

April 29, 2024

Via US and Electronic Mail

Jill F. Faber
Office of the Attorney General
28 Liberty Street
New York, New York 10005
Jill.Faber@ag.ny.gov

Re: Town of Forestburgh – Local Law 3 of 2023

Dear Ms. Faber,

Harris Beach PLLC represents the Town of Forestburgh (“Town”). I have received your April 19, 2024 letter to the Town regarding Local Law 3 of 2023 (“Local Law 3”). As discussed herein, your conclusions of law appear to be based on a selective or incorrect factual record. The Town unequivocally rejects your contention that it “discriminates against Jewish New Yorkers” through its adoption of Local Law 3. Moreover, the Town fully understands the scope of the Open Meetings Law (“OML”) and its obligations thereunder, and the Town has and will continue to fully comply with all applicable provisions of the OML.

A. Local Law 3 Does Not Exclude Places of Worship in Any Zoning District

Contrary to your contention, Local Law 3 (repealing and replacing the Town Zoning Code) allows places of worship in every zoning district and is therefore consistent with state zoning and federal laws. Under the Zoning Code, the Town is divided into two residential districts (Residential Recreation District [RR] and Rural Conservation District [RC]) and three business districts (Neighborhood Business District [B-1], Gateway Business District [B-2], and Four Corners Business District [B-3]). Each zoning district includes “Place of Worship” as an allowable use. “Place of Worship” is defined as “[a]ny structure used for worship or religious instruction including but not limited to a church, chapel, mosque, or synagogue and including administrative rooms accessory thereto” (Town Code¹ § 180-3). Thus, there is no “wholesale exclusion’ of religious uses from any district” as your letter claims. In fact, out of the 15 other towns located in Sullivan County, Forestburgh is one of two towns that allow religious uses in every zoning district, whereas there are five other towns in the County that allow religious uses in less than half of their zoning districts. Moreover, as the Town Zoning Code defines Place of Worship broadly to

¹ References to “Town Code § _” refers to the Town of Forestburgh Town Code, available at <https://ecode360.com/FO0593>.

encompass all religious faiths, it is unclear on what basis your referenced “report” focuses on the effects of Local Law 3 on the Jewish community only.

B. Local Law 3 Does Not Place Onerous Requirements on Religious Uses

Your conclusion that Local Law 3 requires religious uses to meet bulk requirements that “far exceed” those for comparable secular uses is incorrect. As explained below, your analysis appears to be based on selective data.

1. RR Residential Recreation District

The RR District was established to provide for residential development of low density in order to preserve the rural character of the Town. The bulk regulations for the RR district are as follows:

Description of permitted uses	Residential Recreation District - Minimum Requirements							Max Requirements	
	Lot Area	Lot Width	Front Yard	Side Yard	Rear Yard	Waterfront Setback	Accessory Structure Setback	Max Height	Lot Coverage
Permitted Uses									
Group Care Facility	2.3 acres	200	75	50	100	100	75 front road / 25 from side/rear	30	20%
Single Family Dwellings / Two Family Dwellings	2.3 acres	200	75	50	100	100	75 front road / 25 from side/rear	30	20%
Timber Harvesting *acreage must be contiguous	20 acres								
Special Uses									
Animal Husbandry	See section 180-18.								
Campground	20 acres	500	200	200	200	100	200	30	20%
Cemeteries	2.3 acres	200	75	50	100	100	75 front road / 25 from side/rear	30	10%
Clubhouses for social organizations with related recreational facilities	5 acres	200	75	100	100	100	75 front road / 25 from side/rear	30	30%
Commercial Nursery / Greenhouse	10 acres	200	75	200	200	100	75 front road / 25 from side/rear	30	30%
Day Care Center	5 acres	200	75	200	200	100	75 front road / 25 from side/rear	30	20%
Farm Operation	5 acres	200	75	150	150	100	75 front road / 25 from side/rear	30	30%
Fish Hatchery	5 acres	200	75	200	200	N/A	75 front road / 25 from side/rear	30	20%
Hotel / Motel	10 acres	200	75	200	200	100	75 front road / 25 from side/rear	30	30%
Kennel	10 acres	200	500	500	500	500	500 front road / 500 from side/rear	30	10%
Large Scale Solar Energy System	See section 180-28H.								
Library / Museum	5 acres	200	75	50	100	100	75 front road / 25 from side/rear	30	30%
Mining or other quarrying operations	20 acres	500	500	500	500	100	500 front road / 500 from side/rear	30	10%
Nursing Homes	10 acres	200	75	200	200	100	75 front road / 25 from side/rear	30	20%
Park	1 acre	200	75	50	100	N/A	75 front road / 25 from side/rear	N/A	N/A
Place of Worship	5 acres	200	75	200	200	100	75 front road / 25 from side/rear	30	30%
Recreation, Indoor Commercial	15 acres	200	200	200	200	100	200 front road / 200 from side/rear	30	20%
Recreation, Outdoor Commercial	15 acres	200	200	300	300	100	200 front road / 200 from side/rear	30	10%
Schools and colleges	5 acres	200	75	50	100	100	75 front road / 25 from side/rear	30	30%
Site Plan Approval									
Bed & Breakfast	2.3 acres	200	75	50	100	100	75 front road / 25 from side/rear	30	20%
Public Utilities Facility	1 acre	200	75	50	100	100	75 front road / 25 from side/rear	30	20%

As shown above, the five-acre minimum lot size requirement for Places of Worship in the RR District also applies to six other uses, including Day Care Centers, Library / Museums, and Schools / Colleges. There are several other uses comparable to Places of Worship that require more than five-acres (e.g. Indoor / Outdoor recreation [15 acres]; Nursing Homes [10 acres]; Hotel / Motel [10 acres]). While Clubhouses also require a 5-acre minimum, this use is not a comparable use to Places of Worship. Principal structure(s) for a Place of Worship are generally designed for larger gatherings of people requiring more space, while the Clubhouse use is intended for smaller gatherings by social organizations and limited to their members.² With respect to setback requirements in the RR District, Places of Worship are treated the same as Daycare Centers, Hotels / Motels, Nursing Homes, and Indoor Recreation.

2. RC Rural Conservation District

The RC District was established to protect sensitive natural areas from overdevelopment, recognizing these lands cannot be used for certain activities without directly affecting the health and safety of neighboring property owners or the community as a whole. The bulk regulations for the RC district are as follows:

Description of permitted uses	Minimum Requirements							Max Requirements		
	Lot Area	Lot Width	Front Yard	Side Yard	Rear Yard	Waterfront Setback	Accessory Structure Setback	Max Height	Lot Coverage	
Permitted Uses										
Group Care Facility	5 acres	300	150	50	150	100	150 front road / 50 from side/rear	30	20%	
Single Family Dwellings / Two Family Dwellings	5 acres	300	150	50	150	100	150 front road / 50 from side/rear	30	20%	
Timber Harvesting *acreage must be contiguous	20 acres									
Special Uses										
Agricultural Processing Facility	5 acres	200	75	150	150	100	75 front road / 25 from side/rear	30	20%	
Animal Husbandry	See section 180-18.									
Camperound	20 acres	300	200	200	200	100	200	30	20%	
Cemeteries	2.3 acres	300	150	50	150	100	75 front road / 25 from side/rear	30	10%	
Clubhouses for social organizations with related recreational facilities	5 acres	300	150	50	150	100	75 front road / 25 from side/rear	30	30%	
Commercial Nursery / Greenhouse	10 acres	200	75	200	200	100	75 front road / 25 from side/rear	30	30%	
Day Care Center	5 acres	200	75	200	200	100	75 front road / 25 from side/rear	30	20%	
Farm Operation	5 acres	200	75	150	150	100	75 front road / 25 from side/rear	30	30%	
Fish Hatchery	5 acres	200	75	200	200	N/A	75 front road / 25 from side/rear	30	20%	
Garage, Public	5 acres	200	100	100	100	100	100 front road / 100 from side/rear	30	20%	

² “Clubhouse” is defined as a “building used by a business or membership organization for social or recreation purposes” (Town Code § 180-3).

Hotel / Motel	10 acres	200	75	200	200	100	75 front road / 25 from side/rear	30	30%
Kennel	10 acres	200	500	500	500	500	500 front road / 500 from side/rear	30	10%
Large Scale Solar Energy System	See section 180-28H								
Library / Museum	5 acres	200	75	50	100	100	75 front road / 25 from side/rear	30	30%
Mining or other quarry operations	20 acres	500	500	500	500	100	500 front road / 500 from side/rear	30	N/A
Park	5 acre	200	75	50	100	N/A	75 front road / 25 from side/rear	N/A	N/A
Place of Worship	5 acres	200	75	200	200	100	75 front road / 25 from side/rear	30	30%
Recreation, Indoor Commercial	15 acres	200	200	200	200	100	200 front road / 200 from side/rear	30	20%
Recreation, Outdoor Commercial	15 acres	200	200	300	300	100	200 front road / 200 from side/rear	30	10%
Schools and colleges	5 acres	200	75	50	100	100	75 front road / 25 from side/rear	30	30%
Stable, Commercial	20 acres	300	200	200	200	100	200 front road / 200 from side/rear	30	20%
Site Plan Approval									
Bed & Breakfast	5 acres	300	150	50	100	100	150 front road / 25 from side/rear	30	20%
Public Utilities Facility	1 acre	200	75	50	100	100	75 front road / 25 from side/rear	30	20%

The five-acre minimum lot size requirement for Places of Worship in the RC District applies to 11 other uses, including Single-Family Dwellings, Group Care Facilities, Day Care Centers, Library / Museums, and Schools / Colleges. The RC District has other comparable uses to Places of Worship that require more than five-acres (e.g. Indoor / Outdoor recreation [15 acres]; Hotel / Motel [10 acres]). With respect to setback requirements in the RC District, Places of Worship are treated the same as Daycare Centers, and Hotels / Motels.

3. Business Districts

Prior to adoption of Local Law 3, there were only five parcels of land totaling less than nine acres in the entire Town included in the prior existing business district.³ Two of these parcels were located in the current B-1 District. One parcel was located in what is now the B-2 District. The remaining two parcels were located immediately south of the Neversink River Unique Area near the intersection of Oak Valley Road and Burns Road. Three of the five parcels included in the prior business district were less than one acre, therefore not meeting the then-applicable 2.3-acre minimum lot size for any business district use. For practical purposes, only the remaining 2.53-acre parcel (an existing auto repair shop) and 3.5-acre parcel (an existing residential dwelling) met the then existing bulk standards for any commercial development.

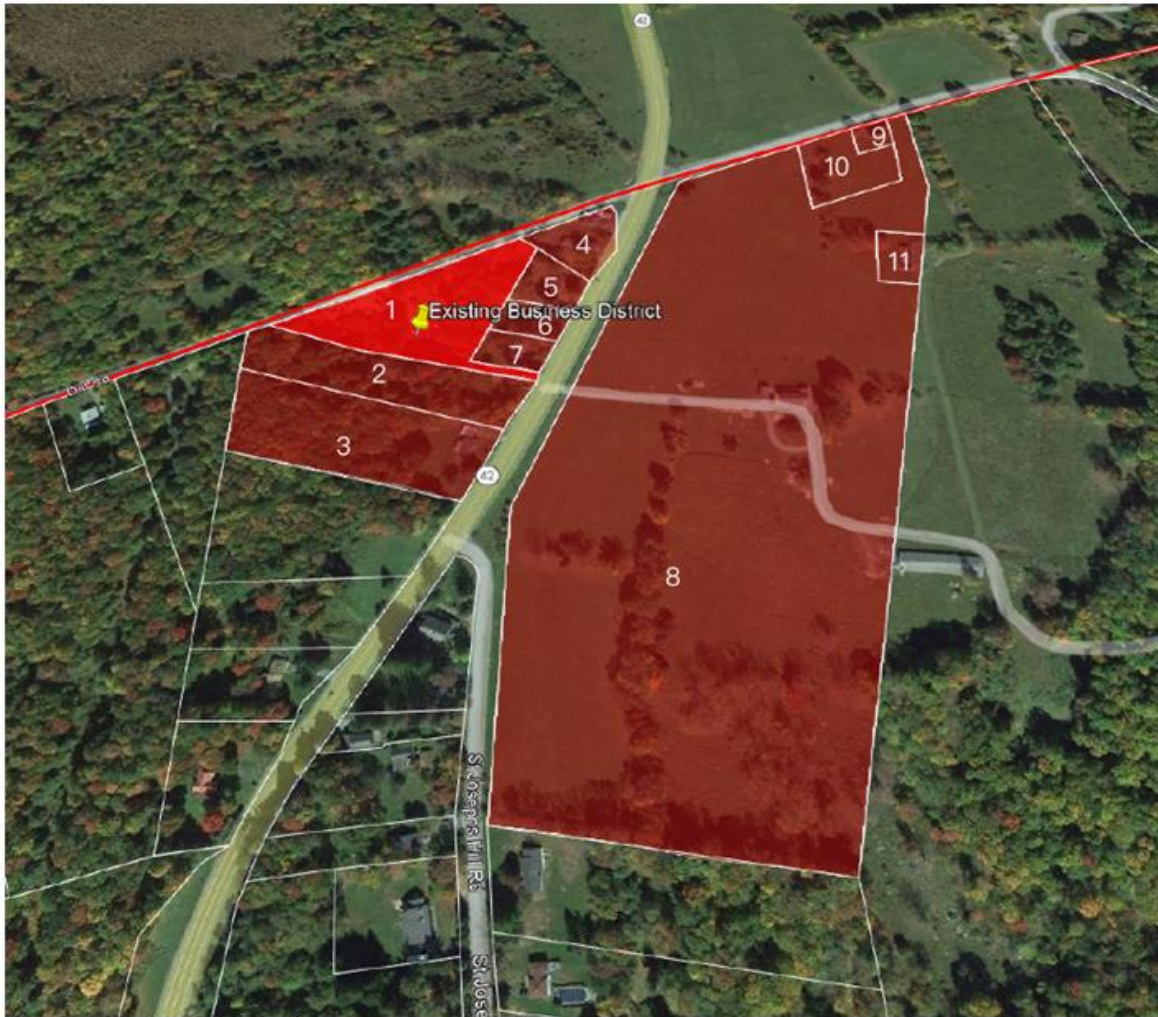
Under Local Law 3, the Town’s prior business district was eliminated and replaced with the B-1, B-2, and B-3 Districts. The B-1 District consists of eight parcels, two of which were previously in the old business district:

³ Section / Block / Lot (“SBL”) 6.-1-4.1 located at 21 Dill Road (2.53 acres); SBL 6.-2-32 located at 2846 State Route 42 (1.45 acres); SBL 13.-1-4 located at 1835 & 2841 State Route 42 (0.82 acres); SBL 27.-1-2.2 located at 21 Schaefer Lane (0.66 acres); and SBL 28.-1-11 located at 901 Oakland Valley Rd. (3.5 acres).



Map ID	<u>S/B/L</u>	<u>Acreage</u>	<u>Parcel Address</u>
1	6.-1-17	5.13	2861 State Route 42
2	6.-2-32	1.45	2846 State Route 42
3	13.-1-2	0.61	28 French Clearing Rd
4	13.-1-3.1	2.16	French Clearing Rd
5	13.-1-3.2	1.76	State Route 42
6	13.-1-3.3	0.95	2847 State Route 42
7	13.-1-4	0.82	1835 & 2841 State Route 42
8	14.-1-1	0.85	State Route 42

The B-2 District consists of 11 parcels, one of which was previously in the old business district:



Map ID	<u>S/B/L</u>	<u>Acreage</u>	<u>Parcel Address</u>
1	6.-1-4.1	2.53	21 Dill Road
2	6.-1-5	1.88	State Route 42
3	6.-1-6	2.59	3025 State Route 42
4	6.-1-4.2	0.66	3051/3055 State Route 42
5	6.-1-4.5	0.45	3045 State Route 42
6	6.-1-4.4	0.34	State Route 42
7	6.-1-4.3	0.34	3099 State Route 42
8	6.-2-36.41	25.87	3038 State Route 42
9	6.-2-36.54	0.21	Lake Joseph Dr
10	6.-2-36.55	1.01	Lake Joseph Dr
11	6.-2-36.59	0.38	Lake Joseph Dr

Finally, the B-3 District consists of 24 parcels, located at the intersection of State Route 42 and Hartwood Road:



Map ID	S/B/L	Acreage	Parcel Address
1	30.-1-18	0.2	Forestburgh Rd
2	30.-1-14.5	1.83	44 Forestburgh Road
3	30.-1-14.2	0.4	40 Forestburgh Road
4	30.-1-20.1	0.14	36 Forestburgh Rd
5	30.-1-14.9	0.17	30 Forestburgh Road
6	30.-1-14.8	3.68	Forestburgh Road
7	30.-1-19	0.28	Forestburgh Rd
8	30.-1-17	7.12	24 Forestburgh Rd
9	30.-1-15	4.11	State Route 42
10	30.-1-16	4.2	2267 State Route 42
11	30.-1-21	0.32	Forestburgh Rd
12	33.-1-26.2	4.87	39 Forestburgh Rd
13	33.-1-28	5.29	23 Forestburgh Rd
14	33.-1-29	0.33	23 Forestburgh Rd
15	33.-1-30	1.97	17 Forestburgh Rd
16	33.-1-31	1.06	5 Forestburgh Rd
17	33.-1-32.2	1.61	16 Mill Road
18	33.-1-32.5	3.37	Mill Rd
19	33.-1-32.6	5.16	State Route 42
20	33.-1-32.7	4.07	2213 State Route 42
21	34.-1-1	0.5	State Route 42
22	34.-1-2	0.92	State Route 42
23	34.-1-3	52.64	2200, 2222 State Route 42
24	34.-1-4	0.37	38 Hartwood Road

Given that the legislative intent behind establishing the B-1, B-2, and B-3 zoning districts in the areas identified above was to promote appropriate commercial development on already existing small parcels, the district bulk regulations were designed to incentivize small-scale business enterprises such as breweries, eateries, and other service establishments. With respect to specific setbacks, Places of Worship are treated the same as Hotels / Motels in the B-1, B-2, and B-3 zoning districts. However, since Hotels and Motels are a more intensive use, those uses are subject to additional land use controls under Town Code Article VI Special Supplemental Regulations of Specific Land Uses (Town Code §§180-19 through 180-28). Local Law 3 does not impose any such additional controls on Places of Worship.

C. Local Law 3 Has No Material Impact on Religious Uses When Compared to Prior Zoning

Your claim that the zoning district regulations adopted under Local Law 3 impose a “substantial increase over the 2.25 minimum acreage of places of worship in both business and residential zones” and that “[i]f any district lacks available five-acre lots Local Law 3 would unlawfully eliminate religious uses from that district” is simply wrong. Your analysis fails to consider the extensive protections incorporated into Local Law 3 to protect property rights and religious uses.

1. New Bulk Regulation Reduction Allowance for Nonconforming Lots

Under the prior zoning code, the Town was divided into two residential districts (Residential Recreation District [RR-1] and Rural Conservation District [RC]) and one Business District (B-1). The bulk regulations in the prior antiquated code, however, made no distinction between the lot and setback requirements for the allowable uses:

§ 85-9. Bulk and yard requirements. [Amended 12-8-1977 by L.L. No. 12-1977; 8-14-1980 by L.L. No. 2-1980; 9-3-1987 by L.L. No. 3-1987]

A. Bulk and yard requirements.

Minimum Required	In RR-1 District	In B-1 District	In RC District
Lot area (square feet)	100,000	100,000	5 acres
Lot width (feet)	200	200	300
Front yard setback (feet)	75	75	150 from edge of road right-of-way
Side yard setback (feet)	50	50	50 per setback
Rear yard setback (feet)	100	100	150
Accessory structure setback (feet)	25	25	25 from any lot line
Maximum Permitted:			
Building height (feet)	30	30	30
Dwelling units	1	1	1

For example, low intensity uses such as residential dwellings or hunting cabins were subject to the same setback requirements as much more intensive uses like hotels and motels, colleges, mobile home parks, and commercial fish hatcheries, regardless of whether such uses were occurring in a RR-1 District or B-1 district.

While it is true that Local Law 3 now imposes particularized bulk regulations depending on the class of use and the zoning district, it also contains significant and material changes to the Town Code to ensure that the new bulk regulations do not have an exclusionary effect or impinge on vested rights. For example, Local Law 3 repealed § 85-12 of the prior zoning code (pertaining to nonconforming uses and structures) and replaced it with a new Article IV that recognizes the status of prior existing nonconforming lots.⁴ Article IV allows a property owner to construct a building or structure on a lot that does not meet the applicable bulk regulations so long as the following conditions are met: (a) the proposed use is allowed in the zoning district; (b) the property owner held title to the lot prior to the effective date of Local Law 3 (November 2023); (c) the owner does not own adjoining property; (d) bulk and yard requirements meet at least 50% of the requirement for the zoning district; and (e) if required, a septic system meeting New York State standards can be placed on the lot should public sewer is not available. With respect to condition (d), Article IV further provides that

[f]or any lawfully existing nonconforming lot, and solely for the purpose of siting one principal building and any lawful accessory structures thereon, the allowable reduction to the bulk and yard requirements set forth in § 180-12B(1)(d) above shall apply **automatically** but is subject to any greater setbacks which may be required for swimming pools, swimming pool decks, slabs, patios or equipment and tennis courts.

(Town Code § 180-12 [B] [2] [emphasis added]). Thus, when the automatic 50% reduction allowance in Article IV is applied, the impact of Local Law 3 on religious uses in the RR, B-1, B-2, and B-3 zoning districts is as follows:

Comparison of bulk and yard requirements for Place of Worship – Residential Districts and Business Districts				
	<i>Pre-Amendment</i>	<i>Local Law 3 of 2023</i>	<i>Local Law 3 of 2023 (w/ Article IV allowance)</i>	<i>Local Law 3 of 2023 Impact</i>
Lot Area	2.3 A	5 A	2.5 A	Increases lot area requirement by 0.2 Acres
Lot Width	200	200	100	Reduces lot width requirement by 100 ft
Front Setback	75	75	37.5	Reduces front setback by 37.5 ft
Side Setback	50	200	100	Increases side setback by 50 ft
Rear Setback	100	200	100	No change
Waterfront Setback	n/a	100	50	Adds a 50 ft setback for waterfront properties
Accessory Setback	25	75 F / 25 R	37.5 F / 12.5 R	Increase front setback by 12.5 ft / reduces rear setback by 12.5 ft

⁴ “Nonconforming lot” is defined as “[a]ny lot lawfully existing in single and separate ownership prior to the adoption of zoning regulations, or any amendment thereto, affecting such lot which does not conform to one or more current dimensional regulations hereof for the district in which it is situated” (Town Code § 180-3).

Contrary to your letter’s claim that Local Law 3 contains “[s]evere [m]inimum [r]equirements for Places of Worship,” the facts, as shown above, demonstrate the exact opposite. With respect to nonconforming lots in the RR and B-1, B-2, and B-3 zoning districts, Local Law 3 results in the following changes: (1) a de minimis increase in the lot area requirement by 0.2 acres; (2) an increase in the side setback requirement by 50 feet; (3) the addition of a new waterfront setback of 50 feet;⁵ and (4) an increase in the front setback requirement for accessory structures by 12.5 feet. These increases, however, are offset by the following reductions: (1) a substantial reduction in the lot width requirement by 100 feet; (2) a reduction in the front setback requirement by 37.5 feet; (3) no change with respect to rear setback; and (4) a reduction in the rear setback requirement for accessory structures by 12.5 feet.

When the Article IV reduction allowance is applied to religious uses in the RC zoning district, the impact of Local Law 3 is as follows:

Comparison of bulk and yard requirements for Place of Worship in RC Districts				
	<i>Pre-Amendment</i>	<i>Local Law 3 of 2023</i>	<i>Local Law 3 of 2023 (w/ Article IV allowance)</i>	<i>Local Law 3 of 2023 Impact</i>
Lot Area	5 A	5 A	2.5 A	Reduces lot area requirement by 2.5 Acres
Lot Width	300	200	100	Reduces lot width requirement by 200 ft
Front Setback	150	75	37.5	Reduces front setback by 112.5 feet
Side Setback	50	200	100	Increases side setback by 50 ft
Rear Setback	150	200	100	Reduces rear setback by 50 ft
Waterfront Setback	n/a	100	50	Adds a 50 ft setback for waterfront properties
Accessory Setback	25	75 F / 25 R	37.5 / 12.5 R	Increase front setback by 12.5 ft / reduces rear setback by 12.5 ft

Based on the above, the positive benefits for religious uses are even more apparent in the RC District. With respect to nonconforming lots in the RC zoning district, Local Law 3 results in the following changes: (1) an increase in the side setback requirement by 50 feet; (2) the addition of a new waterfront setback of 50 feet; and (3) an increase in the front setback requirement for accessory structures by 12.5 feet. These increases, however, are substantially outweighed by the following reductions: (1) a reduction in the lot area requirement by 2.5 acres; (2) a substantial reduction in the lot width requirement by up to 200 feet; (3) a substantial reduction in the front setback requirement by 112.5 feet; (4) a reduction in the rear setback requirement by 50 feet; and (5) a reduction in the rear setback requirement for accessory structures by 12.5 feet.

In terms of real-world application, the impacts of Local Law 3 on the specific B-1, B-2, and B-3 zoning district parcels identified above are as follows:

⁵ It should be noted that the waterfront setback has been added to all uses in the RR, RC, B-1, B-2, and B-3 zoning districts on waterfront properties. Thus, Places of Worship are treated no differently than other uses with respect to this new requirement.

Impact of Local Law 3 of 2023 on Religious Uses Located Within Business Zoning Districts					
<i>B-1 Zoning District Parcels</i>					
Map ID	S/B/L	Acreeage	Under Prior Zoning Code (2.3 A Lot Area)	Under Local Law 3 of 2023 (w/o Article IV Allowance) (5 A Lot Area)	Under Local Law 3 of 2023 (with Article IV Allowance) (2.5 A Lot Area)
1	6.-1-17	5.13	Yes	Yes	Yes
2	6.-2-32	1.45	No	No	No
3	13.-1-2	0.61	No	No	No
4	13.-1-3.1	2.16	No	No	No
5	13.-1-3.2	1.76	No	No	No
6	13.-1-3.3	0.95	No	No	No
7	13.-1-4	0.82	No	No	No
8	14.-1-1	0.85	No	No	No
<i>B-2 Zoning District Parcels</i>					
Map ID	S/B/L	Acreeage	Under Prior Zoning Code (2.3 A Lot Area)	Under Local Law 3 of 2023 (w/o Article IV Allowance) (5 A Lot Area)	Under Local Law 3 of 2023 (with Article IV Allowance) (2.5 A Lot Area)
1	6.-1-4.1	2.53	Yes	No	Yes
2	6.-1-5	1.88	No	No	No
3	6.-1-6	2.59	Yes	No	Yes
4	6.-1-4.2	0.66	No	No	No
5	6.-1-4.5	0.45	No	No	No
6	6.-1-4.4	0.34	No	No	No
7	6.-1-4.3	0.34	No	No	No
8	6.-2-36.41	25.87	Yes	Yes	Yes
9	6.-2-36.54	0.21	No	No	No
10	6.-2-36.55	1.01	No	No	No
11	6.-2-36.59	0.38	No	No	No

Impact of Local Law 3 of 2023 on Religious Uses Located Within Business Zoning Districts					
<i>B-3 Zoning District Parcels</i>					
Map ID	S/B/L	Acreage	Under Prior Zoning Code (2.3 A Lot Area)	Under Local Law 3 of 2023 (w/o Article IV Allowance) (5 A Lot Area)	Under Local Law 3 of 2023 (with Article IV Allowance) (2.5 A Lot Area)
1	30.-1-18	0.2	No	No	No
2	30.-1-14.5	1.83	No	No	No
3	30.-1-14.2	0.4	No	No	No
4	30.-1-20.1	0.14	No	No	No
5	30.-1-14.9	0.17	No	No	No
6	30.-1-14.8	3.68	Yes	No	Yes
7	30.-1-19	0.28	No	No	No
8	30.-1-17	7.12	Yes	Yes	Yes
9	30.-1-15	4.11	Yes	No	Yes
10	30.-1-16	4.2	Yes	No	Yes
11	30.-1-21	0.32	No	No	No
12	33.-1-26.2	4.87	Yes	No	Yes
13	33.-1-28	5.29	Yes	Yes	Yes
14	33.-1-29	0.33	No	No	No
15	33.-1-30	1.97	No	No	No
16	33.-1-31	1.06	No	No	No
17	33.-1-32.2	1.61	No	No	No
18	33.-1-32.5	3.37	Yes	No	Yes
19	33.-1-32.6	5.16	Yes	Yes	Yes
20	33.-1-32.7	4.07	Yes	No	Yes
21	34.-1-1	0.5	No	No	No
22	34.-1-2	0.92	No	No	No
23	34.-1-3	52.64	Yes	Yes	Yes
24	34.-1-4	0.37	No	No	No

As demonstrated above, of the 43 parcels now located in the B-1, B-2, and B-3 zoning districts, only 14 lots would have met the lot area requirement under the prior code. After Local Law 3 was adopted, 8 of the 14 lots would not meet lot area requirements under the applicable zoning district regulations, however, because religious use is allowable in all zoning districts and all 8 parcels would be deemed prior nonconforming lots, all 14 lots that met the lot area requirement under the prior code could still be used as a Place of Worship.

2. Any Lot Not Meeting Applicable District Regulations for Place of Worship May Still Be Authorized with a Variance

In addition to the Article IV reduction allowances, Local Law 3 repealed and replaced prior outdated Zoning Board of Appeals procedures and review standards as related to variances. With respect to legal review standards in granting variances, Local Law 3 did away with prior arcane language requiring a finding that the requested variance “will not be contrary to the public interest,” that there be “exceptional and extraordinary circumstances,” that the request variance “not represent a radical departure” and “in harmony with the general purpose and intent” of the local zoning code. Instead, Local Law 3 now requires that “[a]pplications for an area variance or use variance shall be subject to the review standards and considerations set forth in Town Law § 267-b” (Town Code § 180-41). This change affords land use and area variance applicants, including those seeking to use property for religious purposes, procedural clarity and adherence to established state law with respect to seeing area or a use variance in cases where strict adherence to the zoning regulations represents an unnecessary hardship.

D. The Town Complies with the N.Y. Open Meetings Law

With respect to your office’s “specific concerns” regarding the Town’s adherence to the OML, be advised that the Town and its officials are fully informed of their obligations under the OML. While your letter failed to provide any facts supporting your “specific concerns,” the Town confirms the following: (1) all meetings of the Town Board, Planning Board, and the Zoning Board of Appeals are held on notice; (2) all executive sessions are held after a majority vote of the sitting board taken in an open meetings; (3) the general topic(s) or subject matter(s) to be considered in executive session are recorded in the minutes of the open meeting; (4) no individuals other than the sitting board members and Town Counsel have been invited to participate in an executive session held to discuss pending litigation matters unless such individual is a co-party with the Town in such litigation; (5) the Town Board, Planning Board and the Zoning Board of Appeals do not take votes or authorize the expenditure of funds in executive sessions, therefore the OML obligations with respect to recording minutes in executive sessions do not apply; and (6) Local Law 3 was developed in an open, transparent public process, including holding several public hearings, and voted upon in an open meeting.

We encourage your office to carefully review the factual record to correct any misunderstandings it may still have about Local Law 3, the Town’s compliance with the OML, or any other matter currently being litigated by Lost Lake Holdings, LLC (a private developer currently in litigation with the Town). If you have any further questions with respect to the above or any other issue, we hope that you will contact us to discuss the matter.

Sincerely,

Javid Afzali

c. Daniel S. Hogue, Jr., Town Supervisor