

On Friday this paper announced that “Chabad of Litchfield wins suit to build in Litchfield”.

This is hardly what happened. Instead, the court told the Chabad that it could not build what it had asked for and was ordered to cut its proposed addition in half.

As the article reports, this case started with events that took place ten years ago when the Chabad Lubavitch of Litchfield asked the Litchfield Historic District to grant it permission to build a massive, two story addition to a small house it owns on West St. The house is approximately 2,500 square feet and the Chabad wanted to build an addition that would be approximately 10,000 square feet. The Commission denied the request without prejudice inviting the Chabad to apply again for something smaller.

Instead of revising its plans, Rabbi Joseph Eisenbach chose to sue the Commission claiming 12 violations of the United States Constitution, the Connecticut Constitution and federal and state law. He sued the Borough and its Historic District Commission, as well as three individual members of the Commission. He asked not only for permission to build his gigantic addition, but demanded damages of over \$4 million, as well as costs and attorneys’ fees.

By the time the case got to trial, 10 of the 12 claims had been thrown out as well as the case against one of the individual defendants. The Chabad withdrew its claim against the other two individual defendants. The Borough’s trial attorneys successfully moved the trial court to throw out all of the Chabad’s claims for damages. And the Chabad, recognizing the weakness of its discrimination case, withdrew that claim. Not even the Rabbi was left as a plaintiff.

What was left? The Chabad was left asking the court to order the Commission to approve its application because anything less would be a substantial burden to the practice of its religion.

The Chabad argued that everything its Rabbi did was religious, so unlike everyone else in the community, it should be allowed to build whatever it wanted. Not surprisingly, the court disagreed.

After reviewing the evidence, the court adopted the Borough’s position that Chabad was entitled to build a sanctuary, classrooms and offices, a Kosher Kitchen and Mikvah. But the Court, refused to let the Chabad build a 4,500 square foot apartment for the Rabbi.

(The court also acknowledged that the Chabad could build whatever it wanted underground out of site, another position never contested by the Borough.)

The final upshot? The Chabad has to file with the Commission modified plans for a one story addition of approximately 5,000 square feet and the Commission must approve it. There is no doubt in my mind that if the Chabad had filed such a plan years ago, instead of suing for millions of dollars of damages, this matter would have been settled to everyone’s satisfaction.

The court said nothing about awarding any attorney’s fees or costs of suit, but, a federal statute states that a court “may” allow attorney’s fees to the prevailing party. The Borough prevailed on eight of the counts addressed by that statute, the Chabad one. It will be interesting to see whom, if anyone the courts awards attorneys’ fees.

As you may note from the above, the Borough's trial counsel, Attorneys Mark Shipman and Scott Schwefel did an excellent job representing the interests of the Borough. I was privileged to represent the interests of the three individual defendants, all of whom were dropped from the suit prior to trial.

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