## Coates' Canons Blog: Zoning Religious Land Uses

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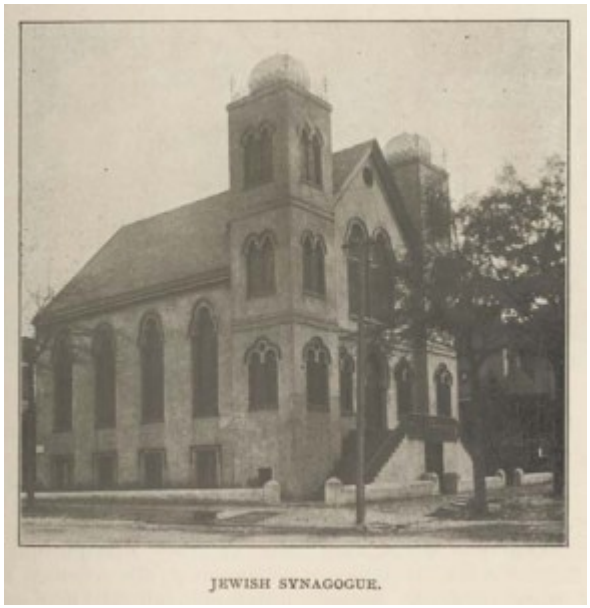
**Article: https://canons.sog.unc.edu/zoning-religious-land-uses/**

**This entry was posted on August 17, 2010 and is filed under Land Use & Code Enforcement**

From the nation's largest city to North Carolina's smallest towns, land use regulation of religious uses can be particularly contentious. While the siting a mosque in lower Manhattan morphed from a local zoning dispute into a national political and policy debate in the past few weeks, the town of Coats (population 2,126) in Harnett County found itself in federal court defending its zoning restrictions on locating places of worship in its small downtown area.

Religious uses have land use impacts, just as their secular counterparts. Large places of worship create the same traffic, noise, and congestion issues as do other places of assembly of comparable size. The fact that a community center, event space, school, daycare, homeless shelter, or food pantry is sponsored by a religious rather than a secular organization usually makes no difference in its land use impacts. So a basic proposition that religious land uses should be subject to the same land use regulations as their comparable secular counterparts makes sense and is noncontroversial, right?




Temple of Israel, Wilimington, completed in 1876 and North Carolina's first synagogue (1902 photo)

Not entirely. There are two difficulties with applying this basic proposition without qualification. First, persons have a constitutional right to the free exercise of their religious beliefs. Second, fear and distrust, particularly of minority religions, has led to discrimination that on occasion is reflected in governmental land use regulations. So how do we allow religious freedom, prevent religious discrimination masked as land use concerns, and still address the legitimate land use impacts of religious uses?

Dealing with overt religious discrimination in land use is simple in legal terms. Our laws clearly address the volatile mix of politics, government, and religion. It is both unconstitutional and a violation of statutory rights to discriminate on the basis of religion. As discussed in a previous **post**, it is unlawful to treat one religious land use on less than equal terms with other comparable religious and secular uses. This protects minority religions by assuring they get the same land use

treatment as majority religions. In the past it may have been a proposed worship center for Catholics, Jews, or Mormons that generated community opposition. Today it may be a mosque, Buddhist temple, or an evangelical Christian outreach center located in an abandoned storefront. But regardless of the religion involved, the identity of the religion simply cannot be a factor in land use decisions. The current controversy over siting of mosques in some communities has a simple legal answer. If you would allow a church to be located on the site, you must also allow a mosque, synagogue, temple, or any other place of worship to be located there.

A more complicated issue arises when the concerns expressed are not religious discrimination, but land use impacts. When land is being rezoned or a special or conditional use permit considered, neighbors have land use concerns. How much traffic will be generated? Is there sufficient parking? Is the size and scope of the building compatible with its surroundings? Does the intensity of the use fit in the neighborhood? Is there adequate water, sewer, and stormwater control? All of these are legitimate land use concerns addressed through regulation. In this state, general land use regulations have been uniformly applied to religious uses for many decades to address these impacts.

But what if these concerns are merely pretexts for religious discrimination? After all, it is easier to stand up in a public hearing and profess a concern that increased traffic will be dangerous for children in the neighborhood than to ask that adherents of a particular religion be kept out of your neighborhood.

In addition to basic constitutional protection, Congress enacted the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) to address this issue. It establishes a **general rule** that a zoning or landmarking regulation cannot impose a substantial burden on religious exercise (including religious assembly) unless it is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. A prevailing party making a successful RLUIPA challenge is entitled to reasonable attorney fees. This law has produced substantial litigation in the past decade, particularly on the critical question of when an ordinance imposes a 'substantial burden."

The courts have found that most general land use regulations do not "substantially burden" religious exercise. The burden imposed must be more than an "inconvenience" or something that increases the costs for the religious user. The burden must be so significant that it renders the religious exercise effectively impractical. Courts find that it is not a substantial burden to require compliance with typical zoning regulations. These include requirements to locate large places of assembly outside of residential areas, prohibitions of noncommercial or institutional uses in industrial or redevelopment areas, limits on the size and heights of buildings and signs, provision of adequate parking and buffers, and maintenance of harmony with existing nearby uses and congruence within historic districts. The cost and time taken to apply for and go through the approval process (such as a rezoning or special use permit review) have likewise been held not to be a substantial burden. Among recent cases finding no substantial burden are: *World Outreach Conference Center v. City of Chicago*, 591 F.3d 531 (7th Cir. 2009) (upholding refusal to allow demolition of landmark building when sufficient vacant land for center was available onsite); *Petra Presbyterian Church v. Village of Northbrook*, 489 F.3d 846 (7th Cir. 2007) (upholding prohibition of religious uses in industrial area); *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643 (10th Cir. 2006 (upholding denial of variance for 100-child daycare center in a low density residential neighborhood); and *Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel of Baltimore County*, 962 A.2d 404 (Md. 2008) (upholding sign size limits applied to church).

The protection offered by RLUIPA is not entirely illusory though. Where a city or county is shown to be using its land use regulations to deliberately frustrate a religious land use without appropriate justification, the courts will step in. Multiple denials have prompted judicial intervention, especially when modifications in the applications have been made to address concerns raised in an initial review or when each application produces new and inconsistent justifications for the denials. Denials that are unsupported by showing any legitimate land use impacts, especially where the decision-maker seems to be ignoring relevant factual information, have also been invalidated. Among the recent cases where a substantial burden was found and the land use restrictions invalidated are: *Westchester Day School v. Village of Mamaroneck*, 504 F.3d 338 (2nd Cir. 2007) (denial of expansion plans at religious day school unsupported by facts); *Guru Nanak Sikh Society of Yuba City v. County of Sutter*, 456 F.3d 978 (9th Cir. 2006) (multiple denials at multiple sites ); *Sts. Constantine and Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895 (7th Cir. 2005) (unjustified multiple denials of rezoning proposals). And it is important to remember that if actual religious discrimination or unequal treatment of religions is established, the action is illegal even if there is not a substantial burden.

So what steps should a local government take when applying land use regulations to religious land uses? Here are a few suggestions for starters to address these constitutional, RLUIPA, and zoning law considerations –

1. Use objective standards that apply equally to all comparable uses where possible. The same density standards, off-street parking requirements, buffer requirements, and the like should be applicable to all religious and comparable institutional uses. If there is any difference in standards, be sure there is a legitimate difference in land use impacts that supports that difference. Charlotte, for example, has differential standards for places of worship in residential areas that are based on the seating capacity in the largest assembly space.
2. When discretionary permit standards are applied to religious uses (such being in harmony with the neighborhood) or a highly discretionary decision such as a rezoning is involved, take particular care to assure that there is a solid land use justification for the decision. Do not assume the usual presumption of validity for land use regulations will be applied. Since the potential for abuse is higher with these discretionary decisions, the courts often look carefully for an appropriate justification. Recommendations from professional staff and the planning board often play a key role here. Cavalier disregard of those recommendations raises a very large red flag.
3. When crafting regulations, be sure that they leave reasonable alternatives available for religious expression. If you want to limit location of all religious uses in a redevelopment area or an industrial district, be sure there are ample places elsewhere within the jurisdiction that these uses can be undertaken. This was a key factor in a recent decision upholding Coat's prohibition of places of worship in a six-block commercial area, but allowing them elsewhere. *Dixon v. Town of Coats*, 2010 WL 2347506 (E.D. N.C. June 9, 2010). Documenting that the availability of alternative sites was thoughtfully considered prior to making a decision can defuse a substantial burden issue.
4. Educate board members, neighbors, and the public as to the very limited extent to which religion can be considered in land use decisions. If there is a public hearing on a controversial land use decision affecting a religious use, explicitly remind those attending that it is appropriate to raise legitimate land use concerns, but neither religious favoritism or intolerance is permissible. Make sure that all involved – the applicant, neighbors, and decision-makers alike – understand that support or opposition to the religious views of the applicant are irrelevant and the focus must be on addressing real potential land use impacts.

Taking these steps will not remove the emotion and controversy that sometimes arise when **religion** and land use regulation collide. They should, however, help produce a civil, repectful, and lawful consideration of legitimate public interests.

## Links

- www.justice.gov/crt/title-42-public-health-and-welfare
- www.youtube.com/watch?v=_l4_4OO5lAs