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TOWN OF FALLSBURG

State of New York - County of Sullivan
Town of Fallsburg - Town Board

In the Matter of the Application of **YESHIVA ZICHRON MAYIR** for a Hardship Variance from the Town's Residential Moratorium Local Law	**Verified Petition for Relief from Moratorium**

The Petitioner, YESHIVA ZICHRON MAYIR, by its attorneys, KALTER, KAPLAN, ZEIGER & FORMAN, hereby submits this Petition for a hardship variance from the application of the Town's Residential Moratorium Local Law (the "Moratorium Law"), and in furtherance thereof, respectfully alleges as follows:

1. The Petitioner is the owner of a parcel of real property located off of Mountaindale Road, in the Town of Fallsburg, known as Town of Fallsburg SBL 42.-1-14 (the "Property").

2. The Property was acquired by the Petitioner in 1964. Since the property was acquired by the Petitioner, the Petitioner has operated a Yeshiva at the Property. The Yeshiva is operated by the Petitioner on a year round basis. The Yeshiva currently serves approximately 45 students on a year round basis.

3. The Property is approximately 18.8 acres. There is now located on the Property several improvements including an old dormitory building, a synagogue building, which includes classrooms, an office building, several trailers, and several residential buildings, including bungalows. As discussed below, recently two trailers were removed, and prior to that several additional trailers had been removed.

4. The Yeshiva has been operating in the Town of Fallsburg since 1964. The Yeshiva currently serves approximately 45 full-time students, who reside at the existing dormitory building now located at the Property.

THE PROJECT

5. The Project now pending before the Town of Fallsburg Planning Board is the removal of the existing dormitory building and replacing the building with a new dormitory building. The new dormitory building is intended to initially house the 45 full time students that attend the Yeshiva. In the event that the Yeshiva expands, the new building will have the ability to house up to 80 full time students. Expansion to 80 students is not anticipated at the current time.

6. The Property is located in the Town of Fallsburg Water and Sewer Districts. It is not anticipated that the construction of the new dormitory building will initially have any impact on the Town sewer or water usage, in view of the fact that the anticipated number of students that will occupy the new dormitory building will be the same as those students that are now occupying the existing dormitory building, and two trailers, each housing one family, were recently removed.

PROJECT HISTORY

7. Application to the Town of Fallsburg Planning Board was submitted April, 2015. At the first meeting before the Planning Board, it was determined that the Property was a preexisting nonconforming use. The property is located in the R-1 Zoning District. No schools are allowed in the R-1 Zoning District. Accordingly, the Project was sent to the Town Zoning Board of Appeals for a variance.

8. The Project first appeared before the Zoning Board of Appeals at its meeting during the month of June, 2015. At that meeting, the Town Code Enforcement Officer indicated that there were certain conditions at the Property that were not satisfactory and needed to be attended to prior to the Zoning Board of Appeals continuing to review the application.

9. Subsequent to the initial meeting before the Zoning Board of Appeals, the Petitioner made efforts to resolve the concerns of the Town Code Enforcement Officer, including removal of a garage building and two trailers. The cost of removing these buildings was approximately $15,000.00.

10. After the garage building and the two trailers were removed, as described above, the Petitioner again appeared at the Zoning Board of Appeals meeting during the month of March, 2016. At that meeting, the requested variance to build the new dormitory building was granted.

11. After the variance was granted, as described above, during the month of May 2016, the Petitioner appeared before the Town of Fallsburg Planning Board to continue the review of the site plan applicable to removal of the existing dormitory building and replacing it with the new dormitory building.

12. During the Planning Board meeting, there was a discussion as to when the existing dormitory building would be removed, and how the removal of that building would impact the replacement by the new building. At the Planning Board meeting it was discussed that the existing dormitory building would not be removed until the new dormitory building had been completed and obtained a certificate of occupancy. The Planning Board expressed concern, and imposed a condition that the applicant would need to post a bond as a condition to approval of the site plan, which bond would secure the obligation of the Petitioner to remove the existing dormitory building when construction of the new dormitory building has been completed.

13. At the May, 2016 Planning Board meeting, the Planning Board asked the Petitioner to do several tasks, including having the Petitioner's engineer calculate the amount of the demolition bond to remove the existing dormitory building, have the project engineer determine the sewer pump capacity to service the new dormitory building, and obtaining approval of the Town Architectural Review Board. The Planning Board indicated that they would further consider the Project at the next meeting after these tasks were completed.

14. Subsequent to the May, 2016 Planning Board meeting, the Petitioner has worked on each of these items. Obtaining a determination of the cost to remove the existing dormitory building was more complicated than anticipated, because obtaining the cost of removal required an asbestos analysis of the building. If asbestos is present in the building, the cost of removal would substantially exceed that which would be the cost if asbestos did not exist.

15. The Project Engineer also met with the Town Engineer to calculate the sewer pump capacity and has been working on preparing the engineering analysis based upon the result of that meeting.

16. In order for the Petitioner to appear before the Architectural Review Board, the Petitioner needed to obtain plans as to what the proposed new dormitory building would look like. This required the Petitioner to retain an architect to prepare a rendering and to prepare the plans. This process has now been completed.

17. As described above, the Petitioner has completed the three tasks that the Planning Board asked be completed prior to the next appearance before the Planning Board. These tasks are now completed and the Petitioner is ready to revisit the Planning Board and the Architectural Review Board but for the prohibition of the Moratorium Law.

HARDSHIP

18. As set forth in Paragraph "7" above, the Petitioner has been pursuing this Project for in excess of one year. During that one year period of time, the Petitioner spent in excess of $15,000.00 substantially improving the Petitioner's Property, having removed a garage building and two trailers.

19. The Petitioner has spent significant funds toward satisfying the conditions of the Zoning Board of Appeals and the Planning Board by way of engineers, architects and attorneys. The costs incurred by the Petitioner for all of the foregoing has been in excess of $7,500.00. In addition, the Petitioner has invested in excess of $7,000.00 on fundraising efforts to obtain funds to construct the new dormitory building.

20. The Petitioner is a not-for-profit organization, and obtains its operating costs primarily through donations. Many of the Yeshiva students that attend the Petitioner's Yeshiva on a year round basis are scholarship students, without the funds to pay tuition. The Yeshiva operates at an annual deficit of approximately $300,000.00; the deficit is funded from donations. For a school of this size, expenditures of almost $30,000.00 is very substantial.

21. For many years, the Rabbi in charge of the Yeshiva was Rabbi Rothenberg. Rabbi Rothenberg was a full time resident of Sullivan County, and as previously stated, operated the Yeshiva at its current location on a year round basis. Subsequent to Rabbi Rothenberg's untimely death, many of the supporters of the Yeshiva have donated money in his honor, the purpose being to construct the new Yeshiva building. Those donations provided much of the money needed for the construction. The Yeshiva has aggressively been making efforts to raise the balance of the money which they believe they now have. The Petitioner has spent in excess of $7,000.00 for these fundraising activities.

22. The existing dormitory building that will be removed is an old building in substantial need of repair. The building is very costly to heat in the Winter, and has many leaks which allows water to enter the building and also cold air. It would be a substantial lifestyle change for the Yeshiva students to allow them to occupy a new building.

23. The Petitioner has spent significant funds to improve its Property, and the replacement of the existing dormitory building would represent a substantial additional improvement to the Property. Although the new building will have capacity for additional students, it is not initially anticipated that there will be any material increase in the population of the Yeshiva once the new building is constructed and in place. It is anticipated that the Yeshiva will save substantial operating costs since the new building will be far more efficient and less costly to operate.

RELIEF REQUESTED

24. For the reasons heretofore set forth above, the Petitioner is requesting relief from the Moratorium Law and requests authority to complete the development to the Project.

25. The Petitioner has obtained all required variances for this Project, and has appeared at the Planning Board meetings on several occasions. At the last meeting of the Planning Board, the Planning Board asked that the Petitioner come back after resolving three items, one being the cost of demolition of the existing building for purposes of establishing a bond, the second being an analysis of the sewer pump capacity for the new building, and the third being obtaining approval of the Architectural Review Board. The Petitioner has completed the engineering and architectural investigation of each of these tasks and is now ready to meet with th Architectural Review Board and the Planning Board. Included with this submission is a rendering of the proposed new dormitory building.

26. The Petitioner has also substantially improved the Property subsequent to its first appearance before the Planning Board, and, consequently has demonstrated the Petitioner's good faith efforts to continue to improve the Property. The Petitioner has removed the garage building and two trailers at a cost to the Petitioner of in excess of $15,000.00. The Petitioner has also expended significant funds towards engineering and other consulting fees, and fundraising efforts. These costs exceed $14,500.00. Thus, the Petitioner's investment subsequent to its first appearance has been in excess of $29,500.00.

27. The Petitioner operates in the Town of Fallsburg on a year round basis. The families that reside at the Yeshiva (which includes Rabbis, teachers and staff) are full time residents of the Town of Fallsburg as well.

28. It is also respectfully submitted that any change to the Town's Zoning Law would have no impact on the Project now pending before the Town of Fallsburg Planning Board. The Petitioner is currently a preexisting non-conforming use as the Property is located in an R-1 Zoning District, and schools are not allowed in an R-1 Zoning District. Thus, in order to pursue the Project the Petitioner needed a zoning variance. Should the Town change any of its zoning laws, the Petitioner will either become a conforming use, where a variance would not be needed, or would remain as a preexisting nonconforming use, which would require a variance, which the Petitioner has already obtained. Accordingly, it is respectfully submitted that the Moratorium Law should not be applicable to the Petitioner, inasmuch as regardless of the ultimate change in the Town's Zoning Law, the right of the Petitioner to proceed with this Project would continue, given that the Petitioner has already obtained the required variance.

29. For all of the reasons set forth herein, it is respectfully submitted that the Petitioner has demonstrated that a significant hardship would be incurred, financial and otherwise, in the event that the Petitioner would not be allowed to proceed towards completion of this Project.

END OF PAGE

WHEREFORE, it is respectfully requested that the Town of Fallsburg grant the Petitioner relief from the stay of development provided for by the Town of Fallsburg Residential Zoning Moratorium Law and that this Project be allowed to proceed through the approval process of the Town of Fallsburg Planning Board and any other Town Boards which may require approval for this Project, including the Architectural Review Board and the Building Department.

Dated: Woodbourne, New York
August 19, 2016

Yeshiva Zichron Mayir

By: _____
Rabbi Shraga Rosenbloom, President

VERIFICATION

STATE OF NEW YORK)
)ss:
COUNTY OF SULLIVAN)

I, Rabbi Shraga Rosenbloom, being duly sworn depose and say that: I am the President of Yeshiva Zichron Mayir, the Petitioner named above; I have read the foregoing Petition, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

Rabbi Shraga Rosenbloom

Sworn to before me on this
18th day of August, 2016

Notary Public

JAY L. ZEIGER
Notary Public, State of New York
NYS Reg. No. 02ZE4684173
Qualified in Sullivan County
Commission Expires Feb. 28, 2017
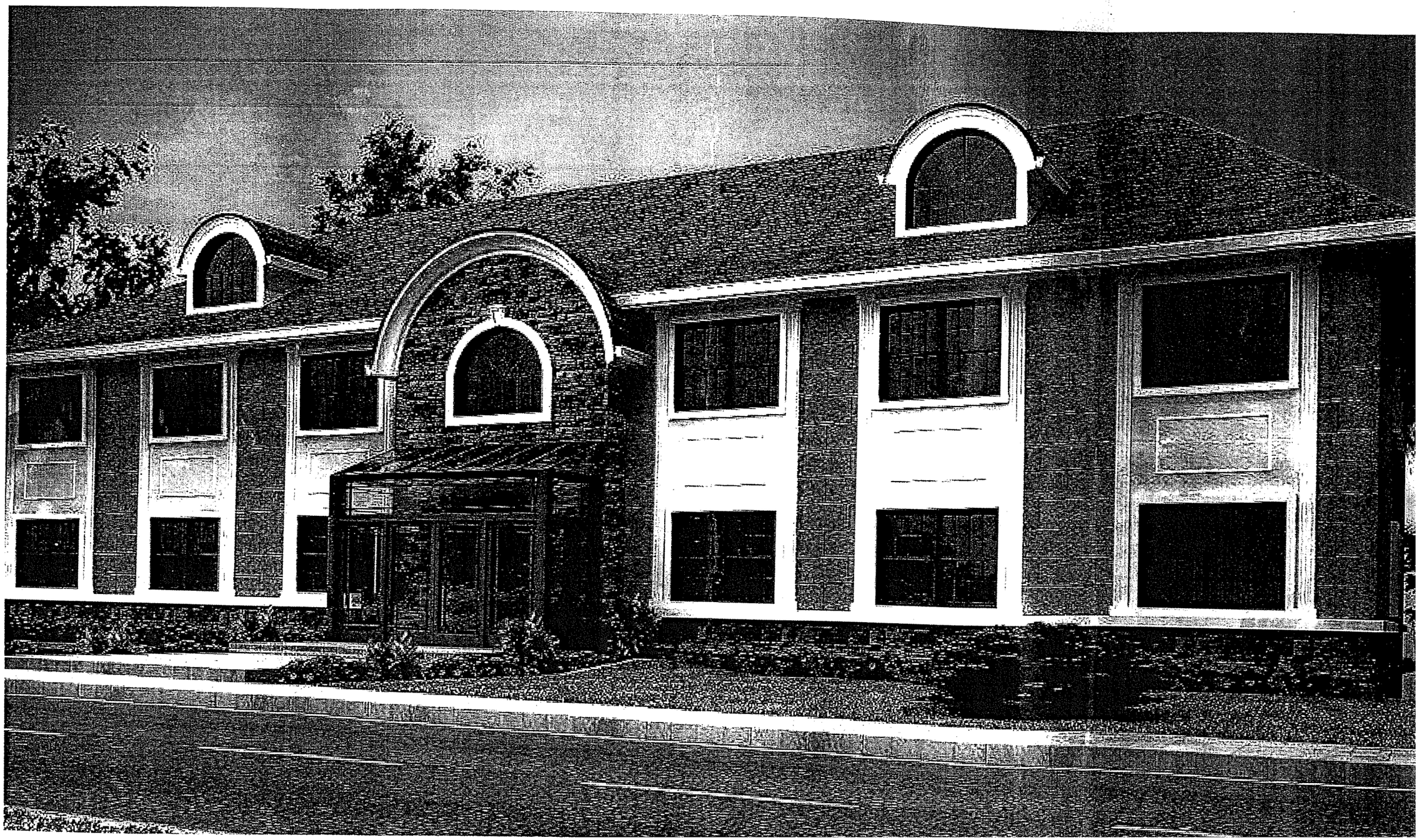
EXHIBIT "A"