



December 13, 2007

Joseph Montebello, Acting Chairman  
Members of Historic District Commission  
Borough of Litchfield  
Historic District Commission  
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Re: Application of Chabad Lubavitch of Litchfield County

Dear Commissioners,

We are writing to express our concerns regarding the application of Chabad Lubavitch of Litchfield County currently pending before you. This application raises complex issues of federal and state constitutional law as well as federal and state statutory law. While we are confident that you will receive careful guidance from your legal counsel, we wanted to emphasize to you the importance of the civil rights at issue, including the freedom of religious expression and the freedom of speech.

The First Amendment of the U.S. Constitution protects the freedom of religious exercise. There is a well developed body of case law setting forth the limits on government action that imposes a substantial burden on religious exercise and what constitutes a substantial burden under the First Amendment. Contrary to comments made at the public hearing held on December 6, 2007, the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) does not supplant that body of Constitutional law. Rather, RLUIPA was enacted by Congress to address specific concerns arising in the context of land use regulations administered by local governments (and the rights of institutionalized persons) and it incorporates the law as it has evolved under the First Amendment. In addition, the State of Connecticut has adopted the Connecticut Religious Freedom Act which applies even more broadly than RLUIPA to actions by local governmental agencies, such as the Litchfield Historic District Commission. The use of a building for religious exercise by a religious institution is a form of religious exercise protected by the First Amendment, RLUIPA, Article First of the Connecticut Constitution, and the Connecticut Religious Freedom Act. Where the religious institution has determined that the proposed building is the minimum necessary for the exercise of its religion, limiting or restricting the size of the proposed building would impose a substantial burden. Such a burden may only be imposed without violating the First Amendment or RLUIPA if it is in furtherance



of a compelling governmental interest and is the least restrictive means of accomplishing that interest. It does not appear that there is anything within the jurisdiction of the Borough of Litchfield's Historic District Commission that is sufficiently compelling to justify the restriction of Chabad Lubavitch's right to the free exercise of its religious beliefs.

The First Amendment also protects the freedom of speech. The display of religious iconography and religious symbols is a form of religious speech. Religious speech, like political speech, is a core form of speech and it receives the highest level of protection under the First Amendment. The government's ability to regulate speech occurring on private property is limited not only by the First Amendment but also by the Fifth Amendment concerning private property rights. Furthermore, because this speech would occur on private property not public property, it does not implicate the Establishment Clause. Finally, a review and application process in advance of the display of religious symbols could fall within the scope of the Prior Restraint Doctrine under the First Amendment. The Prior Restraint Doctrine has developed in response to efforts by local governmental agencies seeking to regulate speech in public forums before it has even occurred. Thus, the application of regulations that restrict, inhibit or chill speech prior to its occurrence would be in violation of the First Amendment.

Historically, houses of worship were located in or near the center of the village or town in close proximity to houses, shops, and local governmental buildings such as the town hall and the court house. Chabad Lubavitch seeks to build a synagogue alongside other religious institutions near the center of the Borough of Litchfield consistent with this tradition. The proposed building is equal in size to one other building and remarkably smaller than those of the other religious institutions in the Borough. Chabad Lubavitch has the equal right to the free exercise of its religion as do these other religious institutions under federal and state constitutional and statutory law.

The Litchfield Historic District Commission has the opportunity to conduct its review and craft a decision that will maintain the protection provided under federal and state law. We ask that you consider this application carefully and weigh the interests at stake with an understanding that the freedom of religious exercise and the freedom of speech are fundamental civil liberties receiving the highest levels of protection available under the law.

Sincerely,

A handwritten signature in black ink that reads "Andrew Schneider". The signature is written in a cursive, flowing style.

Andrew Schneider  
Executive Director