UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CHABAD LUBAVITCH OF THE BEACHES, INC.,

Plaintiff,

v.

INCORPORATED VILLAGE OF ATLANTIC BEACH; MAYOR GEORGE PAPPAS; EDWARD A. SULLIVAN; LINDA L. BAESSLER; ANDREW J. RUBIN; and PATRICIA BEAUMONT,

Defendants.

Civil Action No. 2:22-cv-04141

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION BY ORDER TO SHOW CAUSE FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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INTRODUCTION

This action seeks to prevent the Village of Atlantic Beach ("Village" or "Atlantic Beach") from unlawfully abusing the power of eminent domain to oust a Hasidic Jewish organization from its property. In November 2021, Chabad Lubavitch of the Beaches ("Chabad") purchased 2025 Park Street in Atlantic Beach to open a Chabad House—a center offering religious services, education, and programming to the broader Jewish community. At the time of this purchase, 2025 Park Street had been for sale for nearly two years and vacant for at least three years, during which time Atlantic Beach never once attempted to buy the property. Yet within less than a month of Chabad's arrival—and less than two weeks after Chabad first used the property to publicly celebrate a Jewish holiday—Atlantic Beach decided to take the property through eminent domain, purportedly to build a community center and lifeguard operations facility. Atlantic Beach has never publicly explained its sudden interest in 2025 Park Street. In fact, its attorney admitted the Village considered no alternative sites, even though the Village already owns at least two undeveloped properties better suited for its purported plans than 2025 Park Street.

Atlantic Beach's discriminatory use of eminent domain against Chabad violates both the Constitution and the Religious Land Use and Institutionalized Persons Act (RLUIPA). Under the Free Exercise Clause of the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, and RLUIPA, Atlantic Beach may not substantially burden Chabad's religious exercise unless it can satisfy strict scrutiny. Indeed, under the Free Exercise Clause and RLUIPA, strict scrutiny applies regardless of whether the Village is motivated by discriminatory intent. Yet the Village cannot satisfy either strict scrutiny prong. It lacks a compelling interest in seizing 2025 Park Street because its purported plans are pretextual and, in any event, are far from the sort of first order interests that can justify invading fundamental rights. And even if the Village's interests

were compelling, seizing 2025 Park Street is not the least restrictive means of achieving them given the availability of multiple alternative properties better suited to a community center and lifeguard operations facility—alternatives the Village admitted it never even considered. Finally, the Village's efforts violate the Takings Clause of the Fifth Amendment as well, as its purported public use for 2025 Park Street is a pretext for religious discrimination.

Having made no effort to purchase 2025 Park Street during the many months it was for sale, Atlantic Beach is now in a rush to complete its unlawful taking. Paying no heed to its obligation to, "[w]herever practicable," make an offer prior to acquiring the property, N.Y. Em. Dom. Proc. Law § 303, the Village has made no offer to Chabad but has petitioned the New York Supreme Court to permit it to take title to 2025 Park Street as soon as July 14, 2022. The Village's violation of Chabad's constitutional rights is irreparably harming the organization and, unless enjoined, will continue to do so. Furthermore, the public interest favors an injunction: The Village has no legitimate interest in pursuing so plainly an unlawful course of conduct, and there is no true urgency to the Village's plans, as demonstrated by the Village's years of inaction and, indeed, the decades it has gone without a community center or lifeguard operations facility. Accordingly, Chabad respectfully asks that the Court temporarily restrain and preliminarily enjoin Atlantic Beach and its officials from proceeding with taking Chabad's property.

BACKGROUND

Chabad Lubavitch is a branch of Hasidic Judaism known for its outreach to the broader Jewish world. It aims to draw all Jews, and especially non-Orthodox and secular Jews, closer to Judaism and God. This goal is known as *kiruv*, a term derived from the Hebrew word for "bringing close." *See* Decl. of Eli Goodman ("Goodman Decl.") ¶ 3.

Chabad Lubavitch[1] carries outs its mission of *kiruv* through emissaries known as *shluchim*—husband-and-wife teams who, as young married couples, permanently move to areas with a Jewish presence to set up Chabad Houses, from which they conduct a wide range of outreach activities. *Id.* ¶ 5. Such activities generally include religious services, Torah study, religious instruction, holiday celebrations, and community service. This model has been enormously successful. Today, Chabad Lubavitch is one of the most influential and far-reaching Jewish organizations in the world, with over 2,000 emissary families in the United States, over 5,000 worldwide, and over 3,500 institutions located in over 100 countries.

Seventeen years ago, *shluchim* Rabbi Eli and Beila Goodman founded Plaintiff Chabad Lubavitch of the Beaches to serve the Jewish population of Long Beach Barrier Island, a 10-mile-wide island off the southern coast of Long Island comprising the communities of Atlantic Beach, Long Beach, and Lido Beach. *See* Goodman Decl. ¶ 6. Chabad currently operates a center for Jewish life in Long Beach, consisting of a synagogue as well as a broad range of educational, social, and religious programming for children, teenagers, young professionals, and other adults. *Id.* ¶ 7. For example, the center runs a Hebrew school, adult Jewish education programs, young Jewish professional events, programming for Jewish teens, and women's programming. *Id.*

Last fall, to expand its offerings for the local community, Chabad purchased a property located at 2025 Park Street (the "Property" or "2025 Park Street") in the Village of Atlantic Beach for $950,000. *Id.* ¶ 8. The 9,995 square-foot property, which is down the block from the Village offices, houses a 1,698 square-foot building that was formerly a Capital One bank. The purchase was completed on November 18, 2021. *Id.* ¶ 13.

[1] Chabad Lubavitch is commonly known as "Chabad." To distinguish the broader Chabad Lubavitch movement from Chabad Lubavitch of the Beaches, however, this brief refers to the former as "Chabad Lubavitch" and the latter simply as "Chabad."

At the time of purchase, the Property had been vacant for at least three years and had been available for lease and/or sale, through multiple agents, since December 2019. During the bulk of that time, the Property had a large "For Sale" sign posted in its front yard, facing Park Street, a major thoroughfare. *See* Declaration of Solomon Perlstein ("Perlstein Decl.") ¶¶ 6–7; Appx. fig. 1. The Property was also listed for sale on MLS, Zillow, and other real estate websites. Perlstein Decl. ¶ 7. Yet at no point during that period did the Village ever offer to purchase the Property, much less initiate eminent domain proceedings to take it. *Id.* ¶ 8.

Chabad acquired the Property with the intent of opening a Chabad House offering religious services, religious education, and other Jewish outreach activities. *See* Goodman Decl. ¶ 10. Rabbi Goodman selected the Property because it sits at the foot of the bridge that serves as the main entry point to Long Beach Barrier Island. *Id.* ¶ 12. This high-visibility location promised to promote awareness of Chabad among the island's large Jewish population, especially among secular and unaffiliated Jews who might otherwise not know of Chabad's presence. *Id.*

On December 2, 2021, two weeks after completing its purchase, Chabad held a menorah lighting at the Property to celebrate Hannukah. *Id.* ¶ 14. Chabad had held similar ceremonies in Long Beach every year since 2005, all of which were attended by Long Beach elected officials. *Id.* ¶ 16. Consistent with that tradition, in advance of the Atlantic Beach menorah lighting, Rabbi Goodman emailed the Village's official account, inviting the Village's mayor, Defendant George Pappas, to light the center candle "to bring blessing and light to the Village of Atlantic Beach and the entire Barrier Island." *Id.* ¶ 17. Despite the invitation, no Village officials attended the ceremony, during which participants lit a twelve-foot Menorah and sang religious songs. *Id.* ¶¶ 15, 20. When reports of the event reached Mayor Pappas, he reportedly said he had a plan to prevent Chabad from remaining in Atlantic Beach. Compl. ¶ 41.

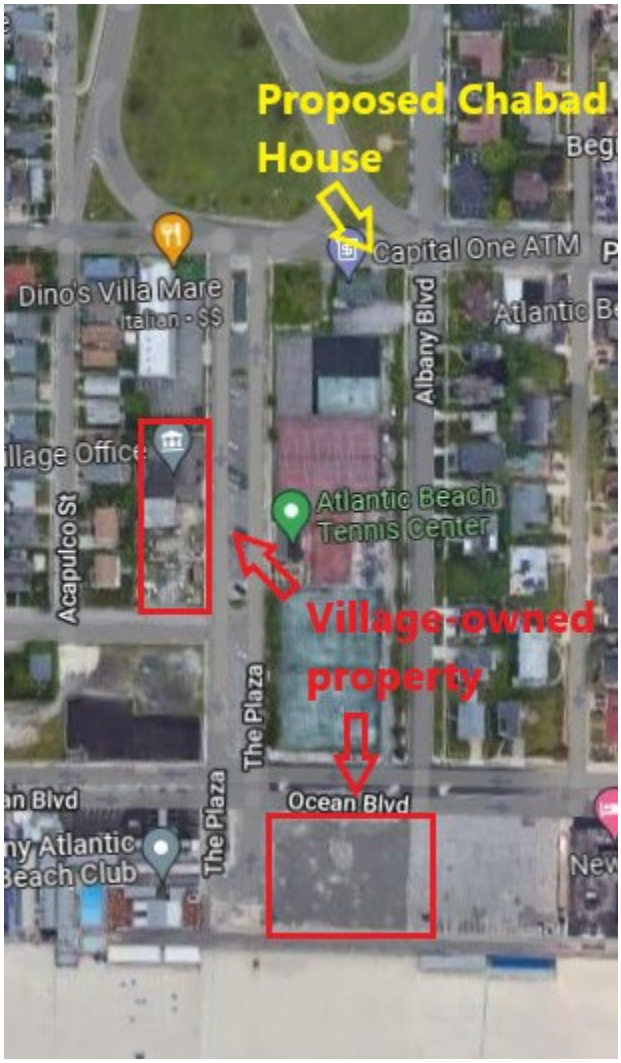
Within less than two weeks, on December 13, 2021, that plan took shape. At a meeting of the Village's Board of Trustees—its governing body—the Board unanimously adopted a resolution to begin the process of seizing 2025 Park Street and the neighboring lot, 2035 Park Street, through eminent domain.[2] *See* Decl. of Gordon D. Todd ("Todd Decl.") Ex. 1.

As required by New York law, the Village held a public hearing to discuss the acquisition on January 10, 2022. At the hearing, the Village's attorney stated that the Village planned to use the Property as a "recreational facility and community center with lifeguard beach operations," and to use the neighboring parcel as a community park. *See* Todd Decl. Ex. 2 at 9:8-15. But numerous residents raised concerns about the Village's plans. Some questioned why the Village chose as a location two parcels it needed to acquire through condemnation, rather than one of several suitable sites it already owned. *Id.* at 18:17-19:21, 48:4-10. Some noted that the Village Hall "was supposed to be the community center" and currently had both staff and space to serve that function. *Id.* at 20:22-21:6; *see id.* at 48:14-15, 49:10-12. Some noted the limited parking available at the Property and asked whether it was safe to place a public park besides a busy road like Park Street. *Id.* at 30:8-12, 38:2-4, 45:18-46:9. Some criticized the Village's lack of specific plans for the proposed facilities. *Id.* at 52:9-12, 37:19-24. And quite a few questioned the Village's motivations. One resident observed that the Property "wasn't interesting for the Village to buy it during those two years" it was on sale, and only attracted the Village's interest "after the Chabad bought it." *Id.* at 24:6-11. Another worried about "this subtext about Chabad having purchased the property," *id.* at 38:19-21, while a third described the Village's actions as "so suspicious," *id.*

[2] In addition to Mayor Pappas, the other Board members are Defendants Sullivan, Baessler, Rubin, and Beaumont.

at 49:23. Neither the Defendants nor the Village's attorney offered any answers or responses to the speakers' questions and concerns.

Those questions and concerns, however, are well founded. First, the Village *does* own several parcels of land equally if not better suited to a community and lifeguard operations center than Chabad's lot. For example, as illustrated below, the Village owns two sizable plots within a block of the Park Street properties, but located closer to the beach, nearer to parking, and on quieter streets than the Park Street properties. *See* Todd Decl. Exs. 4, 6 (deeds for the properties).



There are also several other plots of land in Atlantic Beach well-suited to the Village's purported plans. For example, multiple plots comprising undeveloped land and/or parking lots

line Ocean Boulevard, in the vicinity of the Village's beachfront plot. *See* Appx. fig. 2. There are also several acres of undeveloped land adjacent to the Atlantic Beach Bridge and a nearly three-acre undeveloped property at the intersection of Bay Boulevard and Hamilton and Ithaca Avenues, both of which, on information and belief, are owned by Nassau County or its instrumentalities and could be purchased or leased by the Village. *See* Appx. figs. 3 & 4.

These properties are all equally if not better suited to the Village's plans than 2025 Park Street, and most if not all could likely be acquired more cheaply. But as the Village's attorney acknowledged, the Village did not consider these or any other parcels as alternatives to condemning the Property. *See* Todd Decl. Ex. 2 at 9:15-16 ("No alternative locations were considered for the project.").

Second, the Village has actually codified hostility towards religion in its zoning ordinances. In 2007, it adopted an ordinance regulating "religious and educational uses" of land in the Village to address "the concerns of the surrounding Village inhabitants about the potential adverse effects on the quality of life that these uses may engender." § 250-108.1(A)(1).[3] The ordinance permits the Village to deny approval to establish a "religious . . . use[] in the Village" if the Village believes such use "will sufficiently detract from the public's health, safety, welfare or morals." § 250-108.1(A)(4). In this way, the Village aims to prevent religious uses with a supposed "net negative impact on the surrounding neighborhood." § 250-108.1(A)(2).

Third, this hostility towards religion is also manifest in local residents' public comments. After the hearing, members of the Facebook group "Village of Atlantic Beach Residents," whose 600-plus members reportedly include at least one member of the Village's Board of Trustees, expressed open hostility towards Chabad. "Let's be real," wrote one resident, "The Atlantic Beach

[3] The Village zoning ordinance is available at https://ecode360.com/7204110.

community and the Chabad community are two very different things. Atlantic Beach has been affected by religious agendas for far too long." Goodman Decl. Ex. 3. Another resident wrote: "I don't agree with Chabad coming into this village and changing the dynamic here. Because that is what will happen…Chabad coming in and trampling all over our beautiful village." *Id.* Ex. 5. Others expressed similar views. *See id.* Exs. 2, 4; Compl. ¶ 63.

On February 14, 2022—still without having ever publicly addressed the questions and concerns surrounding their plans—Defendants voted to seize both 2025 and 2035 Park Street. *See* Todd Decl. Ex. 3. On June 14, 2022, the Village filed a petition to acquire fee title to the Property under § 402 of the New York Eminent Domain Procedure Law (EDPL), setting a hearing date of July 14, 2022 "or as soon thereafter as counsel can be heard." Goodman Decl. Ex. 6. Despite the requirement to, "[w]herever practicable, … make [an] offer [of just compensation] prior to acquiring the property," N.Y. Em. Dom. Proc. Law § 303, the Village has made no such offer to Chabad. Goodman Decl. ¶ 25.

Given Defendants' determination to complete their unlawful taking, Chabad seeks a temporary restraining order and preliminary injunction to protect Chabad's fundamental rights and to stop Defendants from proceeding with eminent domain.

LEGAL STANDARD

To obtain a preliminary injunction, a plaintiff must show: (1) that it is "likely to succeed on the merits," (2) that it is "likely to suffer irreparable harm in the absence of preliminary relief," (3) that the "balance of equities tips in [its] favor," and (4) that "an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). When the government is "party to the suit, the final two factors merge." *New York v. U.S. Dep't of Homeland Sec.*, 969 F.3d 42, 58–59 (2d Cir. 2020), *cert. dismissed*, 141 S. Ct. 1292 (2021).

ARGUMENT

I. Chabad is likely to succeed on the merits.

A. Defendants' interference with Chabad's religious exercise violates the Free Exercise Clause.

The First Amendment's Free Exercise Clause bars government from "prohibiting the free exercise" of religion. U.S. Const. amend. I. A plaintiff may prove a free exercise violation by showing that "a government entity has burdened his sincere religious practice pursuant to a policy that is not 'neutral' or 'generally applicable.'" *Kennedy v. Bremerton Sch. Dist.*, No. 21-418, 2022 WL 2295034, at *9 (U.S. June 27, 2022) (quoting *Emp. Div., Dep't of Hum. Res. of Ore. v. Smith*, 494 U.S. 872, 881 (1990)). When a plaintiff makes such a showing, a court "will find a First Amendment violation unless the government can satisfy 'strict scrutiny' by demonstrating its course was justified by a compelling state interest and was narrowly tailored in pursuit of that interest." *Id.*; *see also Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (per curiam) ("[T]he government has the burden to establish that [a] challenged law satisfies strict scrutiny."). Under this framework, Chabad's free exercise claim is highly likely to succeed.

1. The taking of Chabad's property is subject to strict scrutiny because it is neither neutral nor generally applicable.

To begin with, strict scrutiny applies to Defendants' taking of Chabad's Property for two independent reasons.

First, far from acting neutrally, Defendants "target[ed] religious conduct for distinctive treatment." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993). Courts apply strict scrutiny when the government "proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021). In assessing government action, "[f]acial neutrality is not determinative." *Lukumi*, 508 U.S. at 534 (stating that the Free Exercise Clause prohibits "covert

suppression of particular religious beliefs"); *see also Masterpiece Cakeshop, Ltd. v. Col. C.R. Comm'n*, 138 S. Ct. 1719, 1731 (2018) (noting that the Free Exercise Clause "forbids subtle departures from neutrality"). Instead, courts "meticulously" scrutinize both the decision itself and the surrounding circumstances, considering "the historical background of the decision under challenge, the specific series of events leading to [it], and the . . . administrative history, including contemporaneous statements made by members of the decisionmaking body." *Lukumi*, 508 U.S. at 540 (plurality).

Albanian Associated Fund v. Township of Wayne, 2007 WL 2904194 (D.N.J. Oct. 1, 2007), illustrates these principles. The case began when the plaintiffs bought land to build a mosque. Soon thereafter, the city adopted a plan to "preserve open spaces" and tried to condemn the plaintiffs' land, while ignoring similarly situated, secular properties. *See id.* at *2, *4. The plaintiffs sued to enjoin the taking, arguing that the mosque had been "singled out for discriminatory treatment." *Id.* at *13. Analyzing the "circumstances . . . and the manner in which the plaintiffs' property was pursued," the court granted a preliminary injunction and later denied the defendants' summary judgment motion, holding that "[t]he circumstances of this case and the manner in which the plaintiffs' property was pursued, at the very least, supports an indication of discriminatory or improper purpose." *Id.* at *4, *7.

Here, as in *Albanian Fund*, circumstances show that the condemnation was motivated by discrimination. Like the open-space plan in *Albanian Fund*, the Village's determination to acquire 2025 Park Street came about only after authorities learned that the land would be put to religious use. Indeed, the timing here is even more suspicious than in *Albanian Fund*, where the city adopted its open-space plan a full *year* after the plaintiffs applied to build a mosque. *See id.* at *2. Here, Defendants decided to condemn Chabad's property less than a *month* after Chabad's arrival.

Worse still, this sudden need for 2025 Park Street came after the property had been vacant for at least three years and available for lease or sale for nearly two years.

Furthermore, like the city in *Albanian Fund*, Defendants ignored similarly situated, secular property. For example, Atlantic Beach owns two parcels within a block of the Park Street properties, both of which are better suited to the Village's purported plans. *See* Todd Decl. Exs. 4, 6. Both are nearer to the beach, closer to parking, and located on less busy streets than the Park Street properties. *See supra* at 6. Indeed, one of the parcels is beachfront—clearly a virtue when building a lifeguard center. Moreover, the fact that Atlantic Beach already owns these parcels means it could have implemented its purported plans more cheaply and quickly than proceeding through eminent domain. Alternatively, Defendants could have considered using eminent domain to acquire one of the multiple nearby parking lots, *see* Appx. fig. 2, or attempting to purchase or lease some of the other acres of undeveloped land in the Village, *see id.* figs. 3 & 4. Yet Defendants considered *none* of these alternatives before condemning Chabad's property. Their single-minded focus in the face of multiple superior alternatives is further evidence of their discriminatory intent.

Finally, "statements by community members, even if not a part of the decisionmaking body, are relevant in assessing discriminatory purpose." *Congregation Rabbinical Coll. of Tartikov, Inc. v. Vill. of Pomona*, 138 F. Supp. 3d 352, 410 n.36 (S.D.N.Y. 2015), *aff'd*, 945 F.3d 83 (2d Cir. 2019). Here, multiple Atlantic Beach residents made statements on the Village Facebook group revealing strong anti-Chabad animus. *See* Goodman Decl. Exs. 2–5. Those statements are indicative of the discriminatory purpose behind the Village's taking of Chabad's Property, "particularly to the extent that Village officials were aware of these comments," *Congregation Rabbinical Coll.*, 138 F. Supp. 3d at 410 n.36, which they likely were given that the Facebook group's membership includes at least one member of the Village Board of Trustees, *see*

Goodman Decl. ¶ 24. *See also Gilead Cmty. Servs. v. Town of Cromwell*, 432 F. Supp. 3d 46 (D. Conn. 2019).

S*econd*, even if Defendants' condemnation decision were not discriminatorily motivated, it triggers strict scrutiny because it is not "generally applicable" state action. *Fulton*, 141 S. Ct. at 1876**.** Strict scrutiny applies when government makes "individualized" assessments, *see id.* at 1877 (citation omitted), and the "effort[] to condemn" a particular property requires just that, *Cottonwood Christian Ctr. v. Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203, 1223 (C.D. Cal. 2002). Here, in exercising the power of eminent domain, Defendants had discretion to target certain parcels (or not), to adjust its plans in response to public comments (or not), and to exempt specific parcels from government action (or not). Such individualized, discretionary decisions are just the sort of government actions that demand strict scrutiny. *See Fulton*, 141 S. Ct. at 1879.

Finally, condemning 2025 Park Street burdens Chabad's religious exercise. Chabad plans to use the Property for religious services, religious education, and other Jewish outreach activities central to Chabad's religious mission of *kiruv*—bringing Jews closer to God. *See* Goodman Decl. ¶¶ 3, 10. Defendants' taking of the Property prevents Chabad from implementing those plans and plainly burdens its religious exercise. *See Cottonwood*, 218 F. Supp. 2d at 1226 ("Preventing a church from building a worship site fundamentally inhibits its ability to practice its religion."); *see also Yonkers Racing Corp. v. City of Yonkers*, 858 F.2d 855, 871–72 (2d Cir. 1988) (applying strict scrutiny after recognizing that condemnation would "substantially affect" seminary's religious work).

Indeed, even if Chabad were required to show a *substantial* burden, that standard is easily met. *But see Kennedy*, 2022 WL 2295034, at *9 (requiring only a "showing that a government entity has burdened … sincere religious practice"); *Fulton*, 141 S. Ct. at 1876 (same). "[A]

'substantial burden' exists when a governmental action seriously impedes religious exercise." *Westchester Day Sch. v. Vill. of Mamaroneck*, 417 F. Supp. 2d 477, 547 (S.D.N.Y. 2006), *aff'd*, 504 F.3d 338 (2d Cir. 2007). In the land-use context, courts apply this standard by asking whether "government action [has] directly coerce[d] the religious institution to change its behavior." *Westchester Day*, 504 F.3d at 349 (emphasis omitted); *see also McEachin v. McGuinnis*, 357 F.3d 197, 202 (2d Cir. 2004) (noting that demonstrating a substantial burden "is not a particularly onerous task"). Here, condemning 2025 Park Street plainly "coerce[s]" Chabad "to change its behavior" by completely preventing it from using the Property for its desired religious purposes. Thus, Defendants' actions substantially burden Chabad's freedom of religion.

2. Defendants' actions fail both prongs of strict scrutiny.

Because strict scrutiny applies, Defendants' decision can stand only if it advances compelling state interests "of the highest order" *and* is "narrowly tailored in pursuit of those interests. *Lukumi*, 508 U.S. at 546. Chabad is likely to succeed on the merits of its free exercise claim because Defendants cannot satisfy either prong.

a. Condemning the Property furthers no compelling interest.

Defendants attempt to justify the condemnation based on the desire to build a community center, lifeguard beach operations facility, and park. Todd Decl. Ex. 2 at 9:8–15. But this purported justification fails strict scrutiny for two reasons. *First*, as explained above, it is pretextual. *See supra* at 9–12. Strict scrutiny "requires not only that the government's stated purpose is a compelling interest, but that it is also a genuinely-held purpose." *Cottonwood*, 218 F. Supp. 2d at 1228; *see also Am. Amusement Mach. Ass'n v. Kendrick*, 244 F.3d 572, 576 (7th Cir. 2001) (government cannot offer "pretexts for regulation on grounds not authorized by the First Amendment"). Here, however, the Village's timing and failure to consider alternative parcels,

along with its stated commitment to regulating religious land use that it believes will "significantly detract" from the community, show that its supposed plans are a sham.

Second, even if they were genuine, Atlantic Beach's asserted interests would not be compelling. Only "interests of the highest order" are compelling, *Lukumi*, 508 U.S. at 546, and thus compelling interests must "involve[] 'some substantial threat to public safety, peace, or order . . . ." *Tartikov*, 138 F. Supp. 3d at 418 (quoting *Sherbert v. Verner*, 374 U.S. 398, 403 (1963)) (alterations omitted). This sets a "high bar," and courts routinely hold that "aesthetics, traffic, and community character" are not compelling interests. *Id.* (collecting cases) (alterations and internal quotation marks omitted). Nor do interests in "property values," "civic beauty," the "local economy," or the "education, welfare and pleasure" of residents pass muster. *Keeler v. Mayor of Cumberland*, 940 F. Supp. 879, 886 (D. Md. 1996). Defendants' sudden interest in expanding recreational facilities is no more compelling than these, and therefore cannot justify invading Chabad's fundamental rights.

b. Defendants' actions are not narrowly tailored.

Even if condemnation served a compelling interest, Defendants would still flunk strict scrutiny because taking Chabad's property is not the "least restrictive means" of achieving that interest. *Thomas v. Review Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 718 (1981). When the government "can achieve its interests in a manner that does not burden religion, it must do so." *Fulton*, 141 S. Ct. at 1881. And here, nearby parcels would have served the Village's purposes just as well as, if not better than, 2025 Park Street. As explained above, *supra* at 6–7, Atlantic Beach could have used—and may still use—land it already owns that is nearer to the beach, closer to parking, and on less busy streets than the Property. *See* Todd Decl. Exs. 4, 6; *supra* at 6. Defendants' failure even to consider those options is, by itself, fatal to their decision.

B. Defendants' actions violate the Equal Protection Clause.

The Equal Protection Clause bars the government from "deny[ing] to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. This provision requires that "all persons [and entities] similarly situated be treated alike." *City of Cleburne v. Cleburne Living Ctr.,* 473 U.S. 432, 439 (1985). The government violates this command when it engages in selective treatment "based on impermissible considerations such as race, religion, [or] intent to inhibit or punish the exercise of constitutional rights." *LaTrieste Rest. & Cabaret Inc. v. Vill. of Port Chester*, 40 F.3d 587, 590 (2d Cir. 1994) (quoting *LeClair v. Saunders,* 627 F.2d 606, 609–10 (2d Cir. 1980)).

Atlantic Beach did just that: targeting Chabad's property because of Chabad's religious exercise. As described above, *see supra* at 4, 2025 Park Street lay empty and unused for years. Only when Chabad purchased the property and held a public religious celebration did Defendants decide to seize it by eminent domain. Defendants' sudden interest in the Property—after years of sitting on their hands while the property was vacant—strongly indicates their unlawful motivation. *See LaTrieste*, 40 F.3d at 590 (suspicious timing of enforcement action in response to First Amendment exercise can raise a triable issue of fact on equal protection claim).

In targeting Chabad's property, Defendants are also treating Chabad differently from similarly situated, non-religious property owners. Other nearby properties — including several owned by Atlantic Beach itself—are equally (if not better) suited to the Village's purported plans. Yet Defendants failed to consider any alternatives to taking Chabad's property. Instead, the Village singled out Chabad and treated it worse than other property owners, all in an effort to eject Chabad from Atlantic Beach.

Moreover, even if there were no alternatives, the Village's prior lack of interest in 2025 Park Street is a sufficient comparator. *See id.* (failure to enforce the challenged restriction "against

the same premises" in previous years "provide[d] an adequate basis of comparison"). Like the city in *LaTrieste*, Atlantic Beach showed no interest in taking the Property for years, seemingly discovering it only "very shortly []after" Chabad arrived and began engaging in public religious observance. *Id.* The Equal Protection Clause forbids such discrimination.

C. Defendants' actions violate the Takings Clause.

The Fifth Amendment's Takings Clause bars the government from "depriving private persons of vested property rights except for a 'public use' . . . ." *Bank Markazi v. Peterson*, 578 U.S. 212, 229 (2016). When a taking "fails to meet the 'public use' requirement," that is "the end of the inquiry. No amount of compensation can authorize such action." *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 543 (2005). And not just any justification will do. As the Supreme Court has explained, the government may not take property "under the mere pretext of a public purpose, when its actual purpose" is illegitimate. *Kelo v. City of New London*, 545 U.S. 469, 478 (2005).

When the "circumstances of the approval process" undermine the "basic legitimacy" of a taking, "closer objective scrutiny of the justification" may be "required." *Goldstein v. Pataki*, 516 F.3d 50, 63 (2d Cir. 2008) (emphasis omitted). In *99 Cents Only Stores v. Lancaster Redevelopment Agency*, 237 F. Supp. 2d 1123, 1130 (C.D. Cal. 2001), for example, the city condemned land to "prevent[] 'future blight.'" Scrutinizing the evidence, the court found that the taking "rest[ed] on nothing more than the desire to achieve the naked transfer of property from one private party to another." *Id.* at 1129. The court thus enjoined the condemnation, noting that "[n]o judicial deference is required . . . where the ostensible public use is demonstrably pretextual." *Id.*; *see also Cottonwood*, 218 F. Supp. 2d at 1229–30, 1232 (granting preliminary injunction where there was "strong evidence" that purported public use was pretext for private transfer). Courts have similarly refused to defer to a municipality's purported public purpose when the surrounding

circumstances support an inference of discriminatory intent. *See Albanian Fund*, 2007 WL 2904194, at *4, *7.

As explained above, *supra* at 9–12, the public use that Defendants have asserted is pretextual. Atlantic Beach ignored 2025 Park Street during the entire time it was vacant and for sale, and then decided to condemn the Property two *weeks* after Chabad moved in—a newfound burst of interest and energy Defendants have never adequately explained. Still more, Defendants overlooked many similarly (if not better) situated properties in favor of a single-minded focus on Chabad's. Thus, "[t]he circumstances of this case and the manner in which [the] property was pursued, at the very least, support an indication of discriminatory or improper purpose . . . ." 2007 WL 2904194 at *7.

D. Defendants are violating the Religious Land Use and Institutionalized Persons Act.

Finally, Chabad is likely to succeed on its claims that the Village is violating RLUIPA by discriminating against Chabad on the basis of religion, *see* 42 U.S.C. § 2000cc(b)(2), and by taking action that substantially burdens Chabad's religious exercise but neither advances a compelling governmental interest nor is the least restrictive means of furthering the Village's purposes, *see id.* § 2000cc(a)(1).

1. Defendants are violating RLUIPA by discriminating against Chabad.

RLUIPA forbids the government to "impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination." 42 U.S.C. § 2000cc(b)(2); *see Chabad Lubavitch of Litchfield Cnty., Inc. v. Litchfield Hist. Dist. Comm'n*, 768 F.3d 183, 198 (2d Cir. 2014) (RLUIPA "enshrines principles announced in" *Lukumi*). Here, the Village has adopted a zoning ordinance to prevent organizations "primarily devoted to religious practice" from establishing a religious use in the Village if the

Village believes such use "will sufficiently detract from the public's health, safety, welfare or morals." § 250-108.1(A)(4), (B); *see* § 250-108.1(A)(2) (regulating religious uses believed to have a "net negative impact on the surrounding neighborhood"). Defendants' decision to take Chabad's property is, in effect, an effort to enforce this ordinance based on an assumption that Chabad will adversely affect the community, while denying Chabad the chance the ordinance affords to seek a special exemption. *See supra* at 9–12 (explaining how Defendants' actions reveal discriminatory intent). Such gamesmanship only confirms Defendants' true aim of expelling Chabad. Under RLUIPA, such discrimination on the basis of religion is *per se* unlawful.

2. Defendants are violating RLUIPA by substantially burdening Chabad's religious exercise.

RLUIPA also bars the government from "impos[ing] or implement[ing] a land use regulation in a manner that imposes a substantial burden" on religious exercise, unless it shows that doing so is the "least restrictive means" of furthering a "compelling governmental interest." 42 U.S.C. § 2000cc(a)(1). For the same reasons that Defendants are violating Chabad's free exercise rights, *see supra* at 9–14, they are also violating this provision of RLUIPA. *See Murphy v. New Milford Zoning Comm'n*, 402 F.3d 342, 350 (2d Cir. 2005) ("In enacting RLUIPA, Congress endeavored to codify existing Free Exercise jurisprudence.").

a. Seizing Chabad's property substantially burdens Chabad's religious exercise.

Under RLUIPA, government action substantially burdens religious exercise when it coerces a religious institution to change its behavior. *See Westchester Day Sch.*, 504 F.3d at 349. As explained above, *see supra* at 12–13, Defendants are attempting to do just that: enforce the Village's discriminatory zoning ordinance by taking property that Chabad plans to put to religious use. That action necessarily forces Chabad to change its behavior by preventing it from using

2025 Park Street for religious purposes, and thus substantially burdens Chabad's religious exercise.

Taking Chabad's property would also eliminate Chabad's ability to be seen by the community—another substantial burden. Chabad purchased 2025 Park Street precisely because of the property's prominent, desirable location—visibility that is essential to Chabad's religious outreach to the broader Jewish community, and especially to secular and unaffiliated Jews who may not otherwise be aware of Chabad's presence. The Village may say that Chabad could continue its religious exercise in neighboring Long Beach, but that is no answer. A city "may not escape the constitutional protection afforded against its actions by protesting that those who seek an activity it forbids may find it elsewhere." *Islamic Ctr. of Miss., Inc. v. City of Starkville*, 840 F.2d 293, 299 (5th Cir. 1988); *see also Sts. Constantine & Helen Greek Orthodox Church v. City of New Berlin*, 396 F.3d 895, 901 (7th Cir. 2005) (delay, uncertainty, and expense of relocating to another property for worship was a substantial burden).[4]

b. Seizing Chabad's property does not serve a compelling government interest.

Because seizing Chabad's property would substantially burden Chabad's religious exercise, Defendants must advance a compelling interest for doing so. *See* 42 U.S.C. § 2000cc(a)(1)(A). To satisfy this requirement, Defendants must show a compelling interest

[4] While the Supreme Court has not analyzed what constitutes a "substantial burden" in the RLUIPA land-use context, cases applying the term in other RLUIPA contexts and in the context of the Religious Freedom Restoration Act (RFRA) should guide the Court's analysis here. *See Holt v. Hobbs*, 574 U.S. 352, 358 (2015) (RLUIPA allows parties to "seek religious accommodations pursuant to the same standard as set forth in RFRA"). In those other contexts, the Court has held that a prison's rule regulating the length of an inmate's beard and a mandate requiring the provision of contraceptives over a corporation's conscientious objections constitute substantial burdens. *See id.* at 362; *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 726 (2014). Taking the property where a religious organization plans to worship and propagate its faith is at least as burdensome as those restrictions.

specifically in taking Chabad's property; it is not enough for Defendants to prove a generalized compelling governmental interest. As the Supreme Court has held in the closely-related RFRA context, the government must show that "the compelling interest test is satisfied" vis-à-vis "the particular claimant whose sincere exercise of religion is being substantially burdened." *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430–31 (2006); *see Redd v. Wright*, 597 F.3d 532, 535 n.2 (2d Cir. 2010) ("This court has previously applied case law decided under RFRA to issues that arise under RLUIPA."). In other words, courts must "look[] beyond broadly formulated interests . . . and scrutinize[] the asserted harm of granting specific exemption[] to particular religious claimants." *Gonzalez*, 546 U.S. at 430–31, 439. Here, Defendants cannot make the required showing.

As explained above, Defendants' purported interest in building a "recreation facility, community center and lifeguard beach operations facility" is not compelling both because it is pretextual and because, even if genuine, it is far from an interest of the highest order. *See supra* at 13–14. On this basis alone, Defendants' cannot satisfy their burden under RLUIPA. But Defendants' purported interest is inadequate under RLUIPA for an additional reason: Defendants have no compelling interest in building the desired facilities on Chabad's property instead of on one of the numerous similarly situated, non-religious parcels of property in Atlantic Beach. Absent a compelling interest in taking the particular property at issue, Defendants cannot overcome the protections of RLUIPA.

c. Seizing Chabad's property is not the least restrictive means of advancing Defendants' interests.

Even if the Village's interests were compelling, RLUIPA further requires Defendants to achieve those interests by the "least restrictive means." 42 U.S.C. § 2000cc(a)(1)(B). Under this "exceptionally demanding" standard, Defendants must show that they lack *any* other means of

achieving their interests "without imposing a substantial burden on the exercise of religion." *Hobby Lobby*, 573 U.S. at 728. If the Village has "other means of achieving its desired goal," it cannot seize Chabad's property. *Id.* Put another way: Defendants must show that there are *zero* less-restrictive alternatives. *See United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813 (2000). For all the reasons explained above, *supra* at 14, Defendants cannot do so.

Because Defendants are substantially burdening Chabad's religious land use, lack any compelling justification, and cannot show that their actions are the least-restrictive means of advancing their ends, RLUIPA entitles Chabad to injunctive relief.

II. Chabad will suffer irreparable harm unless this Court intervenes.

Without a preliminary injunction, Chabad will face three kinds of irreparable harm. *First*, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (per curiam) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality)). "When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Hartford Courant Co. v. Carroll*, 986 F.3d 211, 224 (2d Cir. 2021) (quoting *Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d Cir. 1984)). Atlantic Beach's eminent-domain proceedings are inflicting such harm, irreparably depriving Chabad of its free exercise and other constitutional rights.

Second, "[d]eprivation of an interest in real property" also "constitutes irreparable harm." *Varsames v. Palazzolo*, 96 F. Supp. 2d 361, 367 (S.D.N.Y. 2000). This is true regardless of whether a defendant offers just compensation—which, to date, Defendants have not. *Tioronda, LLC v. New York*, 386 F. Supp. 2d 342, 350 (S.D.N.Y. 2005) (granting preliminary injunction in eminent-domain case). Without a preliminary injunction, then, Chabad "faces a draconian result": losing its property and "be[ing] forced to cease operations at the site." *Buffalo S. R.R. v. Vill. of*

Croton-on-Hudson, 434 F. Supp. 2d 241, 254 (S.D.N.Y. 2006) (granting preliminary injunction in eminent-domain case).

Finally, the Second Circuit has recognized irreparable harm when "real property is at issue" and the plaintiff "cannot raise its claim for injunctive relief to prevent the taking of its property in the [state proceedings]." *Carpenter Tech. Corp. v. City of Bridgeport*, 180 F.3d 93, 97 (2d Cir. 1999). Like the plaintiff in *Carpenter*, Chabad cannot raise its claim in the pending state-court proceedings because New York affords only "limited" judicial review. *Buffalo*, 434 F. Supp. 2d at 254; *see also In re City of New York*, 847 N.E.2d 1166, 1171 (N.Y. 2006) (If the state court is "satisfied that the condemnor has met all of the EDPL's procedural requirements, it must grant the [vesting] petition."). As a result, "[o]nly intervention by [this] court . . . can stave off a taking that the Village is determined to make." *Buffalo*, 434 F. Supp. 2d at 254.

III. The public interest and the balance of equities favor protecting Chabad's constitutional rights.

Finally, the public interest favors a temporary restraining order and preliminary injunction for at least two reasons. *First*, "securing First Amendment rights is in the public interest." *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013). Indeed, "[i]t is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (cleaned up).

Second, while denying preliminary relief will irreparably harm Chabad, granting it would not harm Atlantic Beach. For one thing, "[t]he Government does not have an interest in the enforcement" of unconstitutional policies. *N.Y. Progress*, 733 F.3d at 488 (quoting *ACLU v. Ashcroft*, 322 F.3d 240, 247 (3d Cir. 2003)). Just the opposite: because Defendants are government actors, their compliance with the Constitution "is not a harm, but rather is in [their] best interest." *Lofton v. District of Columbia*, 7 F. Supp. 3d 117, 125 (D.D.C. 2013). Moreover, Defendants

would lose nothing from an order preserving the status quo. Since its incorporation in 1962, Atlantic Beach has gone sixty years without the planned facilities, and it showed no serious interest in building them during the years 2025 Park Street was vacant and for sale. In addition, the Village already has meeting space for community groups and lifeguards in the Village Hall. And, in all events, preliminary relief would not stop Atlantic Beach from developing land that it already owns—an option that, as demonstrated above, is superior in every way to taking Chabad's property unless the whole point is to oust Chabad from Atlantic Beach.

CONCLUSION

For the foregoing reasons, the Court should issue a temporary restraining order and preliminary injunction prohibiting Defendants from taking any further steps to take Chabad's property by eminent domain.

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APPENDIX

Figure 1 – 2025 Park Street

Figure 2 – Undeveloped Parking Lots on Ocean Blvd.

APPENDIX (CONT.)

Figure 3 – Undeveloped Land by Atlantic Beach Bridge

Figure 4 – Undeveloped Land at Intersection of Bay Blvd. & Hamilton Ave.