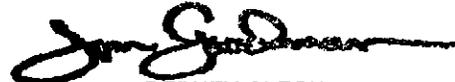


SUPERIOR COURT BERGEN COUNTY  
FILED

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DEPUTY CLERK

554 QUEEN ANNE ROAD, INC.,  
Plaintiffs,

v.

TEANECK BOARD OF ADJUSTMENT,  
Defendant,

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: BERGEN COUNTY  
DOCKET NO. BER-L-12194-10

Civil Action

**COMPLAINT IN LIEU OF  
PREROGATIVE WRITS**

Plaintiff 554 Queen Anne Road Inc. (doing business as Etz Chaim of Teaneck) ("Etz Chaim"), by and through its attorneys, Schenck, Price, Smith & King, LLP and Gibson, Dunn & Crutcher LLP, as and for its Complaint in Lieu of Prerogative Writs, alleges as follows:

**NATURE OF THE PROCEEDING**

1. This is a Complaint in Lieu of Prerogative Writs challenging the Teaneck Board of Adjustment's (the "Board's") arbitrary, unreasonable and illegal determination that Plaintiff Etz Chaim's application as an Orthodox Jewish house of worship would only be granted subject to an unprecedented 25 separate, onerous conditions on the use of the property. See Ex. A (the "Resolution"). Etz Chaim sought routine bulk and parking space

variances in order to use the existing family room in its rabbi's single-family residence as a house of worship, a permitted conditional use in the applicable zone. Despite acknowledging that the variances requested by Etz Chaim were not substantial and would have only a minimal impact on the zoning plan, the Board imposed far-ranging restrictions on the use of the property that are unreasonably and substantially burdensome, are vague and ambiguous on their face, largely have no connection to any legitimate land use concern, and are far more onerous than the conditions imposed on other, comparable secular and religious institutions.

2. The offensive conditions imposed by the Board include an unprecedented total ban on the use of outdoor space on the property for religious assembly and celebration; a near-total ban on the use of the house of worship for religious services or assembly of any kind on more than 75% of the days of the year; a once-a-month cap on the use of the house of worship for study groups or religious classes; a ban on outdoor signage of any kind; and a requirement that congregants vacate the premises within an hour of the conclusion of morning services on those select days when services are permitted. In addition, the Board imposed heavy-handed conditions on the use of the property that had no connection whatsoever to the requested variances, such as detailed guidelines for the layout and use of the proposed house

of worship's kitchenette space. The Board went so far as to impose conditions on Etz Chaim members' use of entirely different properties that were not before the Board at all. At the same time, the Board imposed more than a dozen additional conditions that Etz Chaim does not contest which easily ameliorate any possible negative effects of the variances on the zoning plan.

3. The Board imposed the offensive conditions despite its acknowledgment that a house of worship is an "inherently beneficial" use of the property, despite the fact that the variances do not affect the suitability of the site as a house of worship, despite the Board's finding that the variances would have a minimal impact on the zoning plan, and despite the fact that the property - which is located on a busy street that is already home to numerous houses of worship - will maintain its single-family character. It did so, it appears, to appease a handful of vocal neighbors whose opposition was totally divorced from any legitimate zoning concern, rooted instead in unfounded and utterly irrelevant conspiracy theories.

4. In light of all of the above factors, the offensive conditions (set forth in detail in Paragraphs 33-35 below) are unreasonable, arbitrary and capricious, exceed the Board's statutory responsibilities and powers, violate New Jersey law,

and must be excised from the Resolution granting conditional house of worship approval to Etz Chaim.

5. Separate and apart from the Board's errors of law in imposing vague and unduly burdensome conditions on Etz Chaim's variance approval, the Board's actions violate the Religious Land Use and Institutionalized Persons Act (RLUIPA) in two ways. First, the conditions impose a substantial burden on Etz Chaim and its members' ability to practice their religious activities, and fail to do so in the least restrictive way possible. Indeed, the Board has approved variance applications for numerous comparable houses of worship without subjecting them to nearly the number or magnitude of conditions that it imposed on Etz Chaim. Second, the Board's actions treat Etz Chaim on less than equal terms with comparable secular assemblies or institutions. For the same reasons, these conditions violate Etz Chaim's rights to the free exercise of its religious practices under the First Amendment to the United States Constitution and Article I, Section 6 of the New Jersey Constitution.

6. In addition, the condition denying Etz Chaim the ability to place a modest sign on its property informing passerby of the location of the synagogue - when numerous neighboring property owners are permitted to post commercial advertising signs - deprives Etz Chaim of its free speech rights

under the First Amendment to the United States Constitution and Article I, Section 3 of the New Jersey Constitution.

7. Finally, the vague and ambiguous conditions imposed by the Board violate Etz Chaim's due process rights under the Fourteenth Amendment to the United States Constitution, as they do not provide Etz Chaim adequate guidance as to the conduct prohibited by the Board.

8. Etz Chaim brings this suit only after attempting to resolve the issues raised directly with the Board. In advance of the final passage of the Resolution, Etz Chaim's attorney sent comments objecting to a number of the arbitrary, unreasonably restrictive and vague conditions, and requesting that the Resolution be amended in light of its comments. See Ex. B. Unfortunately, the Board decided to instead pass the Resolution without amendment, leaving Etz Chaim no choice but to bring this suit.

9. Shackled by the onerous conditions imposed by the Board, Etz Chaim is not able to proceed as a fully-operational Orthodox Jewish house of worship. Etz Chaim implores this Court to rule that the conditions imposed by the Board are arbitrary, capricious and unreasonably restrictive, to excise the offensive conditions from the Board's resolution, and to hold that the Board's actions violate Etz Chaim's rights under RLUIPA, the First and Fourteenth Amendments to the United States

Constitution and Sections 3 & 6 of Article I of the New Jersey State Constitution.

**PARTIES**

10. Plaintiff 554 Queen Anne Road Inc. (doing business as Etz Chaim of Teaneck), a New Jersey non-profit corporation, is an Orthodox Jewish religious assembly and faith-community organization located at 554 Queen Anne Road, Teaneck, New Jersey 07666 (the "Subject Property").

11. Defendant Teaneck Board of Adjustment is a duly constituted Board of Adjustment for the Township of Teaneck (the "Township"), established pursuant to N.J.S.A. 40:55D-1 et seq.

**PROPERTY**

12. Plaintiff owns the Subject Property, located at Lot 8 in Block 2409 as shown on the Tax Assessment Map of the Township of Teaneck.

13. The Subject Property is located in an R-S (residential) zoning district under the Township of Teaneck's zoning regulations.

14. Houses of worship are permitted conditional uses in Teaneck's R-S zoning districts.

**FACTUAL BACKGROUND**

**Etz Chaim - A Small, Neighborhood-Based Orthodox Jewish Faith Community - Assembles To Pray At Its Rabbi's Home in Teaneck**

15. Etz Chaim of Teaneck is a small, neighborhood-based Orthodox Jewish religious assembly and faith community. Under the dictates and customs of Orthodox Jewish law and practice, members pray together in a quorum, celebrate life-cycle events such as circumcisions and bar and bat mitzvahs, attend Bible and Talmud study groups, and gather for a festive meal following weekly services at the synagogue, among other activities - all under the spiritual leadership of Rabbi Daniel Feldman.

16. Rabbi Feldman advises congregants on matters of Jewish law, morality and practice, teaches classes, leads study groups, and, together with his wife and children, serves as a spiritual mentor and exemplar of Orthodox life for his member-congregants. Rabbi Feldman is employed by Etz Chaim of Teaneck and lives with his family at the Subject Property.

**The Township of Teaneck Approves and Then Revokes a Certificate of Occupancy For the Use of the Rabbi's Family Room For Prayer Services**

17. Since the fall of 2007, the members of Etz Chaim have prayed together at an informal, private prayer group hosted by Rabbi Feldman on the Sabbath and Jewish holidays at his home at 554 Queen Anne Road.

18. The private prayer group originally was held in the Rabbi's living room. In November 2007, Rabbi Feldman met with Steven Gluck, Teaneck's Zoning Officer, to discuss the legal implications of a planned addition to the house to better accommodate the burgeoning prayer group. Specifically, Rabbi Feldman told Mr. Gluck that he planned to host private prayer group services in the new addition. Rabbi Feldman requested and obtained confirmation from Mr. Gluck that the planned use of the expansion was acceptable to the Township. Etz Chaim and Rabbi Feldman obtained all necessary permits for the expansion and, following completion of the approximately 1,250-square-foot family room (together with an approximately 250-square-foot vestibule and bathroom and the conversion of a 250-square-foot garage to a kitchenette) (collectively, the "Family Room Addition"), the town issued a Certificate of Occupancy for the space. Rabbi Feldman and an attorney representing Etz Chaim met again with Mr. Gluck and other Township officials in May 2008, after the work was completed, to make certain that Mr. Gluck and the Township were satisfied with the construction and use of the space. At that meeting, Rabbi Feldman once more told the Township that he intended to use the space to host private prayer services. At the request of Stanley Turitz, the Township's attorney, Etz Chaim representative (Joel Glucksman)

sent a letter to Mr. Gluck memorializing the parties' discussion. Ex. C.

19. In July 2008, Mr. Gluck received a letter from Rafael Campeas and Janet Abbot, neighbors of Rabbi Feldman's, that argued that the private prayer services now held in the Family Room Addition transformed the Family Room Addition into a "house of worship." Despite the fact that the family room was being used in exactly the manner described and approved by the Township, Mr. Gluck in early August 2008 ordered Rabbi Feldman and Etz Chaim to "cease and desist from using the premises as a house of worship/place of public assembly." Ex. D at 1. On August 26, 2008, Etz Chaim filed a notice of appeal from this cease and desist order, noting that the decision was arbitrary, without factual basis, and in violation of Etz Chaim's New Jersey and federal constitutional rights to the free exercise of religion. Ex. E.

20. Subsequently, Mr. Gluck sent a letter to Rabbi Feldman that made clear that the cease and desist order was issued only a result of the "petition from area residents expressing concerns respecting the use of the . . . property," and that the order was not be construed as a decision on the merits. Ex. F at 1. Rather, "[d]ue to the complexities and nuances of [the] legal issues, and light of the concerns . . . raised by area residents, such issues are best addressed to the Zoning Board of

Adjustment." *Id.* at 1-2. In addition, the letter made clear that "at no time has [Etz Chaim] or Rabbi Feldman attempted to mislead me or the Township." *Id.* at 1. Indeed, "[a]ny implications to the contrary . . . were unintentional and without factual basis." *Id.*

21. In turn, Etz Chaim agreed in the interest of harmony not to engage in a legal battle with the Township over the cease-and-desist order (i.e., over Rabbi Feldman's right to host a private prayer group in his family room) - an appeal that Etz Chaim was confident it would win - but rather to apply for Board approval of the Family Room Addition as a house of worship, as the Township and the neighbors preferred. The cease-and-desist order was stayed by operation of law pending resolution of the permitting application, and services continued uninterrupted at the property.

**The Unrebutted Evidence In Front Of The Board Of Adjustment Establishes That The Requested Use Is Beneficial To The Zoning Plan And That The Requested Variances Would Have No Significant Negative Effects**

22. Following submission of Etz Chaim's application to the Board, the Board held four public hearings between December 16, 2009 and June 16, 2010. A house of worship is a permitted conditional use in the relevant zoning district in Teaneck. However, Etz Chaim needed to obtain from the Board conditional use variances relating to bulk requirements and parking spaces.

23. Etz Chaim's President, Robert Erlich, testified at two meetings. Mr. Erlich testified that Etz Chaim is a small, neighborhood-based Orthodox Jewish religious assembly. He testified that there were approximately 25 member families of Etz Chaim, and approximately 40 people attended services; and, because this is an Orthodox community, members do not drive to services on the Sabbath and Jewish holidays. Mr. Erlich also testified that there may be some weekday events to which people drive, such as life-cycle events and Torah classes, but that members - almost all of whom live within a short distance of the property - are encouraged to walk to those events as well. Mr. Erlich testified that while a variance to permit 6 parking spaces was requested (whereas the ordinance requires 21), neighbors and members living within a one-block radius had provided access for member and visitor parking for 23 additional parking spaces. Finally, Mr. Erlich testified as to the beneficial impact of the house of worship on the neighborhood and the zoning plan, including the inherent and constitutionally protected benefit that a place of worship provides, increased diversity in the neighborhood, moral and ethical instruction and guidance, and rising property prices and tax base. In addition, Mr. Erlich agreed, on Etz Chaim's behalf, to limitations on the use of the property to alleviate any possible negative impact on the zoning plan. These agreed-upon conditions included that Etz

Chaim would not rent the facility to non-members, that privacy walls of shrubbery would be maintained to deflect noise, that there would no cooking on the premises, and that the congregation would appoint a community liaison.

24. On a number of occasions, the Board put substantial pressure on Mr. Erlich to agree to significant additional "stipulations" limiting Etz Chaim's religious activities and services, in violation of its core religious beliefs. Thus, in order to placate the Board, Mr. Erlich "stipulated" that Etz Chaim would not use the property for weekday services (i.e., days other than the Sabbath and Jewish holidays), and that religious classes would be held no more than once per month. However, Mr. Erlich refused to agree to a ban on outdoor celebratory activities or to agree not to erect temporary tents on the Property for outdoor religious celebrations, despite substantial pressure from the Board to do so.

25. Etz Chaim's architect, Christopher Rodriguez, and planner, Michael Kauker, also testified as experts, and Mr. Kauker submitted a Planning & Zoning Analysis report. See Ex. G. As the Board recognized in its Resolution, Mr. Kauker testified that a house of worship is "an inherently beneficial use" and that "[t]here is no substantial detriment to the public good" caused by the variances. Ex. A at 4. Moreover, "[t]here is no substantial impact and the intent and purpose of the

zoning ordinance have been met." *Id.* Specifically, "[t]he residence limits the size of the congregation. As there is less space to utilize the impact on the zone plan and neighborhood is limited. . . . Damages are mitigated by limited use of the premises." *Id.* As to parking, "[a]s this is an orthodox house of worship, there are unique aspects to the parking issue as people must walk to [weekend and holiday] services thereby creating a lesser impact on parking requirements." *Id.* In addition, Mr. Rodriguez, the architect, testified that in the absence of a parking variance the required number of parking spaces would "create a commercial look," which "would be a negative." *Id.* In contrast, the property as it currently stands "is in keeping with the neighborhood" of single-family residences. *Id.* Finally, as to bulk requirements, Mr. Kauker testified that "[t]he coverage meets bulk requirements, except for size," which issue is mitigated because, while "[m]ost lots in the Township are 7500 sq ft.," Etz Chaim's lot size is 14,300 square feet, "larger than most of the single-family lots in the zone." *Id.*

26. Finally, a number of neighbors testified in favor and against the granting of the variances. *Id.* at 5-6. One neighbor testified that people attending services at Etz Chaim do not leave their cars parked on the street outside the property, and that the property was not maintained well by

previous owners but is now well-maintained by Etz Chaim. Another testified that the requested variances were largely "inconsequential," but that in his opinion the parking variance should only be granted if more parking spots were provided.

27. A handful of others made unfounded and wholly irrelevant personal accusations against individual members of Etz Chaim. These residents attacked the congregation's and Rabbi Feldman's sincerity and perceived lack of transparency in the historical events surrounding the formation of Etz Chaim and the addition of the family room, despite instructions from the Board attorney that this history was irrelevant and had no bearing on the proceedings. For example, neighbor Ellen Campeas spoke of alleged harassment and threats to neighbors in the mid-1990s - more than a decade before Etz Chaim existed - by anonymous individuals who she claimed were now members of Etz Chaim. Neighbor Rif Campeas read purported emails allegedly sent by an individual member of Etz Chaim that "on examination [by the Board] . . . [were] not emails but summaries of emails to others" and that could not be authenticated. *Id.* at 5. One purported e-mail stated that "the block is going to hell," which to Mr. Campeas meant that "[t]he block is going to hell because there's going to be a shul." 6/16/2010 Transcript at 23. Mr. Campeas could not explain the relevance of these purported e-mails to the variance application, except to say that they were

somehow indicative of Etz Chaim's moral failing. Mr. Campeas also engaged in unfounded accusations against Rabbi Feldman, for example claiming that the fact that the Township did not copy Mr. Campeas on a letter that it sent to Rabbi Feldman was evidence of a lack of morality and ethics on Rabbi Feldman's part.

28. Although Etz Chaim's attorney repeatedly objected to this testimony, the Board failed to put a stop to these personal attacks. The Board instead allowed the neighbors to continue to testify to matters that were not relevant to the variance application, to make unfounded accusations of misconduct, and to denigrate Etz Chaim and Rabbi Feldman. During the Board's public executive session (at which the Board voted to impose the onerous conditions on Etz Chaim), Board member Harvey Rosen repeated many of the unfounded mischaracterizations expressed by the handful of complaining neighbors - apparently giving weight to these irrelevant and improper considerations in voting to approve the conditions.

**The Board of Adjustment Recognizes The Inherently Beneficial Nature Of The Requested Use, And Acknowledges Its Limited Impact On The Zoning Plan, Yet The Board Imposes An Unprecedented Number Of Onerous Conditions On Etz Chaim's Request For House of Worship Status**

29. The Board recognized that "[h]ouses of worship stand very high on the list of inherently beneficial uses. They are

protected by the U.S. Constitution and are an integral part of our society." Ex A at 6.

30. Meanwhile, the Board acknowledged that the variances were "not terribly substantial considering the neighborhood and the site itself" - a large corner property that continues to maintain its residential character, in keeping with the surrounding residential neighborhood, after the addition of a modest family room. Ex. A at 7. In particular, Etz Chaim requested minor variances to bulk requirements, and a parking space variance. The Board recognized that both requests were insubstantial: "The bulk variances required are lot area deficiency [14,300 square feet where 21,780 are required], which is common to houses of worship in the Township, and front yard setback of 25 ft. where 33 ft. is required. Thus, the bulk variances are minimal." *Id.* As to parking, "[t]he proposed use is for an Orthodox Jewish House of Worship where the members are limited to walking to services and events during the majority of the year [i.e. Sabbath and Jewish holidays]." *Id.* at 6. In addition, the Board recognized that "[b]y its nature, an Orthodox Jewish House of Worship attracts persons who live in the immediate vicinity" (as a result of the Sabbath and holiday restrictions) and there are consequently "very few people who drive" to the house of worship, even for events held on days

that driving would be permitted. *Id.* Thus, "[t]here are very few events which could result in driving." *Id.*

31. The principal issue for the Board was not the variances, but rather the "extent of use and impact on the neighborhood and zoning plan" of the house of worship, variances notwithstanding. *Id.* at 7. The Board recognized that Etz Chaim had "agreed to a great many conditions" on use in order to ameliorate any concerns the Board might have as to the impact of the variances on the neighborhood (e.g., never renting of the facility to non-members, and placing privacy shrubs to deflect noise) but believed it could "impose additional ones . . . to limit the impact on the neighborhood zoning plan and scheme and to foster cooperation with neighbors." *Id.*

32. The Board therefore approved Etz Chaim's application "subject to substantial conditions." *Id.* In particular, the Board imposed 25 separate conditions on approval (and eight separate sub-conditions) - far more (and of a far more onerous nature) than recent, comparable house-of-worship or secular variance approvals in the Township. See *id.* at 8-10. The burdensome conditions to which Etz Chaim objects include severe restrictions on the time and manner that it can use the property (including a complete ban on using the property for religious worship on more than 75% of the days of the year); an almost complete ban on the use of the outdoor space on the property for

religious activities; severe limitations on the congregation's right to assemble for classes and study groups; a complete ban on the use of an outdoor tent for any purpose, including religious celebrations; and heavy-handed guidelines for when and how many specific services Etz Chaim may conduct, even on those limited days when services are permitted.

33. The specific conditions and sub-conditions to which Etz Chaim objects as unreasonably burdensome are: (1) "[t]here will be no outdoor celebratory activities"; (2) the traditional Kiddush gathering after the conclusion of services "shall last no more than one hour"; (3) "[t]here shall be no signs erected or displayed on the property" (e.g., signs denoting the name of the congregation), without returning to the board for special approval; (4) "[s]ervices will be limited to the Jewish Sabbath and . . . holidays" (no regular weekday prayer morning or evening); (5) "no weekday or evening activities"; (6) "[c]lasses and Study Groups shall be limited to one per month"; (7) "[n]o tents or other structures shall be erected on the premises except for a succah during the festival of the Tabernacle"; (8) "[t]here will be no community events held on the property for any reason"; (9) "[n]o catering shall be permitted" on the premises; (10) "[a]dditional services holiday additional programs" [sic] shall be limited to once per week; (11) only one half of the kitchenette area shall be used for food-related

activities and the other half for storage; (12) "[t]here will be a solid 6 ft. high fence with no openings between 554 Queen Anne Road and all adjacent properties placed in the rear and side yards" (without regard for whether adjacent property owners request not to have such a fence, or request an opening); (13) "[i]n the event of a change in the congregation, its practices, or transfer of ownership of the property, the successor shall return to the Board for review of the use at that time"; and (14) Etz Chaim is subject to "[c]ontinuing review by the Zoning Official and Construction Office to ensure compliance with the terms of this Resolution." Ex. A at 8-10.

34. In addition to being unduly burdensome, many of the conditions have no reasonable relationship to any conceivable harm caused by the requested variances. For example, this is true of the Board's heavy-handed guidelines for use of the kitchenette, which was not the subject of a variance request (i.e., that one half of the kitchenette must be used for the warming kitchen and the other half for storage; that the kitchenette will contain refrigerators and warming (holding) ovens only; that there will be no cooking equipment or cooking in the kitchen; and that no catering shall be permitted, only warming of food). Others conditions are outside the scope of the Board's powers to determine and impose. In particular, the Board forbid Etz Chaim from using "adjacent properties and other

properties" for events or overflow activities, though those adjacent and other properties were not before the Board. Ex. A at 9 (emphasis added).

35. Many of the conditions also are impermissibly vague, ambiguous or internally contradictory, and fail to provide sufficient guidance either to Etz Chaim or to zoning officials as to the requirements imposed, including the following:

(1) *"There will be no community events held on the property for any reason."* There is no guidance as to what "community events" means, or how "community events" differ from prayer services, classes and study groups, or life-cycle events and services, all of which are permitted under certain conditions under the Resolution.

(2) *"Additional services holiday additional programs once per week."* There is no way for Etz Chaim to ascertain what "additional services holiday additional programs" means (indeed, the phrase is entirely nonsensical), and there is no indication whether and how this differs from Sabbath and holiday services, classes and study groups, or life-cycle events and services, all of which are restricted in ways other than "once per week" under the Resolution.

(3) *"Cars shall be parked so that they may enter and leave the premises and not be blocked in by other cars."* It is entirely unclear from this language whether the Board is requiring Etz Chaim to construct "stacked" or parallel parking. During the hearings, Etz Chaim submitted plans for "stacked" parking, which limits the egress of the innermost cars when outer cars are "stacked," but also

minimizes the visual impact of the parking spots on the neighborhood. Ex. A at 3. However, following questioning from Board members, Etz Chaim made clear that it would be willing to change its plans to put in parallel parking berths instead, but that this would require a larger parking variance because only five parking spots could be accommodated in this manner. The Resolution requires that Etz Chaim install six parking spots, suggesting that the Board favored the stacked parking arrangement. At the same time, the condition that "[c]ars shall be parked so that they may enter and leave the premises and not be blocked in by other cars" can be read to forbid stacked parking, leaving Etz Chaim with insufficient guidance on this central issue.

(4) *"In the event of a change in the congregation [or] its practices, . . . the successor shall return to the Board for review of the use at that time."* It is entirely unclear what constitutes a "change" in the "congregation" or its "practices." Does the congregation need to return to the Board for review every time a new member joins the congregation, or every time the congregation adds or eliminates a particular prayer from the liturgy? If so, this condition is unduly burdensome.

(5) *"One half of the garage shall be used for the warming kitchen and the other half for storage."* It is unclear how Etz Chaim can comply with this condition given that Township zoning officials, in implementing the conditions and the Township code, have required that a second bathroom be installed in the exact same location.

(6) "No catering shall be permitted only warming of food." It is not clear what the Board intends by banning "catering." While it is relatively clear that a professional caterer is not permitted to cook food on the premises, it is unclear if the Board also intended to forbid Etz Chaim or its members from contracting with a caterer to prepare food off-premises that is then brought in and served on premises, in order to comply with the requirement that only Kosher-certified food is served.

Ex. A at 8-10.

36. Many of these conditions also impose a substantial burden on Etz Chaim and its members' ability to practice according to the dictates of their faith and function as an Orthodox Jewish assembly. For example, the Board placed severe limitations on the days and times at which services, study groups and other activities can be conducted, totally banned outdoor celebratory activities and participation in community activities, severely limited the availability of food prepared in a religiously-acceptable manner, and banned the use of outdoor tents for life-cycle events.

37. Furthermore, the outdoor signage ban impermissibly restricts Etz Chaim's right to speak and publicize its existence and religious message. The outdoor signage ban also conflicts with the mandatory language of the Township Code that "[o]ne sign illuminated by white light only shall be permitted identifying a school, house of religious worship, public

building or any other such public or quasi-public use." Code of the Township of Teaneck § 33-18(c)(9)(e).

38. As the Board recognized, Etz Chaim does not object to many of the conditions. The acceptable conditions, which more than offset any possible negative impact of the variances, include:

- Parking of cars shall only be in designated spaces.
- Landscaping of the property will be maintained as a single family residence. It will express the character of the neighborhood.
- Strollers and carriages are to be parked in the southwest corner of the property as shown on a certain plan dated 3/20/09 marked with an "X" at the time of the hearing. The strollers shall be placed and stored so as not to inhibit access to the building.
- There will be no rental to nonmembers for any reason.
- The property of 554 Queen Anne Road may not be combined to any other adjacent property without further application
- As to the property to the West, holly trees are to be planted under existing trees and topping off the holly tree.
- All exterior lights shall remain of a type customarily used in residential dwellings and will be shielded so to limit visibility of the light source to adjacent homes and to prohibit sky glow.
- Any additional walkway lighting will be turned off one-half (1/2) hour post termination of activities.
- There shall be a representative of the congregation, designated as the community liaison. Designation of such person shall be made annually no later than December 31st of each year. If the representative is changed for any reason, the name of the replacement, address, telephone, cell phone and other contact numbers shall be provided to the Construction Code Official and to all neighbors within a 200' radius of

property within 30 days. The representative shall respond to inquiries no later than 72 hours after contact.

- Notices shall be sent out at least semi-annually to the congregation that it should respect neighbors' privacy and not park in and about other persons' driveways.
- Repair of sidewalks and curbs, if necessary so to comply with Township requirements.
- Revision of the plans and approval by the Zoning official and engineer so to be in conformity with the resolution.
- Compliance with all the required codes of the Township and particularly the fire sub-code and fire official's directions, as well as compliance with all ordinances and regulations of the Township of Teaneck and any and all other requirements of governmental authorities having jurisdiction over same including the engineer's recommendations above set forth and continuing review by the Construction Code Official.

Ex. A at 8-10.

39. On August 11, 2010, the Board approved Etz Chaim's variance requests, subject to the unreasonable and burdensome conditions to which Etz Chaim objects (set forth in Paragraphs 33-35 above), as well as the numerous conditions to which Etz Chaim does not object (set forth in Paragraph 38 above). In advance of the formal memorialization of the Board's decision, Etz Chaim received a copy of the Board's draft resolution. Etz Chaim provided comments on the draft to Harold Ritvo, the Board's attorney, in which it objected to a number of the onerous, vague and unreasonable conditions. See Ex. B. Etz Chaim requested that the Board correct or excise the vague and

improper conditions, in the hope that the Board would rectify its errors of its own accord. Two neighbors also provided comments on the draft resolutions. The Board declined to make any changes to the resolutions as a result of the comments, except to correct the spelling of Rabbi Feldman's name, and it did not clarify or correct the myriad vague and unreasonable conditions contained therein. The final resolution memorializing the approval and conditions was passed by the Board on October 2, 2010, and published on November 3, 2010.

**FIRST CAUSE OF ACTION**

**VIOLATIONS OF N.J.S.A. 40:55D-70: THE CONDITIONS ON APPROVAL IMPOSED BY THE BOARD OF ADJUSTMENT CANNOT STAND BECAUSE THEY DO NOT AMELIORATE ANY NEGATIVE EFFECT THAT WILL ENSUE FROM THE GRANTING OF THE VARIANCE, DO NOT FURTHER A SUBSTANTIAL ZONING PURPOSE, ARE UNREASONABLY RESTRICTIVE, ARE IMPERMISSIBLY VAGUE, AND ARE ARBITRARY AND CAPRICIOUS**

40. Plaintiff repeats and realleges, as if set forth fully herein, the allegations contained in Paragraphs 1-39 hereof.

41. As the Board recognized, the applied-for use of 554 Queen Anne Road as a house of worship is an inherently beneficial use of the property. In addition, the testimony and evidence established that the variances requested would not affect the suitability of the property as a house of worship, and that the site continues to be appropriate for use as a house of worship notwithstanding the variances.

42. There is no legal or factual support for a finding that the variances will "substantially impair the intent and the purpose of the zone plan and zoning ordinance" or that the variances cannot be granted without a "substantial detriment to the public good." N.J.S.A. 40:55D-70d. Indeed, the Board made no findings concerning any negative impact on the zoning plan or the public good if the variances were granted. Instead, the Board recognized that the evidence presented demonstrated that the impact of the requested variances would be minimal on the zoning plan and on the neighborhood: The variances consist of "minimal" bulk zoning variances that are commonly granted to houses of worship, and parking variances that would have little impact in light of the fact that "[t]here are very few events which could result in driving." Ex. A at 6-7. This is so because Etz Chaim is an Orthodox Jewish faith community whose members by and large are Sabbath-observant, live in the immediate vicinity, and do not drive to services. *Id.*

43. In addition, the house of worship space is relatively small, consisting of only a portion of a single-family residence, thus naturally limiting the size of the congregation and impact of the use on the neighborhood and the zoning plan. *Id.* at 4. Finally, the Board made clear that the property was to maintain its character as a single-family residence, even

after approval as a house of worship, further limiting the impact on the neighborhood and the zoning plan. *Id.* at 9.

44. As a result, the variances are easily reconcilable with the Township's determination that certain bulk and parking conditions should be imposed on houses of worship located in an R-S zoning district.

45. Weighing the positive and negative criteria, the variances would have properly been granted without any additional conditions. The property is on a busy street that has numerous houses of worship - including two other Orthodox Jewish houses of worship, in large, non-residential buildings, within an approximately mile-long stretch. At the same time, the property does and will continue to retain its residential character and modest size, and will continue to be used as a residence.

46. In any case, the numerous conditions that Etz Chaim does not contest and readily agrees to comply with (detailed in Paragraph 38 above) more than ameliorate any possible adverse impact on the neighborhood and the zoning plan.

47. The onerous conditions set forth in Paragraphs 33-35 above and imposed by the Board are unreasonably restrictive in light of the minimal impact of the requested variances on the zoning plan.

48. The offensive conditions do not relate to any specific, legitimate concerns as to the impact of the proposed variances on the zoning plan raised in the hearings or based in the factual record.

49. The offensive conditions imposed by the Board do not relate to or reduce the already-minimal impact of the requested variances.

50. The Board exceeded its authority by imposing conditions in order to appease complaining neighbors, rather than focusing strictly on the positive and negative considerations associated with the proposal itself.

51. The Board exceeded its authority by imposing conditions on the use of other properties not in front of the Board on this variance request.

52. The offensive conditions restrict Etz Chaim to a far greater extent than it would be restricted if it had simply maintained its character as private prayer group.

53. The onerous conditions do not seek to mitigate specific concerns raised about the proposed project.

54. The onerous conditions are not reasonably calculated to achieve, or intended to carry out, a legitimate land use purpose. Their purpose is instead to foster cooperation with a few complaining neighbors by severely limiting the scope of activities that the property can be used for. Indeed, the

Resolution itself states explicitly (and incorrectly) that "[t]he Board can impose additional [conditions] . . . to limit the impact on the neighborhood zoning plan and scheme and to foster cooperation with neighbors." Ex. A at 7 (emphasis added).

55. A handful of neighbors gave testimony that was directed not at the impact of the requested variances, but instead at wholly unrelated and irrelevant issues such as alleged acrimonious interactions between those few neighbors and an individual member of the congregation. These considerations appear to have played a role in the imposition of the conditions, as indicated by the statement of Board member Harvey Rosen - who cast the deciding fifth vote in favor of the approval and conditions - at the Board's executive session.

56. The conditions are far more restrictive than those imposed on neighboring houses of worship or secular institutions, without sufficient justification.

57. The conditions also flatly forbid activities - such as use of the outdoor space on the property - that all surrounding property-owners enjoy, without sufficient justification.

58. For each of the reasons enumerated above, the offensive conditions set forth in Paragraphs 33-35 above and imposed by the Board must be annulled and excised from the Resolution.

SECOND CAUSE OF ACTION

VIOLATIONS OF THE RELIGIOUS LAND USE AND  
INSTITUTIONALIZED PERSONS ACT, 42 U.S.C. §§2000CC ET  
SEQ: THE CONDITIONS ON APPROVAL IMPOSED BY THE BOARD  
IMPOSE A SUBSTANTIAL BURDEN ON PLAINTIFF'S EXERCISE OF  
RELIGION, ARE NOT THE LEAST RESTRICTIVE MEANS OF DOING  
SO, AND ARE FAR MORE RESTRICTIVE THAN CONDITIONS  
IMPOSED ON COMPARABLE SECULAR INSTITUTIONS

59. Plaintiff repeats and realleges, as if set forth fully herein, the allegations contained in Paragraphs 1-58 hereof.

60. The Board's implementation of N.J.S.A. 40:55D-70 on Etz Chaim, in the form of the Resolution and its conditions, violates Etz Chaim's rights under the land use Substantial Burden and Discrimination & Exclusion (Equal Terms) provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA).

61. The onerous conditions set forth in Paragraphs 33-35 above impose a substantial burden on Etz Chaim's religious exercise and on the religious exercise of its members, individually and collectively. In particular, Etz Chaim's religious exercise, and that of its members, is substantially burdened by the total ban on outdoor celebratory activities (including religious celebrations such as bar mitzvahs); the total ban on participation in community religious activities; the ban on religious assembly on the property for more than an hour after services have concluded for the traditional Kiddush collation; the total ban on use of the property for any purpose

on more than 75% of the days of the year; the limitation of one study group or other gathering per month outside of services; the ban on putting up a tent on the property under any circumstance; and the catering ban (to the extent that the catering ban is construed to include a ban on bringing kosher catered food that has been prepared off-site onto the premises in order to satisfy the requirement that strictly kosher food is available at meal-gatherings).

62. This substantial burden were not imposed in furtherance of a compelling governmental interest. Indeed, no governmental interest is furthered by the offensive conditions, which do not in any way address or ameliorate any legitimate zoning concerns. In addition, any legitimate government interests were fully allayed, in the absence of the offensive conditions, by the very nature of a small, home-based Orthodox Jewish religious assembly, the physical limitations of the subject property, and the substantial conditions to which Etz Chaim does not object.

63. In any case, the substantial, onerous conditions are not the least restrictive means of furthering any compelling interest that the government asserts. That the conditions are far more restrictive than necessary is clear from the fact that the Board granted other, comparable synagogue variance applications without such onerous conditions. For example, the

Board approved bulk zoning and parking variances for Arzei Darom without restrictions on, *inter alia*, outdoor events, the days and times of services, use of tents, communal events, or the size of the kitchen. The Arzei Darom synagogue is located on Queen Anne Road, only a few blocks from 554 Queen Anne Road, and serves as powerful evidence that less-restrictive means were in fact available. See Ex. H (Board Resolution approving Arzei Darom variances). The same is true of Sha'arei Tefillah, a small congregation located in a residential home, for which the Board approved bulk zoning and parking variances without any of the above-noted restrictions. See Ex. I (Board Resolution approving Sha'arei Tefillah variances).

64. Etz Chaim's religious exercise was also substantially burdened by the substantial pressure put on Etz Chaim by the Board to agree to onerous "stipulations" limiting its religious activities and services, in violation of its core religious beliefs. As a result of the substantial pressure, and in order to placate the Board, Etz Chaim's president agreed to a number of such "stipulations." These "stipulations" significantly modify the Etz Chaim's preferred religious behavior, and that of its members. No compelling governmental interest is furthered by the substantial pressure placed on Etz Chaim to modify its preferred religious behavior, and any imaginable legitimate interest could have been furthered in a less restrictive manner.

65. The Board imposed these substantial burdens in the implementation of a land use regulation under which the Board makes individualized assessments of the proposed uses for the property involved.

66. Separate and apart from the substantial burden placed the religious exercise of Etz Chaim and its members, the onerous conditions impose a land use regulation in a manner that discriminates against Etz Chaim (a religious assembly) by treating it on less than equal terms with nonreligious assemblies or institutions. On information and belief, many comparable secular institution in Teaneck - such as schools, community centers and day care facilities - have not been subjected to comparable conditions, individually or collectively. In particular, on information and belief, comparable secular institutions have had variance applications approved without one or all of the following conditions: (1) A near-total ban on use of outdoor space on the facility for essential programs and activities; (2) a total ban on use of the property for the requested use for more than 75% of the days of the year; (3) a ban on members using the property for more than one hour after formal programming has concluded one those days on which use is permitted; (4) a total ban on "outdoor celebratory activities" and "community activities" on the

premises; and (5) a ban on outdoor signage without Board of Adjustment approval.

67. The latter condition is unlawful and discriminatory on its face because the Township code mandates that "[o]ne sign illuminated by white light only shall be permitted identifying a school, house of religious worship, public building or any other such public or quasi-public use." Code of the Township of Teaneck § 33-18(c)(9)(e). Despite this mandatory, statutory requirement, and despite the fact that dozens of secular schools, public buildings and quasi-public use buildings located in the Township post identifying signs on the premises without special review by the Board, the Board denied Etz Chaim this right and singled it out for unequal treatment.

68. Because the offensive conditions set forth in Paragraphs 33-35 above violate Etz Chaim's rights under the land use Substantial Burden and Discrimination & Exclusion (Equal Terms) provisions of the Religious Land Use and Institutionalized Persons Act, Plaintiff is entitled under 42 U.S.C. §§ 2000 et seq. to the relief requested here, including the recovery of punitive and compensatory damages.

69. As the prevailing party in this action, Plaintiff will also be entitled to the recovery of attorney fees under 42 U.S.C. § 1988.

THIRD CAUSE OF ACTION

**VIOLATIONS OF THE FIRST AND FOURTEENTH AMENDMENTS TO  
THE U.S. CONSTITUTION AND ARTICLE I, SECTION 6 OF THE  
NEW JERSEY STATE CONSTITUTION: THE BAN ON SIGNAGE ON  
THE PROPERTY IMPOSED BY THE BOARD VIOLATES PLAINTIFF'S  
FREE SPEECH RIGHTS**

70. Plaintiff repeats and realleges, as if set forth fully herein, the allegations contained in Paragraphs 1-69 hereof.

71. The condition flatly banning outdoor signs of any kind on the property - even for the size and type of signs that do not need a permit to be erected under the Township code, or where a valid sign permit could otherwise be obtained - without submission for review and approval from the Board (the "Signage Ban") violates Etz Chaim's free speech rights secured by the First and Fourteenth Amendments to the United States Constitution and Article I, Section 6 of the New Jersey Constitution. See Ex. A at 9 ("There shall be no signs erected or displayed on the property or the house without returning to this Board for approval.").

72. First, the Signage Ban imposes harsher conditions on fully protected religious speech than the Township and Board impose on commercial speakers, who are permitted to post small home-business advertising signs and house for-sale signs without Board approval, as many of the home owners in the immediate vicinity of the Property in fact do. Indeed, a sign advertising a home-based medical professional's office is posted on the

front lawn of the property immediately across Queen Anne Road from Etz Chaim's property, and a house for-sale sign has been posted on the front lawn of the property immediately across Van Buren for over a year.

73. *Second*, the Signage Ban targets and discriminates against particular expressive content (content identifying and publicizing the house of worship to members, visitors and potential congregants) for extra review and scrutiny simply because the Board does not approve of, and wishes to silence, the message that will be conveyed. This discrimination is particularly manifest, and ultra vires, in light of the mandatory Township ordinance that gives every house of worship and other comparable institution the right to place an identifying sign on the premises.

74. *Third*, the Signage Ban constitutes an unjustifiable content-based limitation on speech. The Signage Ban is not in furtherance of any compelling governmental interest, and is far more restrictive than necessary.

75. *Fourth*, the Signage Ban is not a valid manner, time and place restriction.

76. *Fifth*, the Signage Ban imposes an impermissible prior restraint on Etz Chaim's protected speech.

77. For each of the reasons enumerated above, the Signage Ban violates Etz Chaim's free speech rights under the First and

Fourteenth Amendments to the United States Constitution and Article I, Section 6 of the New Jersey State Constitution and inflicts damage on Etz Chaim.

**FOURTH CAUSE OF ACTION**

**VIOLATIONS OF FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION: THE VAGUE CONDITIONS VIOLATE PLAINTIFF'S DUE PROCESS RIGHTS**

78. Plaintiff repeats and realleges, as if set forth fully herein, the allegations contained in Paragraphs 1-78 hereof.

79. The vague, ambiguous and internally contradictory conditions for approval imposed by the Board on Etz Chaim (set forth with specificity in Paragraph 35 above) violate Etz Chaim's Due Process rights under the Fourteenth Amendment to the United States Constitution.

80. The vague conditions, on their face and as applied, deprive Etz Chaim of adequate guidance as to the conduct prohibited by the Board, and fail to provide Township officials with guidelines sufficient to prevent arbitrary and erratic enforcement. In other words, the vague conditions do not give a person of ordinary intelligence a reasonable opportunity to know what is prohibited so he may act accordingly.

81. In an effort to avoid violating the vague conditions, Etz Chaim and its members have refrained from engaging in, and will continue to refrain from engaging in, constitutionally protected religious conduct.

82. On information and belief, the Township contemplates criminal sanctions for the violation of the conditions imposed by the Board.

FIFTH CAUSE OF ACTION

**VIOLATIONS OF PLAINTIFFS' CIVIL RIGHTS UNDER THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION (42 U.S.C. §§ 1983 & 1988)**

83. Plaintiff repeats and realleges, as if set forth fully herein, the allegations contained in Paragraphs 1-82 hereof.

84. The Board's determination, and its application of that determination to Etz Chaim, deprive Etz Chaim of its Free Exercise, Equal Protection, Freedom of Speech and Due Process rights. Each violation is separate and distinct from the other, and serves as an independent basis for relief under 42 U.S.C. §§ 1983 & 1988.

85. RLUIPA's substantial burden provisions codify existing Free Exercise rights against zoning officials who, in the implementation of a land use regulations, make individualized assessments of the proposed uses for the property involved. The substantial burden imposed by the Board on Plaintiff's religious exercise rights by the Board's individualized assessment and implementation of a land use regulation, as set forth above in Paragraphs 59-65, infringes Plaintiff's rights secured by the

First and Fourteenth Amendments to the United States Constitution.

86. In addition, RLUIPA's anti-discrimination provisions codify existing Free Exercise and Equal Protection rights against states and municipalities that treat religious assemblies or institutions on less than equal terms than secular institutions. The unequal terms imposed by the Board on Etz Chaim's zoning application in comparison to comparable secular institutions in the Township, as set forth above in Paragraph 66-67, constitute a discriminatory, discretionary decision of zoning officials and thus infringe Plaintiff's Free Exercise and Equal Protection rights.

87. The Board's determination, and its application of that determination to Etz Chaim, also deprive Etz Chaim of free speech rights secured by the First and Fourteenth Amendments to the United States Constitution, as set forth above in Paragraphs 70-77.

88. Finally, the Board's determination, and its application of that determination to Etz Chaim, deprive Etz Chaim of Due Process rights secured by the Fourteenth Amendment to the United States Constitution, as set forth above in Paragraphs 78-82.

89. In depriving Plaintiff of its constitutional rights, Defendant acted under color of law.

90. The Board, individually and in concert with others, executed, directed or had authority over an official decision, practice, policy, or regulation adopted or promulgated by the Board, acting through its officers and members. In particular, the conditions were imposed and the Resolution approved by members of the Board, on behalf of and in the name of the Board.

91. Because (i) Defendant deprived Plaintiff of rights secured by the Free Exercise, Equal Protection, Freedom of Speech and Due Process Clauses of the First and Fourteenth Amendments (ii) Defendant acted under color of law in doing so, and (iii) the deprivation of constitutional rights arose out of an official decision, practice, policy, or regulation of Defendant, acting through its officers and members, Plaintiff is entitled under 42 U.S.C. § 1983 to the relief requested here, including the recovery of punitive and compensatory damages.

92. As the prevailing party in this action, Plaintiff will also be entitled to the recovery of attorney fees under 42 U.S.C. § 1988.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for a Judgment pursuant to N.J.S.A. 10:4-15 & 40:55D-70 and 42 U.S.C. §§ 1983, 1988 & 2000cc et seq.:

(1) declaring that the onerous conditions imposed by Defendant Teaneck Board of Adjustment on the approval of

Plaintiff's variance application contravene Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., and are ultra vires, in violation of lawful procedure, affected by errors of law, unreasonably restrictive, arbitrary and capricious, and are an abuse of discretion, and are therefore without any legal force or effect;

- (2) annulling, individually and collectively, the offensive conditions imposed in the Resolution;
- (3) excising the offensive conditions, individually and collectively, from the Resolution;
- (4) declaring that Board's imposition of the offensive conditions on the approval of Plaintiff's variance application violated Plaintiff's rights under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc et seq.;
- (5) declaring that Board's imposition of the offensive conditions on the approval of Plaintiff's variance application violated Plaintiff's free exercise of religion rights under the First and Fourteenth Amendments to the United States Constitution and Article I, Section 3 of the New Jersey State Constitution;
- (6) declaring that Board's imposition of the Signage Ban as a condition on the approval of Plaintiff's variance application violated Plaintiff's free speech rights

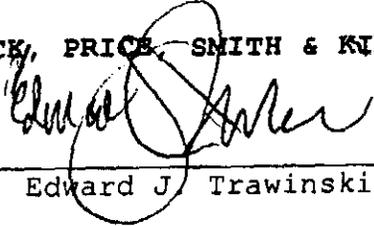
under the First and Fourteenth Amendments to the United States Constitution and Article I, Section 6 of the New Jersey State Constitution;

- (7) declaring that Board's imposition of vague conditions on the approval of Plaintiff's variance application violated Plaintiff's due process rights under the Fourteenth Amendment to the United States Constitution;
- (8) awarding 554 Queen Anne Road Inc. punitive damages and compensatory damages (including but not limited to compensation for reputational harm, professional fees, real estate taxes, and loss of funding) under 42 U.S.C. § 1983;
- (9) awarding 554 Queen Anne Road Inc. punitive damages and compensatory damages (including but not limited to compensation for reputational harm, professional fees, real estate taxes, and loss of funding) under 42 U.S.C. §§ 2000cc et seq.;
- (10) awarding 554 Queen Anne Road Inc. attorney fees under 42 U.S.C. § 1988 and Rule 4:42-9(a)(8);
- (11) awarding 554 Queen Anne Road Inc. its costs, fees and disbursements incurred in connection with these proceedings; and
- (12) granting such other and further relief as the Court deems just and proper.

Dated: December 17, 2010

Respectfully submitted,

~~SCHENCK, PRICE, SMITH & KING, LLP~~

By: 

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*Attorneys for Plaintiff 554 Queen  
Anne Road Inc.*

CERTIFICATION PURSUANT TO RULE 4:5-1

I, Kurt Senesky, of full age, hereby certifies:

1. I am an attorney-at-law in the State of New Jersey and a member of the law firm of Schenck, Price, Smith & King, LLP, attorneys for plaintiff in the instant action.

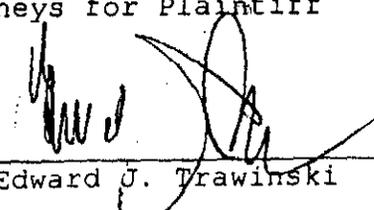
2. I hereby certify that I have no knowledge of any other pending actions or proceedings concerning the subject matter of this action.

3. It is not anticipated at this time that there is any other party that should be joined in this action.

4. I further certify that this Complaint was served within the time prescribed by the Rules of Court or lawful extension thereof.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

**SCHENCK, PRICE, SMITH & KING, LLP**  
Attorneys for Plaintiff

By: 

Edward J. Trawinski

Dated: December 17, 2010

**CERTIFICATION PURSUANT TO RULE 4:69-4**

I, Kurt Senesky, of full age, hereby certifies:

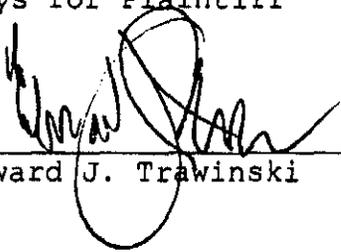
1. I am an attorney-at-law in the State of New Jersey and a member of the law firm of Schenck, Price, Smith & King, LLP, attorneys for plaintiff in the instant action.

2. I hereby certify that all necessary transcripts of local agency proceedings in this cause have been ordered.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

**SCHENCK, PRICE, SMITH & KING, LLP**  
Attorneys for Plaintiff

By:

  
\_\_\_\_\_  
Edward J. Trawinski

Dated: December 17, 2010