

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK, CIVIL TERM

UNITED AMERICAN MUSLIM
ASSOCIATION OF N.Y., INC.,

Petitioner,

v.

ZONING BOARD OF APPEALS OF TOWN
OF ISLIP,

Respondent,

For a Judgment Pursuant to Article 78 of the
New York Civil Practice Law and Rules.

Index No: _____

**MEMORANDUM OF LAW IN SUPPORT OF
ARTICLE 78 PETITION OF THE UNITED AMERICAN MUSLIM ASSOCIATION
OF N.Y., INC.**

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Petitioner the United American Muslim Association of N.Y., Inc. (“UAMA”) respectfully submits this memorandum of law in support of its Petition under Article 78 of the Civil Practice Law and Rules (“CPLR”), seeking to overturn the Decision, dated September 24, 2026, of the Zoning Board of Appeals (“ZBA”) of the Town of Islip (the “Town”).

PRELIMINARY STATEMENT

UAMA seeks an order annulling the ZBA’s September 24, 2026 determination and reinstating the Town Plans Examiner’s January 21, 2026 determination that boarding is a permissible accessory use to UAMA’s proposed parochial school. That relief is warranted because the ZBA’s decision disregards relevant precedent, discounts material evidence, and substitutes speculation for reasoned findings. New York courts have repeatedly recognized residential facilities as permissible components of religious and educational uses. Yet the ZBA concluded that the boarding component of UAMA’s school was neither “customary” nor “clearly incidental” to education and included activities “commonly conducted as a business.” Those conclusions cannot be reconciled with the governing law.

The setting makes those errors particularly stark. A century ago, the Montfort Missionaries established a religious boarding school at 26 South Saxon Avenue, the property at issue (the “Property”). For nearly fifty years, young men lived, learned, and prayed there. When the school closed, the Property continued to serve as a home for members of that religious community. Its history reflects a familiar understanding: that education, faith, and communal life can flourish under one roof. UAMA seeks to renew that tradition, combining academic instruction with Islamic education and worship. A new community of faith would carry forward a familiar purpose. Yet the ZBA concluded that boarding students on this very Property was neither customary nor clearly incidental to their education.

New York law recognizes the relationship that this Property's history illustrates. In *Association of Zone A&B Homeowners Subsidiary, Inc. v. Zoning Board of Appeals*, the Second Department held that a religious institution did not need a use variance for a proposed school building containing dormitory rooms, an infirmary, and guest accommodations. 298 A.D.2d 583, 583–84 (2d Dep't 2002). Like Islip's Code, the ordinance in that case permitted schools, places of worship, and customary accessory uses in a residential district. The court recognized both the favored status of religious and educational uses and the permissibility of facilities reasonably associated with an institution's educational purpose. *Id.* at 584. That decision directly addresses the relationship the ZBA was required to evaluate here.

Other decisions reinforce the point. In *Yeshiva Talmud Torah Ohr Moshe v. Zoning Board of Appeals*, the Third Department held that a provision permitting places of worship encompassed living and dining facilities, recognizing how residence supported religious reflection and study. 170 A.D.3d 1488, 1490 (3d Dep't 2019). Decades earlier, courts recognized dormitories as customary school accessory uses, *N.Y. Inst. of Tech., Inc. v. Ruckgaber*, 317 N.Y.S.2d 89, 93 (Sup. Ct. Nassau Cnty. 1970), and construed a residential zoning ordinance to permit "community living for the purpose of religious study, education, fellowship and contemplation," *Diocese of Cent. N.Y. v. Schwarzer*, 199 N.Y.S.2d 939, 944 (Sup. Ct. Madison Cnty. 1960). These cases required the ZBA to confront an established legal understanding: living together serves the very religious and educational purposes the zoning law favors.

The Plans Examiner's determination honored that understanding. Before purchasing the Property, UAMA obtained the Town's confirmation that its proposed school was permitted as of right and that boarding was a permissible accessory use. UAMA relied on that

determination in acquiring the Property. Two residents appealed. In reviewing their challenge, the ZBA was required to apply relevant precedent and exercise greater flexibility to accommodate religious uses. *See Rosenfeld v. Zoning Bd. of Appeals*, 6 A.D.3d 450, 450 (2d Dep’t 2004). Instead, it resolved uncertainty against UAMA, treated suspicion as evidence, and turned the ordinary features of a boarding school into reasons to prohibit one.

The defects begin with the ZBA’s unexplained assumption of authority to hear the appeal. UAMA raised two objections: the appellants lacked the particularized injury necessary for standing, and their appeal was untimely. The ZBA addressed neither, leaving this Court without the findings or reasoning necessary to review its rejection of potentially dispositive objections. The ZBA then reversed the burden of proof, faulting UAMA, the party defending the Plans Examiner’s ruling, for failing to prove the determination correct. Each merits finding rests on purported gaps in the record that should have defeated the appeal, not sustained it.

On the merits, the ZBA’s “customary” finding disregarded the judicial recognition of school residential facilities and the local evidence confirming that relationship: the Property’s history and the existence of another boarding school in a “Residence AAA District”—the same type of district in which the Property is located—within the Town. The ZBA distinguished those institutions by their approval histories, but those distinctions do not erase their relevance to customary practice. The ZBA instead relied on a generalized statewide statistic, while acknowledging that evidence specifically concerning parochial schools would have been more useful. The prevalence of day schools does not answer whether boarding is an established accompaniment to religious education. The case law and local practice supplied evidence bearing on that question. The ZBA ignored it.

The ZBA’s treatment of “incidental” was equally strained. UAMA explained that

boarding serves its educational and religious mission and identified approximately one-third of the principal building as residential space. The ZBA discounted that calculation and expanded the supposed residential footprint by counting other shared facilities against the school's educational use. But students eat, gather, study, and participate in activities outside the classroom whether or not they sleep on campus. Those functions do not lose their educational character at the end of the school day.

Finally, the ZBA relied on outdated promotional materials that UAMA expressly repudiated to shoehorn commercial activities into the proposed use. It thus evaluated the boarding component through activities excluded from the proposal. Rather than assess the use UAMA actually sought, or consider whether appropriate limitations could resolve its concerns, the ZBA treated the unfounded possibility of some different future use as reason to prohibit the actual present use. Suspicion supplied what the record did not.

Article 78 deference does not insulate that reasoning from review. The Second Department has already rejected a determination by this very ZBA that rested on disbelief of uncontroverted evidence and the substitution of its own conclusory suppositions. *Arceri v. Town of Islip Zoning Bd. of Appeals*, 16 A.D.3d 411, 412–13 (2d Dep't 2005). The same fundamental defect runs through this determination. There, the court required the ZBA to issue the requested favorable interpretation. Here, the Plans Examiner has already issued the favorable determination that the record and governing law support. It should be reinstated.

UAMA seeks the application of principles New York courts have long recognized: religious education may encompass shared study, worship, and residence, and zoning authorities must evaluate that use with the accommodation the law requires. Those protections must extend with equal force to an Islamic school seeking to renew a tradition of religious

learning on this Property. The religious tradition may change; the law's protection must remain constant. The ZBA's unsupported reasoning hinders the continued development of a century of faith and education. This Court should annul the ZBA's decision and reinstate the Plans Examiner's determination.

FACTUAL BACKGROUND

A. The Proposed School

UAMA is a nonprofit organization founded in 1980 to advance Islamic education, moral development, and community service. *See* Ex. 1 at 2; Ex. 10 at 2. Its principal focus is education: UAMA operates full-time parochial boarding schools, weekend schools, summer camps, and other programs combining academic instruction with Islamic studies and worship. It also supports hunger relief and other philanthropic initiatives, serving people of all backgrounds regardless of religion, race, or ethnicity. UAMA has served Long Island since opening its Deer Park branch in 1993 and now has three centers across the community.

UAMA sought to purchase the Property from the Montfort Missionaries, a Roman Catholic congregation of priests and brothers. The Missionaries operated a seminary and parochial boarding school for teenage boys there between 1926 and 1972. Thereafter, the Property served as the congregation's headquarters and a home for aging priests. It retains its boarding facilities today. *See* Ex. 1 at 2.¹

UAMA proposed to open Bay Shore Academy, a parochial boarding school providing religious and secular education to 120 students, with approximately 20 residential faculty and staff supporting daily operations. Boarding is central to UAMA's educational and religious

¹ "Ex. __" refers to the exhibits annexed to the affirmation of Muhammad U. Faridi, attached hereto.

mission because it creates an immersive environment for students' academic and spiritual development. *See id.*

The Property lies within the Town's Residence AAA District. *See* Ex. 2. Town Code § 68-45(B) expressly permits public and parochial schools in that district. Section 68-48(A)(1)(j) also permits "[o]ther customary accessory uses, structures and buildings, provided that such uses are clearly incidental to the principal use and do not include any activity commonly conducted as a business."²

B. The Town's Favorable Zoning Determination

On January 5, 2026, UAMA submitted a Zoning Inquiry Form asking whether its proposed parochial boarding school was permitted and whether discretionary approvals would be required. Ex. 7. UAMA supplied proposed floor plans and a conceptual site plan showing how it intended to use the existing facilities. *See* Ex. 1 at 2; Ex. 6.

By letter dated January 21, 2026, the Town's Plans Examiner determined that the proposed parochial school was permitted as of right under § 68-45(B), and that boarding was a permissible accessory use. *See* Ex. 2. In reliance on that determination, UAMA closed on the Property in June 2026. *See* Ex. 1 at 2.

C. The Residents' Appeal

On May 1, 2026, more than three months after the Plans Examiner's determination, Bay Shore residents Dedi Avner and Laurel Eastman appealed it to the ZBA. Avner and Eastman live approximately 0.6 miles from the Property. *See id.* at 1; Ex. 4 at 1. The appellants contended that boarding was not a permissible accessory use and required a use variance or

² The ZBA's decision erroneously refers to this provision as "§ 68-48(j)." But the catchall for customary accessory uses in Residence AAA District appears in the Town Code at § 68-48(A)(1)(j). This memorandum uses the Code's numbering.

Code amendment. *See* Ex. 8 at 1; Ex. 9 at 4–5; Ex. 1 at 1, 3.

UAMA raised two threshold objections: (i) the appellants lacked standing because they had not demonstrated a particularized injury; and (ii) their appeal was untimely. On the merits, UAMA argued that the Plans Examiner’s interpretation followed the Code’s text and structure and state law favoring religious and educational uses. UAMA also invoked federal protections against religious discrimination in land use, including the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc et seq., and expressed concern that the appeal sought to “singl[e] out an Islamic school for disfavored treatment relative to similarly situated religious or secular schools.” Ex. 1 at 1, 3–7.

D. The Public Hearing

The ZBA held a public hearing on July 21, 2026. *See* Ex. 4 at 1. The hearing followed a pattern that has become all too familiar when Muslim communities seek land use approvals. The crowd made its sympathies plain. Attendees repeatedly applauded the appellants’ counsel and met UAMA’s counsel with jeers and boos. The disparity was stark enough that one ZBA member observed, “I don’t remember hearing th[ese] guffaws when the [appellants’] attorneys were being heard.” Ex. 11 at 87:18–20.³ At one point, the ZBA recessed to “calm” the crowd and warned that it would end the hearing if the disruptions continued. *Id.* at 69:13–18.

Much of the public commentary had nothing to do with the question before the ZBA, which was whether boarding qualified as an accessory use. Instead, speakers aired grievances about Islam, immigration, and national security. One resident reminded the room: “we’re

³ A video of the hearing is available at the Town’s YouTube channel: <https://www.youtube.com/watch?v=2yBZduujCuM>.

actively at war with Iran.”⁴ *Id.* at 171:6–7. To applause, he questioned whether Suffolk County “need[ed]” an Islamic center and suggested that the school’s students would be in the country illegally. *Id.* at 172:23–173:4. Another resident called the Islamic call to prayer “very, very disturbing.” *Id.* at 165:4–11. A third said he would “hate to see” Islip become like Mineola. *Id.* at 197:20–22.

E. The ZBA’s Reversal

On September 22, 2026, the ZBA voted three to one to reverse the Plans Examiner’s determination. Its written decision, filed with the Town Clerk on September 24, acknowledged that the Code permits the principal use as a parochial school but concluded that boarding failed each of § 68-48(A)(1)(j)’s three accessory-use requirements. Ex. 4 at 1–3, 10–11. *First*, the ZBA found boarding was not “customary,”⁵ relying in part on the statewide statistic concerning the prevalence of boarding schools. It distinguished the Property’s historical use because the Catholic seminary had been established under a different zoning scheme, and Harrow because its predecessor had obtained a special permit. *Id.* at 3–5, 8–10. *Second*, the ZBA found boarding was not “clearly incidental” to the school. It declined to treat UAMA’s estimate that residential space occupied approximately one-third of the principal building as determinative, reasoning that dining, recreational, and other shared areas also served residents. It also cited purportedly insufficient limitations on guest accommodations. *Id.* at 5–7. *Third*, the ZBA concluded that the proposal included activities commonly conducted as a business. It relied on

⁴ Following this comment, a ZBA member sought to have the speaker removed from the hearing, but loud and sustained opposition from the audience forced the ZBA to abandon this effort. The speaker was permitted to continue. Ex. 11 at 171:6–173:20.

⁵ The ZBA interpreted “customary” to mean “commonly practiced, used, or observed,” and something “based on or established by custom.” Ex. 4 at 3–4.

earlier promotional materials describing daycare services and social events, notwithstanding UAMA's express repudiation of those uses. *Id.* at 7–8.

The ZBA did not address UAMA's standing or timeliness objections. *See generally id.* Its determination prevents UAMA from operating the proposed boarding school without obtaining a use variance, delaying the school's planned operations.

STANDARD OF REVIEW

Three principles bearing on the standard of review are applicable here. *First*, under Article 78, a zoning determination must be annulled if it is “illegal, arbitrary and capricious, or an abuse of discretion.” *Arceri*, 16 A.D.3d at 412–13. While Article 78 review is deferential, the determination must have a rational basis in the record. *Pell v. Bd. of Educ.*, 34 N.Y.2d 222, 231 (1974). The agency must also sufficiently explain the factual basis for its decision to permit meaningful review; a court cannot supply findings or rationales. *Montauk Improvement, Inc. v. Proccacino*, 41 N.Y.2d 913, 913–14 (1977).

Second, the ZBA's interpretive discretion is likewise bounded. Zoning ordinances must be strictly construed against the municipality, and ambiguities must be resolved in favor of the property owner. *Rendely v. Town of Huntington*, 44 A.D.3d 864, 865 (2d Dep't 2007); *Sullivan v. Bd. of Zoning Appeals*, 144 A.D.3d 1480, 1482 (3d Dep't 2016). Additional protections govern religious and educational uses, which are favored because they presumptively advance public welfare and morals. *Ass'n of Zone A & B Homeowners*, 298 A.D.2d at 584. Religious institutions remain subject to zoning laws, but municipalities must exercise “greater flexibility” in evaluating their proposed uses, and “every effort to accommodate the religious use must be made.” *Rosenfeld*, 6 A.D.3d at 450 (quoting *Genesis Assembly of God v. Davies*, 208 A.D.2d 627, 628 (2d Dep't 1994)). That obligation is affirmative: zoning boards must suggest

measures that accommodate a religious use while mitigating adverse effects on the surrounding community. *Islamic Soc’y of Westchester & Rockland, Inc. v. Foley*, 96 A.D.2d 536, 537 (2d Dep’t 1983).

Third, although “a zoning board’s interpretation of its zoning ordinance is entitled to great deference,” where, as here, “the issue involves pure legal interpretation of statutory terms, deference to the zoning board of appeals is not required.” *Bartolacci v. Vill. of Tarrytown Zoning Bd. of Appeals*, 144 A.D.3d 903, 904 (2d Dep’t 2016) (cleaned up). “[I]n such circumstances, the judiciary is free to ascertain the proper interpretation from the statutory language and legislative intent.” *Id.* “If the law or ordinance at issue does not define a particular term, courts will afford such term its plain or ordinary meaning, and any ambiguity in the language employed must be resolved in favor of the property owner.” *Yeshiva Talmud Torah Ohr Moshe*, 170 A.D.3d at 1489 (quoting *Sullivan*, 144 A.D.3d at 1482).

ARGUMENT

The ZBA’s determination cannot survive. At the threshold, the ZBA failed to address UAMA’s two procedural objections and upended the burden of proof to UAMA’s detriment. On the merits, each of the ZBA’s three findings independently lacks a rational basis: the ZBA discounted established boarding-school uses when assessing what is “customary”; inflated the residential footprint by treating shared school facilities as evidence of an independent residential use; and found prohibited commercial activity based on uses UAMA disclaimed. These errors deprived the determination of the reasoned, record-based foundation Article 78 requires.

I. The ZBA’s Decision Suffers from Fundamental Procedural Defects

The ZBA’s determination is hobbled from the start by the ZBA’s failure to observe two

key procedural requirements: it ignored UAMA's objections as to the justiciability of the appeal; and it inverted the burden of proof. These are not mere peccadilloes, but fundamental defects that independently demand annulment.

First, before overturning the Plans Examiner's determination, the ZBA was required to address UAMA's objections to the appeal's justiciability. Town Law § 267-a(4) permits a private party to appeal as a "person aggrieved," and § 267-a(5)(b) requires an appeal within 60 days after the administrative determination is filed. UAMA challenged the appellants' compliance with both requirements. *See* Ex. 1 at 3–4, 7. The ZBA resolved neither objection, supplying no findings to support its decision to proceed. *See* Ex. 4 at 2–3.

That omission prevents meaningful judicial review. An agency must explain the factual basis for its determination; a reviewing court cannot supply the missing rationale. *Montauk Improv., Inc.*, 41 N.Y.2d at 913–14. In *Graziose v. DiNapoli*, the court annulled an administrative determination because the hearing officer neither acknowledged nor addressed a preserved argument, leaving the court unable to assess whether the determination was rational. 110 A.D.3d 1205, 1207 (3d Dep't 2013). The same defect is present here, where the unanswered objections concerned the ZBA's authority to entertain the appeal at all.

Second, the ZBA's merits analysis rests on a basic legal error that infected each of its three findings: it required UAMA, the party defending the Plans Examiner's determination, to prove that the determination was correct. The residents, not UAMA, invoked the ZBA's appellate jurisdiction to overturn that determination, Ex. 4 at 1–2, and thus they bore the burden of proving that the Plans Examiner erred, *cf. Russo v. Stevens*, 7 A.D.2d 575, 578 (3d Dep't 1959) (where a building official issues a determination, the burden is on those who "attacked the permit before the Board of Zoning Appeals" to prove its issuance violated the ordinance).

The ZBA inverted that allocation. It never found that the appellants had proved the Plans Examiner wrong. It instead concluded that “the property owner has not demonstrated” that boarding is customary, clearly incidental, or free of business activity, Ex. 4 at 10; *see also id.* at 5, 7, and then treated every gap in the record as UAMA’s failure rather than the appellants’. It was the appellants’ burden to show that the residential component overwhelmed the school; yet the ZBA rejected UAMA’s residential-space calculation not because the appellants disproved it, but because “nothing in the record” explained how it was derived. *Id.* at 6. It was the appellants’ burden to show that the guest rooms would serve something other than the school; yet the ZBA faulted UAMA because the record did not “definitively identify the intended occupants” or “contain any proposed limitation,” while conceding that school-related visitors “could remain incidental to the principal educational use.” *Id.* at 5. It was the appellants’ burden to show that boarding is not customary to parochial schools; yet the ZBA accepted a statewide statistic covering all schools, acknowledged that evidence about parochial schools “would have been” more useful, and then held UAMA responsible because “no contrary testimony or evidence was offered.” *Id.* at 4. And it was the appellants’ burden to show that the boarding component would include business activity; yet the ZBA relied solely on promotional materials that UAMA had expressly “disputed and repudiated,” requiring UAMA to disprove uses it never proposed. *Id.* at 7. None of these was a deficiency in UAMA’s proof. Each was a failure of the appellants’ proof, and under a correct allocation of the burden, each should have defeated the appeal rather than sustained it.

Had the ZBA placed the burden where it belonged, the same record would have required affirmance of the Plans Examiner’s determination. The interpretive rules point the same way: ambiguities in an ordinance must be resolved in favor of the property owner, *Sullivan*, 144

A.D.3d at 1482, and religious uses must be evaluated with flexibility and accommodation, *Rosenfeld*, 6 A.D.3d at 450. Misallocating the burden of proof is an error of law, requiring annulment of the ZBA's determination and reinstatement of the Plans Examiner's. *Cf. Moe's Motor Cars, LLC v. Town of Ulster*, 229 A.D.3d 984, 986 (3d Dep't 2024).

II. The ZBA's Findings on Each Accessory-Use Requirement Lack a Rational Basis

Town Code § 68-48(A)(1)(j) permits (i) customary accessory uses that are (ii) clearly incidental to the principal use and (iii) do not include activities commonly conducted as a business. The ZBA found that UAMA's proposed boarding component failed all three requirements. Each finding has no basis in the Town Code or the facts.

A. Boarding Is Customary Accessory Use

The ZBA's conclusion that boarding is not "customary" cannot be reconciled with the relevant precedent, the Property's history, or the evidence of boarding at another school within the Town. Instead of evaluating whether boarding is an established accompaniment to religious education, the ZBA focused on irrelevant statistics and discounted the precedent and local examples that directly addressed the question.

The Second Department has explained that whether a land use is customary turns on whether it has "commonly, habitually and by long practice been established as reasonably associated with the primary use." *7-11 Tours, Inc. v. Bd. of Zoning Appeals*, 90 A.D.2d 486, 486 (2d Dep't 1982) (cleaned up). The Second Department has already recognized that dormitory facilities are a permissible accessory use to a religious school in a residential district. In *Association of Zone A & B Homeowners*, the court held that no use variance was required for a religious institution's proposed school building containing dormitory rooms, an infirmary, a student lounge, and guest accommodations. 298 A.D.2d at 583–84. Like the Code here, the

ordinance there permitted schools, places of worship, and customary accessory uses. The court emphasized both the favored status of religious and educational uses and the permissibility of dormitory facilities reasonably associated with an institution's educational purpose. *Id.* at 584.

Other decisions recognize the same relationship between religious instruction and residential facilities. In *Yeshiva Talmud Torah Ohr Moshe*, the court held that a zoning provision permitting places of worship and related facilities encompassed proposed living and dining facilities for religious students. 170 A.D.3d at 1490. The court considered both the ordinance's inclusion of residential religious facilities and the applicant's explanation that communal residence supported reflection and study. *Id.* In *Diocese of Central New York*, the court permitted temporary residence in a religious education center in a residential district because the "uses proposed certainly come within the true intent of the zoning ordinance[] . . . to permit places of worship, schools, and to allow ***buildings for community living*** for the purpose of religious study, education, fellowship and contemplation." 199 N.Y.S.2d at 943–44 (emphasis added). And in *New York Institute of Technology*, the court ruled that "[t]he permission to operate a school . . . includes the permission to locate upon the property and to maintain those accessory uses customarily engaged in by students. Such accessory uses would include ***dormitories***" 317 N.Y.S.2d at 93 (emphasis added). These decisions foreclose treating the connection between boarding and religious education as unusual or suspect.

UAMA demonstrated that same connection here. It explained that boarding supports comprehensive academic and spiritual instruction and that the residential facilities have no purpose independent from the school. *See* Ex. 1 at 2, 6; Ex. 11 at 102:6–11. The ZBA nevertheless failed to evaluate that explanation under the flexibility required for religious uses or to meaningfully account for the precedent recognizing student housing as an accompaniment

to religious education. *See Rosenfeld*, 6 A.D.3d at 450.

The local evidence reinforced UAMA's position. The Property itself housed a Catholic seminary from 1926 to 1972. UAMA also identified Harrow, a boarding school operating in another Residence AAA District within the Town. *See* Ex. 1 at 2, 5–6. As UAMA explained, the Town's June 12, 2025 approval for Harrow involved only a special permit for dimensional relief, rather than a use variance authorizing its boarding component. *See id.* at 5–6; Ex. 4 at 8–9. The ZBA's reliance on the approval obtained by Harrow's predecessor did not address that feature of Harrow's own approval. Moreover, the ZBA discounted those examples because the Catholic seminary had been established under an earlier zoning scheme and St. John's University, Harrow's predecessor, had obtained a special permit. *See* Ex. 4 at 8–10. Those distinctions do not eliminate the institutions' relevance to whether boarding has an established customary relationship to schooling.⁶

That approach accords with *East Hampton Indoor Tennis Club, LLC v. Zoning Board of Appeals*, where the Second Department approved consideration of practices at other local schools in determining whether proposed facilities constituted a customary accessory use. 83 A.D.3d 935, 938 (2d Dep't 2011). Here, the ZBA discounted the local examples and the Property's history and instead relied on evidence that fewer than three percent of schools statewide offer boarding—even while acknowledging that the percentage of regional parochial schools offering boarding would have been more useful. *See* Ex. 4 at 4. That evidentiary gap was the appellants' to fill—not UAMA's. More fundamentally, a statistic encompassing all

⁶ The Town's treatment of Harrow also raises serious concerns under RLUIPA's equal-terms provision, which prohibits treating religious institutions on less than equal terms with non-religious institutions. 42 U.S.C. § 2000cc(b)(1). UAMA expressly reserves its right to bring a RLUIPA claim against the Town.

schools does not answer whether boarding is an established practice associated with parochial education. Thus, the ZBA's "failure to provide a valid and rational explanation for its departure from" prior decisions on similar uses "mandates a reversal." *Cf. Corona Realty Holdings, LLC v. Town of N. Hempstead*, 32 A.D.3d 393, 395 (2d Dep't 2006) (cleaned up).

The ZBA's textual analysis was similarly incomplete. It inferred that boarding was prohibited because student housing is expressly addressed in the educational campus subdistrict but not separately listed in the Residence AAA District. *See* Ex. 4 at 4–5. That inference fails to give meaningful effect to § 68-48(A)(1)(j), which expressly permits "other customary accessory uses." The provision necessarily calls for evaluating uses beyond those individually enumerated. Moreover, the same section permits parsonages as accessory uses to houses of worship, confirming that *residential* accommodations can serve an accessory religious function. *See* Town Code § 68-48(A)(1)(r). Although that provision does not itself authorize student dormitories, it reinforces the need to assess the relationship between the proposed accommodations and the permitted principal use. The ZBA instead treated the absence of an express listing as restrictive of the catchall provision, abandoning the rule that ambiguities favor the property owner. *See Sullivan*, 144 A.D.3d at 1482.

Yeshiva Talmud Torah Ohr Moshe reinforces that conclusion. After finding the proposed student living facilities permitted under the applicable zoning provision, the Third Department rejected the municipality's argument that expressly permitting dormitories in other districts demonstrated an intent to prohibit them in the district at issue. 170 A.D.3d at 1490–91. Here, too, the ZBA had to give effect to the Residence AAA District's own authorization of customary accessory uses. The express treatment of student housing elsewhere could not substitute for that analysis. Nor does the Town Board's failure to add student housing to § 68-

48 by amendment suggest an intent to exclude it, *see* Ex. 4 at 4–5: because § 68-48(A)(1)(j) already permits “other customary accessory uses,” the Town Board had no need to enumerate each one, and legislative silence about a use the catchall encompasses proves nothing. And for the same reason, § 68-47’s directive that “[a]ll uses not expressly permitted are prohibited” does not help the ZBA, because a customary accessory use is expressly permitted.

B. Boarding Is Clearly Incidental to the School

The ZBA interpreted “clearly incidental” to require an accessory use to be unmistakably subordinate to the principal use in nature, scale, and operation. *See* Ex. 4 at 5. Its analysis, however, focused on an inflated measure of residential space and uncertainty about guest occupancy, while discounting UAMA’s explanation of how boarding serves the school.

Based on its proposed floor plans, UAMA identified approximately 22,000 square feet—roughly one-third of the principal building—as residential space. *See id.* at 6; Ex. 6. The ZBA declined to treat that calculation as determinative, claiming that the boarding component also encompassed dining and food-preparation areas, bathrooms, lounges, laundry facilities, circulation space, and other areas serving residents. *See* Ex. 4 at 6. Although the ZBA could consider the full scope of the proposed use, it needed a rational basis for treating shared facilities as evidence that residential activity displaced the school’s educational function. It could not simply replace UAMA’s evidence with its own conclusory assumptions. *See Arceri*, 16 A.D.3d at 412.

Dining rooms, recreational facilities, and common areas serve students at school, whether or not they also sleep there. Day-school students eat meals, gather, study, and participate in extracurricular activities. Those functions do not become exclusively residential when boarding students use the same facilities after classroom instruction ends. Indeed, in a

case involving this Town, the Second Department recognized that educational institutions may maintain social, recreational, athletic, and other facilities reasonably associated with their educational purposes. *Town of Islip v. Dowling Coll.*, 275 A.D.2d 366, 367 (2d Dep’t 2000) (“Educational institutions are generally permitted to engage in activities and locate on their property facilities for such social, recreational, athletic, and other accessory uses as are reasonably associated with their educational purpose.”); see *E. Hampton Indoor Tennis Club*, 83 A.D.3d at 938 (“[R]ecreational facilities, such as playing fields and tennis courts, are, in general, customary and incidental to the educational purpose of a school.”). By counting shared facilities against the educational use merely because they also serve resident students, the ZBA distorted the relationship it was supposed to evaluate.⁷

More fundamentally, the ZBA allowed scale to substitute for function. It acknowledged that it “may not engraft numerical restrictions upon §68-48(j)” and that neither room counts, residential floor area, nor occupancy percentages automatically disqualify boarding as an accessory use. Ex. 4 at 6. Yet the ZBA effectively did just that by allowing scale to drive its analysis, which treated the extent of residential space as evidence that boarding was not subordinate to education, without meaningfully examining the purpose that space served. Whether a use is incidental also turns on its reasonable relationship to the principal use. *7-11 Tours*, 90 A.D.2d at 486. UAMA explained that the boarding facilities support the school’s academic and spiritual program and have no independent purpose apart from it. See Ex. 11 at

⁷ A hospital illustrates the flaw in the ZBA’s reasoning. Patients sleep, eat, and receive visitors there, but those activities support the hospital’s medical purpose. Counting every space that accommodates those activities as residential would obscure the function it serves. The same is true here: dining rooms, lounges, and other shared facilities do not cease to serve the school’s educational mission because students also use them outside classroom hours. Their role in sustaining residential life does not establish that residential use has displaced education as the principal use.

102:6–18. Merely measuring the space devoted to boarding fails to explain why the proposed accommodations would displace education as the Property’s principal use.

Nor does boarding’s importance to UAMA’s mission defeat its accessory character. A use can be essential to the principal use while remaining incidental to it. In the analogous tax-exemption context, the Court of Appeals held that housing for a religious school’s students, families, faculty, and staff was necessary and reasonably incidental to its primary religious and educational purpose, precisely because that purpose would be undermined without the accommodations. *Yeshivath Shearith Hapletah v. Assessor of Town of Fallsburg*, 79 N.Y.2d 244, 250–51 (1992); *see Univ. of Rochester v. Wagner*, 63 A.D.2d 341, 348–49 (4th Dep’t 1978) (“Dormitories . . . are essential parts of universities and colleges and have been held to be tax exempt based upon the theory that education contemplates not only the mental and moral but the physical training and welfare and the proper maintenance of those in attendance at the institution.”); *Am. Mgmt. Ass’ns v. Assessor of Town of Madison*, 63 A.D.2d 1102, 1103 (3d Dep’t 1978) (finding residence facility for students was properly granted tax exempt status because it was “merely auxiliary or incidental to” the primary educational purpose). The same functional distinction matters here: housing enables the school’s program; it does not supplant that program as the Property’s principal use.

The ZBA’s remaining concern about guest accommodations fares no better. The ZBA noted that the third-floor plan identified rooms for “guests” and concluded that, because the record did not “definitively identify the intended occupants of the guest rooms or contain any proposed limitation” on their use, it “cannot determine that the proposed guest accommodations would remain subordinate and secondary to the principal parochial-school use.” Ex. 4 at 5–6.

But that flat-out ignores record evidence. At the hearing, UAMA unequivocally stated that use

of the guest rooms would be limited to visiting UAMA officials and parents of enrolled students. *See* Ex. 11 at 90:18–91:3; *id.* at 91:6–7 (“[N]one of the bedrooms will be utilized for rental purposes. None of the bedrooms will be for individuals other than those connected with the academy.”); *id.* at 91:19–21 (“Those who are considered guests within the context of this proposal are directly affiliated with ownership.”). As the ZBA acknowledged, “accommodations for school-related visitors, such as guest speakers or parents of enrolled students, could remain incidental to the principal educational use.” Ex. 4 at 5.

The law confirms what the ZBA conceded. “[P]roviding a place for visiting religious scholars and priests to stay in close proximity to the site at which religious worship and instruction is taking place constitutes an incidental use.” *Chung Te Buddhist Ass’n of N.Y., Inc. v. Kusterbeck*, No. 104800/2003, 2003 WL 22798826, at *8 (Sup. Ct. N.Y. Cnty. Sept. 8, 2003); *Ass’n of Zone A&B Homeowners*, 298 A.D.2d at 583–84 (approving as accessory use building with guest accommodations). The scale of the proposal reinforces the point. The plans provide for 120 students and only 23 staff and guests combined. *See* Ex. 6 at 2–3. Capacity alone does not establish incidental use, but a small guest component, serving a parochial boarding school, *see* Ex. 1 at 2, 6; Ex. 11 at 102:6–18, is the opposite of an independent hotel operation. The ZBA—and certainly the appellants—identified no evidence otherwise.

If the ZBA nonetheless considered UAMA’s representations insufficiently specific, the answer was to consider whether clarification or an occupancy restriction would resolve its concern, not to reject the boarding component outright. Zoning boards have an affirmative duty to suggest measures that accommodate religious uses while mitigating adverse effects. *Islamic Soc’y of Westchester & Rockland, Inc.*, 96 A.D.2d at 537. And the Second Department has held irrational a board’s failure to consider limits that would address its concerns about a property’s

use. *Cf. Mart v. Vill. of Port Jefferson Zoning Bd. of Appeals*, 266 A.D.2d 548, 549 (2d Dep’t 1999). The ZBA did not explain why a condition tying guest occupancy to the school’s religious and educational functions would be inadequate. It treated the absence of such a condition as a reason to deny the use, which inverts the accommodation the law requires.

C. Boarding Includes No Business Activity

The ZBA’s commercial-use finding rests on the same substitution of suspicion for analysis. Section 68-48(A)(1)(j) required the ZBA to determine whether the proposed accessory use included activities commonly conducted as a business. Instead, the ZBA relied on outdated promotional materials describing daycare services and outside events that UAMA had expressly disclaimed. *See* Ex. 4 at 7–8. It thus evaluated the boarding proposal through activities that were not part of it.

The Second Department has repeatedly rejected comparable reasoning. In *Green Materials of Westchester v. Town of Cortlandt*, the court annulled a determination premised on the belief that applicants intended to conduct prohibited activities despite their repeated assurances to the contrary. 132 A.D.3d 868, 871 (2d Dep’t 2015). In *Lawrence School Corporation v. Lewis*, it rejected as unsupported a zoning board’s characterization of a school’s proposed activities as a “commercial camp in disguise.” 174 A.D.2d 42, 45–46 (2d Dep’t 1992). And in *BKP Harrison, LLC v. Town/Village of Harrison*, it affirmed annulment of a determination based in part on speculative predictions and subjective concerns that the applicant would not honor its commitments concerning the property’s use. 248 A.D.3d 1240, 1241 (2d Dep’t 2026). Together, those decisions require an evidentiary basis for treating a proposed use as something the applicant says it is not.

Here, UAMA explained that the promotional materials predated the finalized proposal

and did not accurately describe the uses for which it sought the Town's determination. Specifically, at the hearing, UAMA's counsel stated: "The proposal before the town is not for an assembly hall. It's not for a wedding venue. It's not for a public assembly. It is solely for a parochial school with boarding facilities." Ex. 11 at 89:18–21. The ZBA expressly acknowledged that UAMA had "disputed and repudiated" those uses and represented that they would not occur. Ex. 4 at 7. Nevertheless, the decision identifies no evidence beyond the promotional materials establishing that the proposed boarding operation would include the disclaimed activities. *See id.* at 7–8. UAMA had no obligation to disprove a use it never proposed.

The ZBA's statement that it was not required to disregard the materials answers only whether they could be considered; it does not explain why they established the scope of the use despite UAMA's clarification. Nor did the ZBA explain why any remaining concern could not be addressed by limiting the authorized use to the school and its supporting facilities. Its reasoning effectively made the disclaimed activities inseparable from the proposal simply because they had once appeared in promotional materials.

The finding also lacks a connection to the accessory use under review. The question was whether the proposed residential boarding component included prohibited business activity. *See* Ex. 4 at 2, 7–8. A reference to daycare does not establish that student housing would operate commercially. Indeed, the Code expressly permits a child daycare center as an accessory use to a church, place of worship, community building, or educational institution. Town Code § 68-48(A)(1)(k). The ZBA did not reconcile its reliance on daycare as evidence of impermissible commercial activity with that authorization.

Likewise, a reference to events does not, without more, establish an independent

commercial venue. Religious and educational institutions may conduct activities beyond formal worship and classroom instruction. The Code's definition of a house of worship recognizes related religious and socially beneficial activities, and the Second Department has recognized that social and recreational functions can serve an educational institution's mission. *See* Town Code § 68-3(B); *Dowling Coll.*, 275 A.D.2d at 367. Whether a particular event use is permissible depends on its nature and relationship to the principal use. Here, UAMA disclaimed the outside events at issue, and the ZBA never explained how those events established that the proposed student boarding operation included prohibited business activity.

In each instance, the ZBA held against UAMA uncertainties that the appellants bore the burden to resolve. None of its findings supplies a rational basis for reversing the Plans Examiner's determination.

CONCLUSION

A century ago, this Property opened its doors to students who came to live, learn, and pray. UAMA seeks to open those doors again. The religious tradition may change; the law's protection must remain constant. This Court should grant the Petition, annul the ZBA's September 24, 2026 determination, and reinstate the Plans Examiner's January 21, 2026 determination that boarding is a permissible accessory use to UAMA's parochial school.

Dated: New York, New York
October 22, 2026

Respectfully submitted,

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WORD COUNT CERTIFICATION

I, Muhammad U. Faridi, an attorney duly admitted to practice law before the courts of the State of New York, hereby certify that this memorandum of law complies with the word count limit set forth in 22 NYCRR § 202.8-b, because it contains 6,829 words, excluding the words in the parts exempted by § 202.8-b(b). In preparing this certification, I have relied on the word count of the word-processing system used to prepare this affidavit.

Dated: New York, New York
October 22, 2026

By: /s/ Muhammad U. Faridi
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