

## Memorandum

To: Town of Somers Zoning Commission

From: Hillsdale College

Date: January 31, 2020

Re: Further Supplemental Discussion of Hillsdale College's Special Use Applications for 700, 708, 732 and 740 Hall Hill Road

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### INTRODUCTION

This document supplements the memoranda submitted by Hillsdale College to the Town of Somers Zoning Commission on December 2, 2019, and December 23, 2019, as well as oral presentations made at prior hearings, regarding the College's special-use applications for the properties at 700, 708, 732 and 740 Hall Hill Road ("the properties"), the site of the College's planned Blake Center for Faith and Freedom, named after benefactors S. Prestley and Helen Blake. As before, the College reserves the right to further supplement the record in this proceeding for as long as it remains open.

This memorandum has three parts. First, the College sets forth its current plans relating to the Blake Center chapel. Second, the College responds to certain legal questions and objections raised at the January 6, 2020, public hearing. Third, the College responds to items on the Commission's revised list of review comments and requests, dated January 21, 2020.

### I. UPDATED PLANS REGARDING BLAKE CENTER CHAPEL

As the College has explained, use of the Blake Center chapel, which it has designated as a standalone building on 700 Hall Hill Road that will be converted to a chapel, will be central to, and will feature prominently in, the College's programming at the Blake Center, of which it is a key part. *See, e.g.*, Hillsdale College Supp. Mem. 2 (Dec. 23, 2019). Indeed, as described previously (*id.*) and below, *infra* p. 21, programming at the Center will integrate the chapel into all of its activities and will be crafted to promote its use. In short, the chapel will be a principal and central use of the Blake Center. The inside of the chapel will feature an altar, explicitly Christian imagery, symbols, iconography, and décor, including a cross or crucifix. The College will encourage staff, guests, neighbors, and visitors to use the chapel for prayer, worship, Bible studies, vespers, sacred music, and other appropriate devotional activities. In connection with programming at the Center, the College will host Christian services at the chapel, including sermons, retreats, and group prayer

liturgies. *See* Hillsdale College Supp. Mem. 2–3 (Dec. 23, 2019).

Two objections have been raised, however, that relate to the relevance of the College’s proposed chapel and that have prompted the College, wishing to avoid needless legal disputes, to make corresponding adjustments to its plans for the Blake Center. First, Attorney Joseph Williams has taken the position, on behalf of his client Danuta Toklowicz-Vuerich and echoing comments from the Commission’s counsel, that so long as the chapel is not on the same parcel as the Monticello building, the presence of the chapel and its activities—even if fully integrated in, and central to, the Monticello building’s programming and activities and in furtherance the Center’s central Christian mission—are irrelevant to whether the proposed use of the Monticello parcel constitutes a “place of worship or religious institution.” *See* Letter from Joseph Williams 4–5 (Jan. 6, 2020) (hereinafter “Williams Letter”); *see infra* p. 10 (responding to this objection). Second, counsel to the Commission has stated that, under his reading of the zoning regulations, no single parcel in a residential zone is allowed more than one principal building. *See infra* pp. 14–17 (describing this objection and responding to it).

For reasons set forth in Part II of this memorandum, the College maintains that both of these objections are misplaced and incorrect as a matter of law. Nonetheless, in light of the possibility that the Commission might conclude that one or both of these objections is well founded, and in the interest of avoiding wasteful and needless litigation in the event that that occurs, the College has made two adjustments to its Blake Center project, mooted both arguments:

- ***Designation of Indoor Chapel in Monticello Building.*** The College now plans to designate a particular area in the basement of the Monticello building as an additional Blake Center chapel. The nature of the planned use of this chapel is identical to that of the standalone chapel. The College anticipates that the indoor Monticello chapel would be used instead of the standalone chapel when weather conditions do not permit easy travel from Monticello to the standalone chapel for Blake Center guests. All spiritual activities planned for the standalone chapel remain as before, and thus the use of this indoor chapel will be equally fully integrated in the use of Monticello, to be used in conjunction with Monticello-based events. With respect to the standalone chapel, the College anticipates that it will allow access for neighborhood use generally on weekdays from 9 a.m. to 5 p.m. (and on applicable evenings and weekends for Blake Center guest use), except when cold or inclement weather does not permit easy use.

- ***Reconfiguration of 700 and 732 Hall Hill Road Lot Lines So That Monticello and the Standalone Chapel Are on the Same Lot.*** Hillsdale College is the purchaser in a Purchase and Sale Agreement regarding 700 Hall Hill Road in Somers, and the sellers are S. Prestley Blake and Helen Blake. The closing date in the Purchase and Sale Agreement is in January of 2021. Well before that date, however, and indeed as soon as is practicable, the Blakes will convey the rear acreage of 700 Hall Hill Road to Hillsdale College and, in connection this transaction, there will be filed a Notice of Reconfiguration joining the rear acreage of 700 Hall Hill Road to abutting property located at 732 Hall Hill Road (the Monticello lot), which property is currently owned by Hillsdale College. A “Lot Line Reconfiguration Plan Prepared for Hillsdale College 700, 732 & 740 Hall Hill Road Somers, Connecticut Map 10 Lot 07 & 08 & Map 42 Lot 01 Zone: A, dated January 29, 2020” depicts the intended reconfiguration of the property which is the subject of the above-reference Purchase & Sale Agreement. This reconfiguration will ensure that the planned standalone chapel will occupy the same lot as the Monticello building.

## II. RESPONSES TO QUESTIONS AND OBJECTIONS RAISED AT JANUARY 6, 2020, PUBLIC HEARING

### 1. Is the College’s proposed use of the Monticello building a “place of worship or religious institution” use?

Yes. This is framed not as a question but rather as an assertion (in the negative) in Attorney Joseph Williams’ letter of January 6, 2020, submitted to the Commission on behalf of his client Danuta Toklowicz-Vuerich. Below, the College will explain further what a “place of worship or religious institution” use is and then show that the College’s proposal for the Monticello lot, like the other parcels making up the Blake Center, meets that definition.

As the College has noted, because the provision at issue protects uses either as “a place of worship” *or* as a “religious institution,” traditional principles of interpretation require that these two concepts be understood separately, with each carrying its own distinctive meaning. *See Lopa v. Brinker Int’l, Inc.*, 296 Conn. 426, 433 (2010) (“Because every word and phrase of a statute is presumed to have meaning, a statute must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant.”) (internal alterations omitted); *Earl B. v. Comm’r of Children & Families*, 288 Conn. 163, 178 (2008) (conjunctive/disjunctive canon). Thus, to grasp what a “religious institution” use, it is necessary first to understand what a “place of worship” is.

Connecticut case law sheds some light on “place of worship.” It includes not only churches but also “buildings [not] exclusively used for churches” yet “still maintain the essential characteristics of churches,” such as “devotion to the practice of religious worship . . . open to all that care to attend with purposes that are exclusively to further the worship of God and to carry out such activities as are the natural outgrowth of the teachings of religion.” *St. Joseph’s Living Ctr., Inc. v. Town of Windham*, 290 Conn. 695, 751–53 (2009) (internal citation and alterations omitted) (holding that, “in light of th[e] evidence regarding the use of the chapel exclusively as a place of prayer and worship, and its central role in the spiritual aspects of the Center’s mission, we have no trouble characterizing the chapel as a house of religious worship”).

Yet even this definition does not exhaust the meaning of “place of worship,” whose application to a particular use requires a “sensitive determination [that] must be informed by a recognition of the protection afforded the free exercise of religion by the constitutions of Connecticut . . . and of the United States.” *Daughters of St. Paul, Inc. v. Zoning Bd. of Appeals of Town of Trumbull*, 17 Conn. App. 53, 60 (1988) (citations omitted). After all, “[t]he concept of what constitutes a church has changed from a place of worship alone, used once or twice a week, to a church used during the entire week, nights as well as days, for various parochial and community functions.” *Id.* (quoting *Beit Havurah v. Zoning Board of Appeals*, 177 Conn. 440, 447–48 (1979)). For instance, the Connecticut Supreme Court held that a Jewish place of worship retained its character as such while “[a]t any time of the day or night . . . us[ing] its premises for prayer, celebration of festivals and religious events, Jewish study, meals satisfying religious requirements or other activities appropriate to its style of worship, as well as for other accessory uses such as recreation or maintenance.” *Havurah v. Zoning Bd. of Appeals of Town of Norfolk*, 177 Conn. 440, 442–43 (1979). In all cases, “[t]he question of whether a particular use of a building qualifies the structure as a church or other place of worship demands . . . deference” to the religious person or entity proposing the use. *Daughters of St. Paul*, 17 Conn. App. at 61 (emphasis added).

It is against the backdrop of this broad, deferential understanding of “place of worship” that any analysis of “religious institution” must be framed. To begin, “[w]hen a statute does not define a term, [courts] look to the common understanding of the term as expressed in the dictionary.” *Gomes v. Mass. Bay Ins. Co.*, 87 Conn. App. 416, 432 (2005) (citation omitted). The dictionary defines “institution” as “an established organization or corporation (such as a bank or university) especially of a public character.” *Institution*, Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/institution> (last visited Jan. 31, 2020). It defines “religious” as “relating to or manifesting faithful devotion to an acknowledged ultimate reality or deity” and “of, relating to, or devoted to religious beliefs or observances.” *Religious*,

Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/religious> (last visited Jan. 31, 2020). In common understanding, therefore, a “religious institution” is “an established organization or corporation (such as a bank or university) especially of a public character” that “relat[es] to or manifest[s] faithful devotion to an acknowledged ultimate reality or deity” or that is “devoted to religious beliefs or observances.” Thus, as a matter of plain meaning, a “use” proposed by such an entity is a “use” proposed by a “religious institution.” See, e.g., *Congregation B’Nai Jeshurun v. Bd. of Review of City of Des Moines*, 301 N.W.2d 755, 756 (Iowa 1981) (“First, the property must be ‘used . . . by . . . religious institutions and societies.’ We may assume for purposes of decision that this religious institution ‘uses’ the dwelling by housing its Temple custodian there and storing its equipment in the garage.”).

Reading in a requirement that the religious institution’s proposed use *itself* be “religious” would certainly forbid the Little Sisters of the Poor from opening a casino or water park in the A zone, but—just as clearly—it would not demand that any proposed “religious” use be a “place of worship” use. That would be to conflate what the regulation separates. While a “worship” use arguably would consist of “act[s] . . . expressing . . . reverence” to and “offered [to] a divine being or supernatural power,” *Worship*, Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/worship> (last visited Jan. 31, 2020), a “religious” use need only “manifest[ ] faithful devotion to an acknowledged ultimate reality or deity” or relate to or be devoted “to religious beliefs or observances.” See *supra*. So while all “worship” activities are “religious” activities, not all “religious” activities are “worship” activities. See, e.g., *Found. of Human Understanding v. United States*, 614 F.3d 1383, 1388 (Fed. Cir. 2010) (noting “consensus” that “an entity that engages in religious teaching may be a ‘religious organization’ but still not qualify as a ‘church’”).

On the subject of whether a proposed use manifests faithful devotion to a deity or is related to religious beliefs or observances—*i.e.*, is a religious use—precedent sounds several notes of caution. See *Jewish Reconstructionist Synagogue of N. Shore, Inc. v. Inc. Vill. of Roslyn Harbor*, 38 N.Y.2d 283, 288 (1975) (underscoring the “peculiarly pre-eminent status of religious institutions under the First Amendment provision for free exercise of religion”). First, it follows that, for the same reasons that the “place of worship” inquiry demands deference to the prospective, religious user, *Daughters of St. Paul*, 17 Conn. App. at 61, so also must the “religious institution” standard. That is because, just as what qualifies as “worship” is a question not for judges but for the worshipper, what counts as a “religious” use is a matter not for the government but ultimately for the believer or faith-based institution. See *Hernandez v. Commissioner*, 490 U.S. 680, 699 (1989) (“It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants’ interpretations of those creeds.”);

*Protos v. Volkswagen of Am., Inc.*, 797 F.2d 129, 137 (3d Cir. 1986) (“[C]ourts may not inquire into the verity of a religious belief.”). This means that, for persons or institutions proposing a religious use of land, it is “*their religious beliefs*,” as they have articulated them, that matter. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 724 (2014) (emphasis in original) (applying the federal Religious Freedom Restoration Act, a close analogue of RLUIPA). “[I]t is not for [the state] to say” whether those “religious beliefs are mistaken or mistaken or unreasonable.” *Id.*; see *Thomas v. Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707, 719 (1981) (same rule under Free Exercise Clause). Any other approach would at best entangle the State in matters of faith and at worst make it the final arbiter of what religion is—both forbidden by the Constitution.

To illustrate, someone who “believes it is his religious duty to help the sick and their family” exercises his religion by using a house for these purposes, regardless of whether doing so “is an absolute obligation [of his faith]—that is, whether it is secondary to any other religious precepts.” *Bikur Cholim, Inc. v. Vill. of Suffern*, 664 F. Supp. 2d 267, 289 (S.D.N.Y. 2009). Citing Second Circuit precedent, the court in that case explained that “the free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires.” Thus “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection. An individual claiming violation of free exercise rights need only demonstrate that the beliefs professed are sincerely held and[,] in the individual’s own scheme of things, religious.” *Id.* (quoting *Fifth Ave. Presbyterian Church v. City of New York*, 293 F.3d 570, 574 (2d Cir. 2002) (holding that allowing homeless people to sleep on church stairs is a religious exercise under the First Amendment)).

This constitutionally mandated, hands-off approach to matters of religion applies with even greater force to cases involving asserted beliefs or practices that outsiders might regard as atypical or otherwise outside the norm. “The legitimacy of nontraditional religious practices cannot depend upon what is customary among more traditional religious groups.” *Havurah*, 177 Conn. at 449–50. After all, “[t]he protection of RLUIPA, no less than the guarantee of the Free Exercise Clause, is ‘not limited to beliefs which are shared by all of the members of a religious sect.’” *Holt v. Hobbs*, 135 S. Ct. 853, 862–63 (2015) (quoting *Thomas*, 450 U.S. at 715–16). They protect “idiosyncratic” beliefs, too. *Id.* Further, a religious institution with an unusual structure or with no formal affiliation with a congregation or sect has the same free-exercise rights as a church or diocese. See Brief of Amicus Curiae the United States Supporting Appellee, *Spencer v. World Vision, Inc.*, 633 F.3d 723 (9th Cir. 2011), 2008 WL 5549423; see also *Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 900 (7th Cir. 2005) (Posner, J.) (noting “vulnerability of religious institutions—especially those

that are not affiliated with the mainstream Protestant sects or the Roman Catholic Church—to subtle forms of discrimination”). For this reason, courts reject arguments seeking to undermine an institution’s religiosity in light of its financial model, governance structure, or any other artificial metric. *See Larson*, 456 U.S. 228, 230, 246 n.23 (1982) (striking down “a Minnesota statute[] imposing certain registration and reporting requirements upon only those religious organizations that solicit more than fifty [percent] of their funds from nonmembers” because it “effectively distinguish[ed] between well-established churches ... and churches which are new and lacking in a constituency, or which, as a matter of policy, may favor public solicitation over general reliance on financial support from members”); *Univ. of Great Falls v. NLRB*, 278 F.3d 1335, 1342 (D.C. Cir. 2002) (“[A]n exemption [from the jurisdiction of the National Labor Relations Act] solely for ‘pervasively sectarian’ schools would itself raise First Amendment concerns—discriminating between kinds of religious schools.”); *Colo. Christian Univ. v. Weaver*, 534 F.3d 1245, 1258-59 (10th Cir. 2008) (McConnell, J.) (striking down state scholarship program that refused scholarships to “pervasively sectarian” schools because it “directly violate[s] . . . the requirement of nondiscrimination among religions.”).

It is helpful also to consult the meaning of “religious exercise” under RLUIPA here, not only because the common meaning of religious “use” and religious land-use “exercise” obviously overlap but also because reading “use” by a “religious institution” under § 214-98 as covering *at least as much* ground as “religious exercise” in RLUIPA avoids throwing § 214-98’s legality into doubt. RLUIPA protects the “religious exercise” of persons, defined to cover religious assemblies and institutions. 42 U.S.C. § 2000cc(a). RLUIPA provides that “religious exercise” includes *any* exercise of religion, “whether or not compelled by, or central to, a system of religious belief.” 42 U.S.C. § 2000cc-5(7)(A). “The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise . . . .” 42 U.S.C. § 2000cc-5(7)(B). And lest there be “any remaining doubt regarding how broadly Congress aimed to define religious exercise, RLUIPA goes on to state that the Act’s aim of protecting religious exercise is to be construed broadly and ‘to the maximum extent permitted by the terms of this chapter and the Constitution.’” *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 347 (2d Cir. 2007) (citing 42 U.S.C. § 2000cc-3(g)).

Courts have held that “religious exercise” in RLUIPA “covers a wide range of activities, including operation of various faith-based social services facilities; accessory uses such as fellowship halls, parish halls and similar buildings or rooms used for meetings, religious education, and similar functions; operation of a religious retreat center in a house; religious gatherings in homes; and construction or expansion of religiously affiliated schools, even where the facilities would be used for both secular and religious

educational activities.” U.S. Dep’t. of Justice, *Statement of the Department of Justice on the Land Use Provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA)*, <https://www.justice.gov/crt/page/file/1071251/download> (last visited Jan. 30, 2020) (citations omitted). Importantly, to “avoid the force of RLUIPA” it will not do to “assert[ ] that a particular religious activity is something that a religious group merely wants to do rather than something that it must do,” since the “central[ity]” of a practice to a religious belief system is irrelevant under § 2000cc-5(7)(A). *Id.*; see *Cutter v. Wilkinson*, 544 U.S. 709, 725 n. 13 (2005). Consequently, “[r]eligious exercise” in RLUIPA “covers most any activity that is tied to a religious group’s mission.” *Bikur Cholim*, 664 F. Supp. 2d at 288 (emphasis added) (citation omitted); see, e.g., *Layman Lessons, Inc. v. City of Millersville, Tenn.*, 636 F. Supp. 2d 620, 626 (M.D. Tenn. 2008) (holding that RLUIPA protected the plaintiff, “a non-profit, faith-based” corporation seeking “to provide food, clothing, shelter, transportation and Christian training to those in need” and whose facilities included a store “selling donated items to raise money to support Layman Lessons’ programs”).

Applying these principles to Hillsdale College and its proposed use of Monticello yields the conclusion that Monticello is entitled to protection as a proposed “place of worship or religious institution.” Importantly, that conclusion follows *regardless* of whether the standalone chapel and Monticello sit on different lots (as they do now) or whether they occupy the same lot (as they soon will).<sup>1</sup> This memorandum will analyze both arrangements.

To begin, the College is clearly a religious institution. Specifically, it is “an established organization or corporation (such as a bank or university)” that “relat[es] to or manifest[s] faithful devotion to an acknowledged ultimate reality or deity” or that is “devoted to religious beliefs or observances.” Indeed, as it explained in its first memorandum and oral presentation at the previous hearings, all of the College’s activities are “tied to”—and radiate from—its core “religious mission” and vocation. *Bikur Cholim, Inc.*, 664 F. Supp. 2d 267, 288 (S.D.N.Y. 2009). Whether outsiders regard the College’s sincerely held faith in an educational vocation as sufficiently “religious”—or otherwise “acceptable, logical, consistent, or comprehensible”—is irrelevant. *Fifth Ave. Presbyterian Church*, 293 F.3d at 574. It is enough that it is “[*Hillsdale College’s*] religious belief.” *Hobby Lobby Stores*, 573 U.S. at 724 (emphasis in original). And whether the College’s pursuit of this mission in Michigan, Connecticut, or anywhere else is “central” to the College’s conception of its Christian duties (plainly, it is) is equally beside the point. For these and other reasons, the College is a “religious institution” within the meaning of § 214-98. Of course, this much is not in dispute. Nor, thankfully, has anyone suggested that the

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<sup>1</sup> The conclusion also follows even if the proposed use of the Monticello structure did not include a chapel inside the building, as is now planned.



College is “seeking to perpetrate a fraud” on the Commission, by claiming to hold beliefs that it does not “actually hold.” *Yellowbear v. Lampert*, 741 F. 3d 48, 54. (10th Cir. 2014) (Gorsuch, J.) (explaining that courts asked to assess whether belief is “sincerely held” have a “modest” task: to consider solely “whether the claimant is (in essence) seeking to perpetrate a fraud on the court”).

Likewise, the College’s proposed use of the Monticello building specifically is as a “place of worship or religious institution,” even with the standalone chapel on a contiguous lot and even with no chapel in the basement. The primary activities planned for the Monticello building are (1) seminars predominantly addressing or touching on religious themes, including explicitly religious topics such as “Classical and Modern Theology,” “C.S. Lewis,” “Christianity and Education,” “Biblical Exegesis,” “Natural and Divine Law,” “Christianity and Politics,” “Ethics,” and the “Book of Genesis”; and (2) seminars predominantly addressing or touching on religious themes, which will opened with a Christian blessing, delivered by Christian theologians, philosophers, public figures, and others, and on topics to include issues of religious liberty, Christian theology, Christian philosophy, Christianity and the Western Heritage, and contemporary issues in Christian thought. *Daughters of St. Paul*, 17 Conn. App. at 1709–80 (“When a building is used for more than one purpose, the main, principal and dominant use of the building determines its character.” (citation and alterations omitted)).

Although not every seminar, lecture, or other program will focus on explicitly Christian topics, every lecture or seminar will amount to a “religious exercise” of the College’s sincerely held belief in its Christian mission to promote “intelligent piety” and “sound learning.” Hillsdale College Mem. App. Tab 5 (Dec. 2, 2019). The College believes that not only are “Knowledge and Reason . . . sure ministers to Faith,” Saint John Henry Newman, *The Idea of a University* xi (1905), but that faith is necessary to a proper approach to learning in any field, because faith disciplines and directs study toward the divine. Because, “at Hillsdale, faith and learning are integrated in pursuit of a common end,” Hillsdale College, *Four Pillars: Faith*, <https://fourpillars.hillsdale.edu/> (last visited Nov. 26, 2019), all of the seminars and lectures planned for the Monticello building—even those on so-called secular topics—will invariably be “*permeated with religious aspects*.” *Westchester Day Sch. v. Vill. of Mamaroneck*, 417 F. Supp. 2d 477, 545 (S.D.N.Y. 2006) (emphasis added) (protecting faith-based school under RLUIPA notwithstanding that many rooms would “not be devoted exclusively to religious education and practice), *aff’d*, 504 F.3d 338 (2d Cir. 2007) (agreeing with district court and noting that school’s offerings represented a “kind of synthesis between the Judaic and general studies for which the school aims,” given that “the curriculum of virtually all secular studies classes is permeated with religious aspects”); *see also LeBoon v. Lancaster Jewish Cmty. Ctr. Ass’n*,

503 F.3d 217, 229 (3d Cir. 2007) (noting that defendant “engaged in secular activities, such as lectures and instructions with no religious content, and once even rented space to a Hindu group for meetings, that its employees were overwhelmingly Gentile, that it accepted United Way funds with the promise that it would not discriminate in the funded programs, and that it failed to ban non-kosher foods,” but holding that “[n]one of these factors is decisive” since “religious organizations may engage in secular activities without forfeiting protection” as religious organizations under Title VII).

The Monticello structure will also further the College’s Christian mission by fully integrating prayer and worship in all of its events. It will do this not only through use of its standalone chapel but also through use of its indoor chapel. As the College has explained, chapel use and the chaplain will be “*central* to” and a “prominent[ ]” focus of all events. *See, e.g.,* Hillsdale College Supp. Mem. 2 (Dec. 23, 2019). For example, in the official programming materials for seminars, lectures, and other Monticello gatherings, the College will make visits to the Chapel for prayer and worship part of the official agenda. The schedule for a particular day might appear as follows: 8:00 a.m., morning prayer at the Chapel; 9:00 a.m., chaplain invocation and breakfast; 10:00 a.m., seminar and discussion; 12:00, chaplain blessing and lunch; 3:00 p.m., prayer in chapel; 4:00 p.m., seminar and discussion; and 6:00 p.m., vespers (evening prayer) in chapel. When the weather will not permit use of the standalone chapel, these prayer and worship services will occur in the Monticello building’s indoor chapel.

Attorney Williams makes a rather curious suggestion that the standalone chapel’s important role in programming otherwise occurring at Monticello should be ignored when assessing the religiosity of the College’s proposed use of Monticello, so long as the Chapel is technically on another, contiguous parcel. Williams Letter 5. According to this puzzling theory, it would not be a religious use of a Catholic convent for a Mother Superior to direct her novices to go to confession at the parish church down the street. Nor would it be a religious use of a retreat center for a Muslim speaker to urge his listeners to take a pilgrimage to the Middle East. One even wonders how a certain mountain in Galilee would have fared under this test when Jesus of Nazareth used it to deliver a sermon urging his followers to “go and make disciples of all nations.” *Matthew* 28:19 (New International Version). In any event, this objection is mooted by the College’s commitment to include a chapel in the Monticello building itself as well as to reconfigure property lines so that the standalone chapel is on the same parcel as the Monticello building.

With the standalone Chapel included on the same parcel as Monticello, and with a room set aside in Monticello as an indoor chapel use when weather conditions impede use of the standalone chapel, the conclusion that the proposed use constitutes a “place of worship or religious institution” is

unavoidable. Indeed, it follows *a fortiori* from *Daughters of St. Paul*. There, a Catholic religious order sought a special exception to build a multi-use building with a convent on the second floor and a chapel on the first floor along with a store selling religious books and movies. 17 Conn. App. at 54. Cautioning that “the question of whether a particular use of a building qualifies the structure as a church or other place of worship demands . . . deference” to the religious, would-be user, the court rejected the Town’s argument that the store cloaked the property with a commercial character. For one thing, “the principal characteristic of the proposed [store], as evidenced by the purposes set forth in the plaintiff’s articles of organization, the nature of its proposed inventory, the presence of an adjoining chapel in the convent open to the patrons of the center, and the plaintiff’s nonprofit status, is the dissemination of religious doctrine and instructional material, not the mere selling of books,” furthering the order’s “primary purpose, namely, to do missionary work in support of the Roman Catholic faith.” *Id.* at 61–62. Giving little weight to the detail that the store outsized the chapel, the court instead seized on the significance of the fact “that the chapel is open to the public whenever the center is open” and that the convent and chapel would be “in use for more hours per week than the book and audiovisual center.” *Id.* at 62. Last but not least, because the proposed use of the store “integrally related to that of the convent and chapel,” it did not detract from but indeed strengthened the religious character of the convent as a conceded “church or other place of worship.” *Id.* at 63.

Likewise here, the Monticello building’s activities directly promote the College’s faith-based “primary purpose” as expressed in its “articles of organization,” the Monticello uses are “integrally related” to those of the chapels and vice versa, and the chapels are open to the public “for more hours per week” than the Monticello building will be used for outreach events (seminars, lectures, etc.). Even if that were not enough, the standard here is far less demanding of applicants. Unlike the religious order in *Daughters of St. Paul*, which needed to show that the primary use of the parcel was as a “church or place of worship,” the College here needs only to show that the proposed use of this parcel (Monticello, its chapel, and the standalone chapel) amount to a “religious institution”—a broader category of uses that includes places of worship and far more.

***2. Is what the College is proposing for the Monticello building a “private school” use?***

No. And even if were, the College would nonetheless be entitled to a special-use permit for the Monticello building (and parcel) because it is proposing to use it as a “place of worship or religious institution,” an explicitly permitted use in the A district.

As counsel for the Commission noted at the January 6, 2020, hearing, the regulations allow for a “[p]ublic or private school (not including business or trade schools), nursery, dancing school or riding school” special use in the A-1, B, and I districts, but not in the A district. § 214-98. While the regulations do not define what constitutes a “private school” use, the term’s context makes clear that it cannot be read so broadly as to encompass simply any activity or operation undertaken by a private entity for an educational purpose, since “dancing school” and “riding school” (and perhaps also “nursery”) would also fall within that definition, rendering the Commission’s separate enumeration of those uses surplusage. *See City of Meriden v. Freedom of Info. Comm’n*, 191 Conn. App. 648, 656, 216 A.3d 847, 853 (2019) (noting that courts must give “[e]very word and phrase” of legal text independent “meaning” and not “render certain words and phrases surplusage”). Context therefore indicates that a “private school” use within the meaning of this provision generally has “the structure, regularity of attendance and progression of instruction necessary to constitute a school.” *Incorporated Village of Asharoken v. Pitassy*, 507 N.Y.S.2d 164, 169, 171 (N.Y. App. Div. 1986) (holding a horse-riding academy did not qualify as a “private school” under this definition). Consistent with this understanding, the leading law dictionary contemplates that private-school activities are typically “funded, at least in part, by fees or tuition” paid by the participating students, *School*; *Private School*, Black’s Law Dictionary (11th ed. 2019). Common usage would also suggest that “private school” uses typically involve courses or training programs for credits or degrees.<sup>2</sup>

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<sup>2</sup> Alternatively, “private school” in § 214-98 does not refer to *postsecondary* educational institutions at all. *Clark v. Planning & Zoning Comm’n of Town of Westport*, 152 Conn. 559, 562 (Conn. 1965) (holding the term “private school” as used in a zoning ordinance “means a school operated by private interests as a substitute for, and giving the equivalent of, the instruction required in the public schools operated by municipalities [under Connecticut law].”); *School*, Black’s Law Dictionary (11th ed. 2019) (“When used in a statute or other contract, ‘school’ usually does not include universities, business colleges, or other institutions of higher education unless the intent to include such institutions is clearly indicated.” (quoting with approval 68 Am. Jur. 2d *Schools* § 1, at 355 (1993))).

In light of the above (including footnote 2), the proposed use of Monticello does not constitute a “private school” use within the meaning of § 214-98. The College plans to use Monticello as a faith-based retreat and conference center with events open to invitees (such as benefactors of the College), and in all cases free of tuition fees. Participants in “Lifelong Learning Seminars,” for example, are not formally students but simply friends of the College. None of the College’s guests will be charged tuition-like fees of any kind. Nor will the College offer its guests credits or degrees in recognition of their participation in the Blake Center’s events. Further, the College has not sought any accreditation to establish a campus in Somers nor does it plan to. And while the College obviously intends to use the Blake Center for educational purposes broadly speaking, that is hardly enough to make its proposed use a “private school” use, as noted above.

In any case, even if the Commission were to conclude that the College’s proposed use of Monticello qualified as a “private school” use under a broad (but incorrect) reading of § 214-98, that would not furnish a basis for denying the College’s application. After all, “private school” uses, capaciously defined, and “religious institution” uses are not mutually exclusive. Thus, regardless of whether the College is proposing a “private school” use at Monticello, the Commission is not relieved of its duty to determine whether the College is proposing a “place of worship or religious institution” use of Monticello. If it is, then the College is entitled to a special use permit.

To elaborate, while counsel’s question assumes that a use cannot constitute *more than one* enumerated “[p]ermitted [u]ses” simultaneously, that premise is false. Consider that virtually every “place of worship or religious institution” use is also a use by a “[n]onprofit institution,” yet no one could seriously argue that, because of this overlap, churches are necessarily forbidden in the A zone merely because “nonprofit institution[s]” are not an explicitly permitted use there. Likewise, under a broad (and incorrect) definition of “private school” as encompassing any private use whose purposes include an educational purpose, a “place of worship or religious institution” use frequently would double as a “private school” use—education, after all, is a central tenet and purpose of *every* major religion—yet there could be no plausible argument that no “place of worship or religious institution” use is forbidden in the A zone so long as it involves education. *See, e.g., Daughters of St. Paul*, 17 Conn. App. at 57–63 (holding that a Christian nonprofit entity offering several “educational services” was entitled to a special exception for zoning as place of worship); *Havurah v. Zoning Bd. of Appeals of Town of Norfolk*, 177 Conn. 440, 443, 418 A.2d 82, 84 (1979) (“At any time of the day or night, Beit Havurah”—held to be a “a place of worship”—“may use its premises for . . . Jewish study.”); *Westchester Day Sch.*, 504 F.3d at 347 (holding that denying a Jewish day school a special-use permit to construct a classroom building violated RLUIPA).

***3. Does the College's proposed use of the buildings on what is currently 700 Hall Hill Road (featuring the Blakes' current primary residence and the proposed Chapel), or any other Blake Center parcel, violate § 214-10 of the Somers Zoning Regulations?***

The College's ongoing efforts to reconfigure the property lines of 732 and 700 Hall Hill Road so that the former encompasses the proposed chapel moot this question. Even if the College were not to combine the 700 and 732, however, the answer would be no.

A "principal building" is one "in which is conducted the primary or principal use of the lot on which said building is situated." Somers Zoning Regs. § 214-4. The "principal use" is "[t]he primary purpose for which land, water or a building or structure is designed, arranged or intended or for which it is or may be occupied or maintained." *Id.*

Here, the proposed "primary use" of what is currently 700 Hall Hill Road, like that of the other Blake Center parcels, would be as a "[p]lace of worship or religious institution." That the Chapel would serve this function, as a focus of the Center's prayer and worship activities, is obvious. Accordingly, it is clearly a building dedicated to the "primary or principal use of the lot" and therefore a "principal building." *Id.*

Likewise, the College plans to devote the building that currently serves as the Blakes' primary residence principally to religious-institutional uses. In its previous memorandum the College described its immediate-term plans for this building, as the site of an office for a Blake Center staff person or persons whose job duties will include coordinating and managing the Center's religious programming and institutional-development efforts. The building would also host a small number of guests for the Center's programming. Over the longer term, the College expects to use this structure for additional religious-institution uses, including: (1) a "Faith and Reason" library focused on humanity's relationship with and understanding of the divine and (2) a parsonage for out-of-town clergy involved in liturgies and prayer services at the Blake Center Chapel.

Counsel for the Commission suggested at January 6, 2020, public hearing that having two "principal buildings" on this parcel would violate the regulations. That is incorrect. Counsel quoted the first sentence of § 214-10, which states in full:

In all residential zones only one principal building or structure shall be placed on a lot. In nonresidential zones, the Commission may approve a plan for more than one principal building or

structure on a lot (but not more than one principal residential building) if the buildings or structures and land otherwise comply with all other requirements of the zone in which they are located. In the case of public, commercial or industrial buildings or structures, but not in the case of multiple dwellings, a group of buildings under the same ownership may be considered as occupying the same lot.

Context and precedent, however, confirm that the first sentence of this provision does not govern non-residential permitted uses at all. *See Fedus v. Zoning & Planning Comm’n of Town of Colchester*, 112 Conn. App. 844, 850 (2009) (“[Zoning] [r]egulations are to be construed as a whole since particular words or sections of the regulations, considered separately, may be lacking in precision of meaning to afford a standard sufficient to sustain them.” (Citations omitted; internal quotation marks omitted.) First, reading the first sentence as a flat ban on more than one primary building in a residential zone would yield absurd results in light of the regulations’ “Schedule of Permitted Uses.” *Miskimen v. Biber*, 85 Conn. App. 615, 621, 858 A.2d 806, 810 (2004) (“Common sense must be used in construing [a zoning] regulation, and we assume that a rational and reasonable result was intended by the local legislative body.” (citation omitted)). It is obvious, for instance, that the following uses typically require more than just *one* structure dedicated to the use at issue: farms, camps, schools, outdoor recreation facilities, nonprofit institutions, greenhouse operations and nurseries, and senior housing. Indeed, regarding senior housing specifically, the regulations *explicitly* contemplate that the use might require *many* “detached . . . one- or one-and-a-half-story structures” to be used as “dwelling units.” Somers Zoning Regs. § 214-127 (definition of “age-restricted housing”). Yet applying § 214-10’s first sentence to these uses would turn common practice on its head, limiting farms to only one building, camps to a single cabin, plant nurseries to just one greenhouse for all of their flora, and senior housing to one multi-room structure, as opposed to the multiple “structures” explicitly permitted.

Counsel’s proposed reading also fails to appreciate that, when the regulations mean to limit the number of primary buildings for a particular use, they do so expressly. For example, they specifically restrict “[s]ingle-family detached dwelling[s]” in both residential zones to “1 per lot”—consistent with a proper reading of the first sentence of § 214-10 and “[m]ultifamily dwelling[s]” in the A-1 zone to “2 units maximum per lot,” *Id.* § 214-98. The Commission could have similarly restricted the number of principal buildings for other uses in residential zones. But it didn’t.

Connecticut case law is in accord. In *Putnam Park Apartments, Inc. v. Planning & Zoning Commission of Town of Greenwich*, 193 Conn. App. 42, (2019), the Appellate Court of Connecticut squarely rejected a materially

identical version of the reading proposed by the Commission’s counsel at the January 6 public hearing. In *Putnam Park*, the plaintiff challenged a special permit issued to a church seeking to build a second principal building on a parcel on the ground that the town’s zoning regulations prohibited two principal buildings in the zone. The defendants countered “that the proposed building [was] not an accessory structure, but, rather, a second principal structure, and, therefore, [the provision cited by the plaintiff] does not apply.” *Id.* at 59. Siding with the defendants, the court pointed out that the plaintiff’s favored provision “makes no reference to special permitted uses” in the first place and that, at any rate, “[t]he permitted special exceptions under § 6-94 are exceptions *expressly because they are unquestionably not residential.*” *Id.* at 60 (emphasis added). Accordingly, the court held that the provision thought to forbid the second principal building simply “does not apply to those additional uses permitted by special exception or special permit.” *Id.* at 60–61.

What is more, just as the defendants in *Putnam Parks* pointed out, “the Commission has consistently interpreted the [regulations] to allow multiple special permit and special exception uses on the same lot without having one such use accessory to the other.” Defs. Br., 2018 WL 8489689, 27–28. Just as the Defendant in that case “submitted into the Record a multitude of examples of special permit and special exception uses approved on a single property” to establish this point, the College here encloses a list of 15 special or permitted uses on single parcels in residential zones in Somers that feature more than one principal building. *See* App. A. This list is important, because it reflects that the Commission has consistently rejected counsel’s proposed reading, and a “government agency’s reasonable, time-tested interpretation should be accorded great weight by the courts.” *Longley v. State Employees Ret. Comm’n*, 284 Conn. 149, 163 (2007).

***4. Is the College proposing to use the Monticello building as an accessory use to the standalone chapel?***

No. *See* answer to #1. Like the standalone chapel, the Monticello building will be devoted to the “the primary or principal use of the lot on which said building is situated,” Somers Zoning Regs. § 214-4 (definition of “principal building”)—namely, use as a “place of worship or religious institution.” This is so regardless of whether Monticello is on the same parcel as the standalone chapel (as it soon will be) or on a different, contiguous parcel (as it is today).



This is framed not as a question but rather as an assertion in Attorney Joseph Williams' letter of January 6, 2020, submitted to the Commission on behalf of his client Danuta Toklowicz-Vuerich. Unfortunately, his letter mischaracterizes the College's vision for the Blake Center, beginning—remarkably—with what the proposed Blake Center for Faith and Freedom even is in the first place. Notwithstanding that the College has, both in writing and at hearings, consistently described the Blake Center as encompassing *all* of the relevant Hall Hill Road parcels, with the use of each fully integrated with those of the others, Attorney Williams claims that the Blake Center is somehow limited *only to Monticello* and that the other parcels and buildings are simply not a part of it. In fact, and as the College's previous memoranda make clear, the Blake Center proposal comprises *all* of the parcels in which the College has a property interest.

The College could not be clearer about the standalone chapel's centrality to the Blake Center project: "The Chapel's use will be *central* to, and will feature prominently in, the College's programming at the Blake Center. Programming at the Center will integrate the Chapel into all of its activities and will be crafted to promote its use. In short, the Chapel will be a principal use of the Blake Center." Hillsdale College Supp. Mem. 2 (Dec. 23, 2019) (listing numerous additional facts confirming the chapel's centrality to the Blake Center for *Faith* and Freedom). As noted, the College expects that the standalone chapel will be used more often than the Monticello building. While the Monticello building will on occasion open its doors to host invited guests for faith-based lectures, seminars, training, and other programs (which will feature indoor and/or standalone chapel activities), the standalone chapel will be open in addition to the Monticello building's hours, overseen by a chaplain who will regularly be on the properties as well as other staff. *See Daughters of St. Paul, Inc.*, 17 Conn. App. at 62.

### III. RESPONSES TO REQUESTS FOR INFORMATION IN JANUARY 21, 2020, "REVIEW COMMENTS" FROM THE COMMISSION

***"6. Show how the four properties are to interconnect for the convenience and safety of vehicular and pedestrian traffic on the sites."***

The Lot Line Configuration Plan prepared by J.R. Russo & Associates, LLC displays the current structures on the properties, as well as all existing roads, driveways and paths which will be utilized for access. It is understood that access to some of the buildings will require walking across lawn areas.

***"7. Needs a review and report from the Fire Marshall regarding the accessibility of emergency vehicles to the sites."***

A representative of the applicant will contact the Fire Marshall to arrange for a review of the plans and/or a visit to view the existing site with regard to emergency services access.

***“11. Schedule and description of all activities.”***

- Monticello Building<sup>3</sup> (732 Hall Hill Road)
  - Continuing-Education Seminars
    - Three-day seminars led by a professor of the College or other guest lecturer and attended by guests of the College.
      - Attendance ranging from 25 to 50.
      - Up to 9 a year. Offered in June, July, and August.
    - Four-day seminars led by a professor of the College or other guest lecturer and attended by select alumni of the College’s online courses. a. Attendance ranging from 12 to 20.
      - Two a year. One offered during College’s fall break and another offered during the College’s spring break.
    - Possible offerings include “Classical and Modern Theology,” “C.S. Lewis,” “Christianity and Education,” “Biblical Exegesis,” “Natural and Divine Law,” “Christianity and Politics,” “Ethics,” and the “Book of Genesis.”
  - Lecture Program
    - The College plans to host speakers for public lectures.
    - Speeches to be opened with a Christian blessing.
    - Lectures to be given by Christian theologians, philosophers, public figures, and others.

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<sup>3</sup> Most of these descriptions are taken from the College’s previous submissions. *See, e.g.,* Hillsdale College Supp. Mem. 4–7 (Dec. 23, 2019) (describing activities at Monticello building).

- Topics to include issues of religious liberty, Christian theology, Christian philosophy, Christianity and the Western Heritage, contemporary issues in Christian thought, among numerous other topics.
  - An estimate of three such lectures in the year: one in the fall, one in the winter, and one in the spring.
  - The College plans to schedule such events for weekday evenings or weekend afternoons or evenings.
  - The College expects the number of attendees to range between 35 and 75 for each lecture.
- Annual Admissions Event
    - Hold an annual admissions reception for prospective students and their parents who are beginning their College search or who are applicants and desire to learn more about the College.
    - Expectation that the annual reception would be held in January or February.
    - Program structure: opening prayer; talks and presentations; and a reception.
    - To begin at 6:30 P.M. and conclude by 9:00 P.M.
    - Estimated 50 to 75 in attendance.
  - Annual Local Alumni Reception
    - Program to include opening Christian blessing, a speech by a professor emphasizing the College's four purposes rooted in Christianity and Western Heritage.
    - Expected to hold this event in the month of October.
    - Estimated 30 to 40 in attendance.
  - Education Training

- Host regional board, head of school, and teacher training and consultation for K–12 public, charter, and private schools, focusing on incorporating traditional principles of liberal learning and character formation into the American classical education model.
  - Estimated 15 to 30 guests per training session.
  - Intend to hold 2 training sessions in the summer months only.
  - Focus on traditional principles of liberal learning and character formation, consistent with the College's Christian identity and mission even while, when addressing public or public charter teaching, refraining from religious content and material.
- Chapel Activities
    - Chapel in Monticello Building
      - The inside of the chapel will feature an altar, explicitly Christian imagery, symbols, iconography, and décor, including a cross or crucifix.
      - The College will encourage staff, guests, neighbors, and visitors to use the chapel for prayer, worship, Bible studies, vespers, sacred music, and other appropriate devotional activities.
      - The College expects to employ a Christian chaplain. The chaplain will be responsible for setting the chapel's schedule, presiding over certain liturgies and services, and helping to ensure that the chapel's uses are fully integrated in the Center's programming, as well as conducted in an appropriate and sacred manner.
      - Other Christian clergy members, including from the local community, will be invited to preside over services and liturgies at the chapel.
      - In connection with programming at the Center, the College will host Christian services at the chapel,

including sermons, retreats, and group prayer liturgies.

- The Chapel's use will be *central* to, and will feature prominently in, the College's programming at the Blake Center. Programming at the Center will integrate the chapel into all of its activities and will be crafted to promote its use. In short, the chapel will be a principal use of the Blake Center.
- To be used in addition to and generally when standalone chapel (described below) is not in use.
- Standalone Chapel (currently on 700 Hall Hill Road; soon to be on Monticello lot)
  - Similar design and same uses as indoor Monticello chapel.
  - This chapel will be in use seasonally and weather permitting.
- Blakes' Current Primary Residence (700 Hall Hill Road)<sup>4</sup>
  - The College anticipates hosting in the office of this building one or more staff persons who will be in charge of coordinating and managing activities and programming at the Blake Center, including its religious programming, and/or institutional advancement projects.
  - The College also anticipates eventually devoting a room in this building to what it will call the "Faith and Reason Library," which will include classical and modern books that address the relationship between the truths of Christian revelation and truths accessible to natural reason, the relationship between knowing by faith and knowing by reason, and like topics.
  - The College also anticipates eventually allowing outside pastors and clergy members, including those from out of town, to use space in this building to work and lodge as a part of their role in activities in the chapels.

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<sup>4</sup> See also Hillsdale College Supp. Mem. 3–4 (Dec. 23, 2019).

- The Dumas Residence (708 Hall Hill Road)
  - The College and Mr. Dumas intend that Mr. Dumas continue to work as manager of the properties, to oversee the three full-time staff who are caring for the facilities and grounds, and to provide security services to the property and its visitors.
  - As manager of the Blake Center properties, Mr. Dumas's (and any successor's) role is critical to ensuring that the College's religious vision for the Blake Center is realized.
  - The Center's main chaplain would take meetings in an office in this building, including meetings regarding explicitly religious subject matter (such as spiritual direction), at the office.

***“12. Show the days and hours of operation on the plans.”***

See revised plans.

***“13. Show the exact size and location of the existing and proposed buildings.”***

See Lot Line Reconfiguration Plan.

***“14. Submit 2 copies of dimensional floor plans of all existing and proposed buildings.”***

Have been or will be provided.

***“15. Show how the buildings and rooms are going to be utilized.”***

We will prepare to discuss our plans at the February 3 hearing and any subsequent hearing.

***“18. Show building lines.”***

See revised plans.

***“19. Show existing and proposed lot coverage.”***

See revised plans.

***“21. Show existing and proposed walkways.”***

See revised plans.

***“23. Location of watercourses and wetland boundaries on all***

***properties.”***

The Site Plans show reflect the wetland delineation along a portion of the intermittent stream in the vicinity where site improvements are proposed. In addition, the three existing ponds located in the vicinity of the existing buildings on the property have been surveyed and are shown on the Lot Line Reconfiguration Plan. In accordance with the Town Engineer’s direction, the remaining ponds and wetlands shown on the Lot Line Reconfiguration Plan on the eastern portion of the site where no work is being proposed, was located based on mapping available on the Town’s GIS and the NRCS Web-soil Survey.

***“24. Location of all proposed and existing signs.”***

The Site Plan has been revised to show the location of a proposed monument sign near the entrance of the 732 Hall Hill Road property.

***“25. Show the nature of existing land uses on all abutting properties.”***

See revised plans.

***“26. Show proposed drainage improvements and submit hydraulic computations.”***

The proposed Site Plan depicts the proposed drainage improvements at the site. A drainage report detailing the sizing of the drainage system to provide adequate stormwater treatment and detention is being submitted separately.

***“27. Show the location of the existing and proposed exterior lighting.”***

The proposed Site Plan shows existing and proposed site lighting at the 732 Hall Hill Road property. Cut sheets for the proposed poles and fixtures have been submitted along with a Photometric Plan demonstrating that the proposed lighting will not result in light spillover onto adjacent properties.

***“29. How will the seminar topics compare to the course offerings that Hillsdale College offers on its campus and other satellite campuses/locations the applicant operates?”***

The Blake Center will focus most of its events (including its seminars and lectures) on topics or issues relating to Christianity and faith generally, devoting far more time to these issues and topics (as a proportional matter) than it does in Michigan or at its center in Washington D.C. The College envisions that all seminars and lectures at the Blake Center will focus broadly

on subjects in the humanities in general and will concern man's relationship to God in particular. Further, it is expected that most of the Blake Center's seminars and lectures will have clear religious themes.

***“30. Who will be invited or eligible to attend the seminars.”***

The College expects to invite alumni, individuals in the region who have completed the College's informal online courses (not offered for credit), recipients of its publications, friends of the College, and generally those supportive of its mission, including members of the neighboring communities.

***“31. How will the seminars be advertised and potential attendees solicited.”***

The College will invite individuals of the sort identified in its previous answer through its usual means, such as by e-mail, U.S. mail, and phone.

***“32. Will the attendees be charged a fee.”***

The College does not charge fees to those wishing to attend seminars of the kind proposed, lectures, or other events like those proposed to occur at the Blake Center, and it has no plans to change this practice with respect to its events in Somers.

***“33. Describe in detail the teacher and other trainings the applicant proposes.”***

The College regularly offers a variety of training programs for teachers, school boards, and school leaders. For leaders and teachers, the College's programs have focused, for example, on how to structure a K–12 curriculum broadly, on how to implement and administer a senior-thesis requirement, how to approach lesson planning, or how to have an effective parent-teacher conference. Additionally, professors sometimes present on specific subject-matter areas of the curriculum, such as by recommending certain approaches to commonly taught works of literature. The College expects to host similar programs in Somers, although smaller in scale and only twice a year.

***“34. How many full and part time employees will work on the property.”***

As the College has stated, “[t]he College and Mr. Dumas intend that Mr. Dumas continue to work as manager of the properties, to oversee the three full-time staff who are caring for the facilities and grounds, and to provide security services to the property and its visitors.” Hillsdale College Supp. Mem. 4 (Dec. 23, 2019). The College also anticipates retaining the services of a pastor or clergy member to manage and preside over certain prayer and liturgical



services in the chapels and for occasional meetings with staff, invitees, and other guests, such as to provide spiritual direction. The College also anticipates eventually having one to three full-time College staff with offices at the Blake Center who will oversee and manage its religious programming, handle institutional-advancement portfolios, and/or assist with events.

***“35. Where will employees park.”***

The College anticipates having employees park in a garage at the current Blake primary residence. In all events, the College fully expects that vehicles will be parked out of sight from the road.

***“36. At what time in the evening will the lighting go off.”***

On evenings during which the Center is hosting an event, it anticipates turning off most lighting at or around 9:00 or 10:00 p.m, while keeping a security light on at all times. All of the Center’s outside lights will be certified dark-sky compliant and minimally invasive.

***“37. Explain in detail how the proposed shuttle service will work, including the type of shuttle vehicles that will be used and where they will be stored when not in use.”***

The College anticipates that its facilities crew will be tasked with transporting guests to and from the airport. If the College obtains a shuttle vehicle of its own, it expects that it would use some version of a 12- of 15-passanger van. The facilities crew will manage the reservations and shuttle schedule in coordination with the event planner. The College expects no more than 4 round trips per event.

***“38. How will Hillsdale determine who it allows to use the properties for recreational use, when and how often will it occur, and what measures will be taken to prevent trespass onto neighboring properties.”***

The College is committed to maintaining the properties in a way that preserves their beauty and maintains their attractive recreational features. Yet, mindful of concerns expressed by some nearby residents regarding the College’s proposal to open up the properties for general recreational use by neighbors, as described in the College’s December 23, 2019, supplemental memorandum, the College now anticipates adopting a “use by permit” system, requiring would-be users of the properties to seek and obtain permission from the College to enter the premises for certain recreational or other purposes, as well as requiring those guests to check in with the grounds crew upon each entry (depending on the terms of that particular user’s permit). The College intends to use this permitting system to control access to the properties so that

there are no negative collateral impacts on the neighbors. In addition, the College anticipates installing “no trespass” signs in various key locations throughout the properties.

***“39. Aside from the real estate contracts are there any other written agreements between the property owner and Hillsdale College that you would like entered into the record?”***

The College plans to enter the following documents into the record prior to the close of the public hearing:

1. Deed of a portion of 700 Hall Hill Road (the rear land with the proposed chapel) from S. Prestley Blake and Helen Blake to Hillsdale College. This will require a lot line reconfiguration. The property will be added to the 732 Hall Hill Road parcel.
2. Utility Easement over 700 Hall Hill Road to benefit Hillsdale College. The easement will allow utilities to run from 700 Hall Hill to the property being reconfigured with 732 Hall Hill Road.
3. Right of Way Agreement over 700 Hall Hill Road to benefit Hillsdale College. This will allow access through 700 Hall Hill Road to the property being reconfigured with 732 Hall Hill Road.
4. Use and Occupancy Agreement. This agreement will allow Hillsdale College to use the current residence and other portions of 700 Hall Hill Road until the college completes the purchase of 700 Hall Hill in 2021.

***“40. Have you determined where the septic system for the chapel will be located? Has testing been done? Has Steve Jacobs reviewed any results?”***

Bathroom facilities within the Monticello building will be available for visitors to the chapel in the Monticello building. The College is exploring whether to have bathroom facilities for use in connection with the standalone chapel when Monticello building is closed.

***“41. How will overflow parking be handled.”***

The College does not anticipate there being overflow parking. To accommodate the stated interests of members of the public, the College has sought to make its parking footprint as small as possible. Yet of course the College remains willing to expand the size of its proposed parking lot if that would be desirable to the Commission. In all events, the College is committed to ensuring that vehicles parked at the Blake Center generally are not visible

from the road.

***“42. Provide any materials or plans regarding the previously proposed operation of the ‘The Prestley and Helen Blake Center for Business, Ethics, and Entrepreneurship.’”***

This request asks the College to turn over documents that, if they exist at all, are irrelevant to this proceeding. Under well-settled Connecticut case law, a zoning commission “is *required* to assume that a landowner who seeks . . . approval [for a permitted use] *will use the . . . property for the permitted purpose*” and not a prohibited purpose. *Lord Family Windsor, LLC v. Planning & Zoning Comm’n of Town of Windsor*, 288 Conn. 730, 737, 954 A.2d 831, 836 (2008); *see also, e.g., Abel v. New Canaan Planning & Zoning Comm’n*, No. FST-CV-084013132S, 2012 WL 386379, at \*31 (Conn. Super. Ct. Jan. 6, 2012) (“[I]t [is] the commission’s duty to assume that a land owner who seeks approval for a special permit use will use the property for the permitted purpose, not a prohibited purpose.”). Further, “[w]hen considering an application for a special exception, a zoning authority[’s] . . . function is to determine whether the *proposed use*,” as set forth in the applications, “is expressly permitted under the regulations, and whether the standards set forth in the regulations and statutes are satisfied.” *Daughters of St. Paul*, 17 Conn. App. at 56 () (emphasis added). The Commission is powerless to deny special-use applications on the basis of mere “fears, speculation and concern” about the applicant’s rumored former or undisclosed present intentions. It must instead approve or deny the applications solely on the basis on a proper application of law to the “*specific facts relating to [these] particular application[s]*.” *Bethlehem Christian Fellowship, Inc. v. Planning and Zoning Comm’n of Town of Morris*, 73 Conn. App. 442, 464 (2002) (emphasis added) (reversing a zoning board decision because there was “no substantial evidence to support the fears, speculation and concern voiced by opponents of the special exception”), *disapproved of on other grounds by Cambodian Buddhist Soc. of Connecticut, Inc. v. Planning and Zoning Comm’n of Town of Newton*, 285 Conn. 381 (2008); *see also, e.g., Am. Inst. for Neuro-Integrative Dev., Inc. v. Town Plan & Zoning Comm’n of Town of Fairfield*, 189 Conn. App. 332, 352–53 (2019) (“ . . . [I]n the absence of evidence that the proposed use would not be a permitted use, the commission denied the application on the basis of a concern that a for-profit entity might operate in the building. *Unless and until such event occurs, the commission’s denial improperly was based on mere speculation.*” (emphasis added)).

Of course, the College has already raised these points, *see, e.g., Hillsdale College Supp. Mem.* 11–12 (Dec. 23, 2019), as the Commission is well aware. Yet the Commission has deliberately chosen to make this inappropriate (and, we strongly suspect, unprecedented) demand anyway. Worse, it has not even attempted to justify it by identifying a single provision in the Somers Zoning

Regulations or in the Connecticut statutes that would justify this subpoena-like mandate. The College is under no obligation to respond to this request.

The College reiterates that when the gift of these properties was presented to the College, ideas of possible uses were merely that—*ideas*. Gifts of this nature always come with a preliminary “thinking through” period, as both the prospective benefactor and recipient deliberate over terms of the gift that would suit both. While this process works itself out, all ideas of terms of the project are simply preliminary and tentative. The uses proposed *in this proceeding*, by contrast—the only proposed uses that are relevant—are the uses that the Blakes have concluded are most in keeping with their vision and the College has concluded are the best given its Christian mission. It is on the basis of these uses that the Commission must make its decision.

***“43. How will the seminar offerings be different from the originally proposed ‘The Prestley and Helen Blake Center for Business, Ethics and Entrepreneurship.’”***

See answer to #42. The College never formed plans for seminar (or any other) offerings for a “Prestley and Helen Blake Center for Business, Ethics, and Entrepreneurship.” Even if it had, those plans would have no relevance at all to this proceeding.

***“44. What is the seating capacity [of the standalone chapel].”***

It is anticipated that the standalone chapel will have a maximum capacity of 49 people.

***“45. Will a Christian minister be assigned to [the chapel] or lead services in it.”***

Yes. The College expects to retain the services of a minister who will serve as the principal chaplain of the Blake Center chapels. In addition, the College expects also to invite ministers and clergy members from the community as well as from out of town to preside over or participate in various spiritual activities to occur in Monticello and the chapels. *See also* Hillsdale College Supp. Mem. 2, 3 (Dec. 23, 2019).

***“46. If Hillsdale is not buying 700 Hall Hill Road until 2021, then when will Hillsdale convert the barn into a chapel.”***

The College anticipates converting the building into a standalone chapel as soon as its applications are granted.

***“47. How regularly will the chapel hold worship services.”***

As regularly as the Blake Center hosts events, either one or both chapels will hold spiritual services or spiritual activities of various kinds, including prayer, prayer liturgies (such as Vespers), worship, Bible studies, clergy-guided meditations, and sermons. In addition, the College anticipates that at least one chapel will generally be open for individual spiritual use by staff, guests, and invitees, and for use by the chaplain or any guest ministers.

***“48. What other forms of ‘prayerful gatherings’ will take place at the chapel.”***

See answer to #47. *See also, e.g.,* Hillsdale College Supp. Mem. 2–3 (Dec. 23, 2019).

***“49. Parking shown on site plan for chapel”***

All guests to the Blake Center will utilize the proposed parking area adjacent to the Monticello building which has been sized appropriately for the number of invitees to the events. On days that the Blake Center is hosting events, the people using the chapels will be limited to the same guests that are attending the events. On days that the Blake Center is not hosting events, the parking lot will be available for members of the public who have been granted permission to use the chapels and/or grounds in accordance with the “use by permit” system described above.

## **CONCLUSION**

Because Hillsdale College’s plans for the Blake Center involve numerous uses of the properties as both a “place of worship” and by or as a “religious institution,” and because it currently meets or soon will meet all other relevant criteria, the College is entitled to special-use permits.