# 25-2191

## United States Court of Appeals

*for the*

## Second Circuit

LOST LAKE HOLDINGS LLC, a domestic limited liability company, MISHCONOS MAZAH LLC, a domestic limited liability company, RABBI MORDECHAI HALBERSTAM, ROSE HALBERSTAM,

*Plaintiffs-Appellants,*

– v. –

TOWN OF FORESTBURGH, FORESTBURGH ZONING BOARD OF APPEALS, GLENN A. GABBARD, in his personal capacity and in his official capacity as Building Inspector of the Town of Forestburgh,

*(Continuation of caption on inside cover)*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

# BRIEF OF MUSLIM CIVIC ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS

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THE FORESTBURGH TOWN BOARD, STEVE BUDOFSKY, in his personal capacity, SUSAN PARKS-LANDIS, in her personal capacity, KAREN ELLSWEIG, in her personal capacity, VINCENT GALLIGAN, in his personal capacity, DANIEL S. HOGUE, in his personal capacity, RICHARD ROBBINS, in his personal capacity and in his official capacity as Chairperson of the Planning Board of the Town of Forestburgh, DENNIS KETCHAM, in his capacity as Town Assessor of the Town of Forestburgh,

*Defendants-Appellees.*

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *amici curiae* each state that each is a not-for-profit corporation. Each has no parent corporation and no publicly held corporation owns 10% or more of its stock.

# TABLE OF CONTENTS

**Page**

CORPORATE DISCLOSURE STATEMENT ..... i
TABLE OF AUTHORITIES ..... iii
INTEREST OF *AMICI CURIAE* ..... 1
SUMMARY OF ARGUMENT ..... 4
ARGUMENT ..... 6
I. THE LAND USE PROCESS IS OFTEN DISCRIMINATORY ..... 6
A. The Long-Recognized Pattern of Antisemitism in Land Use ..... 7
B. Muslim Communities Face the Same Pattern of Exclusion ..... 10
C. Forestburgh's Claimed Neutrality Is Contrary to the Record ..... 14
II. THE DISTRICT COURT MISUNDERSTOOD THE LAW ..... 16
A. The Trial Court's Decision Undermines the De Facto Finality Requirement, the Constitution, and the Fair Housing Act ..... 17
B. The Blatant Discrimination Rendered Continued Appeals Futile ..... 19
C. Independent Injuries Make the Claims Ripe ..... 22
CONCLUSION ..... 26

# TABLE OF AUTHORITIES

**Page(s)**

## CASES

*Ateres Bais Yaakov Acad. of Rockland v. Town of Clarkstown*,
88 F.4th 344 (2d Cir. 2023) .....17

*Bloomingburg Jewish Educ. Ctr. v. Vill. of Bloomingburg*,
111 F. Supp. 3d 459 (S.D.N.Y. 2015) .....9, 10

*BMG Monroe I, LLC v. Vill. of Monroe*,
93 F.4th 595 (2d Cir. 2024) .....18, 21

*Congregation Rabbinical Coll. of Tartikov, Inc. v. Vill. of Pomona*,
915 F. Supp. 2d 574 (S.D.N.Y. 2013), *aff'd*, 945 F.3d 83 (2d Cir. 2019) .....24

*Dougherty v. Town of Hempstead*,
282 F.3d 83 (2d Cir. 2002) .....23, 24

*Fortress Bible Church v. Feiner*,
694 F.3d 208 (2d Cir. 2012) .....24, 25

*Grand Medford Estates, LLC v. Town of Brookhaven*,
No. 23-CV-4812, 2024 WL 185318 (E.D.N.Y. Jan. 17), *aff'd*, No. 24-402-cv, 2024 WL 4440231 (2d Cir. Oct. 08, 2024) .....22, 23

*Islamic Soc'y of Basking Ridge v. Twp. of Bernards*,
226 F. Supp. 3d 320 (D.N.J. 2016) .....11, 12

*Lost Lake Holdings LLC v. Town of Forestburgh*,
22 CV 10656 (VB), 2025 WL 1899026 (S.D.N.Y. July 9, 2025) .....14

*Mont Belvieu Square, Ltd. v. City of Mont Belvieu*,
27 F. Supp. 2d 935 (S.D. Tex. 1998) .....20

*Murphy v. New Milford Zoning Comm'n*,
402 F.3d 342 (2d Cir. 2005) .....20

*Schroeder v. City of Chicago*,
927 F.2d 957 (7th Cir. 1991) .....19

*Sunrise Detox V, LLC v. City of White Plains*,
769 F.3d 118 (2d Cir. 2014) .....22, 24

*Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly*,
309 F.3d 144 (3d Cir. 2002) .....7, 8

*United States v. County of Culpeper*,
245 F. Supp. 3d 758 (W.D. Va. 2017).....11

*Vill. Green at Sayville, LLC v. Town of Islip*,
No. 2:17-CV-7391, 2021 WL 230298 (E.D.N.Y. Jan. 22, 2021).....24

*Westchester Day Sch. v. Vill. of Mamaroneck*,
504 F.3d 338 (2d Cir. 2007) .....8, 9

## INTEREST OF *AMICI CURIAE*[1]

*Amici curiae* are Muslim civic organizations committed to the protection of religious liberty, equal treatment under law, and the ability of faith communities to participate fully in civic life without discrimination. Through legal advocacy, public education, and community engagement, *amici* have extensive experience confronting the use of ostensibly neutral government processes to exclude religious minorities from living, worshiping, and building on equal terms. That experience gives *amici* a distinctive perspective on how discrimination often operates—not through explicit prohibitions, but through procedural manipulation, delay, and shifting requirements that impose immediate and real harms long before any formal decision is issued.

**The Muslim Bar Association of New York** ("MuBANY") is a professional association of Muslim attorneys, judges, academics, and law students dedicated to advancing equal justice and meaningful participation in civic and legal institutions. MuBANY regularly engages on issues at the intersection of civil rights, religious liberty, and access to justice, and its members have represented and advised religious

[1] All parties have consented to the filing of this brief. No counsel for any party authored this brief in whole or in part, nor did any person or entity other than *amici* or their counsel make a monetary contribution to the preparation or submission of this brief. Maximillian Blinder Acenal, Benjamin Bolnick, Alexandra Prior, and Saumya Sinha of Linklaters LLP also contributed to this brief. Ismail Royer also contributed to this brief.

communities affected by discriminatory land use practices. MuBANY's interest in this case arises from its members' firsthand experience with how zoning and permitting processes can be weaponized against minority faith communities once officials object to who will live or worship in a particular place.

The **Islamic Society of North America (ISNA)** is the largest and oldest Islamic umbrella organization in North America. ISNA is an association of Muslim organizations and individuals that provides a common platform for presenting Islam, supporting Muslim communities, developing educational, social and outreach programs and fostering good relations with other religious communities, and civic and service organizations. ISNA strives to foster the development of the Muslim community, interfaith relations, civic engagement, and better understanding of Islam.

The **Coalition of Virtue** is a Muslim civic organization devoted to promoting justice, moral responsibility, and the common good through public education and civic engagement. Rooted in Islamic ethical principles and a tradition of cooperation across communities, the Coalition addresses issues of public concern where law, morality, and social cohesion intersect. The Coalition has spoken out against the misuse of governmental power to marginalize religious communities and has a strong interest in ensuring that civil rights protections are not undermined by procedural gamesmanship.

The **New Jersey Muslim Lawyers Association** ("NJMLA") is a volunteer association of Muslim lawyers, judges, and law students committed to advancing the professional development and civic engagement of Muslim attorneys in New Jersey. NJMLA promotes Muslim participation in public service and legal institutions to address issues affecting Muslim communities locally and nationally. Its members have a strong interest in ensuring that state and local authorities do not use zoning or permitting mechanisms to restrict where minority faith communities may live, assemble, or worship.

**CAIR-NY** is the New York chapter of the Council on American-Islamic Relations, a Muslim civil rights group. CAIR-NY's mission is to enhance understanding of Islam, protect civil rights, promote justice, and empower American Muslims, including by serving Muslim New Yorkers through legal advocacy. In line with this mission, CAIR-NY has a strong interest in seeking to protect the civil rights of all minority faith communities, including in the land use context.

The **National Association of Muslim Lawyers** serves the community of Muslim lawyers and legal professionals in the United States by providing networking and mentorship services, organizing educational programs on current legal topics of interest, supporting regional Muslim bar associations, and serving the law-related needs of the general public through community service efforts. We have

a deep interest in protecting and vindicating the rights of all minority faith communities, including in the land use context.

Together, *amici* submit this brief to assist the Court in evaluating the real-world operation of land use discrimination against religious minorities and the immediate harms such practices inflict. *Amici*'s shared experience underscores why civil rights laws—including the Fair Housing Act and constitutional guarantees—must reach discrimination carried out through process, and why ripeness doctrine should not be interpreted to require religious communities to endure prolonged and discriminatory delay before obtaining judicial review.

## SUMMARY OF ARGUMENT

This case asks whether discrimination may be carried out through procedure—quietly, incrementally, and indefinitely—and even when de facto finality has been obtained. The record shows how land use tools can be converted into instruments of exclusion once officials object not to a project's dimensions, but to *who* will live there.

*Amici* submit this brief because they recognize that pattern. Muslim communities have seen it before. When a mosque is proposed, familiar steps become obstacles; conditions multiply; reviews are reopened; timelines stretch; costs escalate. Each move is defended as ordinary. Together, they form a wall. What makes this case especially resonant—and why *amici*'s voice matters—is that the

same machinery is now trained on a Jewish community in upstate New York. Different faith. Same playbook.

There is something deeply instructive in that symmetry. History has taught religious minorities that discrimination rarely announces itself in the language of exclusion. It speaks instead in the language of process. Because Muslims have been subjected to that language, they recognize it when it is spoken against others. That perspective is not abstract empathy; it is experiential knowledge. It allows *amici* to identify when procedure has ceased to regulate and has begun to exclude.

Civil rights law exists to pierce precisely this kind of pretext. The Fair Housing Act and the Constitution do not merely protect ultimate outcomes; they also protect the integrity of the path. When process is weaponized, the injury is immediate. Economic harms accrue as projects are drained by delay and escalating exactions. Procedural harms occur when equal treatment is denied in real time. Dignitary harms arise when official conduct conveys that a community does not belong. None of these injuries depends on the issuance of a final land use decision.

Under settled ripeness principles, Plaintiffs' claims are justiciable now. First, Plaintiffs plausibly allege that they sought only to build what had already been approved; there was nothing to "vary," and no variance was required. Second, the record reflects entrenched opposition rooted in discriminatory animus, rendering

further applications futile. Third, the Town's conduct inflicted independent economic, procedural, and dignitary injuries that do not turn on formal finality.

Affirmance would signal that municipalities may do through delay and procedural maneuvering what the law forbids them to do outright. Reversal would reaffirm a deeper principle—one that resonates across faiths—that equal justice is not confined to formal decisions, but extends to the fairness and dignity of the process itself. When a Muslim community speaks to protect a Jewish one from exclusion, it underscores a truth this Court has long recognized: discrimination is not a problem of one faith or one moment, and the law must be alert to it wherever it appears, however quietly it operates.

## ARGUMENT

### I. THE LAND USE PROCESS IS OFTEN DISCRIMINATORY

Courts have long recognized a recurring form of religious discrimination in land use cases. When officials or neighbors object to who will live or worship in a community, ostensibly neutral regulatory tools are repurposed to block the project. Rules once ignored are suddenly enforced. Conditions shift midstream. Review processes multiply. Delay becomes the mechanism of denial. What appears, in isolation, to be ordinary regulation reveals itself—when viewed as a whole—as exclusion by design.

*Amici* are compelled to speak out because this pattern is not theoretical. Muslim communities have repeatedly encountered it when proposing mosques or Islamic centers. Orthodox Jewish communities have faced the same tactics in housing and religious use cases. These shared experiences matter because they illuminate what the record here shows: Forestburgh's conduct fits squarely within a well-documented mode of discrimination carried out through process rather than outright prohibition.

### A. The Long-Recognized Pattern of Antisemitism in Land Use

The manipulation of land use regulation to obstruct Orthodox Jewish communities is well documented in the case law. Again and again, courts have confronted the same sequence of events: a project proceeds without incident; concern emerges once Orthodox Jewish residents are anticipated; and only then do municipalities begin to enforce long-ignored rules or invent new objections couched in neutral planning language. A few examples below.

An early and instructive example appears in *Tenafly Eruv Association, Inc. v. Borough of Tenafly*, 309 F.3d 144 (3d Cir. 2002). For years, the Borough tolerated a wide array of private attachments to utility poles—lost-animal notices, house numbers, church signs, and holiday displays—despite a local ordinance technically prohibiting signs in public places. *Id.* at 151. That ordinance lay largely dormant. It was revived only in 1999, when Orthodox Jewish residents sought permission to

install an eruv—a thin, nearly invisible ceremonial demarcation that allows observant Jews to carry items and push strollers or wheelchairs outdoors on the Sabbath. *Id.* at 152. The eruv would have been privately funded and, as the court observed, so inconspicuous that it would have been "absolutely impossible" to distinguish it from an ordinary utility wire. *Id.* at 152–53.

Once the request became public, the reaction made the real concern unmistakable. At public meetings, residents expressed fear that the eruv would encourage Orthodox Jews to move into Tenafly. A council member warned of "a concern that the Orthodoxy would take over," while another voiced "serious concern" that "Ultra–Orthodox" Jews might "stone … cars that drive down the streets on the Sabbath." *Id.* at 153. Only then did the Borough abruptly enforce the long-ignored ordinance—targeting the eruv while continuing to tolerate comparable secular and Christian displays. *Id.* at 154–55. The Third Circuit held that the plaintiffs were "reasonably likely to show" a violation of the Free Exercise Clause based on this selective enforcement. *Id.* at 178–79.

The same pattern appeared in *Westchester Day School v. Village of Mamaroneck*, 504 F.3d 338 (2d Cir. 2007). Westchester Day School, an Orthodox Jewish school founded in 1948, sought approval in 2001 to construct a new building on its existing campus. *Id.* at 344–45. Initially, the Zoning Board of Appeals voted unanimously that the project would have no significant adverse environmental

impact and could proceed. *Id.* at 345–46. Only after a "small but vocal group" in the community opposed the project did the zoning board reverse course—rescinding its determination and ultimately denying the application in full. *Id.* at 346.

The stated reasons for denial were facially neutral: concerns about "traffic" and "parking." *Id.* But as this Court explained, those concerns were conceived only after the zoning board had closed its hearing process and were "not supported by evidence in the public record." *Id.* The timing and the evidentiary void revealed that the rationales were post hoc and pretextual. The Court therefore held the denial "arbitrary and capricious." *Id.* at 351.

By the time of *Bloomingburg Jewish Education Center v. Village of Bloomingburg*, 111 F. Supp. 3d 459 (S.D.N.Y. 2015), the same pattern had become overt. A residential development that had long enjoyed broad community support became the focus of fierce opposition once it was known that the homes were being marketed to Orthodox Jewish families. *Id.* at 469. Residents publicly expressed hostility to the prospect of Hasidic Jews moving into the village. *Id.* A landowner erected a twenty-foot wooden cross adjacent to the development. *Id.* at 471. A former village trustee asked whether there was a way to ensure that no Hasidic residents would move into the project. *Id.* at 469. A coalition formed for the express purpose of blocking the development and "making life difficult for those who already live there." *Id.*

That coalition ran candidates for office on platforms promising to "stop the Jewish infiltration" and to "keep Jews out of the area"—and won. *Id.* at 473. Once in power, village officials sued to block the development after it became "known that the developer planned a Hasidic community." *Id.* at 469. When an injunction was lifted, the village imposed a moratorium on building permits. *Id.* at 470. After the moratorium expired, officials stopped responding to requests for certificates of occupancy for completed homes, preventing their sale. *Id.* at 469–71. Harassment of the Jewish community continued. *Id.* at 473–74. The court held that this conduct was sufficient to state a plausible claim for relief under the Equal Protection and Due Process Clauses and the Fair Housing Act. *Id.* at 487–91.

Taken together, these cases—among many others—reveal a consistent and judicially-recognized pattern. When Orthodox Jewish residents are anticipated, land use rules that once lay dormant are revived; neutral planning concepts are deployed selectively and belatedly; and procedural mechanisms are used not to regulate, but to exclude. The form varies—selective enforcement, post hoc rationales, moratoria, or administrative paralysis—but the function is the same. Discrimination is carried out through process.

### B. Muslim Communities Face the Same Pattern of Exclusion

Muslim communities have repeatedly encountered a familiar pattern in land use disputes: once a mosque or Islamic center is proposed, routine approvals become

discretionary, standards shift midstream, and delay itself becomes the tool of exclusion. As in cases involving Orthodox Jewish applicants, courts have recognized that these tactics impose immediate harms and cannot be justified by insisting on further administrative process. Some examples below.

The experience of the Muslim community in Culpeper is illustrative. In *United States v. County of Culpeper*, 245 F. Supp. 3d 758 (W.D. Va. 2017), a Muslim congregation purchased land zoned to permit religious uses as of right and applied for a sewage permit—a step routinely granted for other houses of worship. *Id.* at 762–63. Once officials learned that the applicant was a Muslim group, the County departed from its longstanding practice, routed the application to the County Attorney, and delayed consideration while the public responded with overtly anti-Muslim rhetoric. *Id.* at 763. At a subsequent hearing, the County conceded that the application satisfied applicable requirements yet denied it anyway, "drawing applause from the crowd." *Id.* at 764–65. The court held that a reasonable fact-finder could conclude the denial was motivated by anti-Muslim prejudice that would not "evaporate simply by resubmitting a new application," and therefore declined to require further futile process. *Id.* at 765, 770.

A similar pattern unfolded in *Islamic Society of Basking Ridge v. Township of Bernards*, 226 F. Supp. 3d 320 (D.N.J. 2016). There, a small Muslim congregation in suburban New Jersey purchased property zoned to permit houses of worship and

proposed a modest mosque designed to fit within the surrounding residential neighborhood. *Id.* at 326–27. The Township subjected the application to four years of extraordinary scrutiny, including dozens of public hearings, during which hostility mounted and requirements shifted. *Id.* at 326–29. Although the Society's application complied with parking and zoning standards historically applied to churches and synagogues, the Planning Board repeatedly moved the goalposts and ultimately denied the application in 2016. *Id.* at 329–30. A federal court later held that the Township's disparate treatment and shifting standards violated the nondiscrimination provision of the Religious Land Use and Institutionalized Persons Act, and the Township settled the case by agreeing to permit construction of the mosque and to reform its zoning practices. *Id. passim*.[2]

The same trajectory appeared in Oyster Bay. In *Muslims on Long Island, Inc. v. Town of Oyster Bay*, No. 2:25-cv-00428 (E.D.N.Y. filed Jan. 2025), a Muslim congregation sought permission to replace an existing mosque with a facility better suited to its community. In that case, plaintiffs alleged that, rather than deny the request outright, the Town engaged in six years of delay, imposed shifting and arbitrary requirements, and ultimately denied the project based on ostensibly neutral "parking" and "traffic" concerns. *See* Am. Compl. ¶¶ 81–173, *Muslims on Long*

[2] The settlement agreement is available at ECF 115: https://becketnewsite.s3.amazonaws.com/ISBR-v.-Bernards-Settlement-Agreement-FULLY-EXECUTED-FINAL_20170530.pdf.

*Island, Inc. v. Town of Oyster Bay*, Case No. 2:25-cv-00428 (E.D.N.Y. Sept. 12, 2025), ECF No. 102. According to the plaintiffs, each time the community satisfied a new demand, the Town introduced another. Plaintiffs contended that when compliance proved possible, the Town amended its parking ordinance to create new obstacles and fresh pretexts for denial. *Id.* ¶¶ 105–121. These procedural maneuvers were accompanied, according to the plaintiffs, by intense public hostility framing the mosque as a demographic "takeover." *Id.* ¶¶ 128–133, 168. The case ultimately settled, with the Town agreeing to permit construction of the mosque. *See Muslims on Long Island, Inc.*, ECF No. 152.

Taken together, Culpeper, Bernards Township, and Oyster Bay reflect the same core reality seen in the Orthodox Jewish cases discussed above. Ostensible neutrality gives way to selective enforcement once a Muslim community seeks to build. Compliance produces not approval, but additional hurdles. Delay is used to avoid finality, and shifting standards are deployed to exhaust the applicant. Courts have rightly refused to require religious minorities to run that gauntlet indefinitely before seeking relief.

For *amici*, these cases are not merely analogous—they are formative. They explain why Muslim *amici* recognize the same pattern when Jewish communities face similar opposition, and why discrimination carried out through process demands timely judicial intervention. The Fair Housing Act and the Constitution do

not distinguish between faiths, and neither does the machinery of exclusion. Where land use procedures are manipulated to deny religious communities equal footing, the injury is immediate, and the law requires a remedy.

### C. Forestburgh's Claimed Neutrality Is Contrary to the Record

Forestburgh's conduct must be understood against the settled backdrop described above. In case after case, courts have recognized that when land use authority is manipulated in response to the identity of anticipated residents, land use procedures cannot insulate discriminatory action from scrutiny. Forestburgh's actions fit that pattern precisely.

By the time Orthodox Jewish purchasers acquired the Lost Lake development, the project had already received all necessary approvals and had long enjoyed Town support. Its density, layout, and environmental footprint were fixed. *Lost Lake Holdings LLC v. Town of Forestburgh*, 22 CV 10656 (VB), 2025 WL 1899026, at *1–3 (S.D.N.Y. July 9, 2025). Nothing about the project itself changed. What changed was the Town's posture once it became known who would live there.

Even before the sale, Town officials and residents openly expressed anxiety about the prospect of Orthodox Jewish ownership. At a Town Board meeting, one resident warned that buyers might be people who "love to pack themselves into a house like beavers." JA-52 ¶ 85. Town officials privately characterized a purchase by Orthodox Jews as the "worst-case" scenario, warning that if they moved in, "[t]he

community is wrecked forever." JA-53 ¶ 95. Online commentary echoed those fears, predicting that "[t]he Hasidics will buy it and destroy it." JA-55 ¶ 108.

Once the Orthodox Jewish purchasers closed on the property, the reaction was immediate and overtly antisemitic. Public comments trafficked in stereotypes of criminality, corruption, and demographic "takeover," including references to "dirty money," the "Jewish mafia," and "the takeover continues," as well as rhetoric invoking Nazi violence. JA-56-57 ¶¶ 117–118. Before the new owners sought any modification of the approved plans, the Town hired counsel and prepared to oppose the project. JA-60-63 ¶¶ 134–154. The Town's resistance was not tied to any change in land use conditions; it was tied to opposition to Orthodox Jews moving into the community. *Id.* ¶ 154.

From that point forward, Forestburgh deployed land use process to obstruct a project that otherwise complied with existing approvals. Permits were denied on grounds untethered to the code. Stop work orders were issued. Environmental review was reopened. Fees escalated dramatically. Parallel agencies were pressed to intervene. *Id. passim*. As in Tenafly, Westchester Day School, Bloomingburg, Culpeper, Bernards Township, and Oyster Bay, procedures were employed as instruments of exclusion.

Viewed in isolation, any one of these steps might be described as routine. Viewed together—and in light of the record—they tell a different

story. Forestburgh did not apply its land use rules evenhandedly to a changed project. It mobilized those rules in response to who the anticipated residents were. That is the line the Fair Housing Act and the Constitution draw—and forbid municipalities from crossing.

This Court should therefore reject the Town's effort to characterize its conduct as ordinary regulation. Where a municipality invokes procedures selectively and belatedly, against a backdrop of explicit hostility to a protected group, process itself becomes the vehicle of discrimination. The law does not require courts to avert their eyes from that reality, nor does it require religious minorities to endure it indefinitely.

## II. THE DISTRICT COURT MISUNDERSTOOD THE LAW

The District Court dismissed this case on ripeness grounds, reasoning that Plaintiffs had not yet cleared enough procedural hurdles to obtain judicial review. That approach misunderstands both the function of ripeness doctrine and the injuries alleged here. Ripeness does not require plaintiffs to pursue relief they do not need, to engage in administrative appeals that would be futile, or to endure ongoing economic, procedural, and dignitary harms resulting from discriminatory animus. As set forth below, Plaintiffs' claims are ripe because they plausibly allege entitlement to proceed under existing approvals, a record demonstrating that further

applications would serve no purpose, and immediate injuries that, in any case, do not depend on the issuance of a final land use determination.

### A. The Trial Court's Decision Undermines the De Facto Finality Requirement, the Constitution, and the Fair Housing Act

The District Court found that Plaintiffs' land use claims were not ripe because they had not sought a variance. ECF No. 186 at 15. That conclusion rests on a mistaken premise: that a variance was legally required here at all. Plaintiffs, however, plausibly and sufficiently allege that their permit applications sought only to build in compliance with previous approvals and therefore did not require any deviation therefrom.

As Plaintiffs explained, variances under the Town Code are available only where "a proposed site plan contains one or more features which do not comply with the zoning requirements" of a certain chapter of the Code. JA-100 ¶ 428. Plaintiffs do not allege any such noncompliance; they seek only to proceed in accordance with approvals already granted. JA-100-101 ¶¶ 427–430. Requiring a variance under these circumstances would undermine the finality requirement, forcing applicants to request relief for a deviation they do not seek. Where, as here, a plaintiff plausibly and sufficiently alleges that it is entitled to proceed under existing approvals, there is no unresolved land use decision that must precede judicial review. *See Ateres Bais Yaakov Acad. of Rockland v. Town of Clarkstown*, 88 F.4th 344, 351 (2d Cir.

2023) ("[T]he finality requirement is relatively modest, and nothing more than *de facto* finality is necessary.") (internal quotation marks omitted).

Nor does *BMG Monroe I, LLC v. Village of Monroe*, 93 F.4th 595 (2d Cir. 2024), compel a different result. In *BMG*, the Court found that the developer sought to depart from the approved conditions. *Id.* at 603. The Second Circuit made clear that it was that departure that triggered the obligation to seek a variance before proceeding to federal court. *Id.*

Here, by contrast, Plaintiffs plausibly and sufficiently allege the opposite: that the Lost Lake Project complied with the operative approvals and that the Town's resistance arose not from any noncompliance, but from hostility towards Plaintiffs and those who would live there. *See* JA-94-101 ¶¶ 380–432. On those allegations, *BMG*'s underlying logic cuts in Plaintiffs' favor. When there is nothing left for local officials to decide—other than whether to apply the rules evenhandedly—ripeness should not demand further process.

The District Court itself recognized that "the parties have clearly staked out their positions" and that there was "no practical or logical reason to require plaintiffs to apply for a variance, further appeal the ZBA's decision, or seek project approval modifications from the Town Board." JA-1506. That observation applies with equal force here.

Finally, insisting on a variance under these circumstances would undermine the core purposes of the Fair Housing Act and the Constitution. Ripeness doctrine cannot be read to license discrimination by delay. A rule requiring religious minorities to pursue relief for deviations they do not seek—particularly where the record plausibly alleges discriminatory animus—would invite municipalities to manufacture "nonfinality" through baseless assertions of noncompliance. As Judge Posner observed, "[j]ustice delayed is justice denied …; and at some point delay must ripen into deprivation, because otherwise a suit alleging deprivation would be forever premature." *Schroeder v. City of Chicago*, 927 F.2d 957, 960 (7th Cir. 1991).

For these reasons, Plaintiffs' claims are ripe. Where a municipality deploys land use process not to regulate a project, but to obstruct a disfavored community, and de facto finality has been obtained, courts need not—and should not—wait for a purportedly more "final" denial that may never come.

### B. The Blatant Discrimination Rendered Continued Appeals Futile

Even if a variance were theoretically available (it was not), Plaintiffs plausibly allege that seeking one would have been futile. The futility exception exists precisely to prevent municipalities from using repeated denials, shifting standards, or entrenched hostility to insulate discriminatory conduct from judicial review. Where officials have "dug in [their] heels" and made clear that variance

applications will be denied, ripeness doctrine does not require plaintiffs to engage in pointless ritual. *Murphy v. New Milford Zoning Comm'n*, 402 F.3d 342, 349 (2d Cir. 2005).

The District Court discounted Plaintiffs' allegations as mere "hostility toward [Plaintiffs'] proposal for the Lost Lake property," concluding that hostility alone was insufficient to establish futility. ECF No. 186 at 20. That framing misses the mark. Plaintiffs do not allege generalized skepticism about a project or ordinary neighborhood opposition. They allege hostility toward *them*—and toward the Orthodox Jewish community who might live at the property—because of who they are. Where opposition is rooted in discriminatory animus, further applications are not a path to approval; they are the mechanism by which discrimination is prolonged.

For example, in *Mont Belvieu Square, Ltd. v. City of Mont Belvieu*, 27 F. Supp. 2d 935 (S.D. Tex. 1998), the City argued that the plaintiff's constitutional claims were unripe because it failed to seek a variance after its permit was denied. The court rejected that argument, holding that there was "sufficient evidence to indicate that seeking a variance would have been utterly futile" as the record suggested the denial and a related moratorium were racially motivated. *Id.* at 940–41. If discrimination drove the initial decision, the court reasoned, it would likely drive any subsequent one as well. *Id.* at 941.

The allegations here support the same inference. Plaintiffs allege a barrage of antisemitic statements by residents and Town officials, including by the Planning Board Chair, who vowed to stop what he described as a "[H]asidic threat" and to make their "lives miserable." *See, e.g.*, JA-1521, JA-1602. These statements were not isolated or ambiguous. They reflected a settled determination to prevent Orthodox Jews from building in and moving into Forestburgh, regardless of compliance with land use requirements.

Against that backdrop, it strains credulity to suggest that a variance application—submitted to the same municipal apparatus animated by that hostility—would have been given fair consideration. This is not a case where officials merely "express[ed] doubts" about a plaintiff's prospects. *BMG*, 93 F.4th at 603. It is one in which influential officials signaled that no outcome would be acceptable so long as Orthodox Jews were the anticipated residents.

As Plaintiffs correctly observed, "[t]here is no 'variance' procedure available to allow housing for a Hasidic Jewish 'demographic[]' that could somehow address the ZBA's blatantly discriminatory action." ECF No. 176 at 23 n.16. Where the "hostility" is to the religious or ethnic status of the developers and residents rather than to any technical land use feature, no amount of procedural refinement can provide a cure. Under those circumstances, requiring further applications would not advance ripeness; it would entrench discrimination.

The futility doctrine should be applied to prevent precisely that result. When officials have made clear—through words and actions—that they will not approve a project associated with a disfavored religious group, courts need not require plaintiffs to test whether discriminatory animus might relent. Plaintiffs' allegations plausibly establish that further administrative proceedings would have been futile, and the ripeness doctrine does not bar review.

### C. Independent Injuries Make the Claims Ripe

Even apart from the finality and futility existing here, Plaintiffs' claims are ripe because the Town's conduct inflicted immediate injuries independent of any ultimate land use decision. *Sunrise Detox V, LLC v. City of White Plains*, 769 F.3d 118, 123 (2d Cir. 2014) (holding land use claims to be ripe where plaintiffs "suffered some injury independent of the challenged land-use decision"). That principle applies with particular force where, as here, plaintiffs allege that officials manipulated land use process out of discriminatory animus. *Id.*

The economic injuries alleged here arose not from the absence of a permit, but from the Town's repeated use of process to impose escalating costs once Orthodox Jewish residents were anticipated. Courts have consistently recognized such injuries as independently sufficient to establish ripeness. In *Grand Medford Estates, LLC v. Town of Brookhaven*, for example, the court held that the "expenditure of additional resources" required to satisfy new and shifting municipal

demands constituted a cognizable injury ripe for review, even though the dispute arose in a land use context. No. 23-CV-4812, 2024 WL 185318, at *10 (E.D.N.Y. Jan. 17), *aff'd*, No. 24-402-cv, 2024 WL 4440231 (2d Cir. Oct. 08, 2024). Likewise, in *Dougherty v. Town of Hempstead*, the Second Circuit held that the revocation of a building permit inflicted an immediate injury that did not require exhaustion of further administrative process. 282 F.3d 83, 90 (2d Cir. 2002).

Plaintiffs plausibly allege comparable—and compounding—economic harms. To keep the Lost Lake project alive, they repeatedly resubmitted permit applications, supplied duplicative documentation, paid escalating exactions and fees (including a Parks and Playground fee ten times higher than that imposed on comparable subdivisions), absorbed an unlawful over-assessment that yielded millions of dollars in excess property taxes, and undertook duplicative environmental review. JA-64 ¶¶ 158–166, JA-71 ¶ 220, JA-108 ¶¶ 478–479. Each of these costs was imposed not because Plaintiffs sought to deviate from approved plans, but because the Town repeatedly altered the process itself.

Those injuries did not stop once this litigation began. During the pendency of the case, Defendants issued stop work orders, imposed additional inspection requirements, and suspended existing permits and approvals unless Plaintiffs modified their proposals yet again to conform to newly articulated standards. JA-101-102 ¶¶ 434–445. As in *Dougherty*, these actions inflicted immediate economic

harm at the moment they occurred; pursuing further administrative review would do nothing to "further define" the injury. *Dougherty*, 282 F.3d at 90.

Beyond these economic harms, Plaintiffs also suffered independent dignitary and procedural injuries arising from the Town's discriminatory treatment and its manipulation of land use process to keep the project in perpetual limbo. Courts have recognized that when towns weaponize procedure to avoid providing a formal final land use decision, such a decision is not necessary for harms to be cognizable.[3] *Sunrise Detox*, 769 F.3d at 123; *Vill. Green at Sayville, LLC v. Town of Islip*, No. 2:17-CV-7391, 2021 WL 230298, at *6 (E.D.N.Y. Jan. 22, 2021).

That principle has special force in cases involving religious discrimination. In *Congregation Rabbinical College of Tartikov, Inc. v. Village of Pomona*, the court found that a village enacted strategically timed zoning amendments and refused to engage in meaningful review to prevent construction of a rabbinical college, motivated by discriminatory animus against a Hasidic Jewish community. 915 F. Supp. 2d 574 (S.D.N.Y. 2013), *aff'd*, 945 F.3d 83 (2d Cir. 2019). Similarly, in *Fortress Bible Church v. Feiner*, this Court held that a town violated federal law by weaponizing discretionary environmental review—through delay, extortion, and

[3] As described above, Plaintiffs have, in any case, obtained at least de facto finality, which is sufficient.

selective application—to block a church project without ever issuing a final decision. 694 F.3d 208 (2d Cir. 2012).

The allegations here fall squarely within that line of cases. Town officials and residents referred to Orthodox Jews as people who "love to pack themselves into a house like beavers," who "tend to take everything off the tax rolls," and whose presence would mean that "[t]he community is wrecked forever." JA-52-53 ¶¶ 85–86, 95. Online commentary warned that "[t]he Hasidics will buy it and destroy it," trafficked in stereotypes of criminality and corruption, and even invoked Nazi violence. JA-55 ¶ 108, JA-56-57 ¶¶ 117–118. Following the initial permit denial, residents celebrated online: "And just like that we have our county back!!!" JA-65-66 ¶ 175.

This conduct inflicted dignitary harm independent of any ultimate permit decision. When government officials and influential community members deploy slurs, stereotypes, and threats alongside shifting rules and strategic delay, the injury is not merely the denial of a permit. It is the message that members of a disfavored faith are unwelcome participants in civic life. That injury arises the moment discriminatory process begins.

Insisting on further "finality" in this context[4] would reward the very tactics used to exclude religious minorities. Where a municipality manufactures purported

[4] Though, as discussed *supra*, sufficient finality exists here in any case.

non-finality by delaying, shifting standards, and refusing to say "no," courts should not permit that strategy to become a shield against review. The Fair Housing Act and the Constitution protect not only the right to a fair outcome, but the right to a fair and dignified process. Plaintiffs have plausibly alleged violations of both, and their claims are ripe for adjudication.

## CONCLUSION

This case asks whether municipalities may use the land use process to accomplish what the Fair Housing Act and the Constitution forbid them to do directly. The record shows that once the identity of the future residents became known, Forestburgh replaced evenhanded regulation with obstruction—reviving dormant rules, shifting standards, and manufacturing delay to effect discriminatory animus. The ripeness doctrine does not require courts to reward that strategy. Where process itself is weaponized to exclude a religious community, the injury is immediate and judicial review is required. Thus, *amici* respectfully urge the Court to reverse the District Court's dismissal and hold that Plaintiffs' claims are justiciable, reaffirming that equal justice protects not only outcomes, but the fairness and dignity of the path by which communities are permitted to belong.

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Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

This amicus brief complies with the type-volume limitation of Fed. R. App. P 29(a)(5) and Local Rule 29.1(c) and 32.1(a)(4)(A) because this brief contains 5,771 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman 14-point font.

Dated: December 15, 2025

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