CUPON of Chestnut Ridge

Date: November 18, 2018

To: Village Board of Chestnut Ridge

From: Citizens United to Protect our Neighborhoods ("**CUPON**") of Chestnut Ridge

Re: CUPON Statement on the Religious Land Use and Institutionalized Persons Act (RLUIPA)

Chestnut Ridge has proposed making extraordinary changes to its zoning laws with regard to houses of worship (the Proposed Zoning Changes). These changes were described originally in a document dated February 9, 2017, although we understand the Mayor and Village Board claim the date was an error and should have read February 9, 2018. Those proposed changes were then modestly modified and a new set of Proposed Zoning Changes was released on August 29, 2018. The Mayor and Village Board have cited **RLUIPA** as a primary reason for making these changes. Repeatedly, the Mayor has claimed that **RLUIPA** in fact mandates the proposed changes. CUPON, on advice of their attorneys, states that is simply not correct.

While CUPON believes that the Village should review and modernize its zoning laws, permitting process and enforcement procedures, it strongly urges the Village Board not to enact the Proposed Zoning Changes. Instead, the Village should go through the process of adopting a formal comprehensive plan, consistent with Federal and New York State law (including **RLUIPA**). The comprehensive plan must address the needs of all members of the community, including all religious communities.

Background on RLUIPA

RLUIPA was enacted in 2000 shortly after the Supreme Court of the United States decided the Religious Freedom Restoration Act ("**RFRA**") was unconstitutional. The RLUIPA land use provisions cited by the Mayor and the Village Attorney have not been tested at the Supreme Court, and there is vigorous national debate about whether those portions of RLUIPA are constitutional. CUPON, at this time, is not opining on the constitutionality of the land use provisions of RLUIPA. This document instead describes what RLUIPA requires and what it does not require.

RLUIPA forbids local governments from imposing or implementing land use regulations in a manner that "imposes a substantial burden on the religious exercise of . . . a religious assembly or institution." This is often called the "*substantial burden*" provision.

RLUIPA forbids local governments from imposing or implementing land use regulations in "a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." This is often called the "*equal terms*" provision.

RLUIPA bars restrictions that totally exclude religious assemblies from a jurisdiction or discriminate "against any assembly or institution on the basis of religion or religious denomination."

RLUIPA bars discrimination among religions.

Chestnut Ridge's current zoning laws do not and have not violated any of these requirements. They do not impose a substantial burden on religious practice; they do not violate the equal terms provision; they do not exclude religious assemblies; and they do not discriminate based upon a particular religion.

The current zoning laws do include land use restrictions on all types of land use including houses of worship such as minimum land size, fire and safety provisions, parking and traffic requirements which have been in place since Chestnut Ridge was formed. These land use rules have not stifled the formation and healthy diversity of the many houses of worship in the Village. Further, there is a fair and public process in place for any land use including religious to get variances to meet a specific need, for example the use of a house for small religious services or the construction of a community house of worship on a lot that is smaller than authorized in the existing code. The Proposed Zoning Changes instead provides blanket variances for houses of worship and sidesteps the Zoning Board of Appeals. This is NOT required by RLUIPA.

What **RLUIPA** does require is that the variance process be handled in an objective and nondiscriminatory manner that is consistent with each of the requirements described above. For example, when a proposed land use comes before the Planning Board or Zoning Board of Appeals seeking a variance to allow property to be modified and used for religious purposes, these Boards must apply the zoning law fairly in a nondiscriminatory manner that recognizes and balances the property rights of nearby property owners and the public safety of the community at large. They cannot use zoning laws to frustrate a meritorious request for a variance.

The Village Planning Board and Zoning Board of Appeals (ZBA) do not have a history or reputation for making improper decisions relating to proposed variances. Indeed, the most noteworthy religious use case they have addressed involved 3 Spring Hill Terrace where the owner requested and received a permit to build a three-car garage while being silent on the real intent to build a house of worship under the guise of a garage certificate of occupancy. Telling the truth about intended land use is NOT a substantial burden under RLUIPA. Within days of the ZBA decision to revoke the certificate of occupancy, the Village Attorney instructed the Building Inspector to issue a new slightly revised certificate of occupancy, thus negating the ZBA decision. It is no small wonder why the Proposed Zoning Changes avoid the ZBA process.

The Proposed Zoning Changes would create the as of right ability to designate that any house or property in any part of Chestnut Ridge can be converted or constructed as a residential gathering place or neighborhood house of worship. This sweeping change to a community where over 90% of the land in the Village has already been built on is simply a bridge too far and clearly NOT mandated by RLUIPA. These Proposed Zoning Changes provide a blanket variance for any house to be converted or built as residential gathering places or neighborhood houses of worship without any land size requirement. The hasty, very poorly drafted and unenforceable provisions of the Proposed Zoning Changes are NOT mandated by RLUIPA. Certainly, the tax base and marketability of Village property would suffer tremendously.

CUPON strongly supports the creation of a formal Village Comprehensive Plan that serves all residents with equal respect for the rights of the whole community. With over 90% of the Village already built out, this is not a difficult or time consuming process. Please start now!