filed with the Town Clerk on March 28, 2019. A copy of the Town's ZBA's determination in Appeal No. 4133 relating to this application is attached hereto as **Exhibit L**.

87. First, the Town ZBA determined that the only activities permitted under Camp Ramah's 2009 special permit are "weekend retreats, synagogue family, and youth group functions" (Ex. L, at 7)

88. The Town ZBA determined that the 2009 modification of Camp Ramah's special permit was not intended to allow Camp Ramah "to 'rent' its premises to 'outside entities' for profit as a commercial enterprise" (*id.*).

89. The Town ZBA continued, noting that Camp Ramah's current and proposed activities of Women's Getaways, family retreats, yoga and massages, and multi-generational gatherings are beyond what is permitted under the special permit and did not serve a religious purpose (*id.* at 8).

90. The Town ZBA concluded by claiming that granting the modification of the special permit would produce an undesirable change in character of the neighborhood, adverse physical and environmental impacts, and will overburden the property, without providing any concrete evidence to support its determination (*id.* at 10). Indeed, at the outset of this decision, a negative declaration was adopted under SEQRA, which again certified that Camp Ramah's requested modification would not have any potential adverse environmental impacts (*id.* at 3).

91. The Town ZBA's determination denying Camp Ramah's application to modify its special permit was arbitrary and capricious, and contrary to the law.

92. As an initial matter, the Town ZBA irrationally interpreted its prior 2009 resolution modifying Camp Ramah's special permit to "permit [Camp Ramah's] use of the camp from April 1 through November 1." (Ex A, at 7).

93. Simply stated, under the plain terms of the 2009 special permit, Camp Ramah is free to use its property and the dormitory in any way to promote its religious mission from April 1 through November 1.

94. Notwithstanding the general language in the 2009 special permit, Camp Ramah has used the Property in a manner consistent with its initial request for the modification—"for weekend retreats and for synagogue family and Jewish youth group functions during the Spring and Fall before and following summer camp session" (Ex. A, at 5).

95. Notably, the Town's code enforcement officers have regularly inspected the Property, and were well aware of these activities from 2009 to the present. They have *never* indicated that these activities were contrary to the 2009 special permit. They have never issued a notice of violation, an appearance ticket, or even an oral warning regarding these religious activities.

96. Camp Ramah’s use of the property for weekend retreats and for synagogue family and Jewish youth group functions pursuant to the special permit are consistent with its religious mission to “inspire commitment to Jewish life and develop the next generation of Jewish leaders.”

97. The Town ZBA denial of the ministerial modification of the special permit to authorize Camp Ramah’s religious activities for an additional five months fails to accommodate its plain religious use.

98. Similarly, the Town ZBA’s determination, which seeks to regulate Camp Ramah’s religious activities under the guise of land use regulation, substantially burdens Camp Ramah’s free exercise rights guaranteed by the New York Constitution.

99. Accordingly, the Town ZBA’s determination must be annulled and Petitioners’ should be granted the entire relief requested herein.

AS AND FOR A FIRST CAUSE OF ACTION AND CLAIM FOR REVIEW

(Arbitrary and Capricious – Limitation on Religious Activities)

100. Petitioners repeat and reallege all of the foregoing allegations set forth in this Petition with the same force and effect as though set forth at length herein.

101. Under § 290-32 (C) (1) of the Town of Clarkstown Code, the Town ZBA has the authority to hear and determine appeals from any order, requirement, decision, or determination of the Building Inspector and may grant a variation in the strict application of any provision of the Code.

102. Additionally, the Town ZBA is authorized to issue a special permit for any *use* requiring such permit under the Town of Clarkstown Code § 290-32 (C) (3).⁴

⁴ A 2016 amendment to the Code generally removed jurisdiction for new special permits from the Town ZBA to the Town Planning Board. However, since the special permit at issue was originally granted by the Town ZBA, and since the application sought to modify a condition of

103. The Town ZBA's jurisdiction, however, is limited strictly to regulating uses of land.

104. Nothing within the Town Code grants the Town ZBA authority to regulate the types of religious *activities* that Camp Ramah may offer in furtherance of its religious mission and use of the land, and how they are conducted on the property.

105. Here, the Town ZBA exceeded its lawful authority to regulate land uses under the Town Code by proscribing the religious activities that Camp Ramah can hold on the Property.

106. In so doing, the Town ZBA irrationally and arbitrarily violated Camp Ramah's religious free exercise rights under the New York Constitution and impermissibly regulated the operations of Camp Ramah's religious organization.

107. Specifically, the Town ZBA evaluated whether Camp Ramah's proposed year-round activities, including family retreats, multi-generation family retreats, women retreats, and teen weekends, fostered its religious mission to educate and stimulate Jewish culture and thought.

108. The Town ZBA irrationally determined that Camp Ramah's specific proposed activities fail to promote a religious purpose and/or take place during the weekday.

109. The Town ZBA lacks authority under the Town Code, statutory law, or otherwise to evaluate whether certain activities further a religious purpose and when such religious activities can be held.

110. For example, under the Town ZBA's interpretation, religious organizations would be prohibited from holding weeknight bingo fundraisers, intramural sports leagues, pot-luck dinners, and religious lectures because they are not weekend retreats or youth activities.

that ZBA-issued special permit, the Building Inspector determined that the Town ZBA retained jurisdiction.

111. Consequently, the Town ZBA's decision, which defines what is religious activity and what is not in furtherance of Camp Ramah's religious mission and use of the land, is arbitrary and capricious, irrational and contrary to the law.

112. Accordingly, the Town ZBA's determination denying Camp Ramah's proposed modification of its special permit to use and operate its property year-round must be annulled, and this Court should compel the Town ZBA to grant Camp Ramah the proposed modified permit as submitted.

AS AND FOR A SECOND CAUSE OF ACTION AND CLAIM FOR REVIEW

(Arbitrary and Capricious—Denial of the Continuation of the Same Use of the Property for Five Months is Irrational and Not Otherwise Supported by Substantial Evidence)

113. Petitioners repeat and reallege all of the foregoing allegations set forth in this Petition with the same force and effect as though set forth at length herein.

114. In 2009, Camp Ramah was granted a modification of its special permit "to permit [its] use of the camp from April 1 through November 1."

115. Although Camp Ramah's reasoning for seeking the 2009 permit was "to allow use of the Camp for weekend retreats and for synagogue family and youth group functions during the periods in the Spring and Fall before and following the regular summer camp season," the Town ZBA's broad modification contains no restrictions to only those specific religious activities.

116. To the extent that there is an ambiguity as to the permitted use under the 2009 permit, New York law requires the ambiguity to be construed in favor of Camp Ramah.

117. Accordingly, under its current permit, Camp Ramah is authorized to use its property, including its dormitories, kitchen, and incidental facilities, in any way consistent with its religious mission and use of the land from April 1 to November 1.

118. Thus, the Town ZBA's interpretation of the 2009 permit as limiting the permissible activities that Camp Ramah can engage on its Property to only "weekend retreats" and "synagogue family and youth group functions" is irrational and arbitrary and capricious.

119. Since 2009, Camp Ramah has used its property consistent with the reason it sought the modification in the first instance—to offer religious services and programs to Jewish families from April 1 to November 1, in addition to holding its regular day camp.

120. Camp Ramah's proposed modification of the special permit does not seek to change Camp Ramah's current religious use of the Property. Rather, it seeks to extend the time during which Camp Ramah can use the Property by five (5) months to permit year-round operation.

121. The Town ZBA's denial of the five-month extension to continue the same religious use on the Property is irrational, arbitrary and capricious, and contrary to the law.

122. In fact, the Town ZBA offers no justification for its conclusory assertion that the ministerial modification will have adverse impacts on the surrounding community character, which is inconsistent with its issuance of a SEQRA negative declaration certifying that the proposed modification will not have any potential adverse environmental or community character impacts.

123. Accordingly, this Court should annul the Town ZBA's determination and grant Camp Ramah's proposed modified special permit.

AS AND FOR A THIRD CAUSE OF ACTION AND CLAIM FOR REVIEW

**(The Town ZBA's Determination Fails to Accommodate
Religious Use in Violation of New York Law)**

124. Petitioners repeat and reallege all of the foregoing allegations set forth in this Petition with the same force and effect as though set forth at length herein.

125. Camp Ramah has a permitted religious use of its Property in an R-160 zoning district.

126. New York law requires municipalities to accommodate religious uses, even in zoning districts where they may not be expressly permitted.

127. Additionally, a municipality must accommodate uses of a Property that are incidental to the religious use.

128. In violation of these settled principles, the Town ZBA determined that Camp Ramah's proposed year-round use of the Property for religious retreats, synagogue family and youth group functions was not a religious use.

129. There is also nothing in the record showing that the activities at Camp Ramah are not in furtherance of its religious mission—simply generalized community opposition.

130. The Town ZBA did not adopt any findings of fact to support its determination that Camp Ramah's proposed activities did not qualify as a religious use permitted as of right under the Town Code.

131. Further, the Town ZBA did not set forth any interpretation of Town Code that would allow Camp Ramah's existing religious use of the Property to be a permitted use in an R160 zoning district or any other district.

132. In the absence of any interpretation of the Town Code that would permit Camp Ramah's proposed activities in any zoning district in the Town, the Town ZBA's interpretation of the Town Code to exclude Camp Ramah's religious use of the Property was arbitrary, capricious, irrational, and contrary to the law.

133. Therefore, the Town ZBA's determination denying Camp Ramah's modification of its special permit should be annulled, and this Court should declare that Camp Ramah's proposed year-round use is a permissible religious use as of right in the R160 zoning district.

AS AND FOR A FOURTH CAUSE OF ACTION AND CLAIM FOR REVIEW

**(The Town ZBA's Determination Violates the
Free Exercise Clause of the New York Constitution)**

134. Petitioners repeat and reallege all of the foregoing allegations set forth in this Petition with the same force and effect as though set forth at length herein.

135. Article 1, Section 3 of the New York Constitution provides "[t]he free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all humankind."

136. In evaluating whether the Free Exercise Clause of the New York Constitution has been violated, New York courts will balance the right to religious worship against the State's interest in enforcing its laws to determine whether the burden on religious exercise is justified.

137. The Town ZBA's determination imposes a serious and substantial burden on Camp Ramah's religious practices as it dictates not only the time during which Camp Ramah can engage in its religious activities, but also prescribes the actual activities in which Camp Ramah may engage in to further its religious mission.

138. There is no legitimate justification in regulating the activities that a religious organization seeks to conduct on its Property to further its religious beliefs.

139. The Town ZBA lacks authority to establish the confines of Camp Ramah's permissible religious activity. Its attempt to do so violates the Free Exercise Clause of the New York Constitution.

140. Therefore, the Court should declare the Town ZBA's determination unconstitutional and violative of the Free Exercise Clause of the New York Constitution.

AS AND FOR A FIFTH CAUSE OF ACTION AND CLAIM FOR REVIEW

(Town Law § 267-c (2)—Camp Ramah is Entitled to an Award of Costs)

141. Petitioners repeat and reallege all of the foregoing allegations set forth in this Petition with the same force and effect as though set forth at length herein.

142. As demonstrated above, the ZBA's determination denying Camp Ramah's proposed modification of its special permit to authorize the same religious use of the property year-round was arbitrary and capricious, irrational, contrary to the law and violative of the Free Exercise Clause of the New York Constitution.

143. The Town ZBA acted with gross negligence, in bad faith, or with malice in restricting Camp Ramah's free exercise rights guaranteed by the New York Constitution and infringing upon the operation of Camp Ramah's religious practices by limiting both the activities that Camp Ramah can engage in to promote its religion and the time during which such activities can be held.

144. The Town ZBA's determination is particularly egregious because it determined to substitute its own beliefs concerning which activities fostered Camp Ramah's religious mission and use of the property in place of Camp Ramah's own sincerely held religious beliefs.

145. Therefore, Camp Ramah should be awarded costs and disbursements and attorneys' fees incurred in connection with this proceeding and in connection with the proceedings before the Town ZBA pursuant to Town Law § 267-c (2).

WHEREFORE, Petitioners-Plaintiffs The Jewish Theological Seminary of America and Ramah Day Camp in Nyack respectfully request that this Court issue an order and judgment pursuant to Article 78 of the Civil Practice Law and Rules and section 3001: (1) annulling and setting aside the Town ZBA's March 27, 2019 determination denying Camp Ramah's modification of its special permit to use its Property year-round; (2) declaring that the Town ZBA's determination violates Camp Ramah's constitutional rights under the Free Exercise Clause of the New York Constitution; (3) compelling and directing the Town ZBA to issue Camp Ramah the special permit to which it is entitled, or alternatively, declaring that Camp Ramah's proposed year-round use of its property is a presumptively permissible religious use in the Town's R-160 Zoning District; (4) awarding Camp Ramah the costs, disbursements, and attorneys' fees incurred in prosecuting this proceeding and the proceedings before the Town ZBA; and (5) granting Petitioners any other relief as this Court deems just, proper, or equitable.

Dated: April 24, 2019
Albany, New York

WHITEMAN OSTERMAN & HANNA LLP

By:



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VERIFICATION

STATE OF NEW YORK)
 : ss.
COUNTY OF ALBANY)

ROBERT S. ROSBOROUGH IV, being duly sworn, deposes and says as follows:

1. I am a partner with Whiteman Osterman & Hanna LLP, attorneys for Petitioners/Plaintiffs in this matter.

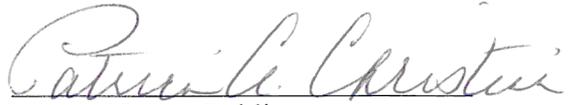
2. I have read the foregoing Verified Petition and Complaint and the same is true to my own knowledge, except those matters stated to be upon information and belief, and as to those matters, I believe them to be true. The source of my belief is my review of the pertinent documents and information provided by my clients.

3. The reason why this verification is made by me and not Petitioners is that Petitioners do not have their principal place of business within the County of Albany.



ROBERT S. ROSBOROUGH IV

Sworn to before me this
24th day of April, 2019.



Notary Public

PATRICIA A. CHRISTIAN
Notary Public, State of New York
Qualified in Rensselaer County
No. 01CH4887803
Commission Expires March 23, 2023