

PETITIONER: Marcio Alves, The Vine International Ministries

HEARING NO.: BA-15-2015

SECTION OF CODE: Section 8.4

ZONING: TOC-G Gateway District

Code allows church, synagogue, and similar congregations of other religion and denominations as a permitted use in the TOC-G Gateway Zoning District, but limits the size of this use to a maximum of 7,000 square feet in gross area. Petitioner is requesting permission to occupy a commercial space that is greater than 7,000 square feet in the TOC-G District.

The Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000 is a federal law that was enacted to protect the free exercise of religion from unnecessary governmental interference. As applicable to local zoning law, RLUIPA provides two general regulations. This recommendation will focus on the first of the two, which provides that no government shall impose or implement a land use regulation in a manner that imposes substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government can demonstrate that imposition of the burden on that person, assembly or institution is in furtherance of a compelling governmental interest, and that the land use regulation is the least restrictive means of furthering that compelling government interest. The second of the two regulations applies to the scope and applicability of RLUIPA.

Attached to this staff recommendation is "A guide To Federal Religious Land Use Protections," provided by the U.S. Department of Justice, Civil Rights Division. This document notes that RLUIPA provides that religious institutions are to be treated as well as comparable secular institutions of assembly. The Margate Zoning Code provides a size limitation of 7,000 square feet for churches, synagogues, and similar congregations of other religion and denominations, but no other size limitation is provided for comparable assembly uses.

Further analysis of the RLUIPA provisions and the Margate Zoning Code presents additional conflicts for houses of worship. The land development regulations of the TOC zoning districts provide specific design guidelines for new development, including minimum build-out of properties, without consideration of use. Staff finds that this building requirement limits churches and similar congregations of religion to smaller properties and smaller developments due to use, where other assembly type uses are not similarly limited. **Staff recommends approval of this variance request and further recommends that this Code provision be amended to eliminate inconsistencies explained herein.**

RECOMMENDATION: APPROVE

APPROVE WITH
CONDITIONS

DENY



Director of Economic Development.

30 SEPT 15
Date



U.S. Department of Justice Civil Rights Division

A Guide To Federal Religious Land Use Protections

The Religious Land Use and Institutionalized Persons Act (RLUIPA) protects religious institutions from unduly burdensome or discriminatory land use regulations. The law was passed unanimously by Congress in 2000, after hearings in which Congress found that houses of worship, particularly those of minority religions and start-up churches, were disproportionately affected, and in fact often were actively discriminated against, by local land use decisions. Congress also found that, as a whole, religious institutions were treated worse than comparable secular institutions. Congress further found that zoning authorities frequently were placing excessive burdens on the ability of congregations to exercise their faiths in violation of the Constitution.

In response, Congress enacted RLUIPA. This new law provides a number of important protections for the religious freedom of persons, houses of worship, and religious schools. The full text of RLUIPA is available at http://www.usdoj.gov/crt/housing/housing_rluipa.htm. Below is a summary of the law's key provisions, with illustrations of the types of cases that may violate the law.

- **RLUIPA prevents infringement of religious exercise.**

Land use regulations frequently can impede the ability of churches or other religious institutions to carry out their mission of serving the religious needs of their members. Section 2(a) of RLUIPA thus bars zoning restrictions that impose a "substantial burden" on the religious exercise of a person or institution, unless the government can show that it has a "compelling interest" for imposing the restriction and that the restriction is the least restrictive way for the government to further that interest.

Minor costs or inconveniences imposed on religious institutions are insufficient to trigger RLUIPA's protections. The burden must be "substantial." And, likewise, once the institution has shown a substantial burden on its religious exercise, the government must show not merely that it has a rational reason for imposing the restriction, but must show that the reason is "compelling."

A church applies for a variance to build a modest addition to its building for Sunday school classes. Despite the church demonstrating that the addition is critical to carrying out its religious mission, that there is adequate space on the lot, and that there would be a negligible impact on traffic and congestion in the area, the city denies the variance.

A Jewish congregation that has been meeting in various rented spaces that have proven inadequate for the religious needs of its growing membership purchases land and seeks to build a synagogue. The town council denies the permit, and the

only reason given is “we have enough houses of worship in this town already, and want more businesses.”

Because the religious organizations in these cases have demonstrated a substantial burden on their religious exercise, and the justification offered by the city in both cases is not compelling, these cases likely would be violations of RLUIPA, assuming certain jurisdictional requirements of the statute are met.

- **Religious institutions must be treated as well as comparable secular institutions.**

Section 2(b)(1) of RLUIPA provides that religious assemblies and institutions must be treated at least as well as nonreligious assemblies and institutions. This is known as the “equal terms” provision of RLUIPA.

A mosque leases space in a storefront, but zoning officials deny an occupancy permit since houses of worship are forbidden in that zone. However, fraternal organizations, meeting halls, and place of assembly are all permitted as of right in the same zone.

Because the statute on its face favors nonreligious places of assembly over religious assemblies, this example would be a violation of 2(b)(1).

- **RLUIPA bars discrimination among religions.**

Section 2(b)(2) of RLUIPA bars discrimination “against any assembly or institution on the basis of religion or religious denomination.”

A Hindu congregation is denied a building permit despite meeting all of the requirements for height, setback, and parking required by the zoning code. The zoning administrator is overheard making a disparaging remark about Hindus.

If it were proven that the permit was denied because the applicants were Hindu, this would constitute a violation of 2(b)(2).

- **Zoning ordinances may not totally exclude religious assemblies.**

Section 2(b)(3)(A) of RLUIPA provides: “No government shall impose or implement a land use regulation that totally excludes religious assemblies from a jurisdiction.”

A town, seeking to preserve tax revenues, enacts a law that no new churches or other houses of worship will be permitted.

Such total exclusions of religious assemblies are explicitly forbidden by section 2(b)(3)(A).

- **RLUIPA forbids laws that unreasonably limit houses of worship.**

Section 2(b)(3)(B) of RLUIPA provides: “No government shall impose or implement a land use regulation that unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.”

A city has no zones that permit houses of worship. The only way a church may be built is by having an individual parcel rezoned, a process which in that city takes several years and is extremely expensive.

This zoning scheme, if proven to be an unreasonable limitation on houses of worship, would constitute a violation of section 2(b)(3)(B).

Enforcement of RLUIPA Rights

Religious institutions and individuals whose rights under RLUIPA are violated may bring a private civil action for injunctive relief and damages. The Department of Justice also can investigate alleged RLUIPA violations and bring a lawsuit to enforce the statute. The Department can obtain injunctive, but not monetary, relief.

If you believe that your rights under RLUIPA may have been violated and you wish to file a complaint or find out more information about the law, you may write to:

Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

or call the Housing and Civil Enforcement Section at (800) 896-7743. Further information about RLUIPA is available at the Section website at <http://www.usdoj.gov/crt/housing/index.html>. Information about the Civil Rights Division’s religious liberties initiative, the First Freedom Project, is available at www.FirstFreedom.gov. You also may call the Special Counsel for Religious Discrimination at (202) 353-8622.