IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PASCACK VALLEY LEARNING CENTER, INC., Plaintiff, v. TOWNSHIP OF PEQUANNOCK, NEW JERSEY, and TOWNSHIP OF PEQUANNOCK, NEW JERSEY ZONING BOARD OF ADJUSTMENT Defendants.	Case No. **COMPLAINT**

Plaintiff PASCACK VALLEY LEARNING CENTER, INC. ("PVLC"), by its attorneys Storzer & Associates, P.C. and Peter McArthur Law LLC, hereby complains of Defendants TOWNSHIP OF PEQUANNOCK, NEW JERSEY ("Township"), and TOWNSHIP OF PEQUANNOCK, NEW JERSEY ZONING BOARD OF ADJUSTMENT ("ZBA") (collectively, the Township and ZBA shall be referred to as "Defendants") as follows:

LOCAL CIVIL RULE 10.1
STATEMENT OF PARTY ADDRESSES

PVLC has a business address of 60 Sunset Road, Pompton Plains, New Jersey 07444. Defendant Township has an address at 530 Newark Pompton Turnpike, Pompton Plains, New Jersey 07444. Defendant ZBA also has its office at 530 Newark-Pompton Turnpike, Pompton Plains, New Jersey 07444.

INTRODUCTION

1. This action is commenced by PVLC to redress violations of its civil rights, as protected by the Free Exercise Clause of the First Amendment and Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, 42 U.S.C. § 1983, and the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §§ 2000cc, *et seq.* ("RLUIPA"), caused by the Defendants' burdensome, discriminatory and unreasonable land use regulations and conduct that have prohibited PVLC from using real property as a private school on a parcel of land located in Pequannock Township, New Jersey.

2. PVLC is an educational organization affiliated with the Plymouth Brethren Christian Church ("PBCC"), and seeks to use real property to develop a primary and secondary school for children of Church members.

3. PVLC applied for conditional use and bulk variances, and preliminary and final site plan approval to the ZBA to use property it owns at 60 Sunset Road, Pompton Plains, New Jersey in the Township (the "Subject Property") as a private school, which was denied by the ZBA following over ten (10) hearings of testimony and evidence in a Resolution of Denial memorialized on February 6, 2025 ("Resolution").

4. Defendant Township's zoning code discriminates against the development and use of the Subject Property as a school, and favors nonreligious institutional and assembly uses.

5. Defendant Township's zoning code further unreasonably limits where Plaintiffs' school may locate by not permitting private schools by right anywhere in the Township, and also because of the onerous conditional use criteria that results in a lack of parcels available for such use.

6. The Defendants' laws and the ZBA's denial of its application have prevented PVLC from engaging in its mission by building its school, and have burdened its religious exercise without being the least restrictive means of achieving a compelling governmental interest.

7. Defendant ZBA was also responsive to residents hostile to PVLC and its use in an effort to thwart PVLC from locating in the Township, and has discriminated against Plaintiff on the basis of religion and religious denomination.

8. Plaintiffs seek declaratory and injunctive relief, as well as compensatory and punitive damages for the Defendants' willful violation of their civil and constitutional rights.

PARTIES

9. Plaintiff PASCACK VALLEY LEARNING CENTER, INC. is a not-for-profit corporation formed under the laws of the State of New York and was originally founded in 2004 as Sunset Education Center on December 17, 2004 pursuant to a provisional charter with the Board of Regents of the University of the State of New York Department of Education (hereinafter referred to as "Regents"). On October 27, 2022, PVLC registered as a foreign Not-For-Profit Corporation with the New Jersey Division of Revenue and Enterprise Services. PVLC has been and continues to be in good standing as such.

10. Defendant TOWNSHIP OF PEQUANNOCK, NEW JERSEY is a municipal corporation of the State of New Jersey, having offices at 530 Newark-Pompton Turnpike in the Township of Pequannock, in the State of New Jersey.

11. Defendant PEQUANNOCK TOWNSHIP ZONING BOARD OF ADJUSTMENT is a municipal agency organized pursuant to N.J.S.A. § 40:55D-69 with its principal place of business at 530 Newark-Pompton Turnpike in the Township of Pequannock.

12. Each of the Defendants is a "government" within the meaning of 42 U.S.C. § 2000cc-5(4)(A).

JURISDICTION AND VENUE

13. The subject matter jurisdiction of this Court is founded upon 28 U.S.C. § 1331 (federal question jurisdiction) in that this action is brought under 42 U.S.C. §§ 2000cc, *et seq.*, and 42 U.S.C. § 1983. This Court also has supplemental jurisdiction over Count VII under 28 U.S.C. § 1367(a) for PVLC's claim brought under New Jersey law as it arises from the same set of facts and circumstances as PVLC's federal claims and are so related to those claims that they form part of the same case or controversy.

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

FACTUAL ALLEGATIONS

15. The primary purpose of PVLC is "to operate a primary and secondary educational organization affiliated with the Plymouth Brethren Christian Church ('PBCC')."

16. The Plymouth Brethren Christian Church ("PBCC") was established over 200 years ago in Plymouth, England.

17. The PBCC community prays and worships together in their shared Christian belief founded on the Holy Bible.

18. Christian fellowship is an integral part of the Church's way of life, and is a commitment to one another to live a life of purity, in line with scripture.

19. In furtherance of its religious mission, the PBCC community has established a network of operations that exists to support the PBCC community.

20. One of these operations is OneSchool Global ("OSG").

21. OneSchool Global was established by members of the PBCC for students and families of the Church Community. The School is strongly supported by volunteers from the Church Community.

22. Plaintiff believes that each student should be prepared with the skills to be a self-directed life-long learner.

23. School-aged members of the PBCC community are enrolled in OSG campuses.

24. PVLC's mission is to provide education to children of the local membership of the PBCC in the third through twelfth grades.

25. The ethos of OneSchool Global, shared by PVLC, is:

> At OneSchool, we are committed to a culture where students are encouraged to develop their full potential and acquire the discipline of learning how to learn while upholding Christian teachings and beliefs.
>
> The truth and authority of the Holy Bible and strong family values underpin the commitment of the School to provide quality in every facet of education – curriculum, teachers, facilities, management, and discipline – in a safe and caring environment.

(Emphasis added.)

26. PVLC aims to create an open, diverse, inclusive and moderate environment for the children of PBCC in its school under the auspices of OSG.

27. PVLC has a management agreement with OSG that has been in existence for many years.

28. PVLC currently operates an OSG campus in Airmont, New York, approximately 21 miles away from the Subject Property.

29. Its current Airmont campus does not serve the current needs of PVLC.

30. The current school building in Airmont, New York is largely underground and was a bomb shelter in the 1940s and 1950s for AT&T.

31. The current building is too small for PVLC's needs, with approximately 16,000 square feet in size. Its proposed building at the Subject Property will be approximately 27,000 square feet.

32. PVLC requires a physical facility where it can fulfill its mission to develop its students' full potential in an environment that upholds Christian teachings and beliefs.

33. As noted in OneSchool Global's ethos, the Holy Bible underpins everything PVLC does in providing a quality education for its students.

34. The current building has one small all-purpose room that is used for assemblies, lunch and other events where students and others gather. This room cannot accommodate everyone at once due to its small size.

35. The new building will have a large all-purpose room that will be able to sufficiently accommodate people at these gatherings and assemblies.

36. The current kitchen facility in the building is not adequate for serving lunches nor conducting cooking classes, while the new facility's kitchen will be adequate for PVLC's needs.

37. The current building does not have a wet room for science class, which the new building will have.

38. The current building does not have dedicated space for a school nurse, while the new building will.

39. The current building does not have adequate space for administrative offices, while the new building will.

40. The current building does not have enough space to have adequate classroom space and functionality.

41. The new building will have adequate classroom space and functionality for its students.

42. The new building is better designed for the learning methodology used by PLVC students.

43. PVLC has special needs students whose needs cannot be adequately accommodated at the current building.

44. The new building would accommodate its special needs students.

45. PVLC requires a gymnasium for its school facility and the current building does not have one.

46. Currently, students must go outside for gym class and in the event of inclement weather, use the basement or go off-site for gym class.

47. The new building would have a gymnasium.

48. The current building does not have a playground for the students, while the new building will have one.

49. The current building does not have a library, while the new building will have a dedicated reading area.

50. The Subject Property is more centrally located to the majority of PVLC's students than the current location.

51. For these reasons, PVLC seeks to build its OSG campus on the Subject Property and close its Airmont, New York campus.

THE SUBJECT PROPERTY

52. PVLC is the owner of real property identified on the tax map of the Township as Block 2104, Lot 21, with a street address of 60 Sunset Road, Pompton Plains, New Jersey.

53. The Subject Property is located in the "R-15" zoning district of the Township.

54. The Subject Property is approximately 3.98 acres in size.

55. The Subject Property is directly across the street from Pequannock Township High School ("High School"), a public high school with 700 students, a football stadium, auditorium, gym, track, four tennis courts and three baseball fields.

56. Both the Subject Property and the High School properties are in the R-15 zoning district.

57. Near the Subject Property is an auto repair shop called The Certified Mobile Mechanic LLC (0.3 mile away), an ACK Oyster Cult gift shop (0.3 miles away), The Chapel Sunset Ministry Center (0.5 miles away), the First Reformed Church (0.6 miles away), Our Lady of Good Counsel Roman Catholic Church (0.7 miles away), and the Akrug Aquatic Club swimming school (0.9 miles away).

58. The Subject Property presently has four buildings on it including a church, a parsonage, a church school building and a shed.

59. The Subject Property formerly was the site of a Presbyterian Church which had operated from the 1950s through 2021, when the church closed.

60. The site has remained vacant from that time to the present, except for shared parking permitted on the Subject Property for the Township of Pequannock High School ("High School."

61. The Subject Property presently has separate access and egress from both Sunset Road and Roome Avenue.

62. The Subject Property has never been graded and does not presently have a Stormwater Management system.

THE TOWNSHIP 'S LAND USE REGULATIONS

63. The use of the Subject Property is subject to the laws and regulations of the Township and the State of New Jersey.

64. The Township regulates zoning within its borders through its "Chapter 360" of the Township's Code ("Zoning Code").

65. The Code sections described herein are "land use regulations" within the meaning of 42 U.S.C. § 2000cc-5(5).

66. Under the Township's Zoning Code, only certain enumerated uses are permitted in the R-15 zoning district "and no other . . . ."

67. Under the Township's Zoning Code, "[t]hose uses which are not specifically permitted in the R-15 Zone are hereby prohibited."

68. Schools are permitted as a "conditional use" in residential zoning districts in the Township, including in the R-15 zoning district, subject to certain conditions.

69. Pursuant to the Zoning Code, the requirements for said conditional use as a school in the R-15 zoning district are as follows:

> Schools shall be permitted as a conditional use in all residence zones, and each school shall be located on a lot with a minimum lot size of five acres and frontage on an improved road of at least 50 feet in width. The minimum lot width shall be 300 feet, and the maximum height of any structure shall be 35 feet or two stories, whichever is less. Side and rear yards of at least 50 feet shall be provided, and at least 25 feet of the side and rear yard

> adjacent to the property lines shall be planted as a buffer. This buffer may include the side or rear yard, but shall not include parking areas or access drives. Prior to the issuance of a building permit, schools in the Airport Hazard Restricted Zone shall obtain the approval of the Commissioner of the Department of Transportation.

(Emphasis added.)

70. In 2021, the Township Zoning Ordinance was substantially revised by virtue of Ordinance #2021-16.

71. These revisions were as a result of a 2019 Master Plan.

72. The zoning provisions for the R-15 zoning district are located in Chapter 360-12 of the Zoning Code.

73. No changes were made to the provisions of the R-15 zoning district with respect to the conditional use of schools when it was substantially revised by virtue of Ordinance #2021-16.

74. Thus, roughly one (1) year prior to the Application discussed below being filed, the Township made the decision that the use of a school would remain a conditionally permitted use in the R-15 zoning district in the Township.

75. A conditional use is one that a municipality has already decided is permitted in the zoning district, subject to conditions. *Meridian Quality Care, Inc. v. Bd. of Adjustment of Twp. of Wall*, 355 N.J. Super. 328, 338 (App. Div. 2002). In New Jersey, "[a] conditional use is, by definition, a use which is suitable to a zoning district but not to every location within that district." *Cardinal Properties v. Borough of Westwood*, 227 N.J. Super. 284, 287 (App. Div. 1988).

76. Section 360-46 of the Zoning Code pertains to regulations in Residential Districts. It states the foregoing regulations "where stated, shall constitute conditions under which conditional use approval may be granted."

77. Section 360-46(G) governs schools in the R-15 zoning district and specifically designates the requirements therein as conditions for a conditional use.

78. The remaining conditions of Section 360-46(G) for a school in the R-15 zoning district relate to certain dimensional requirements, including minimum lot size, lot frontage on an improved road, lot width, maximum height of buildings, side yard and rear yard setbacks and buffering.

79. There are no conditions in Section 360-46(G) concerning impervious coverage of a lot, so the underlying bulk regulations of Section 360-12(B)(7) of the Zoning Code for the R-15 zoning district apply.

80. The maximum allowable impervious coverage for a lot in the R-15 zoning district is 35%.

81. Likewise, there are no conditions in section 360-46(G) concerning parking.

82. Section 360-58(B) of the Zoning Code provides the parking requirements that are relevant to school uses.

83. The regulations in the Zoning Code for Signage for an Institutional Use such as a school are found in Section 360-82(D).

84. Section 360-46(P) contains the regulations in the Zoning Code for Fences.

85. Pursuant the New Jersey Municipal Land Use Law (N.J.S.A. § 40:55D-70(d)(3)), a developer must obtain Conditional Use Variance Approval from the ZBA when an application involves a use that is conditionally permitted in a particular zone, but which does not meet one or more of the conditions set forth in the Zoning Code for that conditional use.

86. Pursuant to the New Jersey Municipal Land Use Law (N.J.S.A. § 40:55D-70(c)(2)), a developer must obtain approval from the ZBA when an application seeks a deviation from the bulk requirements of the Zoning Code, known as a "(C) variance".

87. When any type of use variance also involves (C) variances, the (C) variances must be treated as being subsumed into the use variance. *Price v. Himeji, LLC*, 214 N.J. 263 (2013).

88. In order for PVLC to obtain relief for variance relief from N.J.S.A. § 40:55D-70(c)(2), PVLC must show and the ZBA must find that the variances they require for impervious coverage, parking, fences and signs must constitute a better zoning alternative for the Township.

89. In this regard, PVLC is required to prove that the foregoing variances pursuant to N.J.S.A. § 40:55D-70(c)(2) are not substantially detrimental to the public good and that the benefits will substantially outweigh any detriments.

90. Additionally, PVLC must show that the Master Plan and the Zoning Code are not impaired by the grant of the variances pursuant to N.J.S.A. § 40:55D-70(c)(2).

91. For Preliminary and Final Site Plan approval, an applicant must demonstrate that other than the variances, the technical requirements of the Zoning Code have been met. Important aspects of this showing include proofs that the ingress and egress to the site as well as on- site pedestrian and vehicular traffic are safe and efficient.

PVLC'S SCHOOL APPLICATION

92. On or about October 24, 2022, PVLC filed for conditional use variance approval, preliminary and final site plan approval and bulk variances to construct a one-story private school building together with customary accessory uses and infrastructure on the Subject Property (the "Application").

93. PVLC sought demolition of four existing buildings, one of which was a church structure, on the Subject Property and construction of a one-story 27,925 square feet school, access and egress driveways, internal circulation roadways, surface parking for 43 spaces, loading areas, a non-illuminated soccer field consisting of 33,000 square feet, a hard-court area consisting of 4,084 square feet and other passive recreation areas, fences, gates and signage, drainage and stormwater management systems, landscaping, lighting and other ancillary improvements.

94. The Application sought a "D-3" conditional use variance pursuant to N.J.S.A. § 40:55D-70(d)(3) to permit one (1) deviation from the conditional use standards applicable to a school: "Section 360-46(G) which requires that a lot be 5 acres in size, where the Subject Property was 3.98 acres in size."

95. The Application sought "C" or bulk variances from the following standards in the Township's zoning code, eleven(11) of which were related to the proposed signage and fencing on the Subject Property, and many of which were ultimately withdrawn by PVLC as indicated:

a. 360-56(E)(5): No parking spaces in residential zone front yard setback required. 2 spaces in Sunset Road front yard proposed. [Withdrawn]

b. 360-12(B)(7): Maximum Impervious Coverage 35% is required, 38.7% proposed.

c. 360-58(B): Minimum Number of parking spaces. 56 required, 43 proposed.

d. 360-57: Loading space cannot be located in the front yard required. Loading zone in the Sunset Road front yard proposed. [Withdrawn]

e. 360-82(A)(2): Number of signs for a commercial use in a residential zone. 1 required, 4 signs proposed. [Withdrawn]

f. 360-82(A)(3): Maximum sign area home occupation 2 square feet required for attached nameplate required. Attached sign area of 40 square feet is proposed. [Withdrawn]

g. 360-82(A)(3): Maximum sign area freestanding sign is 12 square feet. Freestanding sign of 15.1 square feet is proposed.

h. 360-82(D)(2): Signs for Institutional Uses. 1 changeable letter sign permitted, 2 freestanding signs proposed.

i. 360-82(D)(2): Signs for Institutional Uses. 1 attached sign permitted, 2 attached signs proposed.

j. 360-82(D)(4): Attached signs can't have top edge higher than 14 feet required. Top edge of attached16 feet proposed.

k. 360-46(P)(1): Fences in Front yard shall have a height of 3 feet required and 6 feet height of fence in a front yard proposed.

l. 360-46(P)(1) Fences in a front yard shall be set back a minimum of 5 feet required. Fence in front yard setback 3 feet is proposed. [Withdrawn]

m. 360-46-(P)(1)(2): Fences in the secondary front yard shall have a maximum height of 4 feet required and the fencein the secondary front yard has a height of 6 feet proposed.

n. 360-46(P)(1)(2): Fences in the secondary front yard shall be setback a minimum of 5 feet required and fence in the secondary front yard is setback 3 feet proposed. [Withdrawn]

o. 360-46(P)(1)(3): Fence in secondary front yard having a height of 4 feet but not exceeding 6 feet must meet setback requirements of underlying zone required. Fence with height of 6 feet set back 3 feet proposed.

96. At the time of the submission of the application, PVLC requested 11 checklist waivers from the two checklists submitted.

97. On December 20, 2022, the Application was deemed complete.

98. Under New Jersey law, a ZBA must render a decision on variance applications within 120 days of the application being deemed complete. N.J.S.A § 40:55D-73(a).

99. The ZBA's Planner, Jill Hartmann, issued a report dated January 17, 2023.

100. Ms. Hartmann took the position that the variance for having two parking spaces in the Sunset Road front yard was a bulk variance and not part of the "D" variance for the conditional use of a school in the R-15 zoning district pursuant to the Zoning Code.

101. Therefore, the only conditional use variance for the school was to the minimum lot size requirement.

102. The school was proposed for students attending third grade through twelfth grade.

103. PVLC's school campus would consist of ninety-one (91) students, eleven (11) teachers, and one (1) administrative staff.

104. The five-year projection would be a 10 to 15 percent increase in students.

105. The hours of operation of the school would be from 8:00 a.m. to 5:00 p.m., Monday through Friday.

106. Students are transported to and from PVLC in "Sprinter" vans that are 8- to 12-passenger vehicles. There would be approximately twelve (12) vans a day dropping off and picking up the students. There would be no bussing, and individual parents do not drop off or pick up their children.

107. The school would not have after-school or evening activities.

108. There would be no pre-school or summer school.

109. The school would not offer any organized sports teams or functions.

110. During evenings, weekends and during the Summer, the school will not be in use.

111. The athletic field is not illuminated and is strictly for outdoor games and gym classes held during school hours.

112. The hard-court will be used for basketball and tennis during school hours. The fenced-in area at the rear of the school building will be a play area for younger students.

113. The school building is not designed for large events such as graduation. The School typically rents out a hall at a hotel for that purpose.

114. There would be no staffed, full-service cafeteria. Students bring box lunches and the lunchroom is equipped with microwave ovens with pizza ordered in once per week.

115. The traffic and parking needs of the school would be extremely minimal.

116. Deliveries would be limited to UPS and Federal Express in standard box trucks about twice per week. No tractor-trailers would be coming to the school.

117. In terms of parking on and traffic to the Subject Property associated with the use, (a) there would be twelve (12) cars for the teachers and administrative staff; (b) one (1) nurse comes once a week; (c) four (4) additional administrators would come to the school once a week; and (5) the maximum number of student drivers who would drive themselves to school would be six.

118. A range of fifteen (15) to twenty-two (22) vehicles will arrive at the Subject Property on a daily basis.

119. Once a month, the school's Board of Trustees will visit, and on those days, thirty (30) vehicles will be parked at the Subject Property.

120. The ZBA's own traffic consultant concluded that the traffic study submitted with the Application by PVLC "was found acceptable and consistent with industry standards."

121. The Township Fire Official had no comments on the Application.

122. The Township's Fire Official stated that he met with the Chiefs of the Pompton Plains and Township Volunteer Fire Departments and they were in agreement that the site plan presented no impediment to their ability to respond to an emergency situation at the Subject Property.

THE ZBA HEARINGS

123. The ZBA held hearings on the Application on ten (10) occasions: March 2, March 16, April 20, May 18, July 27 and November 8, 2023, and January 24, February 15, May 8 and July 30, 2024.

124. The hearings often involved hostility directed at PVLC, including on the basis of

its religious affiliation.

125. With respect to said hearings, the Defendant ZBA has admitted that:

> At the first hearing and during various points in time during all ten (10) hearings in this matter, the Board Chair and/or the Board Attorney made statements to the public indicating the hearing procedures to be followed. There were instances when members of the public made statements rather than asking questions, asked repetitive or similar questions and/or failed to refrain from disrupting the hearing by public demonstrations including shouting, laughing, cheering or applause.

126. The first ZBA hearing was scheduled for February 2, 2023.

127. It was adjourned, in part, due to the number of objectors, which exceeded the occupancy and Fire Code limitations of the Meeting Room at the Township Hall.

128. As a result, all of the remaining hearings were held at the Township High School Auditorium in order to comply with the occupancy and Fire Code regulations.

129. Upon information and belief, the ZBA has not held any other recent hearings on applications at the High School, but conducted them only at the Township Hall.

130. Approximately 175 to 300 people were present at each hearing.

131. Upon information and belief, most people present were Township residents who opposed the Application.

132. The Objectors engaged in frequent outbursts of shouting, cheering, jeering and clapping, demonstrating their hostility toward PVLC, which disrupted each and every hearing.

133. Upon information and belief, the hearings were disruptive due to the organized opposition to PVLC's religious denomination.

134. One resident hired an attorney to represent her interests at the hearings in opposing the Application.

135. Residents organized to post signs in the Township saying "60 Sunset: No

Variances" with respect to the Application.

136. Upon information and belief, residents discussed their opposition to the Application in a closed Facebook group called "Our Pequannock."

137. Comments were made by the members of the public at the hearings demonstrating significant hostility toward PVLC's religious affiliation.

138. A nonexhaustive list of these comments targeting PVLC and its religion include:

a. So, Plymouth Brethren Christian Church, is that the group that has been testified to in the past? February 15, 2024

b. [H]ow many of those are minorities that will be coming to Pompton Plains? Because they're coming to Pompton Plains, and none of the Pequannock kids are going to your school. They'll just be bringing in kids from the outside. March 2, 2023

c. [C]an any of the townspeople's kids apply for the school or can we use your facilities? I'm just not getting the correlation of "inherent benefit" with this proposal with the Township of Pequannock. February 15, 2024

d. We don't want the applicant here.

139. Some of the comments above became Finding of Fact 468 in the Resolution of Denial.

140. One Objector stated that her "research" about the applicant led her to Westfield Hall in Warren, New Jersey. She went on a Sunday and Westfield Hall was not having a service. She testified that it was "locked up like Fort Knox security cameras, gates." She further stated: "Yes, pictures were taken on multiple occasions. Some very strange, strange observations were made. I believe that there is a conflict of interest somehow. I believe that things aren't what they seem. However, I just highly recommend that this project be denied."

141. This prejudicial statement was made Finding of Fact No. 524 in the Resolution.

142. The attorney for the ZBA, in acknowledging that there were repetitive comments

from the public, stated on the record that "we're getting into different territory."

143. The ZBA was responsive to comments from the members of the public.

144. The ZBA in its Resolution recognized:

> The extensive hearing record is replete with numerous and unanimous comments, concerns and objections from the Board members, neighbors of the Property and members of the public, which indicate that the proposed introduction and operations of the school, field, recreational uses and other ancillary improvements are contrary to the Master Plan and Zoning Ordinance. The Board found these comments, concerns and objections to be credible.

145. During the course of the May 8, 2024 hearing and for most of the next hearings, the Objectors were given five minutes each to give closing statements.

146. The ZBA was responsive to comments from local residents.

147. In addition to public comment, the ZBA itself recognized procedural irregularities existed with respect to the proceeding, including local officials giving statements in opposition to the Application:

> By the Chairman: I do want to mention, it came to my attention during the break that I guess one sitting member of the planning board and one sitting member of the governing body had come up and given statements. I think you probably, or you may not be, again, we're not going to go crazy on this, but the Local Government Ethics Law, the MLUL, and the Open Public Meetings Act kind of, you know, discourage that kind of activity because it creates an appearance of impropriety that somehow the board you're a member of takes the position that you speak on, that you speak. So I would ask that those members, those members who previously spoke not offer statements or questions again during this proceeding. And I'm gonna direct the Board to disregard, you know, any previous statements or questions from them. Having said that, please come forward.

148. Angelo Caputo, the Chairman of the Pequannock Township Planning Board attended and appeared at the March 2, 2023 hearing to object to the Application.

149. Caputo's attendance and appearance were objected to by the ZBA attorney, Clifford Gibbons, as a conflict of interest.

150. Regardless of this acknowledged conflict, the ZBA based its Findings of Fact paragraphs numbers 39, 46, 52, 57 and 108 in the Resolution of Denial upon Caputo's participation at this hearing.

151. On March 16, 2023 and April 20, 2023, Township Deputy Mayor Ryan Herd attended and appeared at the hearings to object to the Application. Mr. Herd did not identify himself at his first appearance, but did the second time and an objection was lodged by the ZBA attorney, Clifford Gibbons, based on his conflict of interest.

152. Sam Ciresi, a member of the Township Board of Education, appeared at two early hearings in the proceedings and again at the last hearing to give a closing statement. He did not identify himself as a member of the Township of Education until his second appearance at which time an objection was again lodged by the ZBA attorney, based on this conflict of interest.

153. The ZBA based certain paragraphs of their Findings of Fact in the Resolution of Denial based upon Mr. Ciresi's participation, namely paragraph numbers 34 and 54.

154. Brian Senyk, the President of the Township Board of Education, attended the second and the ninth hearings. He did not identify himself as the President of the Township Board of Education until the ninth hearing when he gave a closing statement on behalf of Dr. Michael Portas regarding shared services.

155. Dr. Portas is the Superintendent of Schools in the Township.

156. The ZBA based Finding of Fact #35 in the Resolution of Denial upon Mr. Senyk's participation at this hearing.

157. Dr. Portas appeared at the seventh hearing.

158. Prior to the seventh hearing for the Application, it was generally known that PVLC's traffic expert would present his final traffic report on that evening.

159. Crucial to the traffic report were the different start times and dismissal times for PVLC and the Township High School.

160. Following the close of traffic expert testimony, the ZBA permitted Dr. Portas to give a statement that the Township High School, which is directly across the street from the Subject Property, had changed its start and dismissal times to be much closer to the start and dismissal times for PVLC.

161. The action by the Township Board of Education was authorized on January 22, 2024, *two days* prior to the seventh hearing and not in enough time to be set forth in any minutes available to the public.

162. The appearance and participation in the hearings by each of these Township and Township School Board officials was highly irregular and prejudicial to the Application.

163. On or about August 5, 2024, within a week of the denial of the Application, and six months before the Resolution was issued by the ZBA, Gordon Gibbs, Business Administrator and Secretary of the Township Board of Education contacted PVLC Board of Trustee Member David Mornan via text and asked him if PVLC would consider selling the Subject Property in question to the Township Board of Education.

164. The ZBA was responsive to comments from Township and other Township bodies' officials.

165. The ZBA also required all of PVLC's witnesses to be bound over and to be present for the entirety for each succeeding hearing for the Application, which was also procedurally irregular.

EXPERT TESTIMONY AT THE HEARINGS

166. PVLC's expert witnesses presented uncontroverted testimony and expert opinion during the course of the ten (10) hearings that was not contested by any ZBA Expert nor any expert presented by any Objector.

167. In fact, the Objectors did not present any expert testimony.

168. Such testimony, and lack of any contrary expert testimony, demonstrated both that the Township lacked any legitimate justification for denial of the application, and that the ultimate basis for denial was pretextual.

169. Nick Chelius, P.E., the ZBA's engineer, and Maurice Rached, P.E., the ZBA's traffic engineer, testified that their expert opinions concurred with those of PVLC's civil engineers, Jake Modestow, P.E. and Afton Savitz, P.E., and traffic engineer John Corak, P.E, P.T.O.E.

170. ZBA Planner Jill Hartmann, PP, AICP did not take a position contrary to the testimony of PLVC's planner, T.J. Ricci, PP, AICP.

171. Gregory Ralph, AIA, PVLC's architect, testified that the design of the building is better than the buildings that exist presently on the Subject Property as it is more cohesive for the site and the massing, height and square footage are likewise appropriate for the Subject Property.

172. The Resolution fails to acknowledge the existence of the noise specifications for the rooftop HVAC, which was submitted to the ZBA prior to the third hearing by Mr. Ralph's office.

173. Three witnesses and counsel for PVLC incorporated these specifications into their opinions and arguments that the roof top equipment would not violate the noise ordinance in the Township regardless of the architectural screening provided by Mr. Ralph.

174. Mr. Ralph next discussed the South elevation of the building, indicating the location of the roof top equipment was intentionally placed between 30 to 60 feet behind the plane of the façade.

175. Thus, the sliding roof and massing of the building would provide natural screening and sight lines to keep that equipment out of sight.

176. In terms of the first prong of the negative criteria, Mr. Ralph testified that the air conditioning units on top of the building would not impact the surrounding neighborhood.

177. Mr. Ralph's testimony is diametrically opposed to what appears in the Resolution.

178. Mr. Ralph testified that this design advanced N.J.S.A. § 40:55D-2(i) in that the design promoted a desirable visual environment and good civic design and arrangement.

179. Mr. Modestow testified that the proposed building respects the front yard setback and will be 154 feet to the nearest residence to the rear of the Subject Property and the building coverage is less than what is required by the Zoning Code.

180. Mr. Modestow testified that the side yard setbacks are met by the Application as well.

181. Mr. Modestow testified that the impervious coverage proposed on the Subject Property is only 8,853 square feet more than what is permitted in the R-15 zoning district, approximately only five percent (5%) of the total square footage of the Subject Property.

182. Mr. Modestow testified that PVLC is providing 385 feet of new sidewalk along the entire Roome Avenue frontage of the Subject Property with two connection points, one of which will connect with the sidewalk on Sunset Road.

183. Mr. Modestow testified that the lighting will comply with the requirements of the Zoning Code.

184. Mr. Modestow testified that there would be no light spillage on adjacent properties surrounding the Subject Property.

185. Mr. Modestow testified that only nine new trees are required by the Zoning Code and 189 are being provided.

186. Mr. Modestow testified that two variances had been eliminated: the variance for having parking spaces in the front yard and the loading zone variance.

187. Mr. Modestow testified that there is no stormwater management on the Subject Property at present.

188. Mr. Modestow confirmed that Stormwater management would be implemented on the Subject Property in complete accordance with DEP regulations and local ordinances.

189. Mr. Modestow testified that drainage on the site would be treated and retained pursuant to current best management practices of the New Jersey Department of Environmental Protection.

190. Pursuant to the request of the ZBA, PVLC's professionals obtained and PVLC counsel read into the record, a letter from Mark Lime, Fire Code Official of the Township Fire Prevention Bureau.

191. The letter reiterated for a second time that there was adequate room for fire apparatus to move around the proposed school in the event of an emergency even though the width of the fire lane was reduced from 20 to 18 feet.

192. This time Mr. Lime noted that he had the concurrence of both Chiefs of the Fire Departments serving the Township.

193. Mr. Modestow further testified that the site circulation was a single flow off of Sunset Road in and out of the Subject Property.

194. There is enough space for someone to pull in and open the gates without interfering with traffic on Sunset Road.

195. On cross-examination from the Objectors, Mr. Corak testified that the gate operation will not impact nor limit the level of service at the site driveway.

196. In response to a question from the ZBA Chairman, Mr. Corak testified that PVLC has the ability to keep the gate open to allow for a steady flow of traffic.

197. He further testified that two vans side by side will not obstruct the sidewalk and provide ample time in case the gate is not open.

198. Plaintiffs' experts collectively testified that the sight triangles at the egress driveway, the intersection of Roome and Sunset roads and the intersection of Dewilde and Roome roads all had no obstructions within the sight triangles.

199. Mr. Modestow further testified that:

a. the ingress and egress remain safe and efficient;

b. the on-site pedestrian and vehicular circulation remain safe and efficient;

c. the design of the Subject Property does not create a substantial detriment to the public good;

d. the site plan application promotes safety from flooding pursuant to N.J.S.A § 40:55D-2(b); and

e. that due to the elimination of the access and egress points that the Application constitutes a better zoning alternative.

200. Mr. Modestow testified that the three separate drainage areas around the Subject Property will all have a net reduction of the stormwater runoff from what currently flows there undetained.

201. Mr. Corak indicated that with the faculty, all staff and students who drive to school on a daily basis, the 44 parking spaces provided by PVLC will support the 23 parking spaces needed to meet the daily demand.

202. Mr. Corak then testified regarding the comparisons of the levels of service at all intersections studied of the no-build and build scenarios for the AM peak.

203. Mr. Corak stated that the increases were very modest, between 0.1 seconds and 0.4 seconds.

204. Mr. Corak testified that the comparison results were the same at the various intersections for the PM peak.

205. Mr. Corak testified that none of the levels of service at the various intersections for the AM and PM peaks increased or "degraded" between the no-build and build condition.

206. He further testified that there was not a significant change in delay for any level of service for any intersection at either peak.

207. Mr. Corak testified that there would be no substantial detriment to the adjacent roadway network as a result of the Application. Both of his studies showed the proposed use would only produce 47 trips an hour at peak times.

208. Mr. Corak testified that the Application:

a. has safe and efficient ingress and egress;

b. has safe and efficient vehicular and pedestrian on-site circulation;

c. does not create a substantial detriment to the adjacent roadway network;

d. supports N.J.S.A. § 40:55D-2(i) regarding the promotion of the free flow of traffic;

e. by eliminating and consolidating access and egress points, it constitutes a better zoning alternative for the Township;

f. supports the school operations in terms of parking.

209. PVLC's landscape architect, Paul Devitto, testified that the total count of new plants being added to the Subject Property as 1,002.

210. Mr. Devitto testified that the landscape design for the Application advances N.J.S.A. § 40:55D-2(i) by creating a desirable visual environment.

211. T.J. Ricci PP, AICP, PVLC's professional planner, testified that this school was scaled down in proportion to the size of the Subject Property.

212. Mr. Ricci testified to multiple goals of the Township Master Plan that would be advanced by the Application.

213. Mr. Ricci testified that in addition to the fact that the School use is inherently beneficial, PVLC has proved the positive criteria by showing within the context of PVLC's site plan the site can accommodate the deviation from the condition of deficient lot size.

214. Mr. Ricci testified that by scaling back the parking spaces, the building is able to be pulled back from the residences more so than the buildings that exist presently satisfying land use purpose N.J.S.A § 40:55D-2(c), preservation of light, air and open space.

215. Mr. Ricci in his report dated February 2, 2024, on page 4 sets forth eleven (11) benefits of the proposed development many of which are set forth in Count VII, *supra.* He then identified four (4) potential detriments that he then resolved as not being a detriment once he does the balancing test.

216. Mr. Ricci testified that the Subject Property's current poor drainage will be substantially improved, and which will meet all current New Jersey Department of Environmental Protection requirements.

217. Mr. Ricci testified that the Subject Property could accommodate the proposed parking, the landscape plan and the overcompliance with the underlying bulk requirements, which includes the height requirement.

218. Mr. Ricci also testified that the Zoning Code would not be impaired as the Application over-complied with the bulk conditional use requirements as well as the bulk requirements in the underlying zone.

219. He further testified that the deviation of one condition of a use that is conditionally permitted in the zoning district does not go against the intent of what the R-15 zoning district is trying to accomplish.

220. Mr. Chelius and Mr. Rached undertook a substantial review of the Application and issued letters indicating what concerns, if any, they had with the technical requirements of the Township Zoning Code regarding Site Plans.

221. Mr. Chelius and Mr. Rached reviewed these letters with their counterparts on the record at the hearings and agreed with Mr. Modestow and Mr. Corak as to the resolution of each and every item on said review letters.

222. Messrs. Corak and Modestow provided uncontroverted opinions that the on-site pedestrian and vehicular circulation was safe and efficient.

223. Messrs. Corak and Modestow testified that the ingress and egress to and from the site were safe and efficient.

224. Messrs. Modestow, Devitto and Corak testified that all of the requirements of the Township Environmental Commission Letter dated March 10, 2023 would be complied with.

225. The Objectors did not present any expert testimony, plans or reports in opposition to any expert presented by PVLC.

226. The expert testimony and opinions rendered by Mr. Modestow, Ms. Savitz, Mr. Devitto, Mr. Ralph, Mr. Corak and Mr. Ricci were uncontroverted.

THE APPLICATION'S CONSISTENCY WITH THE TOWNSHIP'S MASTER PLAN

227. The Application is consistent with the Township's Master Plan.

228. The Township's current Master Plan was adopted in 2019.

229. One goal of the Master Plan is to ensure non-residential land uses are compatible with surrounding neighborhoods and require buffers to mitigate impacts.

230. The setbacks and buffer for PVLC are greater than what is required by the Zoning Code and mitigated the impact of the slightly undersized lot, which was consistent with this goal, which was the subject of expert testimony presented by PVLC.

231. Another goal of the Master Plan was right size parking ratios to reflect current and future trends.

232. PVLC designed a parking plan that fits the needs of PVLC and accomplished this goal of the Master Plan, which was the subject of expert testimony presented by PVLC.

233. Another goal of the Master Plan was to ensure that new development properly captures all potential stormwater runoff.

234. The Application's proposed stormwater management system accomplished this goal by improving the existing stormwater condition of the Subject Property as no current stormwater management system exists, which was the subject of expert testimony presented by PVLC.

235. The Master Plan also recommends implementing the Safe Routes to School Program in Township.

236. The Application's provision of a 348-foot sidewalk along the entirety of the Subject Property's frontage on Roome Avenue advances this recommendation, which was the subject of expert testimony presented by PVLC.

237. The R-15 zoning district conditionally permitted schools within the zone and thus, the proposed use did not negatively impact the Master Plan, which was the subject of expert testimony presented by PVLC.

THE DENIAL OF THE APPLICATION

238. On July 30, 2024, the ZBA voted to deny the Application.

239. The ZBA voted to deny the application without any deliberation or comment by a vote of 7-0.

240. Pursuant to N.J.S.A. § 40:55D-10(g)(2), the ZBA is required to adopt a memorializing resolution of its decision at a meeting held not later than 45 days after the date of the meeting at which the municipal agency voted to grant or deny approval or within the time period provided in the act for action by the municipal agency on the application for development.

241. The hearing on the memorialization of the Resolution was not scheduled until the ZBA's reorganization meeting on or about January 9, 2025, over six (6) months after the ZBA's vote for denial of the Application.

242. For reasons unknown to PVLC, the Resolution was placed on the executive session agenda.

243. The executive session on January 9, 2025 lasted 45 minutes.

244. When the ZBA returned from executive session, nothing was placed on the record concerning what was discussed in executive session concerning the Resolution.

245. The hearing on the memorialization of the Resolution was carried to the February 6, 2025 meeting.

246. It was not until February 6, 2025, seven (7) months after the ZBA denied the Application, that the ZBA adopted a Resolution memorializing its denial of the Application. Attached as **Exhibit A** is a true and correct copy of the ZBA's Resolution.

247. The notice of decision of the ZBA's action was published in the local newspaper on February 12, 2025.

248. Paragraph 428 of the Resolution sets forth variances that were no longer being sought by PVLC, specifically (a) the location of a parking lot in the required front yard of a conditional use, (b) minimum setback of a parking lot from a front property line, (c) location of loading zones within a required front yard, (d) minimum setback of a primary front yard fence from a property line, and (e) and minimum setback of a secondary front fence from a property line.

249. The ZBA failed to consider the appropriate variance requests in rendering its decision to deny the Application.

250. A ZBA is permitted to grant a conditional use variance pursuant to N.J.S.A. § 40:55D-70(d)(3).

251. Pursuant to N.J.S.A. § 40:55D-70(d), a conditional use variance may not be granted without a showing that such variance or other relief can be granted (1) without substantial detriment to the public good, and (2) that it will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

252. These provisions are what are referred to as the "positive" and "negative" criteria that an applicant must prove to obtain a variance.

253. Pursuant to New Jersey law, an inherently beneficial use automatically satisfies the

positive criteria.

254. Pursuant to New Jersey law, PVLC's school is an "inherently beneficial use," which the ZBA acknowledged in its Resolution. N.J.S.A § 40:55D-4.

255. As an inherently beneficial use, PVLC satisfied the positive criteria component of New Jersey's use variance analysis.

256. With respect to determining if an inherently beneficial use has met the negative criteria, New Jersey law provides that a ZBA must apply the legal test set forth in *Sica v. Bd. of Adjustment of Twp. of Wall*, 127 N.J. 152 (1992) ("*Sica*").

257. The test under *Sica* requires that the ZBA engage in the following four-part balancing test to determine if an applicant has met the negative criteria: (1) identify the public interest at stake; (2) identify the detrimental effect that will ensue from the grant of the variance; (3) reduce the detrimental effect by imposing reasonable conditions on the use; and (4) weigh the positive and negative criteria and determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good. *Sica*, 127 N.J. at 165.

258. The test under *Sica* is a much more relaxed standard than that under *Coventry Square v. Westwood Zoning Bd. of Adjustment*, 138 N.J. 285 (1994), which governs conditional use variance applications that are *not* inherently beneficial, in that *Sica* instructs a ZBA to presume the positive criteria, mitigate the negative criteria with conditions if possible, and then weigh them to determine whether the "variance would cause a substantial detriment to the public good . . . ." *Sica*, 127 N.J. at 166.

259. The decision in *House of Fire Christian Church v. Zoning Bd. of Adjustment of Clifton*, 379 N.J. Super. 526, 535-39 (App. Div. 2005), also reiterated the New Jersey Supreme Court's observation "that '[t]his balancing, '[w]hile properly making it more difficult for

municipalities to exclude inherently beneficial uses . . . permits such exclusion when the negative impact of the use is significant. It also preserves the right of the municipality to impose appropriate conditions upon such uses.'"" *House of Fire*, 379 N.J. Super. at 536 (quoting *Sica, 127 N.J.* at 166 (second and third alterations in original)).

260. In contrast, with respect to the applicable standard for a conditional use variance that is not inherently beneficial, under *Coventry Square,* the applicant must "show that the site will accommodate the problems associated with the use even though the proposal does not comply with the conditions the ordinance established to address those problems." *Coventry Square,* 138 N.J. at 299.

261. The ZBA only improperly considered the Application under the more difficult *Coventry Square* standard.

262. The ZBA stated in the Resolution the following:

a. Applicant's proposed development plainly fails to meet the Coventry Square standard. As an initial consideration, it is undisputed that the Property, located in the R-15 zone, is largely surrounded by residential uses, in close proximity to a busy public high school and in the vicinity of a major health care facility. As such, the proposed use even though purportedly "inherently beneficial", is de facto inconsistent with the Master Plan and Zoning Ordinance.
b. Based upon the foregoing, the Board concludes that the Applicant failed to satisfy its burden of proof. The significantly deficient lot area cannot accommodate the proposed density of development without resulting in substantial detriment to the public welfare and substantial impairment to the zone plan and zoning ordinance. The Applicant's request for variance relief from the conditional use lot area requirement of the Zoning Ordinance does not satisfy the positive or negative criteria standards for said relief pursuant to N.J.S.A. 40:55D-70 (d)(3) and the case law set forth in Coventry Square. The application is therefore denied.

263. The ZBA failed to correctly apply the *Sica* balancing test in considering the Application.

264. In denying the Application, the ZBA found that PVLC did not satisfy the positive criteria, a requirement that should have been presumed under *Sica*, and instead concluded as a matter of law, in pertinent part:

> With regard to the positive criteria requirement, the Board finds that the undersized property, being over twenty percent (20%) less than the minimum lot area required under the Zoning Ordinance, is far too small for the Applicant to prove, and the Board to find, that the requested conditional use variance would advance the purposes of the MLUL set forth in N.J.S.A, 40:55D-2, which provide the statutory basis of the positive criteria. The Board makes this conclusion notwithstanding the Applicant's argument that the proposed school is considered an inherently beneficial use as defined in the MLUL, N.J.S.A. 40:55D-4.

265. The ZBA erred as a matter of law in not presuming the positive criteria was satisfied as PVLC is an inherently beneficial use.

266. The ZBA failed to identify any "public interest" at stake.

267. The ZBA failed to identify any "detrimental effect" that will ensue from the grant of the variance.

268. With respect to the negative criteria, the ZBA made the following conclusory statement:

> With regard to the negative criteria requirement, as evidenced by the concerns expressed repeatedly and in detail by neighboring property owners, the proposed school would have numerous deleterious impacts on surrounding lots and existing permitted uses thereon. In addition, the proposed use and location, though a conditional use, cannot be reconciled with the Zoning Ordinance's conditional use requirements and substantially impairs the intent and purpose of the Township's Master Plan and Zoning Ordinance.

269. The ZBA failed to consider reducing any detrimental effect by imposing reasonable conditions on the use.

270. PLVC had offered several conditions/mitigations on its use including:

a. Recordation of the Resolution of the Memorialization.

b. Limitations on parking.

c. No second story to the school.

d. Staggering arrival and departure times with the Township High School.

e. Compliance with the Township Environmental Commission Report dated March 10, 2023.

f. That stormwater basins are maintained on a timely basis.

g. Arborvitaes are planted on the outside of the fence.

h. Limiting the number of students permitted at the school.

i. Compliance with the ZBA's engineer report regarding stormwater management on the Subject Property.

j. Working with the ZBA engineer to finalize a location analysis for a drywell.

k. Compliance with any and all outside agency approvals.

l. Compliance with any and all state, county and municipal regulations regarding how many students may attend housed the school.

m. Changing the afternoon dismissal time.

271. The ZBA failed to weigh the positive and negative criteria and determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good, as required under New Jersey law.

272. The ZBA erred as a matter of law in failing to analyze the Application under the four-prong *Sica* test.

273. The ZBA further erred in considering and relying upon the case of *Dallmeyer v. Lacey Twp. Bd. of Adjustment*, 219 N.J. Super. 144, 146 (Law Div. 1987), in finding that PVLC had an obligation to "demonstrate that efforts were made to bring the property into conformity with the zoning ordinance by attempting to acquire adjacent property or by offering to sell the

undersized lot to adjacent owners," which is a requirement related to satisfaction of the positive criteria which PVLC was not required by law to satisfy.

DEFENDANTS' LAND USE REGULATIONS ARE DISCRIMINATORY ON THEIR FACE

274. The Township Code discriminates against Plaintiff's use and in favor of various nonreligious assembly and institutional uses in the R-15 zoning district.

275. Public recreation areas are permitted by right in the R-15 zoning district, without having conditional use requirements.

276. For "Schools" in the R-15 zoning district, the minimum lot size is five (5) acres, while public recreation areas have a minimum lot size of 15,000 square feet.

277. Other nonreligious assembly and institutional conditional land uses in the R-15 zoning district have less restrictive minimum lot size requirements. Minimum lot size requirements for other conditional uses in the R-15 zoning district include:

a. Medical and professional offices: 45,000 square feet.

b. Museums and historic sites: None.

c. Community Centers: 10 times the minimum permitted lot size in the zone in which it is to be located, which would be 3.44 acres in the R-15 zone.

d. Libraries. 10 times the minimum permitted lot size in the zone in which it is to be located, which would be 3.44 acres in the R-15 zone.

278. For "Schools" in the R-15 zoning district, pursuant to § 360-12(B)(7), maximum building coverage is 17% while other nonreligious assembly and institutional conditional land uses in the R-15 zoning district continue to have less restrictive building coverage requirements. Maximum building requirements for other conditional uses in the R-15 zoning district include:

a. Medical and professional offices: 25%.

b. Nursing homes, hospitals, and intermediary care centers. 30%.

279. Schools are required to meet the following off-street parking space requirements: § 360-58(B):

Elementary	2 per classroom, plus 1 per staff
Intermediate	1.5 per classroom, plus 1 per staff
Secondary	2.5 per classroom, plus 1 per 10 students

280. Other nonreligious assembly and institutional uses have potentially less restrictive off-street parking requirements.

281. The Off-street parking requirement for other nonreligious assembly and institutional uses, including Museums and historic sites, Community Centers, Nursing homes and intermediary care centers, and Public recreation areas, is the following:

> In cases of uses not specifically mentioned, the requirements for off-street parking facilities of similar uses shall apply. If no use can be described as similar to the proposed use, parking shall be required in accordance with the judgment of the Planning Board or the Zoning Board of Adjustment.

282. There are only four (4) lots in the R-15 zoning district larger than five (5) acres.

283. There are no available unimproved lots in the R-15 zoning district that meet the conditional use requirements for a school.

284. There are four lots larger than the Subject Property in the R-15 zoning district.

285. Three of the lots have public schools already built on them and the other lot is the Pequannock senior citizen housing complex.

286. The Subject Property is the next largest piece of land available in the R-15 zoning district that is available for a school.

287. Upon information and belief, there are very few, if any, unimproved lots in the

other zoning districts in the Township that meet the conditional use requirements for a school.

288. Upon information and belief, no additional land is available through purchase or other conveyance to bring the Subject Property into compliance with the lot size requirement of the Zoning Code for conditional use.

289. The ZBA's decision prevents any ability of PVLC to use the Subject Property as a school, regardless of the scale, conditions or intensity of such use.

290. PVLC offered conditions on the use of the Subject Property.

291. PVLC does not have any readily available alternatives for a school within the Township.

292. By completely prohibiting PVLC from using the Subject Property for a school, the ZBA has substantially burdened PVLC's religious exercise.

293. There is no compelling or legitimate governmental interest that requires the denial of the Application.

294. Denying the Application is not the least restrictive means of achieving any governmental interest.

295. Schools are similarly situated to the nonreligious assembly and institutional land uses listed above with respect to any regulatory purposes.

296. Schools are only permitted as a conditional use in the residential zoning districts in the Township, with the exception of the Continuing Care Retirement Community District and the Senior Citizen Housing Overlay District, where they are neither permitted nor conditionally permitted.

297. By not permitting Schools as a use by right in any residential zoning district in the Township, the Township has unreasonably limited schools.

298. The Township and ZBA have unreasonably limited religious practice within the Township by requiring a five-acre lot size as a condition for the building of a school within the residential zones of the Township which allow such use even though there are no unimproved five-acre lots within the residential zones where schools are currently conditionally permitted within the Township.

299. The Township and ZBA have unreasonably limited schools within the Township by enforcing this five-acre lot size as a condition for the building of a private school.

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

301. PVLC had a reasonable expectation that its use would be permitted on the Subject Property.

302. The ZBA's denial of PVLC's application severely impedes and prevents PVLC's religious exercise.

303. The construction activity related to PVLC's school would affect interstate commerce. The construction's effect on interstate commerce would result from, amongst other things, PVLC's fundraising activities related to the construction; the transfer of funds to those it engages to assist with construction; the engagement of construction companies; the employment of and payments to construction workers either by PVLC or by companies engaged by it; the purchase of necessary materials for the construction; the use of interstate highways for the transportation of persons and materials used for the construction; the use of interstate communication related to the construction; and other activities related to the construction.

304. PVLC's operation affects interstate commerce by or through, amongst other things, serving as a site for educating students living outside of the State of New Jersey; the use of means

of interstate communication to facilitate PVLC's ongoing operations; the use of interstate travel related to PVLC's ongoing operations; and the purchase of goods and services related to PVLC's ongoing operations and maintenance.

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

306. The harm to PVLC caused by the Defendants' laws and actions, which prevent them from using the Subject Property to accommodate its religious needs, is immediate and severe.

307. Application of the Zoning Code to PVLC's proposed religious land use creates extreme expense, delay and uncertainty for PVLC.

308. PVLC has also suffered significant financial damages as a result of the Defendants' laws and their application to PVLC.

309. There are no quick, reliable, and viable alternative options for PVLC's operations.

310. PVLC has no adequate remedy at law for the harm and damage caused by Defendants' wrongful laws and actions.

COUNT I

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

311. Paragraphs 1 through 310 are incorporated by reference as if set forth fully herein.

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

COUNT II

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

313. Paragraphs 1 through 312 are incorporated by reference as if set forth fully herein.

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

COUNT III

Violation of Religious Land Use and Institutionalized Persons Act of 2000
"Equal terms"
42 U.S.C. § 2000cc(b)(1)

315. Paragraphs 1 through 314 are incorporated by reference as if fully set forth herein.

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

COUNT IV

Violation of Religious Land Use and Institutionalized Persons Act of 2000
42 U.S.C. § 2000cc(b)(3)(B)
"Exclusion and Limits": Unreasonable Limitation

317. Paragraphs 1 through 316 are incorporated by reference as if set forth fully herein.

318. Defendants have deprived and continue to deprive the Plaintiff of its right to the free exercise of religion, as secured by RLUIPA, by imposing and implementing land use regulations both on their face and as applied to Plaintiff in a manner that unreasonably limits

religious assemblies, institutions, and structures within their jurisdiction, both on their face and as applied to Plaintiff.

COUNT V

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

319. Paragraphs 1 through 318 are incorporated by reference as if set forth fully herein.

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

COUNT VI

United States Constitution, Fourteenth Amendment
42 U.S.C. § 1983
Equal Protection of the Laws

321. Paragraphs 1 through 320 are incorporated by reference as if set forth fully herein.

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

COUNT VII

Action in lieu of prerogative writ
New Jersey Municipal Land Use Law
N.J.S.A. §§ 40:55D-1, *et seq.*

323. Paragraphs 1 through 322 are incorporated by reference as if set forth fully herein.

Failure to grant conditional use variance approval pursuant to N.J.S.A. § 40:55D-70(d)(3)

324. As set forth above, PVLC's school use is an inherently beneficial use and therefore satisfied the positive criteria for the grant of a conditional use variance.

325. As set forth above, with respect to the negative criteria, PVLC established through competent and credible fact and expert evidence that granting the conditional use variance would not result in substantial detriment to the public good and would not impair the intent and purpose of the Zoning Code or the Township Master Plan.

326. In failing to find that PVLC's school use presumptively satisfied the positive criteria, failing to find that the positive criteria were satisfied in other multiple ways pursuant to *Coventry Square,* failing to find that the negative criteria was satisfied and failing to engage in the balancing test under *Sica*, the ZBA's decision to deny the conditional use variance was arbitrary, capricious and/or unreasonable.

Failure to grant variances pursuant to N.J.S.A. § 40:55D-70(c)(2)

327. As set forth above, the ZBA erred in not undertake the proper analysis with respect to the variances sought pursuant to N.J.S.A. § 40:55D-70(c)(2) and acted in an arbitrary, capricious and unreasonable manner in denying the Application.

Failure to grant preliminary and final site plan approval pursuant to N.J.S.A. §§ 40:55D-48 and 40:55D-52

328. The Application, other than the variances requested herein, satisfies the technical requirements for site plans as set forth in the Zoning Code.

329. As the Township's professionals and PVLC's professionals were in agreement on all of the Site Plan items, the ZBA should have granted Preliminary and Final Site Plan approval requested by PVLC.

330. The ZBA's decision to deny the Preliminary and Final Site Plan approval requested by PVLC was arbitrary, capricious and/or unreasonable.

Violation of N.J.S.A § 40:55D-10(g)(2)

331. N.J.S.A § 40:55D-10(g)(2) states that a memorializing resolution be adopted at a meeting to be held not later than 45 days after the date of the meeting at which the municipal agency voted to grant or deny approval.

332. The meeting in which the ZBA voted to memorialize their decision rendered on July 30, 2024 was held on February 6, 2025, 191 days after their vote on July 30, 2024.

333. A Resolution cannot be based upon bare allegations or unsubstantiated beliefs.

334. Instead, the Resolution in this matter is based upon a multitude of "misses": Misrepresentations ("facts" which are not true), misleading statements (half-truths where a part of a statement or testimony is parroted and the most important details are omitted), mistakes (which are occasioned by a lack of full understanding of the record), omissions (critical facts and statements of law which are left out entirely), and misapplications of the law.

335. Many of these "misses" have been identified in numerous prior paragraphs of this Complaint. For the sake of brevity, a few additional nonexhaustive examples of each will be set forth herein:

a. Mistakes: There are many references in the Resolution and the record itself where the number of variances that PVLC was ultimately seeking is incorrect.

b. Misleading Statements: Paragraph 29 of the Resolution omits the record testimony that the maximum height of the proposed building is far less than what is permitted in the R-15 zoning district. Paragraph 124 of the Resolution states that drainage flows to Sunset and Roome Roads. The testimony was that there is no flow to

Roome Road. Paragraph 238 of the Resolution states that Mr. Devitto's testimony is alleged to have been that insecticides or fertilizers should not be used, while the actual testimony is that they will not be used.

c. Misrepresentations: Paragraph 79 of the Resolution: stormwater will not run off the property in the Northwest Corner in the "Build Condition." Paragraph 213 of the Resolution: The objector's statement is false because sheet C-9 of the site plans did match the rendering being shown to the public. The false statement arose out of the inability or failure by the Objector to consult sheet C-9.

d. Misapplication of the Law: Paragraphs 17, 18, 19 and 20 of the Resolution: The *Dallmeyer* decision has no applicability in the matter at bar. It is a hardship case for bulk variances promulgated under N.J.S.A. § 40:55D-70(c)(1) and not a conditional use variance under N.J.S.A § 40:55D-70(d)(3). *Dallmeyer* was decided in 1987, 7 years prior to the *Coventry Square* decision and is not cited by the Court in the *Coventry Square* decision. Additionally, Conclusion of Law No. 23 in the Resolution fails to identify the Master Plan goals that PVLC testified they advanced and for that matter omits the Master Plan Goals that PVLC was alleged to have not met or been in conflict with.

e. Omissions: Paragraph 222 of the Resolution left out that the replacement of ornamental trees for evergreens that was a specific request from the Objector himself and which PVLC accommodated. The vast majority of the twenty plus concessions or revisions to the site plans made by PVLC throughout the course of the hearings are missing from the Resolution. The Resolution fails to acknowledge the existence of the noise specifications for the rooftop HVAC that was submitted

to the ZBA prior to the third hearing by Mr. Ralph's office. PVLC incorporated these specifications into their opinions and arguments that the roof top equipment would not violate the noise ordinance in the Township regardless of the architectural screening provided by PVLC.

336. The "misses" are borne out of a rejection of all of the expert testimony given in this matter by PVLC's witnesses and the Township's own experts (who adopted the testimony and opinions of PVLC's experts in total) who the ZBA determined were not credible. *See* Conclusions of Law Nos. 22 and 23. Thus, the ZBA was left with the record created by the Objectors, which was resplendent with *inter alia*, pure conjecture, assuming facts not in evidence and mischaracterization of PVLC expert testimony. As such, the ZBA's conduct is in derogation of N.J.S.A. § 40:55D-10(g)(2) and the ZBA acted in an arbitrary, capricious and unreasonable manner in denying the Application

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests that this Court grant the following relief:

a. A declaration that §§ 360-46(G), 360-58(B) and 360-12(B)(7) of the Zoning Code regulating schools as described herein are unconstitutional and illegal under the Free Exercise Clause of the First Amendment to the United States Constitution, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and RLUIPA;

b. A declaration that the ZBA's decision is void, invalid and unconstitutional on the ground that it violates the Free Exercise Clause of the First Amendment to the

United States Constitution, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, RLUIPA, and state law;

c. An order reversing the decision of the ZBA and granting the Application;

d. An order directing the ZBA to grant the Application;

e. Preliminary and permanent orders enjoining the Defendants, their officers, employees, agents, successors and all others acting in concert with them from applying their laws in a manner that violates the Free Exercise Clause of the First Amendment to the United States Constitution, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, RLUIPA, and state law, or undertaking any and all action in furtherance of these acts;

f. An award of compensatory damages against Defendants in favor of the Plaintiff as the Court deems just for the loss of its rights under the First and Fourteenth Amendments to the United States Constitution and RLUIPA incurred by the Plaintiff and caused by the Defendants' laws and actions;

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

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

Dated: March 26, 2025

STORZER & ASSOCIATES, P.C.

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Attorneys for Plaintiffs

LOCAL CIVIL RULE 11.2 CERTIFICATION

Pursuant to Local Civil Rule 11.2, I hereby certify that this matter is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding and that no such action, arbitration or administrative proceeding is contemplated at this time. I do not know of any other party who should be joined in this action.

Dated: March 26, 2025

STORZER & ASSOCIATES, P.C.
/s/ Sieglinde K. Rath
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Attorneys for Plaintiff

NEW JERSEY COURT RULE 4:69-4 CERTIFICATION

Pursuant to R. 4:69-4, I hereby certify that all necessary transcripts of the proceedings before the Township of Pequannock Zoning Board of Adjustment in the cause have been ordered.

Dated: March 26, 2025

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Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PASCACK VALLEY LEARNING CENTER, INC. Plaintiff, v. TOWNSHIP OF PEQUANNOCK, NEW JERSEY, and TOWNSHIP OF PEQUANNOCK, NEW JERSEY ZONING BOARD OF ADJUSTMENT Defendants.	Case No. 2:25-cv-02088-MCA-AME **MOTION FOR ADMISSION PRO HAC VICE FOR ROMAN P. STORZER**

Pursuant to Local Rule 101.1(c), the Plaintiff, Pascack Valley Learning Center, Inc., moves this honorable Court to admit *pro hac vice* Roman P. Storzer of Storzer & Associates, P.C., in the above-captioned case. Mr. Storzer is ineligible for admission pursuant to Local Rule 101.1(b).

As detailed in the Declaration of Roman P. Storzer, Mr. Storzer is a member in good standing of the bars of the State of Maryland and District of Columbia.

There are no pending disciplinary actions against Mr. Storzer, and he has never been suspended, disbarred or resigned as a result of a disciplinary charge or proceeding. He will pay the annual fee to the New Jersey Lawyers' Fund for Client Protection in accordance with New Jersey Court Rule 1:28-2(a) for 2025 upon admission in this matter.

Good cause exists for Mr. Storzer's appearance in this matter as co-counsel as set forth in his Declaration.

The undersigned is a member of the New Jersey Bar and the Bar of this Court and will

serve as lead counsel for the Plaintiff.

Dated: March 27, 2025

STORZER & ASSOCIATES, P.C.

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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of March 2025, the foregoing document, supporting Declarations, and proposed form of Order were electronically filed via the Court's ECF system.

By: s / Sieglinde K. Rath

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PASCACK VALLEY LEARNING CENTER, INC. Plaintiff, v. TOWNSHIP OF PEQUANNOCK, NEW JERSEY, and TOWNSHIP OF PEQUANNOCK, NEW JERSEY ZONING BOARD OF ADJUSTMENT Defendants.	Case No. 2:25-cv-02088-MCA-AME **DECLARATION IN SUPPORT OF PRO HAC VICE ADMISSION FOR ROMAN P. STORZER**

Sieglinde K. Rath, declares as follows, pursuant to 28 U.S.C. § 1746:

1. I am an attorney with the firm of Storzer and Associates, P.C., counsel for Plaintiff in this action.

2. I make this Declaration on personal knowledge.

3. Pursuant to Local Rule 101.1(c), Plaintiff, Pascack Valley Learning Center, Inc., moves this honorable Court to admit *pro hac vice* Roman P. Storzer of Storzer & Associates, P.C., in the above-captioned case. Mr. Storzer is ineligible for admission pursuant to Local Rule 101.1(b).

4. As detailed in the Declaration of Roman P. Storzer, Mr. Storzer is a member in good standing of the bars of the State of Maryland and the District of Columbia. His Maryland bar number is 9612190192 and his District of Columbia bar number is 459878.

5. There are no pending disciplinary actions against Mr. Storzer, and he has never been suspended, disbarred or resigned as a result of a disciplinary charge or

proceeding. He will pay the annual fee to the New Jersey Lawyers' Fund for Client Protection in accordance with New Jersey Court Rule 1:28-2(a) for 2025 upon admission in this matter.

6. Good cause exists for Mr. Storzer's appearance in this matter as co-counsel as set forth in his Declaration.

7. The undersigned is a member of the New Jersey Bar and the Bar of this Court and will serve as lead counsel for the Plaintiff.

8. I have reviewed the Local Rules for the United States District Court for the District of New Jersey and agree to be bound thereby with respect to Mr. Storzer's *pro hac vice* admission to this Court.

Dated: March 27, 2025

STORZER & ASSOCIATES, P.C.

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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of March 2025, the foregoing document, supporting Declarations, and proposed form of Order were electronically filed via the Court's ECF system.

By: s / Sieglinde K. Rath

Supreme Court of Maryland

Annapolis, MD

CERTIFICATE OF GOOD STANDING

STATE OF MARYLAND, ss:

I, Gregory Hilton, Clerk of the Supreme Court of Maryland, do hereby certify that on the nineteenth day of December, 1996,

Roman P. Storzer

having first taken and subscribed the oath prescribed by the Constitution and Laws of this State, was admitted as an attorney of said Court, is now in good standing, and as such is entitled to practice law in any of the Courts of said State, subject to the Rules of Court. This certificate of good standing is valid through the twenty-third day of May, 2025.

In Testimony Whereof, I have hereunto set my hand as Clerk, and affixed the Seal of the Supreme Court of Maryland, this twenty-fourth day of March, 2025.

Clerk of the Supreme Court of Maryland