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*Attorneys for Defendant, The Zoning Board of Adjustment
of the Township of West Orange*

DAUGHTERS OF ISRAEL, INC.,

Plaintiff,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
DOCKET NO.: ESX - L - 4045 - 23

v.

Civil Action

THE ZONING BOARD OF ADJUSTMENT
OF THE TOWNSHIP OF WEST ORANGE,

Defendant.

**ANSWER TO COMPLAINT
IN LIEU OF PREROGATIVE WRITS**

Defendant, The Zoning Board of Adjustment of the Township of West Orange (the “Defendant” or the “Board”), having its principal offices at 66 Main Street, West Orange, NJ 07052, Essex County, State of New Jersey, by way of Answer to the Complaint in Lieu of Prerogative Writs (the “Complaint”), filed by Plaintiff, Daughters of Israel, Inc. (the “Plaintiff” or “Daughters”), hereby say as follows:

GENERAL ALLEGATIONS

Introduction

1. The Board admits the allegations contained in Paragraph 1 of the Complaint, except to deny that Daughters is entitled to any of the relief requested therein.
2. The Board admits that “after 11 public hearings, the Board voted 4-3 *in favor of* Daughters’ application. Thus, a majority of the Board – including the Chair and Vice Chair – voted to approve the Project”, however the Board denies the balance of the allegations contained

in Paragraph 2 of the Complaint, including specifically denying the characterization of the deliberations contained therein.

3. The Board admits that a use variance requires 5 affirmative votes for passage and that the subject application for development received only 4 affirmative votes, thus resulting in a statutory denial of the application, however the Board denies the balance of the allegations contained in Paragraph 3 of the Complaint.

4. The Board admits that “the Board members who voted “no” stated on the record a series of considerations on which their decision was based”, however the Board denies the balance of the allegations contained in Paragraph 4 of the Complaint, including specifically denying the characterization of the deliberations contained therein.

5. The Board denies the allegations contained in Paragraph 5 of the Complaint, and, where same calls for a legal conclusion, the Board is not required to respond to same. To the extent the Board is required to respond to the allegations calling for a legal conclusion, the Board denies same.

6. The Board admits the allegations contained in Paragraph 6 of the Complaint.

7. The Board admits that “since 1962, Daughters has been caring for the elderly at the subject property, which is next to a large rehabilitation center and is across from a golf course.”, denies knowledge or information sufficient to form a belief as to the truth of the allegation that “the Project will therefore allow Daughters to provide *more* services to *more* seniors, and will allow Daughters to continue its mission of caring for the elderly and remain a viable home for its residents.”, and denies the balance of the allegations contained in Paragraph 7 of the Complaint.

8. The Board denies the allegations contained in Paragraph 8 of the Complaint, and, where same calls for a legal conclusion, the Board is not required to respond to same. To the extent the Board is required to respond to the allegations calling for a legal conclusion, the Board denies same.

9. The Board admits that the Project was approved by 4 of the 7 voting board members and, therefore, was statutorily denied by the Board, however the Board denies the balance of the allegations contained in Paragraph 9 of the Complaint.

10. The Board admits that Daughters requests the relief referenced in Paragraph 10 of the Complaint, however the Board denies that Daughters is entitled to any such relief.

The Parties

11. The Board admits the allegations contained in Paragraph 11 of the Complaint.

12. The Board admits the allegations contained in Paragraph 12 of the Complaint.

BACKGROUND FACTS

Subject Property

13. The Board admits the allegations contained in Paragraph 13 of the Complaint, except to deny the allegation of errors in the Resolution contained in the footnote thereto.

14. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint, and leaves Plaintiff to its proofs as to same.

15. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint, and leaves Plaintiff to its proofs as to same.

Applicable Zoning

16. The Board admits the allegations contained in Paragraph 16 of the Complaint.

17. The Board admits the allegations contained in Paragraph 17 of the Complaint.

18. The Board admits the allegations contained in Paragraph 18 of the Complaint.

Daughters' Mission

19. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint, and leaves Plaintiff to its proofs as to same.

20. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Complaint, and leaves Plaintiff to its proofs as to same.

21. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Complaint, and leaves Plaintiff to its proofs as to same.

22. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of the Complaint, and leaves Plaintiff to its proofs as to same.

23. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of the Complaint, and leaves Plaintiff to its proofs as to same.

24. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24 of the Complaint, and leaves Plaintiff to its proofs as to same.

25. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 of the Complaint, and leaves Plaintiff to its proofs as to same.

26. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 of the Complaint, and leaves Plaintiff to its proofs as to same.

27. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27 of the Complaint, and leaves Plaintiff to its proofs as to same.

The Project

28. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28 of the Complaint, and leaves Plaintiff to its proofs as to same.

29. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29 of the Complaint, and leaves Plaintiff to its proofs as to same.

30. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30 of the Complaint, and leaves Plaintiff to its proofs as to same.

31. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31 of the Complaint, and leaves Plaintiff to its proofs as to same.

32. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 32 of the Complaint, and leaves Plaintiff to its proofs as to same.

33. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33 of the Complaint, and leaves Plaintiff to its proofs as to same.

The Application

34. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 34 of the Complaint, and leaves Plaintiff to its proofs as to same.

35. The Board admits the allegations of Paragraph 35 of the Complaint.

36. The Board admits that the independent living units are market rate units, however the Board denies knowledge or information sufficient to form a belief as to the truth of the balance of the allegations contained in Paragraph 36 of the Complaint, and leaves Plaintiff to its proofs as to same.

37. The Board admits that a significant portion of the proposed development would have been located on previously developed land, however the Board denies knowledge or information sufficient to form a belief as to the truth of the balance of the allegations contained in Paragraph 37 of the Complaint, and leaves Plaintiff to its proofs as to same.

38. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 38 of the Complaint, and leaves Plaintiff to its proofs as to same.

39. The Board admits the allegations contained in Paragraph 39 of the Complaint, except that this Paragraph fails to include the “d(1)” use variance relief sought by the Applicant for three (3) principal uses on one lot, in violation of Section 25-8.12 of the Revised General Ordinances of the Township of West Orange (the “Ordinances”).

40. The Board admits the allegations contained in Paragraph 40 of the Complaint.

41. The Board admits the allegations contained in Paragraph 41 of the Complaint.

42. The Board admits the allegations contained in Paragraph 42 of the Complaint.

43. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 43 of the Complaint, and leaves Plaintiff to its proofs as to same.

44. The Board admits the allegations contained in Paragraph 44 of the Complaint.

45. The Board admits that Daughters proposed the application be constructed in multiple phases, however the Board denies knowledge or information sufficient to form a belief as to the truth of the balance of the allegations contained in Paragraph 45 of the Complaint, and leaves Plaintiff to its proofs as to same.

46. The Board admits that “Applicant initially proposed a ten year buildout and sought protection from changes in the terms and conditions on which approval is granted, including zoning and site plan requirements other than those relating to public health and safety, for a period of ten years as authorized by N.J.S.A. 40:55D-52.e.”, however the Board denies knowledge or information sufficient to form a belief as to the truth of the balance of the allegations contained in Paragraph 46 of the Complaint, and leaves Plaintiff to its proofs as to same.

47. The Board admits the allegations contained in Paragraph 47 of the Complaint.

48. The Board admits the allegations contained in Paragraph 48 of the Complaint, except to deny the characterizations contained therein and to deny knowledge or information sufficient to form a belief as to the truth of the alleged intentions of Daughters in taking the actions referenced therein, and leaves Plaintiff to its proofs as to same.

49. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 49 of the Complaint, and leaves Plaintiff to its proofs as to same.

50. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50 of the Complaint, and leaves Plaintiff to its proofs as to same.

51. The Board admits the allegations contained in Paragraph 51 of the Complaint.

The Public Hearing

52. The Board admits the allegations contained in Paragraph 52 of the Complaint.

53. The Board admits the allegations contained in Paragraph 53 of the Complaint.

54. The Board admits the allegations contained in Paragraph 54 of the Complaint.

55. The Board admits the allegations contained in Paragraph 55 of the Complaint, except to deny knowledge or information sufficient to form a belief as to the truth of the allegation that Loren Svetvilas is not a “party immediately concerned” pursuant to the MLUL and leaves Plaintiff to its proofs as to same.

56. The Board admits the allegations contained in Paragraph 56 of the Complaint.

57. The Board admits that the Public Advocate and just over a dozen members of the public asked questions or gave testimony, however the Board denies knowledge or information

sufficient to form a belief as to the truth of the balance of the allegations contained in Paragraph 57 of the Complaint, and leaves Plaintiff to its proofs as to same.

58. The Board admits the allegations contained in Paragraph 58 of the Complaint.

59. The Board admits that Township Planning Director Grygiel and Board Engineer Hess were the only Board experts to proffer expert testimony, however the Board denies the balance of the allegations contained in Paragraph 59 of the Complaint.

60. The Board denies the allegations contained in Paragraph 60 of the Complaint.

Plaintiff's Testimony at the Public Hearing

61. The Board admits that Daughters presented testimony from the witnesses listed therein, however the Board denies the balance of the allegations contained in Paragraph 61 of the Complaint.

62. The Board admits that Daughters presented testimony from the witnesses listed therein, however the Board denies the balance of the allegations contained in Paragraph 62 of the Complaint.

63. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 63 of the Complaint, and leaves Plaintiff to its proofs as to same.

64. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 64 of the Complaint, and leaves Plaintiff to its proofs as to same.

65. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 65 of the Complaint, and leaves Plaintiff to its proofs as to same.

66. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 66 of the Complaint, and leaves Plaintiff to its proofs as to same.

67. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 67 of the Complaint, and leaves Plaintiff to its proofs as to same.

68. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 68 of the Complaint, and leaves Plaintiff to its proofs as to same.

69. The Board denies the allegations contained in Paragraph 69 of the Complaint, and, where same calls for a legal conclusion, the Board is not required to respond to same. To the extent the Board is required to respond to the allegations calling for a legal conclusion, the Board denies same.

70. The Board admits the allegations contained in Paragraph 70 of the Complaint.

71. The Board admits that the R-2 District permits hospitals, but denies knowledge or information sufficient to form a belief as to the truth of the balance of the allegations contained in Paragraph 71 of the Complaint, and leaves Plaintiff to its proofs as to same.

72. The Board admits that the R-2 District permits senior housing, but denies knowledge or information sufficient to form a belief as to the truth of the balance of the allegations contained in Paragraph 72 of the Complaint, and leaves Plaintiff to its proofs as to same.

73. The Board admits that the Township's 1989 Master Plan is the most recent complete Master Plan and that the 2010 Master Plan Reexamination Report includes an objective

to provide for the housing needs of senior citizens and low and moderate income households, but denies the balance of the allegations contained in Paragraph 73 of the Complaint, including Daughters' contention therein that the development project is consistent with such objective.

74. The Board admits that the referenced 2010 objective was reaffirmed in the 2019 Master Plan Reexamination Report, but denies the balance of the allegations contained in Paragraph 74 of the Complaint, including Daughters' contention therein that the development project is consistent with such objective.

75. The Board admits the allegations contained in Paragraph 75 of the Complaint.

76. The Board admits the allegations contained in Paragraph 76 of the Complaint.

77. The Board admits the allegations contained in Paragraph 77 of the Complaint.

78. The Board denies the allegations contained in Paragraph 78 of the Complaint.

79. The Board denies the allegations contained in Paragraph 79 of the Complaint.

80. The Board denies the allegations contained in Paragraph 80 of the Complaint.

Objector Testimony at the Public Hearing

81. The Board believes that the Objector resides approximately 5,000 feet from the subject property and denies knowledge or information sufficient to form a belief as to the truth of the balance of the allegations contained in Paragraph 81 of the Complaint, and leaves Plaintiff to its proofs as to same.

82. The Board admits the allegations contained in Paragraph 82 of the Complaint.

83. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 83 of the Complaint, and leaves Plaintiff to its proofs as to same.

84. The Board admits the allegations contained in Paragraph 84 of the Complaint.

85. The Board admits the allegations contained in Paragraph 85 of the Complaint.

86. The Board denies the allegations contained in Paragraph 86 of the Complaint.

87. The Board admits the allegations contained in Paragraph 87 of the Complaint, except to deny that the referenced rule of procedure was mandatory.

88. The Board denies the allegations contained in Paragraph 88 of the Complaint.

89. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 89 of the Complaint, except to admit that the referenced Planning Report contained some errors and misstatements, and leaves Plaintiff to its proofs as to same.

90. The Board denies the allegations contained in Paragraph 90 of the Complaint.

91. The Board admits the allegations contained in Paragraph 91 of the Complaint, except to deny the characterization of Objector's Planning Expert Witness as "combative" and to state that it believes that the Objector resides approximately 5,000 feet from the subject property.

92. The Board admits the allegations contained in Paragraph 92 of the Complaint.

93. The Board admits that Objector's Planning Expert Witness contended that all necessary variances require independent proofs, but denies knowledge or information sufficient to form a belief as to the truth of the balance of the allegations contained in Paragraph 93 of the Complaint, and leaves Plaintiff to its proofs as to same.

94. The Board neither admits nor denies the allegations contained in Paragraph 94 of the Complaint.

95. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 95 of the Complaint, and leaves Plaintiff to its proofs as to same.

96. The Board admits the allegations contained in Paragraph 96 of the Complaint.

97. The Board denies the allegations contained in Paragraph 97 of the Complaint.

98. The Board admits the allegations contained in Paragraph 98 of the Complaint.

99. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 99 of the Complaint, and leaves Plaintiff to its proofs as to same.

Board Deliberations and Action on the Application

100. The Board admits the allegations contained in Paragraph 100 of the Complaint.

101. The Board admits the allegations contained in Paragraph 101 of the Complaint.

102. The Board admits the allegations contained in Paragraph 102 of the Complaint.

103. The Board admits the allegations contained in Paragraph 103 of the Complaint.

104. The Board admits the allegations contained in Paragraph 104 of the Complaint.

105. The Board admits the allegations contained in Paragraph 105 of the Complaint.

106. The Board admits the allegations contained in Paragraph 106 of the Complaint.

107. The Board admits that Daughters accurately quoted certain findings from the Resolution, but denies the contentions that such findings are unsupported by the record or reflect improper considerations that do not warrant or justify denial, and otherwise denies the balance of the allegations contained in Paragraph 107 of the Complaint.

108. The Board admits the allegations contained in Paragraph 108 of the Complaint.

109. The Board admits the allegations contained in Paragraph 109 of the Complaint.

110. The Board denies the allegations contained in Paragraph 110 of the Complaint.

111. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 111 of the Complaint.

COUNT ONE
**(Action in lieu of prerogative writs seeking reversal of
the Resolution and grant of approval because the
Board's denial of the Application was arbitrary,
capricious, and unreasonable)**

112. The Board repeats and reiterates each response heretofore made as if set forth in full herein and same is incorporated by reference herein.

113. The Board denies the allegations contained in Paragraph 113 of the Complaint.

114. The Board denies the allegations contained in Paragraph 114 of the Complaint.

115. The Board denies the allegations contained in Paragraph 115 of the Complaint.

116. The Board denies the allegations contained in Paragraph 116 of the Complaint.

117. The Board denies the allegations contained in Paragraph 117 of the Complaint.

118. The Board denies the allegations contained in Paragraph 118 of the Complaint.

119. The Board denies the allegations contained in Paragraph 119 of the Complaint.

120. The Board denies the allegations contained in Paragraph 120 of the Complaint.

121. The Board denies the allegations contained in Paragraph 121 of the Complaint.

122. The Board denies the allegations contained in Paragraph 122 of the Complaint.

123. The Board denies the allegations contained in Paragraph 123 of the Complaint.

124. The Board denies the allegations contained in Paragraph 124 of the Complaint.

WHEREFORE, the Defendant hereby demands judgment against the Plaintiff, as follows:

- A. Dismissing the Complaint, in its entirety, with prejudice;
- B. Affirming the decision of the Board denying the subject development application, in its entirety;
- C. Awarding the Defendant recovery of its attorneys' fees and costs of suit incurred in defending this frivolous prerogative writ appeal of the Board's decision; and

- D. Awarding such other relief as the Court may deem just and proper.

COUNT TWO
(Abuse of Discretion)

125. The Board repeats and reiterates each response heretofore made as if set forth in full herein and same is incorporated by reference herein.

126. The Board denies the allegations contained in Paragraph 126 of the Complaint.

127. The Board denies the allegations contained in Paragraph 127 of the Complaint.

128. The Board denies the allegations contained in Paragraph 128 of the Complaint.

WHEREFORE, the Defendant hereby demands judgment against the Plaintiff, as follows:

- A. Dismissing the Complaint, in its entirety, with prejudice;
- B. Affirming the decision of the Board denying the subject development application, in its entirety;
- C. Awarding the Defendant recovery of its attorneys' fees and costs of suit incurred in defending this frivolous prerogative writ appeal of the Board's decision; and
- D. Awarding such other relief as the Court may deem just and proper.

COUNT THREE
(Unsupported Resolution)

129. The Board repeats and reiterates each response heretofore made as if set forth in full herein and same is incorporated by reference herein.

130. Paragraph 130 of the Complaint fails to state a fact but rather calls for a legal conclusion and, therefore, does not require that the Board respond to same. To the extent that a response is determined to be required, the Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves Plaintiff to its proofs.

131. The Board denies the allegations contained in Paragraph 131 of the Complaint.

132. The Board denies the allegations contained in Paragraph 132 of the Complaint.

133. The Board denies the allegations contained in Paragraph 133 of the Complaint.

134. The Board denies the allegations contained in Paragraph 134 of the Complaint.

135. The Board denies the allegations contained in Paragraph 135 of the Complaint.

WHEREFORE, the Defendant hereby demands judgment against the Plaintiff, as follows:

- A. Dismissing the Complaint, in its entirety, with prejudice;
- B. Affirming the decision of the Board denying the subject development application, in its entirety;
- C. Awarding the Defendant recovery of its attorneys' fees and costs of suit incurred in defending this frivolous prerogative writ appeal of the Board's decision; and
- D. Awarding such other relief as the Court may deem just and proper.

COUNT FOUR
(Duty to "Turn Square Corners")

136. The Board repeats and reiterates each response heretofore made as if set forth in full herein and same is incorporated by reference herein.

137. Paragraph 137 of the Complaint fails to state a fact but rather calls for a legal conclusion and, therefore, does not require that the Board respond to same. To the extent that a response is determined to be required, the Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves Plaintiff to its proofs.

138. The Board denies the allegations contained in Paragraph 138 of the Complaint.

139. The Board denies the allegations contained in Paragraph 139 of the Complaint.

140. The Board denies the allegations contained in Paragraph 140 of the Complaint.

WHEREFORE, the Defendant hereby demands judgment against the Plaintiff, as follows:

- A. Dismissing the Complaint, in its entirety, with prejudice;
- B. Affirming the decision of the Board denying the subject development application, in its entirety;

- C. Awarding the Defendant recovery of its attorneys' fees and costs of suit incurred in defending this frivolous prerogative writ appeal of the Board's decision; and
- D. Awarding such other relief as the Court may deem just and proper.

COUNT FIVE
(Disqualification of Board Member Scott)

141. The Board repeats and reiterates each response heretofore made as if set forth in full herein and same is incorporated by reference herein.

142. The Board admits that Board Member Scott initially responded in the affirmative to the inquiry of whether he resided within 200 feet of the Property, but then it was promptly determined that he did not reside within 200 feet of the Property and indeed resides more than 2.5 miles from the Property, and the balance of Paragraph 142 of the Complaint fails to state a fact but rather calls for a legal conclusion and, therefore, does not require that the Board respond to same. To the extent that a response is determined to be required, the Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves Plaintiff to its proofs.

143. The Board denies the allegations contained in Paragraph 143 of the Complaint.

144. The Board denies the allegations contained in Paragraph 144 of the Complaint.

145. The Board admits that Board Member Scott had not yet attended the briefing session referenced in Section 2.07 of the Bylaws by the time of the decision in the underlying proceedings, and the balance of Paragraph 145 of the Complaint fails to state a fact but rather calls for a legal conclusion and, therefore, does not require that the Board respond to same. To the extent that a response is determined to be required, the Board denies knowledge or

information sufficient to form a belief as to the truth of the allegations contained therein and leaves Plaintiff to its proofs.

146. The Board admits that Board Member Scott made the quoted statement, as an aside, in the context of his detailed recitation of his multiple bases for voting to deny the subject application for development, but denies the balance of the allegations contained in Paragraph 146 of the Complaint.

147. The Board admits the allegations contained in Paragraph 147 of the Complaint.

148. The Board admits the allegations contained in Paragraph 148 of the Complaint.

149. The Board admits the allegations contained in Paragraph 149 of the Complaint.

150. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 150 of the Complaint, and leaves Plaintiff to its proofs as to same.

151. The Board denies the allegations contained in Paragraph 151 of the Complaint.

WHEREFORE, the Defendant hereby demands judgment against the Plaintiff, as follows:

- A. Dismissing the Complaint, in its entirety, with prejudice;
- B. Affirming the decision of the Board denying the subject development application, in its entirety;
- C. Awarding the Defendant recovery of its attorneys' fees and costs of suit incurred in defending this frivolous prerogative writ appeal of the Board's decision; and
- D. Awarding such other relief as the Court may deem just and proper.

COUNT SIX
(Disqualification of Board Member Eben)

152. The Board repeats and reiterates each response heretofore made as if set forth in full herein and same is incorporated by reference herein.

153. The Board admits that Board Member Eben missed a portion of the deliberations of, at most, 2 other Board Members, but he was present for all of the testimonial and documentary evidence presented on the record throughout the entire proceedings, as well as the balance of the deliberations, and the Board denies the balance of the allegations contained in Paragraph 153 of the Complaint.

154. The Board admits that Board Member Eben missed a portion of the deliberations of, at most, 2 other Board Members, but he was present for all of the testimonial and documentary evidence presented on the record throughout the entire proceedings, as well as the balance of the deliberations, and the Board denies the balance of the allegations contained in Paragraph 154 of the Complaint.

155. The Board admits that Board Member Eben missed a portion of the deliberations of, at most, 2 other Board Members, but he was present for all of the testimonial and documentary evidence presented on the record throughout the entire proceedings, as well as the balance of the deliberations, and the Board denies the balance of the allegations contained in Paragraph 155 of the Complaint.

156. The Board denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 156 of the Complaint, and leaves Plaintiff to its proofs as to same.

157. The Board denies the allegations contained in Paragraph 157 of the Complaint.

WHEREFORE, the Defendant hereby demands judgment against the Plaintiff, as follows:

- A. Dismissing the Complaint, in its entirety, with prejudice;
- B. Affirming the decision of the Board denying the subject development application, in its entirety;

- C. Awarding the Defendant recovery of its attorneys' fees and costs of suit incurred in defending this frivolous prerogative writ appeal of the Board's decision; and
- D. Awarding such other relief as the Court may deem just and proper.

COUNT SEVEN
(Violation of Open Public Meetings Act)

158. The Board repeats and reiterates each response heretofore made as if set forth in full herein and same is incorporated by reference herein.

159. The Board denies the allegations contained in Paragraph 159 of the Complaint.

160. The Board denies the allegations contained in Paragraph 160 of the Complaint.

161. The Board denies the allegations contained in Paragraph 161 of the Complaint.

162. The Board denies the allegations contained in Paragraph 162 of the Complaint.

WHEREFORE, the Defendant hereby demands judgment against the Plaintiff, as follows:

- A. Dismissing the Complaint, in its entirety, with prejudice;
- B. Affirming the decision of the Board denying the subject development application, in its entirety;
- C. Awarding the Defendant recovery of its attorneys' fees and costs of suit incurred in defending this frivolous prerogative writ appeal of the Board's decision; and
- D. Awarding such other relief as the Court may deem just and proper.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted and the Defendant reserves the right to move for dismissal at, or prior to, trial.

SECOND AFFIRMATIVE DEFENSE

The relief sought in the Complaint is barred by the applicable statute of limitations and the limitation period imposed by R. 4:69-6.

THIRD AFFIRMATIVE DEFENSE

The Defendant's actions are presumed valid and were not arbitrary, capricious, or unreasonable, and the Plaintiff cannot meet its significant burden of proving to the contrary.

FOURTH AFFIRMATIVE DEFENSE

The Plaintiff's demand for an award of attorneys' fees and/or costs should be stricken as there is no right to such relief in an action in lieu of prerogative writs.

FIFTH AFFIRMATIVE DEFENSE

All actions of the Board, including, but not limited to, those involving the exercise of its powers under the MLUL, and those referenced in the Complaint, were exercised in a reasonable and proper manner and in accordance with all applicable statutes, regulations and ordinances.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiff is not entitled to the relief sought in the Complaint since the Plaintiff failed to demonstrate the "positive criteria" for use variance relief under Sections 70(d)(1) and (d)(6) of the MLUL.

SEVENTH AFFIRMATIVE DEFENSE

The Plaintiff is not entitled to the relief sought in the Complaint since the Plaintiff failed to prove either of the two requisite prongs of the "negative criteria" for use variance relief under Sections 70(d)(1) and (d)(6) of the MLUL, and such relief cannot be granted unless both of the requisite prongs of the "negative criteria" are proven.

EIGHTH AFFIRMATIVE DEFENSE

The Plaintiff's prerogative writ appeal of the Board's decision is frivolous and has no basis in law or fact, particularly since the Plaintiff failed to prove either the positive criteria, or either of the two prongs of the negative criteria, for either the requisite d(1) use or the requisite d(6) height variance relief, whereas the Plaintiff was required to prove both the positive criteria and both of the two prongs of the negative criteria for both the d(1) use and the d(6) height variance relief. Pursuant to R. 1:4-8 and N.J.S.A. 2A:15-59.1, the Plaintiff is hereby put on notice that the Complaint is believed to violate the provisions of the Frivolous Litigation Rule and the Frivolous Litigation Statute and, accordingly, demand is hereby made that the pleading be withdrawn. Please be advised that an application for sanctions will be made within a reasonable time thereafter if the pleading is not withdrawn within twenty-eight (28) days of service of this written demand.

WHEREFORE, the Defendant hereby demands judgment against the Plaintiff, as follows:

- A. Dismissing the Complaint, in its entirety, with prejudice;
- B. Affirming the decision of the Board denying the subject development application, in its entirety;
- C. Awarding the Defendant recovery of its attorneys' fees and costs of suit incurred in defending this frivolous prerogative writ appeal of the Board's decision; and
- D. Awarding such other relief as the Court may deem just and proper.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Steven K. Warner, Esq. is hereby designated as trial counsel for the Defendant.

DEMAND FOR DOCUMENTS

Pursuant to R. 4:18-2, the Defendant hereby demands copies of all documents referred to in the Complaint within five (5) days, as prescribed therein.

SAVO, SCHALK, CORSINI, WARNER,
GILLESPIE, O'GRODNICK & FISHER, P.A.
Attorneys for Defendant,
The Zoning Board of Adjustment of the
Township of West Orange

By: 
Steven K. Warner

Dated: August 25, 2023

RULE 4:5-1 CERTIFICATION

Pursuant to Rule 4:5-1, it is hereby stated that the matter in controversy is not the subject of any other action pending in any other court or pending arbitration proceeding, and that no other party should be joined in this action pursuant to R. 4:28 or is subject to joinder pursuant to R. 4:29-1(b).

RULE 1:38-7(c) CERTIFICATION

Pursuant to Rule 1:38-7(c), the undersigned hereby certifies that confidential personal identifiers have been redacted from documents now submitted to the Court and will be redacted from documents in the future in accordance with Rule 1:38-7(b).

RULE 4:6-1 CERTIFICATION

The undersigned hereby certifies that the within pleading was served and filed within the time permitted by the Rules of Court, as extended by stipulation.

The undersigned certifies that the foregoing statements are true. The undersigned is aware that if any of the foregoing statements are willfully false, the undersigned may be subject to punishment.

By: 
Steven K. Warner

Dated: August 25, 2023

Civil Case Information Statement

Case Details: ESSEX | Civil Part Docket# L-004045-23

Case Caption: DAUGHTERS OF ISRAEL, INC. VS TP. OF W. ORANGE Z

Case Initiation Date: 06/23/2023

Attorney Name: STEVEN K WARNER

Firm Name: SAVO SCHALK CORSINI WARNER
GILLESPIE O'GRODNICK FISHER

Address: 56 EAST MAIN ST STE 301
SOMERVILLE NJ 08876

Phone: 9085260707

Name of Party: DEFENDANT : TP. OF W. ORANGE
ZONING BOARD

Name of Defendant's Primary Insurance Company
(if known): None

Case Type: ACTIONS IN LIEU OF PREROGATIVE WRITS

Document Type: Answer

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Does this case involve claims related to COVID-19? NO

Are sexual abuse claims alleged by: DAUGHTERS OF ISRAEL, INC.? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

08/25/2023
Dated

/s/ STEVEN K WARNER
Signed