

Churches/Places of Worship Zoning Ordinance Text Amendment Questions and Answers

1. Question: Is the proposed amendment legal since there are other assembly uses (schools and no-profit clubs) that are permitted by right in the residential zoning district?

Answer: The Religious Land Use and Institutionalized Persons Act (RLUIPA), enacted in 2000, is a federal law that prohibits local governments from imposing or implementing land use regulations in “*a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.*” Since the proposed amendment will require churches and other places of worship to obtain a conditional use permit (CUP) to locate in R-1, R-2, and R-5 residential zoning districts and similar nonreligious assemblies or institutions are not required to have a CUP it seems clear the proposed amendment will place an undue burden on religious use and thus violate RLUIPA. However, religious uses do not get a “free pass” under RLUIPA and are not exempt from zoning. A religious group “has no constitutional right to be free from reasonable zoning regulations nor does [it] have a constitutional right to build its house of worship wherever it pleases” [*Alger Bible Baptist Church v. Township of Moffatt, 2014 WL 462354, (E.D. Mich. Feb. 5, 2014)*].

2. Question: Is it permissible to draft performance standards for assembly uses (churches, schools, and non-profit clubs) that are allowed by right in residential districts to address some of the issues brought up during the Planning Board discussion?

Answer: Yes, so long as the standards apply equally to all assembly uses and the standards do place an undue burden on the exercise of religion. For example, the Santeria faith has a deeply held belief that animal sacrifice is required to placate their deities. If a Santeria Church or temple meets all zoning requirements, a local government cannot interfere with their practice of animal sacrifice under the zoning ordinance [*Church of the Lukumi Babalu Aye, Inc. v. Hialeah, 508 U.S. 520 (1993)*]. It is possible however to regulate this type of activity under a local government’s health and safety authority if the local government can show the regulation advances a compelling governmental interest using the least restrictive means possible.

3. Question: If it’s permissible to draft standards for these uses are there any guidelines/parameters the board needs to keep in mind? Can the county require that churches are on public roads and/or have some regulations of road width, etc.?

Answer: Unlikely, again, if the regulations only apply to churches they would most likely violate RLUIPA because the burden of meeting the regulations would not apply to similar uses. The same principles of evaluating potential traffic

problems (requiring that the use be on a public road, road width, etc.) would need to apply to all similar assembly uses.

4. Question: Is a conditional use permit, rezoning or specific requirements the best way to go?

Answer: Probably specific requirements for all assembly uses is the best way to go, but this will require further study.

5. Question: Can standards be drafted based on the number of occupants of a church?

Answer: Yes, but they would need to apply to all similar uses, not just churches, and be based on the size of the building, number of seats, or some other objective criteria, rather than the number of occupants. Number of occupants is regulated under the fire code.

6. Question: Is there a legal and equitable way to require high traffic operations on private roads to pay a proportional share of the road maintenance based on the (rough) number of visitors they receive?

Answer: It is unlikely the County has such authority.

7. Question: Can we require public meeting spaces (above a certain threshold) to have direct access to a public road?

Answer: Not for existing public meeting spaces; we would need to look at the question for new spaces but many existing meeting spaces access public roads by easements.

8. Question: In the meeting, there was the impression that we could accomplish our goals through updating administrative standards rather than requiring a special use permit, how would this work?

Answer: The person creating the impression would need to answer that question, but any updated administrative standards would need to pass muster under RLUIPA as outlined above.

9. Question: What would happen if we had a nonreligious, nonprofit event center? Wouldn't they have to go through the business re-zoning process? These projects should be judged based on the traffic they will generate, not their intent or purpose. School, church, it doesn't matter, 400 people on a one-way gravel road causes the same problems.

Answer: Again, the ordinances must be equally applied. Bob's Hoedown Barn for Disabled Veterans, Pagan Patty's Garden of Meditation, the Atheist Center for Science, and the 33rd Baptist Church would all have to follow the same rules. However, each use would bring different traffic and other issues to the area it seeks to locate in and could be evaluated against specific criteria that apply to all similar uses, religious and nonreligious. Bob's Hoedown Barn may have 100 attendees a night while Pagan Patty may only have three (3) visitors a day. The burden of demonstrating an equal effect on each applicant

would rest with the County, and the effect of regulation would be evaluated regardless of religious or secular use.

10. Question: Can we make the special event permit more rigorous? Rather than just being a notification, could it have some real teeth? A cost, a required police presence and fire-marshal inspection over a certain size?

Answer: Yes, if those are reasonable requirements for the specific use, and the special event permit process and standards apply equally to everyone, regardless of religion, or lack of it, and places no undue burden the practice of religion.

11. Question: What are our options for setting thresholds? Can we leave it by right if it is going to >50 and only operate once a week, but require a conditional use permit if the average attendance is above 50 or they operate 3 days a week?

Answer: Again, the thresholds would need to be objective and apply equally to all establishments so that a higher burden is not placed on a religious use. Occupancy is regulated under the fire code, not the zoning ordinance.

12. Question: No matter what, we need to find a way to require a public meeting before these things happen. How will that reconcile with any proposed plan to move forward?

Answer: Two (2) required public meetings have already been held, not sure how to respond to the second part of the question.