

<p>SUPREME COURT STATE OF NEW YORK</p>	<p>COUNTY OF WESTCHESTER</p>
<p>Robert L. Alexander & Elizabeth C. Alexander, Trustees, as Trustees of the Robert I. Alexander Revocable Trust and Elizabeth C. Alexander Revocable Trusts, The Munding Paul -Trust, Benjamin Rosenstad & Jane Lubowitz, Kevin J Kelly & Janet A Brody, John S. Galantic & Alexandra Galantic</p> <p>Petitioners,</p> <p>V.</p> <p>City of Rye Planning Commission, and Wainwright House, Inc.,</p> <p>Respondents.</p>	<p>Index No. _____</p> <p>AMENDED VERIFIED PETITION</p> <p>Plaintiffs designate Westchester County as the place of trial. The basis of venue is the residence of Plaintiffs</p>

Petitioners, by their attorneys, VENEZIANO & ASSOCIATES, as and for their Verified Petition against the Planning Commission of the City of Rye (the "Planning Commission"), allege as follows:

THE AFFIRMANT

1. This Petition is Verified by your affirmant, Joseph P. Eriole, Esq. ("Eriole"), who sets forth each and every allegation herein upon personal knowledge, both in his own right, being fully familiar upon personal knowledge with each and every fact alleged herein, except as to those facts alleged upon information and belief, and as to those facts, he believes them to be true, and

in his capacity as attorney for each of the captioned Petitioners, who have each reviewed this Petition and verify the truth of these allegations, but each of whom reside in Westchester County, being outside the County of Dutchess, wherein Eriole's law offices are located.

THE PARTIES

2. Respondent City of Rye Planning Commission is, upon information and belief, a municipal corporation duly organized within the State of New York.

3. Respondent Wainwright House, tnc. ("Wainwright") is, upon information and belief, a domestic not-for-profit corporation and the owner of property known as 260 Stuyvesant Avenue ("Wainwright Property"). Each Petitioner is the owner of property which abuts and/or is in the same residential neighborhood with the Wainwright Property, which properties are known as:

Benjamin Rosenstad & Jane Lubowitz	220 Stuyvesant Avenue, Rye NY
Kevin J Kelly & Janet A Brody	210 Stuyvesant Avenue, Rye NY
John S. & Alexandra Galantic	230 Stuyvesant Avenue, Rye NY
The Munding Paul -Trust	200 Stuyvesant Avenue, Rye NY
Robert L. Alexander Revocable Trust and	290 & 300 Stuyvesant Avenue, Rye NY
Elizabeth C. Alexander Revocable Trust	

NATURE OF THE ACTION

4. This Article 78 proceeding is necessitated by the Planning Commission's unlawful approval of Wainwright' Applications seeking Site Plan Approval and Wetlands Approval for the use of its residential property as a commercial venue.

SUMMARY OF THE ARGUMENTS

5. The Planning Commission's approval of Wainwright' applications were unlawful, in summary, for the following reasons:

- a. Each Approval Resolution was adopted prior to the adoption of a Negative Declaration under the State Environmental Quality Review Act ("SEQRA"), rendering any action taken by the Commission on the applications null and void;
- b. Each Approval Resolution was reviewed and adopted on the premise that they were the continuation of existing, valid approvals, but each previous approval had lapsed according to its terms, and the Applications ought to have been reviewed as *de nova* applications with no previously established record;
- c. Each Approval Resolution was adopted without substantial evidence in the record supporting the Planning Commission's decision, in that there was no proof in evidentiary form on the record which sufficiently supported either application;
- d. Under the City Code, the use proposed is a "Use Permitted Pursuant to

Additional Standards and Requirements," which additional standards and requirements were never discussed on the record;

e. Under the City Code, the use proposed is a "Use Permitted Pursuant to Additional Standards and Requirements," which additional standards and requirements were not met; and

f. The Planning Commission's actions were ultra vires in that it was tantamount to a re-zoning, which is the prerogative of the legislative body.

REQUEST FOR RELIEF

6. In light of the foregoing, and as discussed in the accompanying Affidavit of Robert Alexander, it is respectfully submitted that Petitioners are entitled to an Order and Judgment:

a. Annuling and setting aside the Planning Commission's approval of the Wainwright' Applications;

b. Remanding the Applications to the Planning Commission for the specific purpose of compelling the Planning Board's denial of the Applications; and

c. Granting to Petitioners such other, further and different relief that the Court deems just and proper.

FACTUAL BACKGROUND

7. On March 22, 2011, Wainwright obtained approval from the Planning Commission in Resolution No. 04-2011 {"2011 Approval") to install and use of a seasonal tent for wedding and non-wedding events each season (**Exhibit A**).

8. The 2011 Approval had an expiration date of October 1, 2016.
9. On April 17, 2015, Wainwright submitted a request for Modification and Extension of Final Site Plan, Use Permitted Subject to Additional Standards and Requirements, Wetland and Watercourses Permit and LWRP Coastal Consistency, located at 260 Stuyvesant Avenue (the "2015 Approval") (**Exhibit B**).
10. The 2015 Approval granted by the Planning Commission expired on October 30, 2021.
11. The 2015 Approval required that an application to renew that Approval was required to be submitted by October 30, 2020 ("Application Deadline").
12. On March 8, 2021, five (5) months after the expiration of the Application Deadline, Wainwright submitted a letter and application material seeking a five-year extension of the 2015 Approval (the "2021 Application").
13. Although Wainwright made this application after the Application Deadline, in its application materials, Wainwright suggested that the application was a "continuation" of previous approvals. (See, Applications in **Exhibit C**).
14. Wainwright requested that the new Approvals sought be subject to the same conditions and restrictions as the 2015 Approvals, and claimed that there were no new facts or circumstances which should alter such approval or conditions, even though the application was

made late and the request asked for an expanded program of events.¹ (*See, Id.*, Applications in Exhibit C).

15. On April 10, 2021, the Commission conducted a site walk of the applicant's property and reviewed the surrounding area.

16. On April 13, 2021, the Commission set a public hearing for its April 27, 2021 meeting, which had to be re-set for May 11, 2021, due to a notice deficiency.

17. The public hearing on this matter was held and closed on May 11, 2021.

18. The Planning Commission did rely upon, and re-affirmed, the findings supporting the granting of the 2011 and 2015 Approvals, despite the fact that the previous approvals had expired in virtue of the Application Deadline being missed.

19. The lapsing of the previous approval, and the need to sever the record, is further pointed up by the fact that the 2021 Approval was not filed in the City Clerk's Office until November 22, 2021, by which time not only had the Application Deadline passed, but the effective date of the 2015 Approval had passed.

20. On September 14, 2021, the Planning Commission approved the Site Plan and Wetlands Applications ("2021 Approvals")(Exhibit D).

¹ 1 Wainwright sought the following additional relief in its 2021 Application:

- Amend Condition 1 of the 2015 Approval to allow for an **additional 5** tented wedding events with amplified music (bringing the total wedding events to 15) **and to allow 4 non-wedding cultural or community events with amplified music:**
- Amend Condition 2 of the 2015 Approval **to allow weddings to extend to the end of October.** but excluding the Columbus Day weekend; and
- Amend Condition 3 of the 2015 Approval to require the tent to be removed after the last weekend in October.

21. In each 2021 Approval, the Planning Commission stated that it "re-affirmed the findings in Resolution No. 04-2011 and Resolution No. 15-2015," which are incorporated herein by reference."

22. A review of those previous Approvals will also, by the way, show that no substantial evidence was cited by those previous Commissions in their approval resolutions, either.

23. The Planning Commission, despite the fact that the previous approvals had expired in virtue of the Application Deadline being missed, cited no new or changed circumstances of the neighborhood or the new impacts brought to its attention by the Neighbor Petitioners.

24. In each 2021 Approval, the Planning Commission stated that "after considering" and relying upon "the analysis and findings in the Negative Declaration Resolution Number 14-2021 (Negative Declaration, **Exhibit E**), it resolved to approve the Application.

25. This is not a true statement.

26. The Negative Declaration was in fact reviewed, considered, and adopted *after* the adoption of the Approval Resolutions. This is a plain violation of the State Environmental Quality Review Act ("SEQRA"), found in ECL §8 *et seq*, and elaborated in § 617.3(a) of the NYCRR. SEQRA is a strict construction statute, and the adoption of the Approval Resolutions out of sequence with SEQRA is a fatal flaw for the City and Wainwright.'

LEGAL STANDARDS

27. There are essentially two bodies of law to be considered in considering whether the record in this matter supported the decision of the Planning Commission. The first is the

statutory and case law interpreting the authority of administrative agencies such as the Planning Commission; the second is the City of Rye Code, which establishes the criteria under which applications for uses with additional standards may be granted.

28. In the instance case, both bodies of law require the nullification of the Planning Commission's decisions.

The Exercise of the Planning Commission's Discretion

29. Upon information and belief, the Planning Commission is the municipal board of the City of Rye (the "City") charged with duties specifically set forth in the Code of the City of Rye (the "Code") and applicable provisions of the New York State City Law (the "City Law").

30. The Planning Commission has no inherent power to enact or enforce zoning or land use regulations.

31. Instead, the Planning Commission exercises its authority solely by legislative grant and, in the absence of legislative delegation of power, its actions are *ultra vires* and void.

32. As a discretionary approval body, its decisions must be supported by substantial evidence in the

record, and must articulate the rational basis for its decisions based upon that record, failing which, the decision will be deemed arbitrary and capricious.

33. The Planning Commission lays out in the Approval Resolutions its "basis" for the approvals.

The recitation is brief, as it must be, because there is no substantial record to draw from. What is cited rings hollow, to wit:

- "WHEREAS, both Congress and the Courts have broadened the definition of religious exercise; and
- WHEREAS, with the adoption of the Religious Land Use and Institutionalized Persons Act (RLUIPA), Congress' intent was to construe religious exercise "to the maximum extent permitted by the terms of this chapter and the Constitution." 42 U.S.C. 2000cc(a)(1).
- WHEREAS, under RLUIPA, religious exercise is defined as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 2000cc-5(c)(7)A); and
- WHEREAS, the City has required the applicant to undergo the normal land use process that every other secular land use applicant must go in the R-1 zoning district and such process is not a substantial burden...
- WHEREAS, the Commission reviewed and discussed the matter at its May 27, 2021 meeting and encouraged the applicant to work with area neighbors to address concerns regarding the application...
- WHEREAS, public comment both oral and written was reviewed and considered by the Planning Commission and is incorporated as part of the official record of this application; and
- WHEREAS, the record includes letters and comments both supporting and objecting to the application; and
- WHEREAS, in an August 9, 2021 letter to the Planning Commission, the applicant, after speaking with the neighbors, agreed to reduce its request from a 5-year permit to a 3-year permit..." (See, Exhibit __, 2021 Approval)

34. That is the entirety of the support outlined in the Approval Resolutions. The failure of these broad assertions to rationally support the Commission's decision will be set forth in distinct allegations below.

The RLUIPA Red Herring

35. As is readily apparent, the first set of "justifying" statements are merely restatements of the federal RLUIPA statute and interpretive case law, and, while a religious use would be entitled

to rely upon the statute, there is no evidence in the record, or pointed to in the resolution, upon which the Commission makes its finding that Wainwright is a religious institution. That is a fatal flaw.

36. Even if there were some evidence construed to support this claim in the record, it is still fatal to the Approval that it is not relied upon by the Commission in its approval.

37. To the extent that the City or Wainwright, in answer to this Petition, seek to make a showing of the religious nature of Wainwright House's proposed uses, such a showing would be outside the Record before the Commission at the time its decision was made, and outside the "facts" cited by the Commission in drawing its conclusion on this point.

38. Moreover, there are serious questions as to whether Wainwright House is, in fact, a religious institution entitled to such protection.

39. While its original establishment and present governing documents memorialize an initial set of core values rooted in Christian temperance, in practice it seems to expressly deny any religious affiliation or creed, and its operation, as evidenced by Wainwright's own statements on the record, has become essentially that of a commercial rental facility and catering hall.

40. Indeed, Wainwright only seems to claim its "religious" pedigree when it is useful in securing approval for its commercial activity.

41. A review of the Record by the Court will show that the only proffers made on the

religious use question in this matter were advanced by opponents of the project (including but not limited to, Petitioners herein), and the Veneziano firm on their behalf (**Exhibit F**). Wainwright ignored the issue. See, **Exhibit G**, the Minutes of meetings at which the Wainwright matter was considered, where no discussion of the "religious" nature of the operation will be found.

42. In the proffers of our firm and the Petitioners during the public process, it was pointed out that Wainwright never advanced a religious use argument on the record, that the purpose and intent of the Wainwright House to operate as modest "parish house" but that mission had now broadened to include a broad range of commercial and club-like events unrelated to its current or past mission, and that the real justification for the approvals was merely that Wainwright relied on the income to remain viable. Exhibit F, Veneziano Submissions)

43. We also pointed out, on the record, and without any counter from Wainwright, that the best test of whether the Wainwright House is a religious institution is to refer to the special conditions set forth in the Rye Code for making such a determination, and, as we shall establish decisively below, Wainwright cannot meet any standard set forth in the Code for such a use. (*Id,*)

44. Finally on this point, the mere restatement of statutory law or case law does not "create" the record necessary to cover the action under those legal umbrellas. These statements are self-serving recitations of legal standards meant to create the impression that the Commission developed or reviewed a record on this point, when in fact, despite numerous written submissions by this firm on behalf of the Petitioners pointing out that no such record had been made, the Commission and Wainwright simply did not press the point. (*Id.*)

Non-Compliance with SEQRA

45. As set forth above, the Negative Declaration was in fact reviewed, considered, and adopted after the adoption of the Approval Resolutions. This is a plain violation of SEQRA, as noted above. SEQRA is a strict construction statute, and the adoption of Approval Resolutions prior to the conclusion of SEQRA is a fatal flaw for the City and Wainwright. Affiants Robert Alexander and attorney Joseph Eriole, Esq. were both in attendance that evening, and each attest to the fact that the SEQRA Negative Declaration had not been adopted when the 2021 Approvals were voted upon.

46. It is telling that this sequence of events is not reflected in the Minutes recorded for the September 14, 2021 Meeting.

47. The Approval Resolutions were therefore both adopted without a SEQRA determination being on the record.

48. It is also noted that there was no review of Wainwrights' Environmental Assessment

Form reflected in the Minutes.

49. The failure to comply with SEQRA is a fatal flaw and is grounds for remand at the very least.²

With Respect to the Record

50. To the extent that the deficiency of the Record herein is alleged, we note that the City will be required to produce the certified Record herein, and we will detail with greater specificity the deficiencies and references made in these and other papers in our Reply. Any allegation herein with respect to the Record is therefore made without prejudice to our opportunity to clarify, correct or make further reference to the Record.

There is No Prior Record Supporting the Decision

51. The 2015 Approval had lapsed on the basis that one of its express conditions (the requirement to apply for renewal had passed at the time of its 2021 Applications, and the time period during which the 2015 Approvals continued (October 2021) had expired by the time the 2021 Approval Resolutions were filed with the City Clerk (November 22, 2021). **(Exhibit E)**.

52. Therefore, no part of the record upon which the City claims to have relied in arriving at its conclusion can be considered in granting the 2021 Approval.

² No agency involved in an action may undertake, fund or approve the action until it has complied with the provisions of SEQRA." 6 N.Y.C.R.R. §617.3(a). The "purpose of SEQRA is to assure the preparation and availability of an environmental impact statement at the time any significant authorization is granted for a specific proposal." *Tri-County Taxpayers Assoc. v. Town Board of Queensbury*, 55 N.Y.2d 41, 46-7, 447 N.Y.S.2d 699, 701 (1982)."(C)ompliance with SEQRA must occur before the agency acts; after-the-fact compliance is of no avail." *DiVeronica v. Arsenault*, 124 A.D.2d 442, 507 N.Y.S.2d 541, 543 (3d Dep't 1986). Thus, before an agency can make a "significant authorization" for an "action," It must have before it a valid negative declaration that the proposal will not have a significant environmental impact. *Devitt v. Heimbach*, 58 N.Y.2d 925,460 N.Y.S.2d 512 (1983). Otherwise, the action is invalid. *Tri-County Taxpayers Assoc. v. Town Board of Queensbury*, 55 N.Y.2d 41, 447 N.Y.S.2d 699 (1982); *Briody v. Village of Lewiston*, 188 A.D.2d 1017, 591 N.Y.S.2d 1017 (4th Dep't 1992), app. den'd 81 N.Y.2d 710, 600 N.Y.S.2d 197 (1993).

53. Wainwright neither presented nor was required to submit updated information on the manner in which their proposed use met the special conditions by which the use could be justified.

There is No Current Record Supporting the Decision

54. The City drew the unsubstantiated conclusion that "the Applicant's use of the property is permitted under the City's zoning and land use regulations as a religious use" (See, Exhibit E, 2021 Approval Resolution).

55. Like the unsubstantiated conclusion that RLUIPA justified the Planning Commission's action, this conclusion is merely a self-serving legal conclusion clearly designed to give the impression that the City Code had been considered, but, in fact, nowhere in the 2021 Approval Resolution is that proffer of "religious use" supported.

56. Returning to the two sections of the Code where a potential religious use may be allowed in a residential zone, Wainwright House's applications were approved on the premise of operating a "use permitted subject to additional standards and requirements"

57. The list of uses permitted subject to conditions is set forth in the Rye City Code at §197-86.

58. The two religious uses recognized within the zoning district are the "religious headquarters" use and the "religious institution" use. Wainwright is neither.

Wainwright is on Too Small a Lot to be a " Religious Headquarters"

59. The "religious headquarters" categorization requires a parcel size of at least 20 acres. Upon information and belief, Wainwright's parcel at 270 Stuyvesant is 2.16 acres and its parcel

at 260 Stuyvesant is 2.82 acres. Wainwright House cannot qualify.

Wainwright is not a "Church or Place of Worship"

60. Closer examination of the Code makes the "religious institution" claim yet more remote.

61. The "religious uses" categorization expressly incorporates the practice of religious worship at the location ("Churches and other places of religious worship.")

62. As noted above, Wainwright seems to make a point of being an "irreligious" use, except and until it needs to shoehorn the religious use into an approval.

63. Tellingly, Wainwright has never advanced any factual argument for the consistency of its proposed uses with the religious special use permit under which the City Attorney has confirmed they are operating (March 30, 2021). In the context of this Commission's legal standard of review in considering this application, this must be characterized as a lack of substantial evidence in the record supporting the issuance of the special permit.

64. Wainwright's record consists essentially of some public sentiment on their side and a description of proposed uses which they argue is consistent with previously issued special permits. They do not engage meaningfully in the discussion of whether they continue to be the religious use under which the special permit has traditionally been granted, or whether the neighborhood circumstances and character have changed to become more or less consistent with the proposed uses.

65. Reference to Exhibit G, the Minutes of each meeting out which Wainwright's application

was considered, shows the paucity of any record by Wainwright on these necessary points of law and fact.

66. In order to categorize Wainwright's use as a religious institution based upon Wainwright's casual references to the contemplative or spiritual aspects of some of their programming, the Court would open the door to any home in which grace was said at dinner or the residents occasionally engaged in meditation with their houseguests could qualify as a church.

67. On the other hand, Petitioners submitted substantial evidence to establish that Wainwright House is not a religious use.

68. When Fonrose Wainwright Condict petitioned the City in a letter dated May 8th, 1951 she said:

"Your petitioner, Fonrose Wainwright Condict, is considering giving said premises...to ... the "*Layman's Movement*," to be used by it as a home where men may meet to consider and strive to carry out the purpose of the *Laymen's Movement*. ..

This home is not to be used as a church, but it will be used as a place of worship from time to time. [It] will be used by much smaller groups of people than would a parish house running from 10 to 20 persons.

There will be no outward appearance of its being used for any purpose substantially different from the uses for which a private house might be expected to be used.
(emphasis added).

69. The City granted approval on May 8th, 1951 with conditions:

"The approval of this Commission for the granting of a permit for the use of said premises, as herein described, and relates only to this use of said premises by the applicants herein" (*emphasis added*). (see, Exhibit D4)

70. As can be readily apprehended, neither the original application for land use entitlements, nor the approval first granted, conceived of a religious institution which would become a host site for any large commercial event that sought to book it.

71. Today, Wainwright's self-professed mission seems almost to emphasize its non-denominational, broad and secular thrust. Upon a visit to their website at <https://www.wainwright.org/a-mansion-with-a-mission> one can read this current statement of Wainwright's purpose:

"For almost 70 years, Wainwright House has been the site of hundreds of conferences, meetings and classes in a variety of disciplines... "Upon her death in 1983, Fonrose Wainwright Condict donated the Wainwright House to be used for the continuation of her mission. At the time, it was known as the Wainwright House Center for the Development of Human Potential. Today, Wainwright House plays host to a variety of social and corporate events.. The facilities include three buildings with meeting rooms, dining rooms, a meditation room, library, and solarium: as well as ...lodging for programs and retreats.
...Wainwright House is proud to be the oldest non-profit, non-sectarian holistic learning center in the United States." (*emphasis added*).

72. These are **Wainwright's own words**. It is evident that, while Wainwright may have been inspired by an interest in preserving Christian moral virtues and temperance, those characteristics were focused not on religious exercise, but on building such moral character in the workplace. ie., the secular sphere. , Into the present day, at best it might be

characterized as an educational and conference center.

The Use is Not Permitted; The Planning Commission's Action is *Ultra Vires*

73. Wainwright House is located in a residential zone.

74. The Code allows for a religious use in a residential zone under two circumstances:

- (1) a religious headquarters, or
- (2) a church or place of worship.

75. If one of these criteria cannot be met, then Wainwright is not even eligible for the "use subject to special conditions" under which it was approved. It is simply an illegal use. And its approval by the Planning Commission becomes an ultra vires action outside its jurisdiction, by permitting an unlawful use. That is a power reserved to the legislative body, and under some circumstances. delegated to the Zoning Board of Appeals.

76. The Court should note that prior to making the instant applications to the Planning Commission, Wainwright had attempted to have its property ***re-zoned*** to allow for the uses it seeks to legalize in these applications.

77. That history is part of this record, as we submitted it for incorporation. *Wainwright knows it is operating outside the lawful limits of the Code.* (Exhibit F3, Veneziano Letters)

78. The City Council did not entertain the petition. This failed attempt not only shows that Wainwright knows itself to be operating outside of the law, but it also undermines its argument before the City Council and this Commission that nearby uses such as social and recreational

clubs are no more intense uses than they now propose.

79. This "argument" ignores the fundamental fact that those clubs are in zoning districts where such uses are expressly allowed. In addition those clubs, such as the Shenorock Shore Club and Covaleigh are substantially larger than the Wainwright parcel, a fact which is easily verified by your Assessor. Residents bought houses relying upon the known proximity and intensity of existing club uses on parcels zoned and sized for that purpose.

80. Further, over the last 25 years, the City of Rye has authorized development of a number of residential properties, ranging in price from \$1 million-\$10 million, within 3 miles of this site. This area of Rye is increasingly defined by high end, exclusive residential living. These facts make all of the commercialization of the Wainwright house more inconsistent with the character of the area.

81. Contrary to the casual references of Wainwright and its supporters to the notion that this property is situated no differently than numerous private clubs nearby, it is actually not similar in size, purpose, zoning designation, and, it is in an area becoming more residential in character, not less.

82. For these and other reasons, the City Council did not choose to change Wainwright House's zoning designation. This Commission cannot, and should not, usurp the Legislative prerogative by granting a special permit as an "end-run" around the Zoning Code.

The Planning Commission Expressly Establishes its Ultra Vires Usurpation of the Legislative Zoning Prerogative

83. The Commission set forth in its unlawful, post-approval Negative Declaration Resolution, a virtual hornbook description of a discretionary approval which usurps legislative authority and is tantamount to a zoning change.

84. In its Negative Declaration Resolution, the City sets forth among its Findings its conclusion that the approval should be granted and impacts deemed mitigated because the Commission concludes the proposed Wainwright use to be compatible with uses in another zoning district! In other words, it concludes that since the Wainwright House use would be at home in a different, but nearby zoning district, it should be allowed in this residential district.

85. That reasoning is the sort that might be appropriated for a legislative body to consider under the review of a re-zoning petition, but it is not the sort of reasoning that can lawfully be applied to the discretionary decision making power of a Planning Commission whose authority is circumscribed by the express grant of authority pursuant to the City Law.

86. The Court will note these SEQRA Findings of the Commission:

Impact on Community Character

The Planning Commission has reviewed the use of the property with a purposeful eye on the impacts to the community, including noise and traffic concerns raised by residents. The Planning Commission notes that **although Wainwright House is located in an R-1 Single Family Residence District on Milton Point, it is in an area that includes both single-family residential and membership club uses.** Opposite the property on the east side of Stuyvesant Avenue is the Coveleigh Club. Further south on Stuyvesant Avenue are the Shenerock Shore Club and the American Yacht Club. Prior to 1991, these clubs were located in the City's R-1 District until the zoning district designation was changed to the Membership Club District as recommended in the City's Local Waterfront Revitalization Program (LWRP). **These clubs are permitted uses** and can generate

potentially disruptive levels of noise, traffic and outdoor activities during the same period that Wainwright House uses its seasonal tent. Clearly, the land use context is not one of an exclusively residential area. ***{emphasis added}***

87. It is submitted that this language, adopted by the Planning Commission in its own wads, establishes that its approval was based in large part on its judgment that the Wainwright use was an appropriate use not in its present zoning district, but in a neighboring district, as if that conferred on the Planning Board the power to render such a use permissible.

88. This reasoning would be unlawful in any event, but it is especially egregious where the legislative body of the City had expressly declined to entertain a previous petition for exactly that rezoning!

89. Moreover, we submit that the Record does not establish sufficient grounds for such a conclusion, even if it were appropriate to cite it. The Record establishes this district as a clearly estate-based, residential district, and establishes that historically even the Wainwright House was contemplated to remain in just that character notwithstanding its broader mission. *See allegations in paragraphs 65 - 70 above.*

**There is no Support for the Satisfaction of the General Criteria for
Special Uses**

90. In addition to the specific standards relevant to a religious use, there are a number of general criteria for approving special uses in the residential district, as to which Wainwright has

also made no substantial evidentiary proffer.

91. At §197-10 Uses permitted subject to additional standards and requirements, the uses

indicated in Column 2 of the Table of Regulations include:

- **Code:** In a residential district the proposed use will serve a community need or convenience.
 - **Record:** Review of the minutes and public comment (The closest anyone gets to making this case is in numerous statements that very pleasant events are held there, and that for people who don't belong to private clubs, Wainwright serves as a public club. But, this actually helps make our case - proponents of the Wainwright Approvals see it as **a club**, which is expressly disallowed in the zone. There are large clubs in the vicinity which operate under entirely different and protective criteria. Moreover, the Planning Commission does not rely upon or cite any aspect of the record to support that this criteria has been met. When the City produces the entire certified Record herein, we will point out in Reply the nature of these immaterial "supporting" public comments. It is also important to note that the Commission does not point to the statements made to try to support the satisfaction of this criteria; likely in recognition that such statements are immaterial on the matter, they are neither relied upon by the Commission, nor do they go beyond statements that efforts will be made to limit the disturbances to certain hours.
- **Code:** The proposed use will be appropriate in the proposed location and will have no material adverse effect on existing or prospective conforming development, and the proposed site is adequate in size for the use.
 - **Record:** *There is ample evidence to the contrary on this point in the record, and, as noted above, and the statements made to try to support the satisfaction of this criteria are neither relied upon by the Commission, nor do they go beyond statements that efforts will be made to limit the disturbances to certain hours.*
- **Code:** The proposed use will be provided with adequate off-street parking to meet its needs, properly screened from adjoining residential uses, and entrance and exit drives are to be laid out to minimize traffic hazards and nuisance.
 - **Record:** *The same type of broad and unsubstantiated statements as to parking controls are in the record, but there are no hard data or even experiential studies of current conditions as to parking for these events.*
- **Code:** The potential generation of traffic will be within the reasonable capacity of the existing or planned streets and highways providing access to the site.

- o **Record:** See immediately above.

Request for Relief

92. The Planning Board exceeded the powers granted to it by law herein.

93. The Planning Board's approval of Wainwright's 2021 Applications was and is unconstitutional, *ultra vires* and void.

94. The Planning Board's approval of Wainwright's 2021 Applications was and is not supported by the Record.

95. The Planning Board's approval of Wainwright's 2021 Applications was and is arbitrary and capricious.

96. In fact, the record confirms that the Planning Board failed to articulate any rational basis for its denial, as none exists.

97. No prior application for the relief sought herein has been made to this or any other Court.

98. The Petitioner has no adequate remedy at law.

99. For the foregoing reasons, and upon all papers previously or hereafter to be had herein, an Order is sought granting the following relief with respect to the Planning Commission's approval of Wainwright's Applications:

- a. Annulling and setting aside the Planning Commission's approval of the Wainwright' Applications;
- b. Remanding the Applications to the Planning Commission for the specific purpose of compelling the Planning Board's denial of the Applications; and
- c. Granting to Petitioners such other, further and different relief that the Court deems just and proper.

Dated: Rhinebeck, New York

December 21, 2021

Yours, etc.
VENEZIANO & ASSOCIATES
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1051 Boston Post Rd.
Rye, NY 10580

To: Wainwright House, Inc.
260 Stuyvesant Avenue
Rye NY 10580

VERIFICATION

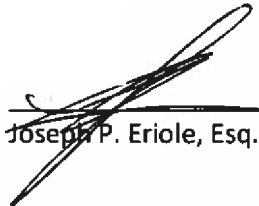
STATE OF NEW YORK

) ss.:

COUNTY OF DUTCHESS)

JOSEPH P. ERIOLE, being duly sworn, deposes and says:

1. I am of counsel to the firm of VENEZIANO & ASSOCIATES, attorneys for Petitioners.
2. I am an attorney, duly licensed to practice Law in the State of New York, and a duly licensed notary public.
3. I am fully and personally familiar with all the facts and circumstances and the pleadings and the proceedings heretofore had herein. I have read all of the allegations of the Verified Petition and I believe said allegations to be true and correct, and as to these allegations and any allegations asserted upon information and belief, I believe the same to be true and correct based upon the books and records in Petitioner's possession, custody and control.
4. I have also consulted with the Petitioners, who know the contents herein.
5. The reason this Verification is made by me is that I have personal knowledge of all of the material allegations contained in the Verified Petition, and my offices are located outside the County in which the Petitioners reside.



Joseph P. Eriole, Esq. _____

SUPREME COURT STATE OF NEW YORK	COUNTY OF WESTCHESTER
<p>Robert L Alexander & Elizabeth C. Alexander, Trustees, as Trustees of the Robert L. Alexander Revocable Trust and Elizabeth C. Alexander Revocable Trusts, The Munding Paul -Trust, Benjamin Rosenstad & Jane Lubowitz, Kevin J Kelly & Janet A Brody, John S. Galantic & Alexandra Galantic Petitioners,</p> <p>V.</p> <p>City of Rye Planning Commission, and Wainwright House, Inc.,</p> <p>Respondents.</p>	<p>Index No. _____</p> <p>AMENDED VERIFIED PETITION</p> <p>Plaintiffs designate Westchester County as the place of trial. The basis of venue is the residence of Plaintiffs</p>

Dated: Rhinebeck, New York
December 21, 2021

VENEZIANO & ASSOCIATES
Attorneys for Petitioners
Joseph P. Eriole, Esq., of Counsel
108 Montgomery Street
Rhinebeck, NY 12572

To: Planning Commission
City of Rye
1051 Boston Post Rd.
Rye, NY 10580

To: Wainwright House, Inc.
260 Stuyvesant Avenue
Rye NY 10580