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Houses of Worship

Are Zoning Distinctions for Religious Use Valid?

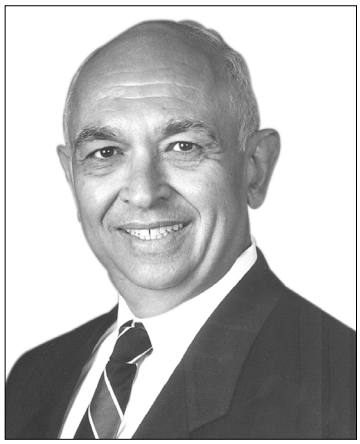
In New York, local zoning ordinances typically permit different uses in different zoning districts. Thus, industrial facilities usually are not allowed where single-family homes are located. Rules relating to special exceptions, variances and pre-existing, non-conforming uses help zoning boards smooth over the difficulties that otherwise might result.

Still, in many instances, property owners will find that they are unable to use their property as they would prefer. For example, a zoning code may prohibit houses of worship in a residential district. If it also permits various other uses there, can a church or synagogue successfully challenge that provision on the ground that it is being denied the equal protection of the law? Frequently the basis of such a challenge is that, since zoning promotes the health, safety and general welfare of the community and since houses of worship promote the same, by definition such uses cannot be prohibited. This stiff syllogistic standard also implicates First Amendment considerations and is now being challenged by practical experience of the real impact of religious uses on traditional residential values, including peace, tranquility, and seclusion from commercial and industrial activities.

Supreme Court Decisions

Although the U.S. Supreme Court has issued a number of important decisions in connection with religious land use matters,[1] it has not yet directly addressed the equal protection implications of municipal restrictions on use of land by religious institutions.[2] However, the Supreme Court's application of a rational basis test in cases involving other alleged liberty restrictions by municipalities exercising land use authority suggests that a highly deferential standard of review would be applicable in this situation.

ZONING AND LAND USE PLANNING



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For instance, in *Village of Euclid v. Ambler Realty Co.*,[3] a zoning ordinance classified different portions of land into six categories. The owners of a vacant plot of land that fell partially within a zone restricted to two-family dwellings filed suit claiming they were being deprived of liberty and property without due process within the meaning of the Fourteenth Amendment. They argued that the land had been held for industrial development, and that under the ordinance the land would be greatly reduced in value because it could not be put to that use.

The Court noted that the case involved the "validity of what is really the crux of the more recent zoning legislation, namely, the creation and maintenance of residential districts, from which business and trade of every sort, including hotels and apartment houses, are excluded."

The Court proceeded by observing the logic of such a design in land use — that the segregation of residential, business, and industrial buildings would increase the safety and security of home life; greatly tend to prevent street accidents, especially to children, by reducing the traffic and resulting confusion in residential sections; decrease noise and other conditions; and preserve a more favorable environment in which to rear children. Thus, the Court sustained the ordinance as "having [a] substantial relation to the public health, safety, morals, or general welfare."

The Court further noted that zoning ordinances should be treated deferentially like other "practice-forbidding laws," and should be upheld even if uses that "are neither offensive or dangerous will share the same fate."

Nearly a half century later, the Court upheld a zoning ordinance in *Village of Belle Terre v. Boraas*.[4] In that case, the Court addressed the validity of a zoning ordinance that restricted a portion of a village to one-family dwellings. The term "family" was defined to mean individuals related by blood, adoption, marriage, or living and cooking together as a single housekeeping unit, but it excluded the latter category if the household consisted of more than two individuals who were not related by blood,

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adoption, or marriage. Six students attending college at the State University at Stony Brook, none of whom was related by blood, adoption, or marriage, brought suit challenging the validity of the ordinance. The Court observed that the "regimes of boarding houses, fraternity houses, and the like present urban problems. More people occupy a given space; more cars rather continuously pass by; more cars are parked; noise travels with crowds."

Thus, the Court concluded that the ordinance was rationally related to a legitimate state objective, holding that a "quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. ... It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people."

'City of Cleburne'

A more recent Supreme Court decision, in *City of Cleburne v. Cleburne Living Center*,[5] provides a good deal of guidance on the equal protection analysis. In this case, the Court concluded that similarly situated group homes were impermissibly treated differently because one home's occupants were mentally handicapped. The Court made two determinations crucial to the outcome in this case. First, it determined that the proposed use, a group home for the mentally retarded, was similarly situated to the allowed uses — other group homes — pursuant to the zoning ordinance. Second, it found that there was no rational reason behind the differential treatment of the similarly situated uses.

Other courts have tracked the two-step analysis established in *City of Cleburne*, determining first if the uses were "similarly situated" and, if they were, asking if there was a rational basis for distinguishing between them.

For instance, in *Cornerstone Bible Church v. Hastings*,[6] the Eighth Circuit relied on *City of Cleburne* and required the municipality to provide a rational basis for the "apparent unequal treatment of similarly situated entities" only after first concluding that the church was similarly situated to permitted uses in a commercial zoning district.

Similarly, in *Christian Gospel Church v. San Francisco*,[7] a church sought a permit to build a church in an area zoned for single-family residences. The Ninth Circuit stated that, to prevail, the church had to "make a showing that a class that is similarly situated has been treated disparately." In concluding that there was no equal protection violation, the court observed that the church "was treated no differently than a school or community center would have been," and, thus, that the church had failed to establish that other similarly situated uses had been treated differently.

In sum, the first inquiry courts make in an equal protection challenge to a zoning ordinance is to examine whether the complaining party is similarly situated to other uses that are permitted in a certain zone. If, and only if, the entities are similarly situated, then the municipality must justify its different treatment of the two, such as by citing to the different impact that such entities may have on the asserted goal of the zoning plan.

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'Abington Township'

Recently, the U.S. Court of Appeals for the Third Circuit issued a decision applying the two-step *City of Cleburne* standard in a case involving an equal protection challenge by a synagogue to a zoning ordinance enacted by a township in a Philadelphia suburb that prohibits houses of worship in residential neighborhoods. Although the Third Circuit's decision will not directly govern New York disputes, the court's analysis of the equal protection issue is so clear that federal — and state — courts in New York very well may refer to it, and perhaps even may rely on it.[8]

The case arose when Congregation Kol Ami, a Reform Jewish Synagogue, desired to relocate to a 10.9-acre parcel of land in the midst of a purely residential section of Abington Township that was zoned R-1 residential under the township zoning ordinance. After the township's zoning hearing board denied the congregation's application for either a variance or a special exception, and alternatively, permission to use the property as an existing non-conforming use, the congregation filed suit in a federal district court in Pennsylvania.

The district court found that the ordinance, as applied, violated the Equal Protection Clause, reasoning that a "house of worship inherently further[s] the public welfare," and that the township had no rational reason to allow some uses by special exception, such as a country club subsumed under "outdoor recreation," but not the congregation. In essence, the district court concluded that the ordinance was unconstitutional as applied to the congregation because it did not permit the congregation to apply for a special exception in the R-1 Residential District.

As the district court viewed it, the issue was whether the township's scheme was rationally related to its proffered reason for excluding the congregation — a concern over traffic, light, and noise pollution. That is, the question was whether it was permissible for the township to allow uses other than residences in the R-1 Residential District while simultaneously excluding the congregation. The district court observed that Abington's "traffic, noise and light concerns also exist for the uses currently allowed to request a special exception." Thus, the district court concluded that the method employed by the ordinance, i.e., distinguishing between country clubs and the congregation, was not rationally related to the goal of preventing traffic, noise, and light pollution in the neighborhood.

The township appealed, arguing that the district court had erred in its equal protection analysis, and the Third Circuit agreed. According to the circuit court, the district court had failed to make the preliminary determination in the equal protection analysis — that is, it had not inquired whether the uses permitted by special exception, such as country clubs, were "similarly situated" to religious institutions or to the congregation in particular. Rather, the district court had concluded that because the impact of the uses, either similar or not, was the same, there could be no rational

basis for distinguishing between them.

Similarly Situated

The Third Circuit then emphasized that it was not until the "similarly situated" showing was made that it became incumbent on the township to provide a rational basis for the apparent unequal treatment of similarly situated entities. Even if Abington offered a rationale based on the congregation's impact, it did not relieve the congregation of its burden to demonstrate, at the outset, that it was similarly situated to the uses permitted by special exception in the R-1 District.

According to the Third Circuit, to conclude, as the district court had, that all uses with a similar impact had to be treated alike, regardless of the fact that such uses may be fundamentally distinct, would "turn zoning law on its head." That was because such a conclusion would mean not only that churches must be allowed in a zone where country clubs are allowed (based on the conclusion that country clubs impact light, traffic and noise as well), but also, by necessity, that a host of other uses that impact light, traffic and noise also must be permitted in such zones. This "would strip of any real meaning the authority bestowed upon municipalities to zone since the broad power to zone carries with it the corollary authority to discriminate against a host of uses that a municipality determines are not particularly suited for a certain district."

The circuit court then remanded for the district court to consider the similarity issue in the first instance.

Interestingly, the circuit court made a number of observations that could assist the district court in its decision. For example, the circuit court noted that the congregation's proposed use presented an "intense use" of the land, which, it stated, might be "incompatible" in a residential district. Services and educational classes typically require a large number of people to arrive and leave by car at roughly the same time, the Third Circuit said.

The Third Circuit also pointed out that, as represented at oral argument by the township, the congregation had stated at the initial proceeding before the zoning hearing board that it had a membership of 207 families, had predicted a growth to about 350 families, but later had indicated that it even might reach 450 families. As the Third Circuit observed, with a large and growing congregation "comes increased traffic and noise." Moreover, the circuit court stated, the fact that the congregation had reported that it would need to expand the parking lot to 137 spaces and might need to make available an additional 54 spaces for reserve parking for heavy-use occasions could be considered by the district court on remand.

Rationality

The Third Circuit also offered some observations on the rationality issue as well, should the district court decide that it had to consider that issue.

The Third Circuit stated that the facts of this case illustrated why religious uses may be, in some cases, incompatible with a place of "quiet seclusion." As the circuit court noted, when conducting its comprehensive plan in 1992, the township determined that institutional uses, such as schools, churches, and hospitals, had distinctive requirements that would best be addressed by placing them in particular districts. Specifically, the township concluded that although these entities provided "many benefits to the community," they also had "specific use, space and locational requirements" that were inherently different from other land categories and that necessitated "a separate land use classification." To that end, the circuit court pointed out, the CS-Community Service District was established to meet the particular needs of churches and other institutions. In view of the "enormously broad leeway afforded municipalities in making land use classifications," the Third Circuit declared, it was "strongly arguable" that the township's decision to group churches together with schools, hospitals, and other institutions was "rationally related to the needs of these entities, their impact on neighboring properties, and their inherent compatibility or incompatibility with adjoining uses."

The court emphasized that it was not until the "similarly situated" showing was made that it became incumbent on the township to provide a rational basis for the apparent unequal treatment of congregations.

Finally, it said, it did "not believe" that land use planners could assume that religious uses were inherently compatible with family and residential uses. "Churches may be incompatible with residential zones," it stated, as they bring congestion, generate traffic and create parking problems, and can cause a deterioration of property values in a residential zone.[9] Thus, the Third Circuit concluded, the district court had to refrain from making a blanket determination that religious institutions were inherently compatible, and, as argued by the congregation, "essential to residential zoning."

Such a conclusion is similar to the New York Court of Appeals' view in *Cornell Univ. v. Bagnardi*,[10] in which the Court rejected the per se syllogistic rule in favor of a more practical approach based on performance standards grounded in reality and experience. Of course, in such a flexible balancing test analysis, expert testimony and environmental testing are crucial to the ultimate decision.

(1) See, e.g., John M. Armentano, "Religious Land Use," NYLJ Sept. 25, 2002, at 5.

(2) See, e.g., *Christian Gospel Church, Inc. v. City of San Francisco*, 896 F.2d 1221 (9th Cir. 1990), cert. denied, 498 U.S. 999 (1991) (holding that denying a permit to establish a church in a residential area did not violate the Equal Protection Clause because there was no discrimination against appellant).

(3) 272 U.S. 365 (1926).

(4) 416 U.S. 1 (1974).

(5) 473 U.S. 432 (1985).

(6) 948 F.2d 464 (8th Cir. 1991).

(7) 896 F.2d 1221 (9th Cir. 1990).

(8) *Congregation Kol Ami v. Abington Township*, 2002 U.S. App. Lexis 21541 (Oct. 16, 2002).

(9) See *Jewish Reconstructionist Synagogue v. Village of Roslyn Harbor*, 38 N.Y.2d 283, 293 (1975).

(10) 68 N.Y.2d 583 (1986).