

Religious Uses

Pendulum Moves Toward Local Control

BY ANTHONY S. GUARDINO

Under well established New York law, religious (and educational) institutions enjoy special treatment with respect to residential zoning ordinances.¹ Indeed, the New York Court of Appeals held more than 50 years ago that a total exclusion of such institutions from a residential district was beyond the scope of local zoning authority,² and, in fact, courts have permitted these entities to expand into neighborhoods where nonconforming uses would otherwise not have been allowed.³

Although such favored status once seemed unobjectionable, since churches and schools serving the surrounding area were welcomed as benefits to the neighborhood, courts have more recently recognized that the growth and diversification of religious and educational institutions can bring a host of new problems. As the Court of Appeals itself has explained, “[s]prawling universities brought increased traffic and other unexpected inconveniences to their neighbors, while the benefits these universities conferred were becoming less relevant to the residents of the immediately surrounding areas.”⁴

Accordingly, courts began to require that local governments and zoning boards use a “balancing test” when considering requests by religious or educational institutions for variances or special permits. Under that standard, the controlling con-



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sideration in reviewing the request of a church or school for permission to expand into a residential area “must always be the over-all impact on the public’s welfare.” An institution’s request may be denied where the benefits of a particular educational or religious use are outweighed by a significant negative impact on traffic congestion, property values, municipal services, and the like.⁵

Thus, in *Pine Knolls Alliance Church v. Zoning Board of Appeals of the Town of Moreau*,⁶ the Court used the balancing approach to hold that a town’s zoning board had not acted improperly when it granted a church’s application for a special use permit to expand but denied its request to build an additional access road as part of the expansion. In reiterating the need to utilize the balancing test, the Court held that in assessing a special permit application, zoning officials should “review the effect of the proposed expansion on the public’s health, safety, welfare or morals, concerns grounded in the exercise

of police power, with primary consideration given to the over-all impact on the public welfare.” Applications “may not be denied based on considerations irrelevant to these concerns,” the Court declared.

The Erie County Case

These principles were applied recently by Supreme Court, Erie County, in its decision in *Western New York District, Inc. of the Wesleyan Church v. Village of Lancaster*.⁷ The court’s opinion, which ran on page 29 of yesterday’s Law Journal, illustrates the analysis that local governments should make when religious (or educational) entities seek zoning relief.

The case arose earlier this year after a church entered into an agreement to purchase a building in an area of the upstate Village of Lancaster zoned an industrial park; the church intended to operate the structure as a house of worship. The contract was expressly subject to the issuance by the village of a special use permit allowing use of the property as a church, which was needed because the village’s zoning ordinance only permitted industrial and related uses in the industrial park. The church therefore applied for the special use permit.

After a hearing, the village denied the request. The village acknowledged that development of the church somewhere in the village would serve the public welfare, but, after weighing the beneficial effects of the use of the property for religious purposes as proposed by the church against the benefits of a continuing industrial use, concluded that, on balance, it would be contrary to the public welfare to approve the church’s application. In

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