Defining Religious Exercise

WHEN FACED WITH REQUESTS for zoning relief for religious uses, planners and local government officials often grapple with an important question: What constitutes religious exercise under the Religious Land Use & Institutionalized Persons Act?

The RLUIPA statute defines "religious exercise" as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief," and adds that "[t]he use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose."

Still, what constitutes religious use is not always clear. For example, charitable uses like soup kitchens, food pantries, and homeless shelters may seem secular, but they often have religious meaning and may be subject to the protections of RLUIPA. When it comes to mixed use proposals that combine a clear religious use with other, secular uses—like a church building with an ancillary retail store, coffee shop, or cafeteria—the line can be even more blurred.

RLUIPA litmus tests

In January, the United States District Court, in *Chabad Lubavitch of Litchfield County, Inc. v. Borough of Litchfield*, offered important guidance to planners and local zoning agencies faced with this dilemma.

The case involves a long-standing dispute between the Chabad group and Litchfield, Connecticut, and its historic district commission. The Chabad group purchased a 2,656-square-foot former home located in Litchfield's historic district to serve as the residence for the group's rabbi, and applied for a certificate of appropriateness to renovate the house to accommodate its religious beliefs. The renovations called for a three-story, 17,000-square-foot addition that would include a sanctuary, rabbi's study, library, classrooms, a ritual bath, a residence for the rabbi's staff, visitor housing, a coffee bar, and an indoor swimming pool. The historic district commission denied the application out of concern that the size of the proposed addition would "dwarf and overwhelm" other homes nearby and destroy the property's residential character. It invited the group to submit a new application for double the square footage of the existing home, with the rest of the improvements located underground.

In reviewing, and ultimately denying, the defendants' motion for summary judgment, the District Court considered whether the historic district commission's decision substantially burdened the group's religious exercise. The court first considered whether each of the proposed renovations was religious exercise. The municipal defendants conceded that the sanctuary, rabbi's study, classrooms, ritual bath, library, and coffee bar were religious exercise, but argued that the swimming pool, staff visitor housing, and rabbi's residence were not.

Although the case will not be decided until trial, the court noted two possible tests that it—and planners—may use to determine whether mixed use constitutes religious exercise. The first test is the "segmented" approach, which examines each room or facility to determine whether it is exclusively secular or exclusively religious, or for both religious and secular uses. Rooms and facilities falling into the first group are not religious exercise under RLUIPA. Those that fall into the second group, however, are and invoke the statute.

The second, alternative test is the "balancing" approach, which examines each room or facility to determine whether it is put to exclusively secular, exclusively religious, or a hybrid of both uses. Then, weighing all of the rooms and facilities, a final determination is made as to whether the entire building, on balance, is religious exercise.

In *Chabad*, the court concluded that the segmented approach was most appropriate. Determining which rooms and facilities were religious would allow the court to evaluate whether the renovation space, along with the original home, could sufficiently accommodate the Chabad group's religious exercise. The court rejected the balancing approach because it risked affording religious protection to secular uses.

The verdict

Close scrutiny of each proposed use within a project offered by a religious entity is well worth the effort. In the case of religious groups seeking mixed uses, zoning agencies can fashion the appropriate zoning relief based on the extent of the religious uses by limiting the size of development, imposing reasonable conditionals, or both.

But exercise caution when assessing whether a use within a project is or is not religious. You could find yourself in a prickly situation if you try to define religious uses. Courts have long held that if a religious group sincerely asserts that its use of property is religious in nature, it must be taken at its word. It is best to work with the applicant and determine together which elements of the project may be secular. Doing so will make your municipality appear more reasonable in the eyes of a court and place it in a better position to defend a potential RLUIPA suit. By contrast, defining a use as secular, despite contrary statements by the religious applicant, could be used to support a violation of RLUIPA.

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