

**IN THE
SUPREME COURT OF THE UNITED STATES**

City of Claremont,

Petitioner,

v.

Glenwood Unity Church,

Respondent.

**ORDER GRANTING PETITION FOR
WRIT OF CERTIORARI**

November 12, 2010

On Petition for Writ of Certiorari to the United States Court of Appeals for the Thirteenth Circuit in the above captioned case:

The petition is hereby GRANTED on the following questions:

1. *Did the Thirteenth Circuit correctly construe and apply the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. § 2000cc, with respect to what constitutes a “substantial burden” under the Act?*
2. *Did the Thirteenth Circuit correctly construe and apply the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. § 2000cc, with respect to what constitutes a “compelling governmental interest” and “least restrictive means” under the Act?*

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

No. 09 – 3180

CITY OF CLAREMONT ET AL.,

Appellants,

v.

GLENWOOD UNITY CHURCH,

Appellee.

Appeal from the United States District Court
For the District of Grace

Before: David Beckstrom, Javier Gomez, and Kate Sanders, Circuit Judges

Opinion by Circuit Judge Gomez

INTRODUCTION

This case concerns the application of the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”) to a conflict between a church’s desire to expand its worship space and provide needed services in the community and a surrounding neighborhood’s concerns about overcrowding, traffic problems, and public safety. The Glenwood Unity Church (“Glenwood” or “the Church”) claims that the City of Claremont (“the City”) violated RLUIPA by denying the Church’s special use permit application.

The material facts of this case are not in dispute. The City of Claremont is located in the agricultural heart of the State of Grace. The Glenwood Unity Church has had a presence in Claremont since 1951; it moved to its present location in the Glenwood neighborhood in 1983. The Glenwood church building sits on a 1.5 acre plot, with a 36-car parking lot, on the corner of Grapevine Street (a four-lane road that traverses the entire city of Claremont from east to west) and Lemon Lane (a single-lane entrance street into one of Claremont's more affluent neighborhoods). *See* Appendix 1 (Map).

The building has a main floor and a basement. On the main floor is the sanctuary for religious services with seating for 185 people. At the back of the building (separated from the sanctuary) is a "fellowship hall" where congregants hold weekly meetings and serve food and refreshments after church activities. Additionally, the main floor has offices for the pastor and the assistant pastor. The basement, which is significantly smaller than the first floor, is used primarily as a storage area.

The Church holds regular Sunday service at 10:00 a.m. The service lasts for two hours. For the first twenty years after Glenwood moved to its current location, attendance at Sunday services averaged roughly 140 to 150 people, and on holidays, attendance grew to around 200. In 2003, Megan Gale became pastor at Glenwood. As part of her ministry, she initiated a variety of new programs to attract additional members. Weekly church attendance has now increased to 200 on Sundays. On religious holidays, attendance grows to nearly 250. On those days, the Church uses the fellowship hall as an overflow room and sets up speakers so worshipers may listen to the service. Pastor Gale also holds services in Spanish for an hour on Sundays at 8:00 p.m.; the Spanish-language service has an average attendance of 60 to 70, and consists primarily of recent immigrants to the United States.

In addition to worship services, Pastor Gale began teaching English classes on Monday nights and leading Bible study on Tuesdays for adults (both a daytime and an evening class) and on Thursday evenings for youth. On Wednesday evenings, the church hosts meetings of Alcoholics Anonymous. Choir practice is every Thursday after youth Bible study. The building is not often used on Saturday. Although the evening meetings generally have no more than 25 to 30 in attendance, several neighbors have complained to the police and the Church about noise from groups of individuals milling around outside the church, especially following youth events. The Church has expressed sympathy with the neighbors' concerns, but says that the noise is no greater than what neighbors experience from guests leaving a party at someone's residence, and also that the Church has little ability to control the noise once individuals leave the church building.

The growing size of the Church's congregation has created parking and traffic concerns in the area surrounding the property. On any given Sunday, 30 to 35 cars have to find space on the street. On holidays, up to 60 cars have to find spots in the surrounding neighborhood. Police have spoken with Pastor Gale on several occasions about complaints from neighbors because of the parking problems. In July 2006, a local neighborhood boy, Steve Rogers, was hit by the car of an attendee leaving church services.

Starting in late 2005, Pastor Gale perceived that homelessness was a growing problem in the city of Claremont; she specifically noticed several homeless individuals who regularly walked by the church. She invited these individuals to share in refreshments after daytime Bible study in the fellowship hall, and soon a small group of seven or eight regulars started to come every Tuesday. Eventually, Pastor Gale began offering them a bag lunch at the Tuesday gatherings with Bible study participants.

By mid-2007, Glenwood determined that the current building was insufficient for its needs. Every Sunday, the congregation filled the main sanctuary and spilled over into the fellowship hall. At about this time, Pastor Gale also began preaching about the biblical injunction to feed the hungry. Members who had attended Bible study and served bag lunches to some of the homeless people gave testimony about their experience. More members began attending daytime Bible study and others offered financial help, but the opportunity to serve was minimal given the capacity of the building and the bag lunch program's lack of structure.

During late 2007, Glenwood consulted with architects and contractors to develop plans for the Church's expansion. The Church had previously consulted a real estate agent about the possibility of moving to another property. Finding that such a move would be financially infeasible,¹ however, the Church resolved to remodel and add an annex onto its existing building in order to enlarge the sanctuary and house a larger feeding program. In March 2008, the Church formally applied to the Claremont Zoning Commission ("the Commission") for permission to expand the church building. The application proposed an expansion of the sanctuary into what is currently the fellowship hall and the pastors' offices. As proposed, the new sanctuary would comfortably seat 300 people and would also include a choir area that seats 40 people.

The permit application also proposed the construction of an annex, which would be attached to the north side of the building, and would cover about half of the now-existing lawn on that side. *See* Appendix 1 (Map). The annex would include a larger fellowship hall and kitchen, both of which would be needed to support the planned growth of the feeding program.

¹ According to the real estate agent's affidavit, the Church would have to pay at least twice the value of the Church's current property—an amount significantly greater than the cost of renovating and adding an annex to the current building—in order to acquire and modify an alternative property located in a zone within Claremont in which the Church's proposed uses would be categorically permitted. The real estate agent also concluded that there were no suitable properties currently available for lease within Claremont. The City does not dispute this assessment.

The new hall and kitchen would be large enough to serve 75 individuals at a time. Although the construction of the annex would preclude a significant expansion of the parking lot, the Church's proposal included a plan to rearrange the lot and remove some landscaping, expanding the lot to 50 spaces.

Around that same time, Pastor Gale met with two other religious leaders in the area whose congregations serve evening meals to the indigent on Mondays, Wednesdays, and Fridays.² Pastor Gale suggested that the congregations develop a coordinated approach to their meal programs, and offered the use of the Glenwood's planned annex as a place to serve meals on Tuesdays and Thursdays. This would give the homeless in Claremont an opportunity to receive hot meals five nights a week. The plan would be for the homeless to meet each weeknight at the church building closest to them so that each congregation could arrange transportation to take individuals to and from the particular church hosting the meal that night. With these three locations throughout the city, the participating congregations hope to serve a larger population of the homeless than they have previously been able to serve.

Under Claremont's zoning regulations, the Glenwood Unity Church site is located in an "SF-1" zoning district, indicating a residential neighborhood for single-family houses. As such, a church is only permitted to operate on the site pursuant to a special use permit, which may be granted under Claremont, Grace, Ordinances §§ 10-1 to 10-5 (2010). The Commission, which is composed of seven members appointed by the Claremont City Council, has the authority to review and grant applications for, or amendments to, special use permits.

Glenwood has a special use permit to operate the church building in its present size and use. However, the current permit does not allow the church to build additional structures on the

² These two religious organizations are located in commercial zones, in which food service and religious uses are permitted as of right.

property, nor does it explicitly allow the congregation to serve hot meals on the property. In its March 2008 application, Glenwood asked for a new special use permit that would include the annex and expanded feeding program.

Once an application is submitted, the city's municipal code requires the Commission to hold a public hearing on the application. *Id.* § 10-2. The Church posted notice of the hearing on its property and the Commission provided notice to residents in the area through mailings and weekly announcements in the newspaper. The Commission held a hearing on Glenwood's permit application on June 4, 2008. Prior to the hearing, the Commission's staff carefully examined the proposed plan, and its possible impact on the neighborhood.

The proposal was met with significant opposition from the church's immediate neighbors. Neighborhood residents sent letters to the Commission, detailing specific complaints about Glenwood, and its proposed expansion. Pastor Gale attended the hearing in hopes of alleviating some of the neighborhood's concerns. The hearing revolved around three major issues. The first was traffic—the mother of Steve Rogers spoke against the proposals, and several other members of the community complained that with an expansion of the Glenwood Church, their driveways would be blocked more frequently by congregants. Residents complained that Lemon Lane was already constantly clogged on Sundays following church services as well as after some meetings during the week.

The second issue was the new meals program. Community members complained that an increase in the number of homeless individuals in the area would pose safety concerns for neighborhood residents. Selina Kyle lives across the street from Glenwood but does not attend the church. At the hearing, she described how on one occasion, as she was putting her children in the car, a man approached her in front of her house and asked her for some food or money; she

believes she has seen the person on Tuesdays near the church. Other residents of the neighborhood testified to seeing men—some of them drinking from bottles enclosed in paper bags—emerge from the Tuesday feeding program and wander somewhat aimlessly through the neighborhood. One resident, Larry Brooke, testified that one of these men urinated against a tree on Brooke's front lawn and used foul language to Brooke's ten-year-old son. The Chief of the Claremont Police Department testified that the rate of petty theft from garages and lawns in the neighborhood had increased by 10% in the past year, though the Chief could not specifically attribute any crime to participants in the Church's programs. In addition, the Chief testified that the other meals programs in Claremont were located in neighborhoods associated with high crime rates.

Third, neighbors argued that the larger building and more intensive meals program would increase the already existing problems with noise, especially following evening events at the church. In total, 40 people from the neighborhood attended the meeting, and most were vociferously opposed to the proposed changes.

In early November of 2008, the Commission formally denied the application, finding that the Church's proposal did not meet the guidelines in § 10-3 of the City's zoning regulations. First, the Commission found that the Church's proposed meal service program would be incompatible with and injurious to the use of other property. *Id.* § 10-3(1). Specifically, the Commission cited concerns about crime, panhandling, and loitering in the neighborhood. Second, the Commission found that the expansion of the Church's sanctuary to a capacity of 300 would impair the safe and convenient movement of vehicular and pedestrian traffic. *Id.* § 10-3(4). The Commission cited the inadequate size of the parking lot on the premises and found that the Church's proposal would further exacerbate the current parking and traffic problems.

Third, the Commission found that the Church's meals program and building expansion would result in an unreasonable increase in noise in the neighborhood and that the Church's plan did not contain adequate nuisance prevention measures. *Id.* § 10-3(5).

In addition, the Commission found that the Church had a number of reasonable alternatives to the proposed addition and expanded feeding program. For example, the Church could divide the congregation into two separate worship services, expand the parking lot to remove cars from the neighborhood, and find property in a more appropriate location elsewhere in the city to run the feeding program. Alternatively, the church could sell its property and move to another location where the proposed uses would be more consistent with the surrounding community and would be permitted by right under the zoning regulations. The Commission's decision specifically identified zones within the city at which the proposed use would be permitted. Glenwood appealed the Commission's decision to the Claremont City Council ("the Council"). *See id.* § 10-5. After hearing the appeal, the Council upheld the Commission's decision and denied the application.

Following the Commission's decision, Glenwood brought suit against the City of Claremont, the Claremont Zoning Commission, and the members of the Commission in their official capacity, under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc (2006). The complaint alleged that the denial of Glenwood's permit amendment imposed a substantial and legally unjustifiable burden on the religious exercise of the Church. Glenwood sought an order requiring the Commission to approve the permit application.

After Glenwood and the Commission filed cross-motions for summary judgment, the district court granted summary judgment in favor of Glenwood and ordered the Commission to

approve Glenwood’s proposal and grant the requested permit. The City subsequently appealed to this Court, and pending the outcome of the appeal, we stayed the district court’s order.

DISCUSSION

As this case is an appeal of the district court’s final judgment, we have jurisdiction pursuant to 28 U.S.C. § 1291 (2006). Because this appeal concerns the district court’s grant of summary judgment, and there are no material facts in dispute, we review the legal issues *de novo*. See *Eastman Kodak Co. v. Image Technical Servs., Inc.*, 504 U.S. 451, 466 n.10 (1992).

RLUIPA provides, in relevant part:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution— (A) is in furtherance of a compelling interest; and (B) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc(a)(1) (2006). Section (a)(1) only applies if at least one of the following three jurisdictional tests fits the facts of the case: (A) the burden is imposed in a program funded by the federal government; (B) the burden affects interstate commerce; or (C) the “burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes . . . individualized assessments.” *Id.* § 2000cc(a)(2). A “land-use regulation” is defined as an “application of [a zoning] law that limits or restricts a claimants use or development of land.” *Id.* § 2000cc-5(5). It is undisputed that statutory jurisdiction in this case is appropriate under the “individualized assessment” test.

I. Substantial Burden

The City argues that Glenwood failed to prove that application of the zoning regulations imposed a substantial burden, and that the district court erroneously applied a standard too

favorable to the Church. At most, the City argues, the zoning regulations resulted in delay, uncertainty, and expense for Glenwood. We reject the City’s arguments and affirm the decision of the district court.

Congress did not define substantial burden when drafting RLUIPA. Consequently, we must first determine what a “substantial burden” is; then, we must apply that definition to the facts of this case. Ultimately, this Court holds that the City of Claremont has substantially burdened Glenwood Unity Church’s religious exercise.

A. What is a “Substantial Burden?”

“Substantial burden” is a term of art in the Supreme Court’s Free Exercise jurisprudence. The Supreme Court’s definition informs what Congress understood the term to mean in drafting RLUIPA.³ However, the Supreme Court has not decided a land-use case under RLUIPA, and the unique character of land-use cases necessarily influences the interpretation of “substantial burden.” In the land-use context, an adherent or congregation is seeking permission from the local government to develop or use its own land for religious use. If the government denies permission for the proposed use, then the religious entity or individual is burdened. The question then is about the severity of the burden. To determine whether a burden is “substantial,” several Circuit Courts focus on the governmental conduct at issue in the case. *See Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 349 (2d Cir. 2007) (“government action that directly coerces”); *Midrash Sephardi, Inc., v. Town of Surfside*, 366 F.3d 1214, 1227 (11th Cir. 2004) (“significant pressure which directly coerces”). However, in keeping with the ordinary meaning of the word “burden”—something that is felt, carried, or borne—we focus on how the religious

³ This is supported by RLUIPA’s legislative history: “substantial burden” shall not “be given any broader interpretation than the Supreme Court’s articulation of the concept.” 146 Cong. Rec. S7776 (daily ed. July 27, 2000).

institution experiences the government's denial. *See Sherbert v. Verner*, 374 U.S. 398 (1963) (substantial burden standard measures the effect of the challenged state action on the believer's exercise).⁴

The Seventh Circuit has recognized that "substantial burden" must take into account the particular circumstances of each religious congregation; what is substantial for one congregation may be insubstantial for another. *World Outreach Conference Ctr. v. City of Chicago*, 591 F.3d 531, 537 (7th Cir. 2009). The Seventh Circuit's definition of "substantial burden" focuses on the hardship experienced by the congregation: a burden is substantial if the hardship experienced by the congregation or individual renders religious exercise "effectively impracticable." *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 761 (7th Cir. 2004). However, another court has suggested that a religious institution need only prove "that the [government]'s actions have had an actually inhibiting effect on [the institution]'s ability to practice its religion . . ." *Guru Nanak Sikh Soc'y v. County of Sutter*, 326 F. Supp. 2d 1140, 1153 (E.D. Cal. 2003), *aff'd*, 456 F.3d 978 (9th Cir. 2006).

While we find the Seventh Circuit's articulation of an "effectively impracticable" test useful, the Seventh Circuit has applied that standard in a way that is far too rigid and unfavorable to religious organizations. The City argues that a high hurdle for what constitutes a "substantial burden" is necessary, because too lax a standard would unconstitutionally favor religious land-use over non-religious land-use. We disagree. *See Cutter v. Wilkinson*, 544 U.S. 709 (2005).⁵

⁴ The Supreme Court articulated the burden in *Sherbert* as a choice between adhering to religious beliefs or receiving a government benefit. *See Sherbert*, 374 U.S. at 404. While the land-use issue here does not present a "choice" in the same terms, *Sherbert* provides a useful illustration of how a "burden" can be understood from the perspective of the burdened party.

⁵ In *Cutter*, opponents of RLUIPA characterized the law as conferring a benefit on religious activity, arguing that the accommodation offered by RLUIPA violated the Establishment Clause. In response, the Court held that RLUIPA "fits within the corridor between the Religion Clauses . . . as a permissible legislative accommodation of religion that is not barred by the Establishment Clause." *Id.* at 720. Justice Ginsburg, writing for the Court, characterized

Of course, RLUIPA does not give religious organizations *carte blanche* in the land use regulatory process, and denial of a congregation's permit application does not constitute a *per se* substantial burden on religious exercise. *See Civil Liberties for Urban Believers*, 342 F.3d at 762. Nonetheless, when governmental action or regulation places a financial and spiritual hardship on a religious organization such that the organization cannot feasibly carry out its religious mission on its existing property and has no reasonable alternatives, the government has made the organization's religious exercise "effectively impracticable," and has thus imposed a substantial burden on that religious exercise.

B. Application

To determine whether Claremont's denial of Glenwood's permit imposed a substantial burden on its religious exercise, we must answer two questions. First, does the denial make the sought-after religious use of the existing land effectively impracticable? Many religious organizations have failed to demonstrate a substantial burden on religion because the challenged governmental action merely amounted to a request for more information or a request for a slightly altered development plan that would address the concerns of the zoning commission. *See, e.g., San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1035 (9th Cir. 2004) (finding no substantial burden because the denial only required the College to submit a completed application and additional information about the proposed development). In those situations, there is no substantial burden because the religious use is not made effectively impracticable; the denial still leaves open the possibility of using the existing land and satisfying the zoning commission's criteria.

RLUIPA not as endorsing or conferring a benefit on religion, but rather "[alleviating] exceptional government-created burdens on private religious exercise." *Id.* (citing *Corp. of the Presiding Bishop v. Amos*, 483 U.S. 327, 349 (1987) (O'Connor, J., concurring)).

Second, if the existing land is not usable for the intended religious use, does the Church have reasonable alternative means of meeting its religious needs? *See Westchester Day Sch.*, 504 F.3d at 351. To be reasonable, such alternatives must be actually available within that jurisdiction and financially feasible for the congregation. If a religious organization has a ready alternative to meet both its needs and the zoning board's concerns, the hardship is minimal.

1. Use of Glenwood's Existing Property

In the instant case, the City argues that Glenwood can still use the existing land and renovate the building in order to accomplish its religious purposes. For example, the City argues that Glenwood can divide the congregation into two or more worship services on Sunday, which would solve the capacity problem and allow the church to preserve its existing fellowship hall. The City also argues that Glenwood may locate its meals program at any site in the jurisdiction approved for commercial use. Thus, the City contends that Glenwood does not need the new annex to continue its current activities and effectuate its service ministry.

We are not persuaded by the City's arguments. Glenwood *Unity* Church has presented testimony through Pastor Gale that its religious beliefs require the whole congregation to worship together, and the City concedes that such a belief is sincere. We will not second-guess the Church's determination of its own religious tradition and obligations, and application of RLUIPA does not depend on a finding that the religious practice is central to the claimant's beliefs. *See* 42 U.S.C. § 2000cc-5(7); *Thomas v. Review Bd.*, 450 U.S. 707, 715-16 (1981). Dividing the congregation into multiple services would be inconsistent with that element of Glenwood's religious practice and commitment to worship as a singular body in fellowship.

Additionally, Glenwood contends that it has a sincere religious reason for integrating both worship and service to the needy in one location. The limitations of the existing building—

including size, amenities, and restricted uses—substantially impede Glenwood’s sincere religious beliefs. Denial of the permit makes the desired forms of worship and service not only impracticable but impossible on the existing property.

Although the City concedes the sincerity of Glenwood’s beliefs, it denies that those beliefs have been substantially burdened, and argues that the present dispute involves merely the scope of the congregation’s ministry, not the ministry itself. The City contends that this case is similar to *Living Water Church of God v. Charter Twp. of Meridian*, 258 F. App’x 729 (6th Cir. 2007). In that case, Living Water had outgrown its facilities and wanted to expand beyond the square footage limitation set by the zoning commission. Part of the expansion included a multi-purpose gymnasium. The Sixth Circuit denied protection under RLUIPA, because Living Water could nearly double the size of the existing buildings without any kind of approval from the zoning board; “the fact that Living Water’s current facility is too small does not give the church free reign to construct on its lot a building of whatever size it chooses . . .” *Id.* at 739. The court was also not convinced that the gymnasium was a necessary part of carrying out Living Water’s ministry. *Id.* The present case is factually distinguishable. Glenwood does not have the same ability as Living Water to make the additions necessary to meet its capacity needs. Glenwood has also established—and its sincerity is hardly open to question—that the proposed annex is necessary to carry out its religious mission.

2. Availability of Reasonable Alternatives

The City argues that even if Glenwood’s religious exercise would be substantially burdened by the limitations the City has imposed on the use of its present site, Glenwood has two reasonably available alternatives that would allow the congregation to achieve its religious objectives. The congregation could buy unimproved land and build a suitable structure, or

purchase an existing building. Both would require Glenwood to sell its existing property to finance the purchase and development of a new property.

There is no certainty that Glenwood can sell its current property or find another suitable property. The Church submitted expert testimony that purchasing and developing a new property would cost at least twice the market value of the existing property and that doing so would be significantly more expensive than renovating the current building and adding the annex according to the Church's plan. The City does not dispute this testimony. Nor does the City dispute that the existing cost of purchasing a new property is currently outside the financial means of the Church. The City argues that the burden upon the Church, though material, is not insuperable. In other words, the City contends that the Church might eventually acquire the resources that would enable it to fully accomplish its religious objectives at another location; the City argues that the Church merely cannot accomplish its goals immediately in precisely the way it wants.

We have defined substantial burden as such a hardship upon religious use such that the use becomes effectively impracticable. In this case, the Church cannot use its existing property to accomplish fully its religious objectives as a community of integrated worship and service. The Church, furthermore, does not have any reasonable alternatives available to accomplish those same religious objectives. The City's speculation about future means of accomplishing those goals does not establish that such means are present and reasonable alternatives. A burden need not be insuperable to be substantial. *Sts. Constantine and Helen Greek Orthodox Church, Inc., v. City of New Berlin*, 396 F.3d 895, 901 (7th Cir. 2005); *see also Merced v. Kasson*, 577 F.3d 578, 590 (5th Cir. 2009) (*quoting Barr v. City of Sinton*, 295 S.W.3d 287, 305 (Tex. 2009) ("A restriction need not be completely prohibitive to be substantial; it is enough that alternatives

for the religious exercise are severely restricted.”)). The burden here places such a hardship upon religious exercise that the exercise has become effectively impracticable.

Viewing the facts in the light most favorable to the City, we find as a matter of law that Glenwood has been substantially burdened.

II. Compelling Governmental Interests and Least Restrictive Means

Because the Commission’s decision to deny Glenwood’s application for a new special use permit imposed a substantial burden on the Church’s religious exercise, the Church has established a prima facie violation of RLUIPA. Once the plaintiff has made that showing, the City can prevail only if it can demonstrate that the zoning decision is “in furtherance of a compelling governmental interest” and is the “least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000cc(a)(1)(A)–(B) (2006).

A. What Constitutes a Compelling Governmental Interest

Like the “substantial burden” provision, the “compelling governmental interest” test is rooted in the Supreme Court’s Free Exercise Clause jurisprudence.⁶ The Supreme Court has indicated that “only those interests of the highest order” meet the demanding standard of a compelling interest. *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993). Although courts have struggled with how and whether to categorize certain governmental interests as “compelling,” the Supreme

⁶ “The phrase ‘in furtherance of a compelling governmental interest’ is taken directly from RFRA [the Religious Freedom Restoration Act], which was enacted in 1993; the phrase was and is intended to codify the traditional compelling interest test.” 146 Cong Rec. E1563 (daily ed. Sept. 22, 2000) (statement of Rep. Canady, sponsor, on the Religious Land Use and Institutionalized Persons Act of 2000). The City rightly points out that in enacting RFRA, and later RLUIPA, supporters of the legislation in Congress indicated their intention to restore the pre-*Smith* standard on governments to justify the burdens they place on religious exercise. The City argues that decisions like *United States v. Lee*, 455 U.S. 252 (1982); *Bob Jones Univ. v. United States*, 461 U.S. 574 (1983); *Goldman v. Weinberger*, 475 U.S. 503 (1986), and *O’Lone v. Estate of Shabazz*, 482 U.S. 342 (1987), did not apply such a rigorous standard on governments to show a compelling interest. However, rather than looking back at these decisions, we find it more appropriate to examine the instant case in light of the Court’s more recent decisions applying RLUIPA and RFRA.

Court's recent decision in *Gonzales v. O Centro Espirita Benificente Uniao do Vegetal*, 546 U.S. 418 (2006), provides useful guidance in interpreting and applying the standard. *O Centro* involved the application of the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb (2006), which employs the same compelling governmental interest test found in RLUIPA, to a conflict regarding religious use of a controlled substance. The key holding of *O Centro* is that a government must show more than a general compelling interest, *see* 546 U.S. at 430-31; indeed, RLUIPA requires a justification for the "imposition of the burden *on that person, assembly, or institution.*" 42 U.S.C. § 2000cc(a)(1) (emphasis added). Thus, in a land-use context, RLUIPA requires us to "scrutinize[] the asserted harm of granting [the] specific exemption" to the zoning criteria in question. *O Centro*, 546 U.S. at 431.

The City argues that under *Cutter*, RLUIPA requires this Court to give deference to the City's judgment about the weight of the interests served by its zoning regulations. We disagree. The concerns with RLUIPA that the Court raised in *Cutter* were twofold. First, as discussed above, the Court rejected the argument that RLUIPA violated the Establishment Clause by conferring a benefit on religious activity. The Establishment Clause does not bar the government from accommodating religious activity that the government has burdened. *See Corp. of the Presiding Bishop v. Amos*, 483 U.S. 327 (1987).

Second, prison officials feared that RLUIPA, by imposing a compelling governmental interest/least restrictive means test, would grant additional rights and incentives to prisoners in a way that would undermine prison security and safety. *See Cutter*, 544 U.S. at 721 n.10, 722. The Court responded by indicating that "'context matters' in the application of [the compelling governmental interest] standard." *Id.* at 723 (*citing Grutter v. Bollinger*, 539 U.S. 306, 327

(2003)). The Court offered words of assurance to prison administrators that “particular sensitivity [would be given] to security concerns.” *Id.* at 723.

The City contends that “context matters” in this case as well and argues for deference to the Commission’s decision. Essentially, the City’s position calls for a watered-down version of the compelling interest test. However, *Cutter* dealt specifically with RLUIPA in the context of prisons. *Id.* at 715 n.3. The circumstances of prisons make it more likely that the government will carry its burden of showing a compelling interest, because prisons have specific and weighty security concerns that the Claremont Zoning Commission does not share.

Even when a government demonstrates that it acted in furtherance of a compelling interest, RLUIPA requires the government to show that the substantial burden imposed is the least restrictive means of furthering that interest. 42 U.S.C. § 2000cc(a)(1)(B). This test also comes from the Court’s pre-*Smith* jurisprudence. *See Thomas*, 450 U.S. at 718 (“The state may justify an inroad on religious liberty by showing that it is the least restrictive means of achieving some compelling state interest.”). In order for a government to meet its burden on the question of least restrictive means, it must “demonstrate that no alternative forms of regulation” would achieve the stated interest. *Sherbert*, 374 U.S. at 407.

B. Application

Claremont argues that, as a local government, it has a compelling interest in ensuring the peace, safety, and security of its residents. The City further argues that this interest extends to the enactment and enforcement of effective zoning regulations. Undoubtedly, there are circumstances in which governments have a compelling interest in promoting the safety of citizens, to the detriment of some organization or individual’s other interests. Nevertheless, it is not enough for the City to merely assert a compelling interest. The City “must show a

compelling interest in imposing the burden on religious exercise in the particular case at hand, not a compelling interest in general.” *Westchester Day Sch.*, 504 F.3d at 353 (citing *O Centro*, 546 U.S. at 432). The City cites three major concerns with the Church’s proposal for expansion on its property. We consider each in turn.

1. Traffic Concerns

First, the City contends that expansion of the sanctuary’s seating capacity from 200 to 300 people will eventually attract greater attendance at the church, and that this in turn will lead to greater traffic problems in the neighborhood. Several of the Church’s neighbors voiced their concerns about traffic in the area, including concerns about double-parking on the street, occasional obstruction of driveways, and congestion on Lemon Lane as churchgoers arrive and depart the building. However, if the City truly has a compelling governmental interest in promoting traffic safety on Lemon Lane, we find it puzzling that the City would only assert this interest upon the Church’s proposal for the new permit. The City has not sufficiently demonstrated a quantum leap, so to speak, from the present traffic situation on busy days for the Church (e.g., Easter and other holidays) to what would be expected to occur if the Church’s proposal is permitted. The City places emphasis on the unfortunate accident that occurred when a church member’s vehicle hit a neighborhood boy; however, the City can do no more than speculate that the Church’s expansion would create a pattern of such accidents. Accordingly, we find that the City’s concern over traffic in this case does not rise to the level of a compelling governmental interest for purposes of RLUIPA. *Cf. Westchester Day Sch.*, 504 F.3d at 353 (holding that the city did not show a compelling interest “in the particular case at hand” despite an asserted interest in ensuring safety through traffic regulations).

Even if we were to accept the City's traffic concerns as a compelling governmental interest, the City has failed to demonstrate what other options it has pursued (e.g., increased traffic patrolling at busy times) in other traffic-prone areas of Claremont and why those options would not work in this case. This undercuts the City's ability to show that its denial of the Church's permit is the least restrictive means of furthering its interests.

2. Safety Concerns

The City's second concern is in regard to the Church's proposed program of providing hot meals to the poor and hungry in Claremont. The City asserts a compelling interest in ensuring public safety. The City argues that the meals program, as proposed, would threaten this interest and impose undue harm on the neighborhood and its residents. Although the clear difference in the types of entities involved makes it a crude and perhaps unsavory analogy, the City argues that its concern is essentially similar to that of cities with restrictions on adult theaters—the Commission is concerned with the supposed “secondary effects” of allowing the Church to serve meals to poor and homeless community members. *Cf. City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986).

Given the authority of cases like *Renton*, we recognize that the desire to promote safety and lower crime rates through land use regulations is a substantial interest. However, unlike the city in *Renton*, which had based its decision to regulate on the similar experiences of other cities, *id.* at 50-52, the City in this case has failed to demonstrate sufficiently that the implementation of the meals program will increase crime in the Glenwood area. This case is about a proposed land use by a house of worship, which RLUIPA protects, not a theater showing sexually explicit films. Courts should evaluate competing interests accordingly.

Because the court below decided the case on a motion for summary judgment, we must view the facts in the light most favorable to the City. As such, we fully credit the testimony in the record about instances of panhandling, vulgar language in front of children, and public urination. But each of those instances was isolated; the record does not show any persistent presence of anti-social behavior. Some of the resistance in the neighborhood to the Church's expansion seems to be a function of class-based prejudice and fear. The City has no legitimate interest in accommodating those sentiments. *Cf. City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985). The testimony of the Chief of Police was about petty, not serious crime, and in any event, the testimony did not link the crime to the participants in the Church's programs. As in the case of traffic concerns, the City has conflated its concerns regarding *current* conditions with its concerns over potential effects of granting the Church's permit. Thus, even if we recognize the City's stated interests as compelling, we are skeptical that the City is actually acting in the furtherance of those interests by denying the permit.

The City has further failed to demonstrate that other alternatives, such as increasing police presence at certain hours, would not suffice to ensure the safety of the Church's neighbors. The City argues that sending more police officers to the neighborhood would cost more money and divert the City's law enforcement resources from other areas. However, the fact that such action might cost marginally more does not make it impossible. If criminals have come to this part of Claremont, they have left a different part of the City. The City's cost-based concerns do not constitute a showing that denial of the Church's requested permit is the least restrictive means of achieving the City's safety interests.⁷

⁷ The fact that Claremont has *not* introduced evidence of any other measures to specifically combat crime in the Glenwood area further emphasizes the City's inability to show that it is acting in furtherance of a compelling governmental interest: "One way to evaluate a claim of compelling interest is to consider whether in the past the

3. Incompatibility with Other Uses

Third, the City argues that it has a compelling interest in maintaining the character of the Glenwood neighborhood (by excluding incompatible uses), preserving property values in the area, and preventing unreasonable noise in the neighborhood. The Church does not dispute the neighbors' described incidences of noise after the Church's evening activities; however, the Church argues that these interests do not constitute a compelling governmental interest.

At the heart of the City's position is its argument based on *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703 (1985); that is, that the Church may not exercise its religious liberty in a way that forces the Glenwood neighborhood residents to "conform their conduct to [the Church's] religious necessities." *Id.* at 710 (1985) (*quoting Otten v. Balt. & Ohio Ry.*, 205 F.2d 58, 61 (2d Cir. 1953)). While the "substantial burden" portion of this opinion, *see supra* Part I, focuses on the Commission's permit denial as a burden on the church, the City would have us consider how *allowing* the permit would constitute a burden on third parties (i.e., neighbors) in the area.

This argument seeks to turn RLUIPA on its head, and is without merit. In *Caldor*, the Supreme Court struck down a law that gave an unqualified right to employees to refuse to work on the day of their Sabbath observance. 472 U.S. at 708. The Court indicated that its concern with the law was that by granting an unqualified privilege to Sabbath observers that no other interest could trump, it shifted the burden of employees' Sabbath observance entirely to others—to other employees, who would need to cover unworked shifts, or to employers. There, the shifted burden was quantifiable, discrete, and clear. Here, any new costs imposed on the neighborhood are speculative and diffuse, and we find any additional costs imposed on the

governmental actor has consistently and vigorously protected that interest." *Grace Church of N. Cnty. v. City of San Diego*, 555 F. Supp. 2d 1126, 1140-41 (S.D. Cal. 2008) (*citing Lukumi*, 508 U.S. at 547 ("A law cannot be regarded as protecting an interest of the highest order . . . when it leaves appreciable damage to that supposedly vital interest unprotected.")).

Church's neighbors by grant of the permit insufficient to justify the City's imposition of a burden on the religious exercise of Pastor Gale and her congregants.

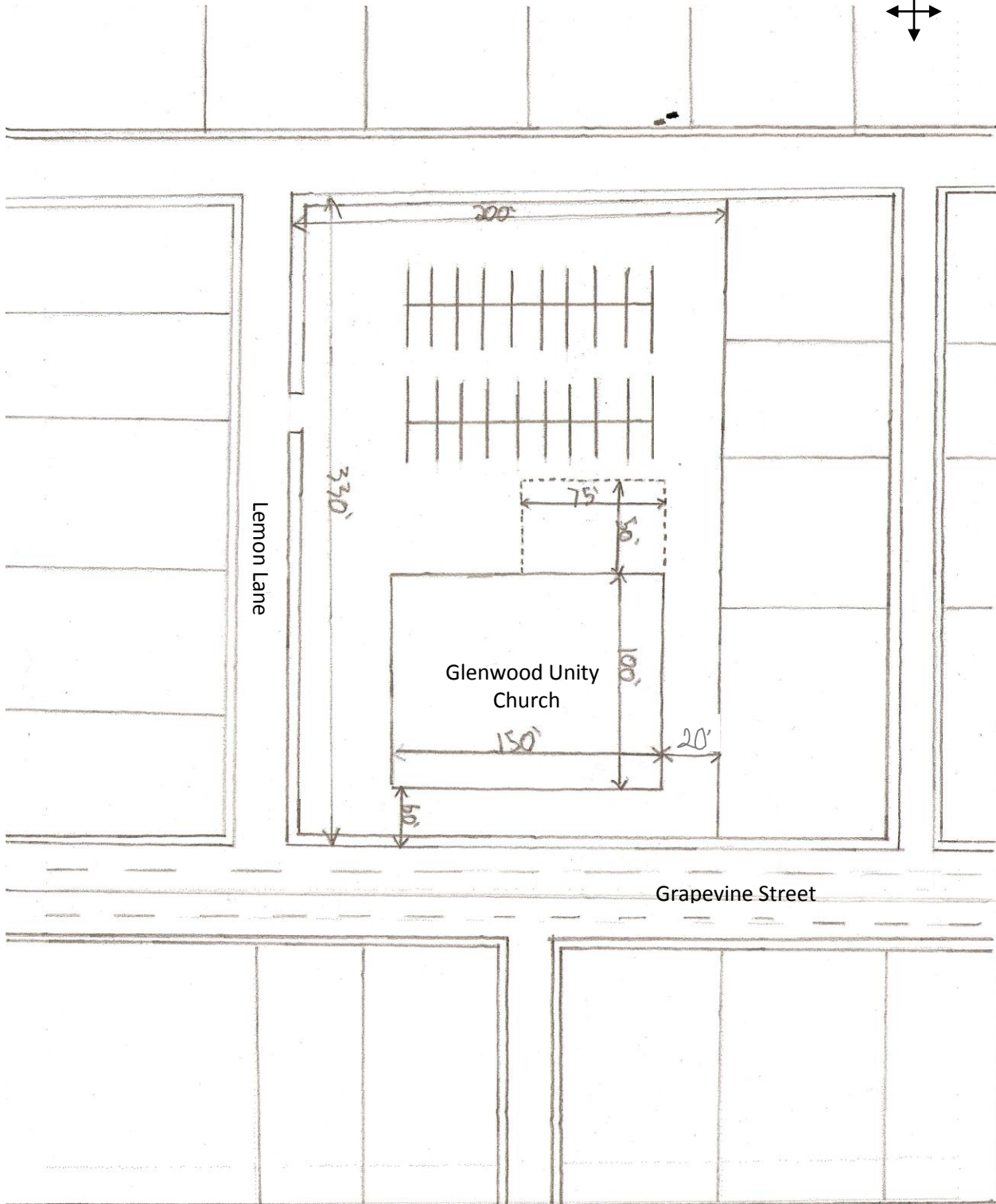
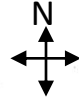
In short, we are skeptical that these interests meet the compelling governmental interest standard. Even if they do, the City has not shown that the denial of the permit is the least restrictive means of achieving these interests. The common law of nuisance provides the possibility of private remedies for the neighbors if the Church's activities (now or in the future) unreasonably interfere with the use and enjoyment of the neighbors' property interests. *See* Restatement (Second) of Torts § 822 (1979). In addition, the City can continue to enforce appropriate restrictions on noise in the neighborhood.

CONCLUSION

We conclude by echoing the court in *Western Presbyterian Church v. Board of Zoning Adjustment of D.C.*, 862 F. Supp. 538 (D.D.C. 1994)—Glenwood Unity Church's desire and proposal to feed and support the poor and homeless residents in the area are commendable, and “[i]t is difficult to imagine a more worthwhile program.” *Id.* at 546. The Commission's decision to deny the Church's new special use permit has imposed a substantial burden on the Church, and the City has not satisfied its burden under RLUIPA. For the foregoing reasons, we affirm the judgment of the District Court. We thus affirm the grant of the Church's motion for summary judgment, the denial of the City's motion, and the order to the Commission to approve the Church's proposal and issue the requisite permit.

It is so ordered.

Appendix 1 - Map



----- Site of Proposed Building Annex
(50' by 75')

(Map not drawn to scale)

Note: All properties on this map are zoned SF-1, single-family detached housing. The Church building is set back 60 feet from Grapevine Street and 20 feet from the eastern edge of the Church's property.

Appendix 2 - Portion of the Claremont City Ordinances

§ 1-3 Definitions and Explanations

One-family dwelling (detached) means a dwelling designed and constructed for occupancy by one (1) family and located on a lot or separate building tract and having no physical connection to a building located on any other lot or tract and occupied by one (1) family.

§ 3-5 Zoning

(a) For the purpose of promoting health, safety, morals or the general welfare of the community, the council may by ordinance regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes. Such ordinance shall provide that the board of adjustment may, in appropriate cases and subject to appropriate principles, standards, rules, conditions and safeguards set forth in the ordinance, authorize variances from and make special exceptions to the zoning regulations in harmony with their general purpose and intent.

(b) For any or all of said purposes the council may divide the city into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this section; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. All such regulations shall be uniform for each district, but the regulations in one district may differ from those in other districts.

(c) Such regulations shall be made in accordance with the goals of the city and be designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health or the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, public convenience and other public requirements. Such regulations shall be made with reasonable consideration of the character of the district and its peculiar suitability for particular uses, and with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the city.

§ 5-2 Building Permits, Use and Occupancy Certificates

(a) The city shall have the power to prohibit the erection, construction or use of any building or structure of any kind within the city without a permit having first been issued, by the city, for the construction or erection of such building or structure, and without a use and occupancy certificate having been issued for the use actually made of such premises and structure and may authorize a fee to be charged for such permit. In pursuance of this authority the council may

authorize the inspection of all buildings and structures during the progress of their construction or thereafter and may require new construction, renovation, or reconstruction to comply with all building regulations.

(b) For the purpose of preserving property values, protecting the public health, preventing the blighting of areas within the city, promoting safety and the public welfare the council may fix a minimum standard for the construction and use of housing accommodations and other structures within this city and prohibit the construction, erection and use of substandard housing and other substandard structures.

§ 5-4 Conditions Imposed

The commission or the city council may impose conditions concerning the location, use, arrangement, construction or development of the district in order to ensure the appropriate use of the district and to protect surrounding properties.

Special Use Permits

§ 10-1 Purpose

This division provides the city council the opportunity to deny or to conditionally approve those uses for which special use permits are required. These uses generally have unusual nuisance characteristics or are of a public or semipublic character often essential or desirable for the general convenience and welfare of the community. Because, however, of the nature of the use or possible adverse impact on neighboring properties of the use, review, evaluation and exercise of planning judgment relative to the location and site plan of the proposed use are required.

§ 10-2 Application Procedure

An application for a special use permit shall be filed with the department of planning and community development on a form prepared by that department. The application shall be accompanied by a site plan which, along with the application, will become a part of the special use permit, if approved. The accompanying site plan shall provide the following information:

- (1) Data describing all processes and activities involved with the proposed use;
- (2) Boundaries of the area covered by the site plan;
- (3) The location of each existing and proposed building and structure in the area covered by the site plan and the number of stories, height, roofline, gross floor area and location of building entrances and exits;
- (4) The location of existing drainage ways and significant natural features;

- (5) Proposed landscaping and screening buffers;
- (6) The location and dimensions of all curb cuts, public and private streets, parking and loading areas, pedestrian walks, lighting facilities and outside trash storage facilities;
- (7) The location, height and type of each wall, fence and all other types of screening; and
- (8) The location, height and size of all proposed signs.

Once the application has been filed, the Zoning Commission must schedule a hearing to review the application and allow for public comments before making a decision whether to approve the application. The Zoning Commission must take appropriate efforts to provide notice to Claremont residents likely to be affected by the special use. In addition, the applicant must provide notice on the relevant property.

§ 10-3 Conditions for Approval

A special use permit shall be issued only if all of the following conditions have been found:

- (1) That the special use will be compatible with and not injurious to the use and enjoyment of other property nor significantly diminish or impair property values within the immediate vicinity;
- (2) That the establishment of the special use will not impede the normal and orderly development and improvement of surrounding vacant property;
- (3) That adequate utilities, access roads, drainage and other necessary supporting facilities have been or will be provided;
- (4) The design, location and arrangement of all driveways and parking spaces provides for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent developments;
- (5) That adequate nuisance prevention measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration;
- (6) That directional lighting will be provided so as not to disturb or adversely affect neighboring properties; and
- (7) That there is sufficient landscaping and screening to ensure harmony and compatibility with adjacent property.

§ 10-4 Amendments

The procedure for amendment of a special use permit shall be the same as for a new application; provided, however, that the director of the department of planning and community development

may approve minor variations from the original permit which do not increase density, change traffic patterns or result in any increase in external impact on adjacent properties or neighborhoods.

§ 10-5 Appeals from Commission Action

An appeal may be granted to be heard by the City Council if the Commission disapproves a special use application or an amendment to an existing special use permit. If an appeal is not granted, the decision by the Commission is final.

Table of Zoning Codes and Permitted Uses

- X DESIGNATES USE PERMITTED IN DISTRICT INDICATED.
- (blank) DESIGNATES USE PROHIBITED IN DISTRICT INDICATED.
- S DESIGNATES USE MAY BE APPROVED AS SPECIAL USE PERMIT

Zoning Code	SF-1	SF-2	SF-3	SF-4	2-F
TYPE USE	One Family (Detached)	(Attached)	(Restricted)		Two Family Dwelling
ONE-FAMILY DETACHED	X	X	X	X	X
ONE-FAMILY ATTACHED		S	S	S	S
TWO-FAMILY DWELLING					X
MULTIPLE-FAMILY					
COMMUNITY UNIT	S	S	S	S	S
SCHOOL	S	S		S	S
CHURCH OR RECTORY	S	S	S	S	S

Zoning Code	MF-R	MF-1	MF-2	P	OAR
TYPE USE	Multiple Family Dwellings			Parking District	Outdoor Amusement
ONE-FAMILY DETACHED	X	X	X	X	
ONE-FAMILY ATTACHED	S	X	X	X	
TWO-FAMILY DWELLING	X	X	X	X	
MULTIPLE-FAMILY DWELLING		X	X	X	
COMMUNITY UNIT	S	X	X	S	
SCHOOL	X	X	X		
CHURCH OR RECTORY	X	X	X	X	

Zoning Code	CB	LI	HI	PD	
TYPE USE	Central Business	Light Industrial	Heavy Industrial	Planned District	Commercial
ONE-FAMILY DETACHED		X			
ONE-FAMILY ATTACHED		X			
TWO-FAMILY DWELLING		X			
MULTIPLE-FAMILY DWELLING		X			
COMMUNITY UNIT DEVELOPMENT	X	X			X
SCHOOL	X				X
CHURCH OR RECTORY	X	X	X	X	X