

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

THE BENSLEM MASJID INC., a)
Pennsylvania corporation,)
)
Plaintiff,)
)
v.)
)
BENSLEM TOWNSHIP,)
PENNSYLVANIA, and BENSLEM)
TOWNSHIP ZONING HEARING BOARD,)
)
Defendants.)
)

COMPLAINT

Civil Action No. _____

COMPLAINT

Plaintiff, THE BENSLEM MASJID INC., by its undersigned attorneys, complains of Defendants BENSLEM TOWNSHIP, PENNSYLVANIA, and BENSLEM TOWNSHIP ZONING HEARING BOARD as follows:

NATURE OF ACTION

1. Plaintiff files this action to redress violations of its civil rights caused by the Defendants' burdensome, discriminatory, and unreasonable land use regulations and intentional conduct that have prohibited and continue to prohibit The Benslem Masjid Inc. (the "Masjid") from building and operating a place of worship on its property in Benslem, Pennsylvania, in violation of the United States Constitution, the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc *et seq.* ("RLUIPA"), and Pennsylvania's Religious Freedom Protection Act ("PA-RFPA"), 71 Pa. Cons. Stat. § 2401 *et seq.*

2. Benslem Township's land use regulations restricting religious institutions and

the Bensalem Township Zoning Hearing Board’s (the “Board” or “ZHB”) denial of the Masjid’s application for a use variance (the “Application”) substantially burden the Masjid’s religious exercise without being the least restrictive means of achieving any compelling governmental interest.

3. Bensalem Township’s land use regulations restricting religious institutions and the Board’s denial of the Application discriminate against the Masjid and in favor of similarly situated religious and secular assembly and institutional uses.

4. Finally, Bensalem Township’s scheme for regulating religious land uses—by banning places of worship throughout the Township except for scant individual parcels located throughout its jurisdiction and already occupied—effectively grants the Township and Board unbridled discretion to permit favored religious land uses and prohibit disfavored religious land uses, including the Bensalem Masjid.

PARTIES

5. Plaintiff THE BENSALEM MASJID INC. is a religious organization incorporated under the Laws of the Commonwealth of Pennsylvania in 2013.

6. Defendant BENSALEM TOWNSHIP is a municipality located in Bucks County in the Commonwealth of Pennsylvania with an address of 2400 Byberry Road, Bensalem, Pennsylvania 19020.

7. Defendant BENSALEM TOWNSHIP ZONING HEARING BOARD is a zoning hearing board organized under 53 Pa. Cons. Stat. Ann. §§ 10901-10918 and authorized by § 232-781 of the Code of Bensalem Township. It has an address of 2400 Byberry Road, Bensalem, Pennsylvania 19020. The ZHB consists of five members appointed by the governing body of

Bensalem Township.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction) because this action is brought under 42 U.S.C. § 2000cc *et seq.*, and 42 U.S.C. § 1983. This court also has supplemental jurisdiction over Counts VIII and IX pursuant to 28 U.S.C. § 1367(a).

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because all of the events giving rise to the claims herein occurred in this District and the Defendants are subject to personal jurisdiction in this District as of the commencement of this action.

FACTUAL ALLEGATIONS

The Bensalem Masjid

10. The Bensalem Masjid is a Muslim religious organization that serves approximately 200 congregation families (the “Members”).

11. Approximately 80% of the Masjid’s Members live in Bensalem.

12. The Masjid (which is the Arabic word for “mosque”) does not have its own mosque, which is an integral component of Muslim religious worship.

13. There is no mosque within Bensalem Township, which has approximately 60,000 residents, according to the 2010 Census.

14. Consistent with mainstream Islam, the Masjid’s Members believe they are required to pray five times daily.

15. Religious Muslims believe that these prayers should occur in a mosque.

16. Consistent with mainstream Islam, the Masjid's Members believe that there is religious merit to performing daily prayers with congregation members.

17. There is no mosque in Bensalem Township to do so, and the nearest mosques are an impracticable distance away from the Members.

18. The Members of the Bensalem Masjid cannot conduct their prayers at those nearest mosques as those facilities are too small to accommodate them.

19. Members of the Masjid go to unaffiliated mosques for significant religious events as the Bensalem Masjid does not have adequate facilities.

20. The Masjid lacks a mosque to hold its Friday prayer service.

21. Consistent with mainstream Islam, the Masjid's Members believe that they are religiously obligated to attend these prayers, which must be performed in a mosque.

22. The Masjid's Members currently meet to worship for Friday prayers in a rented fire hall located at 5931 Bensalem Boulevard.

23. The Bensalem Masjid has no property interest in the fire hall.

24. The fire hall is owned by the Newportville Fire Company, which leases it to Faith Unity, a non-affiliated religious organization.

25. Faith Unity is a separate organization from the Plaintiff.

26. Faith Unity currently permits the Plaintiff to join it in religious worship at the fire hall location.

27. Faith Unity does not utilize the same religious calendar used by the majority of Muslims, including the Bensalem Masjid.

28. The prayer area in the fire hall facility used for prayers by the Masjid and Faith Unity is 2,400 square feet.

29. The fire hall facility is entirely inadequate for the Bensalem Masjid's religious exercise.

30. Currently, the only religious services being offered at the fire hall that are available to the Bensalem Masjid are the Friday prayer service and Sunday school.

31. The space at the fire hall is not large enough to accommodate the Plaintiff for larger religious events.

32. As the Plaintiff is not the lessee of the fire hall, its Members do not generally have the codes necessary to access that facility for daily prayers.

33. The Bensalem Masjid has been meeting at the rented fire hall for approximately six years.

34. The fire hall is not a mosque and can never be considered a mosque by the Plaintiff.

35. In order to be considered a mosque, Plaintiff believes: (a) a facility must be a deeded property donated by the owner to God; (b) the prayer area be specifically consecrated according to religious tenets; and (c) the sanctity of that prayer area be maintained by adherence to certain religious practices and restrictions.

36. Plaintiff's Members are violating their religious beliefs by holding Friday prayer services in a building that is not a mosque.

37. The fire hall also lacks the religious, cultural and social experience of a mosque. For example, the fire hall does not have the facilities for the Masjid's Members to perform *wudu*, a necessary ritual ablution before services that includes the washing of the feet.

38. The fire hall does not have any specific ablution facilities, but only has two restrooms.

39. Most Members do not use the existing fire hall restrooms for *wudu*.
40. Consistent with mainstream Islam, the Masjid's Members believe men and women must be separated during communal prayer.
41. The fire hall space does not adequately accommodate the separation of men and women at prayer services.
42. Instead, a partition has to be placed between the men and women during prayers. Women therefore cannot currently see the speaker delivering sermons at services; and the *imam* or other speaker cannot see them.
43. Members of the Masjid with small children are prevented from attending prayer services because there are no facilities such as a separate area for infants and younger children.
44. Most of the Masjid's Members cannot travel significant distances for the Friday prayer service because of employment obligations.
45. Communal prayer is also essential on two Muslim holy days, called *Eids*. The Masjid has no mosque in which it can observe these holy days.
46. The commitment to charity (*zakat*) set forth in the Five Pillars of Islam, which is followed by the Masjid's Members, requires them contribute part of their earnings to charitable causes. Such charitable giving customarily occurs during prayers at a mosque. Muslims who are members of a mosque are often more comfortable giving directly to the mosque and trust that the mosque will distribute the funds to charitable causes within the community. Because the Masjid lacks a mosque, the religious practice of *zakat* is burdened.
47. The Bensalem Masjid currently has no *imam*, or worship leader, because it has no mosque facility. An *imam* would not only lead religious services, but would also be available for religious counseling to the Masjid's Members.

48. The Masjid cannot attract a full-time imam without a mosque.
49. A full-time *imam* would provide family counseling to Members. Currently, the Masjid does not have space for such an *imam* to provide such counseling. A mosque would provide an office for the imam to meet with Members.
50. Consistent with mainstream Islam, the Masjid's Members believe that proper religious education and upbringing of children is an important religious duty.
51. Plaintiff is unable to operate various important religious education programs because it lacks a mosque and auxiliary space such as classrooms.
52. Faith Unity currently operates some Sunday school programs, to which some Members of the Plaintiff send their children.
53. The Masjid seeks to provide religious education for five age groups. At a dedicated mosque facility, the Masjid would be able to provide five separate classrooms for religious education.
54. The fire hall cannot accommodate five separate classrooms for religious education, nor do such facilities exist at the fire hall.
55. The Masjid seeks to provide religious classes and a meeting space for teenage Muslims; however, it cannot currently do so because of lack of facilities.
56. The Masjid also seeks to provide a meeting space for religious fellowship for elderly Muslims; however, it cannot currently do so because of lack of facilities.
57. The Masjid seeks to provide facilities for Quran study groups and for interfaith activities; however, it cannot currently host such religious activities.
58. There is no space for a religious library for the Masjid.
59. Plaintiff also requires a mosque in order to have a meeting center for the Muslim

community in Bensalem.

60. Plaintiff cannot provide a facility to accommodate the small religious ceremony that is part of many Muslim weddings, and Members are forced to go to a different mosque for such ceremonies.

61. Plaintiff also seeks to bring the youth of its community to the mosque through youth programming and activities. This is vitally important to the Muslim community, as it enhances community cohesiveness among Muslims, brings new members into the congregation, teaches morality and religious observance and keeps youth away from alcohol and drugs, and brings youth into the proximity to the mosque's prayer hall so that they will be nearby when it is time for prayer.

62. The Masjid's current fire hall location has inadequate parking for its congregation; the proposed location for the Masjid's mosque would provide more than adequate parking.

63. The proposed place of worship would also provide a cafeteria, which is important to Members as it provides a place for community fellowship after the Friday prayer service, between the daily sunset and night prayers; or when their children are in Sunday school.

64. The fire hall also lacks architectural elements significant for a mosque structure.

65. It lacks a dome, which represents the heavens and provides a spiritual environment for Plaintiff's prayer hall area.

66. It lacks a minaret, which possesses significant religious symbolic value, but would not be used for calls to prayer in Bensalem.

67. The fire hall is not oriented toward Mecca, as a mosque would be.

68. In order to accommodate its religious exercise, the Masjid requires a mosque with

a prayer area large enough and configured adequately to accommodate its members for prayers, regular services, holy day services, funerals, other events and for charitable giving, and an auxiliary space adequate for religious education for youth and adults, for after-school, religious and educational programs for its youth, for religiously ordained meals, for charitable activity, and space for an *imam*, his office and counseling space.

The Subject Property

69. In order to address its religious needs, in 2012 the real property located at 3805 and 3825 Hulmeville Road, Bensalem, Pennsylvania was purchased by IMC Properties LLC (the “LLC”). Previously in 2009, 3743 Hulmeville Road was also purchased by the LLC. All three parcels (the “Property”) were ultimately combined in order to accommodate the religious needs of the Plaintiff.

70. The Property is leased by the LLC to the Masjid.

71. The Masjid has an option contract to purchase the Property from the LLC upon the granting of the use variance or other land use approval permitting it to develop the Property as a mosque.

72. The Bensalem Masjid intends to use the three combined parcels as its place of worship.

73. The Property is also known as tax map parcels 02-040-029, -030, and -031.

74. Plaintiff’s Members have attempted to construct a mosque in Bensalem for six years.

75. Beginning in 2008, the Plaintiff began to seek property for its place of worship.

76. Plaintiff sought property in Bensalem that was of sufficient size and would allow

for the construction of their mosque and required parking spaces.

77. The Masjid has also attempted, without success, to purchase the property of other existing religious institutions in Bensalem to use as their place of worship.

78. Plaintiff sent out letters to every house of worship in Bensalem offering to purchase their properties, but none were willing to sell their existing house of worship.

79. Plaintiff also attempted to purchase property in the Institutional (“IN”) zoning district, the only zoning district in Bensalem that permits places of worship, as described below.

80. The Plaintiff’s land use planner visited every IN-zoned property within Bensalem Township and determined that no such property was available for the Plaintiff’s use.

81. Plaintiff was not aware of any properties in the IN zoning district that were available for sale during its property search.

82. Other properties examined by the Plaintiff were unavailable for its religious use for various reasons, including that the prior owner rejected the Plaintiff’s bid (even though such bid was higher than the ultimate sale price), that bids went unanswered and properties were taken off the market, that the property lacked sufficient space for the facility or for parking, that existing structures could not be converted into a mosque, that a property was sold internally to another church group, and that the sites were incompatible with a mosque use.

83. Plaintiff did ultimately find the subject Property, which met all of its needs and was located in an area suitable for a place of worship.

84. The Property is comprised of three separate parcels and is 4.58 acres in total.

85. The Property is a “split zone,” divided into R-11 and R-A residential zoning districts, and the bulk in the Business Professional (BP) zoning district.

86. All three parcels have road frontage on Hulmeville Road, Pennsylvania State

Route 513, which is classified as a minor urban arterial road.

87. Currently, there are two residences located on the Property. The Masjid would use one of the residences as its library, an administrative building, and a space for the prayer service leader to prepare sermons.

88. The other residential building would be demolished.

89. The BP-zoned parcel is vacant.

90. The residential-zoned parcels are not appropriate for residential use because of their location in a predominantly non-residential area, being fronted on an arterial road, and isolated from other residential uses.

91. The Hulmeville Road corridor by the Property is a general mixed use corridor and is lined with various institutional, commercial and limited residential uses.

92. There are many zoning districts adjoining Hulmeville Road near the property, including G-C (General Commercial), R-11 (residential), R-1 (residential), H-C1 (Highway Commercial), IN (Institutional), R-22 (residential), and others.

93. The area surrounding the Property is mainly comprised of commercial development to the south, a new residential development proposed to the east and commercial development further north.

94. The adjoining land uses to the north of the property are primarily commercial including a bank, pizzeria, CVS pharmacy and a small office park. To the east there is a wooded area with wetlands, and an apartment complex. To the south there is a bank, shopping center and strip commercial center, 7-11 and Sunoco. To the west there is a library, rescue squad, park and municipal complex.

95. Located near the Property on and near Hulmeville Road are many assembly and institutional land uses.

96. The Peace Lutheran Church is located approximately 0.2 mile away from the Property, at the corner of Byberry and Hulmeville.

97. The St. Gregorios Malankara Orthodox Church is located approximately 0.4 mile away from the Property on Hulmeville Road.

98. The Bensalem Church is located approximately 0.5 mile away from the Property on Hulmeville Road.

99. The Bensalem United Methodist Church is located approximately 0.5 mile away from the Property on Hulmeville Road.

100. Altogether there are six churches on the Hulmeville Road corridor.

101. The Bensalem Library is located across the street from the Property.

102. The Benjamin Rush Elementary School is located approximately 0.3 mile away from the Property on Hulmeville Road.

103. The Bensalem High School is located approximately 0.5 mile away from the Property on Hulmeville Road.

104. The Robert K. Schafer Middle School is located approximately 0.5 mile away from the Property.

105. The St. Ephrem Catholic School is located approximately 1.4 miles away from the Property on Hulmeville Road.

106. The Bensalem Christian Day School is located approximately 0.4 mile away from the Property on Hulmeville Road.

107. Many other commercial, institutional and assembly land uses are located near the Property.

108. There is a 200-foot buffer to the nearest residential use.

109. The Property would accommodate the religious needs of the Masjid, as described above.

110. The proposed place of worship, originally planned to be approximately 27,400 square feet with 143 parking spaces, was reduced to 16,900 square feet with 154 parking spaces.

111. Architectural plans for the proposed mosque incorporate the traditional elements generally found in such a religious building including a dome and minaret.

112. The proposed prayer hall will feature separate entrances for men and women, and adequate facilities for the Members to perform *wudu*.

113. The proposed religious facility would include four classrooms and two administration rooms totaling 800 square feet.

114. The proposed religious facility would also include a 500 square foot conference room and a 4,000 square foot multipurpose room in the basement, which will be used for community meetings of the Members.

115. The proposed facility would not be rented out or used for parties.

116. Alcohol would not be permitted in the mosque.

117. The Property is uniquely situated to serve the Plaintiff's religious needs, which include a worship space, classrooms for adult education and youth education and social programming intended to encourage the Masjid's youth to become observant practicing members of the Muslim community.

118. The Property was the only site within Bensalem that the Masjid could purchase that physically met its needs.

119. The Plaintiff met several times with the Mayor of Bensalem Township and with each Township Councilmember concerning the use of the Property as a religious institution.

120. The reaction from the Mayor and each Councilmember was positive concerning the proposed use.

121. Only upon consultation and with the tacit approval from the Mayor, his engineering staff, and the Councilmembers did the Bensalem Masjid submit the application to the Bensalem Zoning Hearing Board.

122. Several other religious organizations had received use variances to use property within Bensalem Township as religious institutions.

123. The Bensalem Masjid had a reasonable expectation that it would be permitted to use the Property as a religious institution based on its above-mentioned discussions with Township officials and the ZHB's treatment of other similar applications.

The Applicable Land Use Regulations and Existing Land Uses

124. Use of the Property is subject to the laws and regulations of Bensalem Township.

125. Religious institutions are prohibited in the BP, R-A and R-11 zoning districts that Plaintiff's Property is comprised of.

126. Religious institutions are also prohibited in the Township's NRP, MHP, R-A-1, R-A-2, R-1, R-2, R-3, R-3A, R-AA, R-22, R-33, R-44, R-55, A-D, R-66, and MXD residential zoning districts.

127. Religious institutions are also prohibited in the Township’s G-C, H-C1, and PCD commercial zoning districts.

128. Religious institutions are also prohibited in the Township’s L-I and G-I industrial zoning districts.

129. Religious institutions are also prohibited in the Township’s CSD convention stadium district and REC recreational district.

130. Many nonreligious assembly and institutional land uses are permitted in the Township’s residential, commercial, convention stadium and recreational districts.

131. Houses of worship are only permitted within the Institutional (IN) zoning district within Bensalem Township.

132. The Township’s zoning ordinances define a “religious institution” as: “Religious institution: A convent, monastery, church, temple, synagogue, or similar religious institution, subject to the special requirements of subsection 232-358(b)(2);”

133. The Township requires any religious institution to be located on a lot with a “net lot area” (defined as the “area contained within the property lines of individual parcels of land, excluding any area within an existing or ultimate legal right-of-way for public streets, and including the area of any easement”) greater than four acres in size and a minimum lot width of no less than 300 feet.

134. Several of the permitted uses on the Property would have much greater land use impacts, including traffic impacts, than the proposed mosque.

135. The BP zoning district permits various nonreligious assembly and institutional land uses, including “Business and professional schools,” “College and university,”

“Professional services” including medical and law offices, and “Business services limited to offices for licensed real estate brokers, stock and bond brokers and accountants.”

136. The R-A zoning district also permits various nonreligious assembly and institutional land uses by right, by special exception, or as a conditional use, including: “Municipal building and municipal use,” “Railway passenger station,” “Private educational institution for general educational purposes,” “Convalescent home or sanitarium,” and “Child, adult or senior citizen day care center.”

137. The R-11 zoning district permits nonreligious assembly and institutional land uses, including “Municipal building and municipal use,” and “Child, adult or senior citizen day care center.”

138. There are no available properties zoned IN that can be used for the Masjid, either because they are incapable of being developed as a mosque, are already developed for other uses, or not for sale.

139. There are approximately 35 parcels of land in Bensalem that are zoned IN.

140. Of those parcels, approximately 20 are currently used by other religious organizations, 4 are used as park and recreation areas, 5 are cemeteries, and 6 are devoted to other uses including schools and institutional residential uses.

141. All IN parcels are developed with other uses with the exception of one park that is owned by the Township and slated for use as a recreation complex.

142. The legislative determinations by the Defendant Township to zone particular parcels of land as “Institutional” unreasonably provide the Township with unbridled discretion to determine whether and where particular religious expression will be permitted.

143. The Plaintiff hired real estate professionals and seriously evaluated at least eleven properties during a five-year period, and has looked for properties zoned IN in Bensalem to build a mosque.

144. During the course of the five-year search period prior to the filing of the zoning application with the Bensalem Zoning Hearing Board, only one IN-zoned property was available for sale. That property was sold by one church to another and was not listed or made available to the Applicant.

145. The Applicant was also unable to utilize any existing structures/churches for its proposed mosque.

146. Another IN-zoned property was listed with a real estate agent after the Application was filed. This property is subdivided off an existing cemetery, which is zoned IN. Islamic religious law discourages and may preclude development of a mosque on this parcel because of its location at or next to a cemetery. Further, upon information and belief, that property was recently placed under agreement of sale to Faith Unity and is thus unavailable to the Plaintiff.

147. Plaintiff does not have any realistic opportunity to purchase land elsewhere in Bensalem in order to construct its mosque, and any such course of action would involve unreasonable delay, uncertainty, and expense due to the zoning ordinances promulgated by the Defendant Township.

148. In order to build a mosque in Bensalem on property zoned other than Institutional, a use variance would be required.

149. Plaintiff also attempted to purchase property at 2746 Mechanicsville Road, and offered a higher price than that property ultimately sold for. The Board granted a use variance to another religious organization for that property.

150. As a place of worship is not a permitted use on the Property, Plaintiff sought a use variance in order to engage in such religious land use.

151. The Bensalem Township Code requires that each of the following criteria be met for a use variance:

The Zoning Hearing Board shall hear requests for variances where it is alleged that the provisions of the zoning ordinance inflict unnecessary hardship upon the applicant. The board may grant a variance, provided that all of the following findings are made where relevant in a given case:

- (1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.
- (2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- (3) That such unnecessary hardship has not been created by the appellant.
- (4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
- (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue. In granting

any variance, the board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this act and the zoning ordinance.

152. The Defendant Board has not applied these requirements strictly to other applicants for use variances.

153. Were the Bensalem Masjid to attempt to purchase new land and apply for a use variance to build a mosque there, this course of action would result in considerable and unreasonable delay, uncertainty and expense.

The Use Variance Application to Use the Property as a Place of Worship
and the Zoning Hearing Board's Denial

154. On October 24, 2013, the Plaintiff applied to the Bensalem Township Building and Planning Department to use its Property as a mosque.

155. On November 19, 2013, the Township Engineer denied the application, as the use as a place of worship was not permitted in the zoning districts in which the Property is located.

156. On December 17, 2013, the Plaintiff applied for a use variance before the Zoning Hearing Board of Bensalem Township to build a mosque on its Property.

157. The Bucks County Planning Commission provided comments on the Application in a letter dated January 16, 2014.

158. Plaintiff was and is agreeable to address every single issue raised in the Planning Commission's January 16, 2014 letter.

159. Hearings on the Plaintiff's application were held before the Board on February 6, 2014, June 5, 2014, July 10, 2014, August 7, 2014 and September 23, 2014.

160. The first hearing on Plaintiff's Application was held on February 6, 2014.

161. The Plaintiff thereafter revised its plans and Application on May 23, 2014 to reduce the size of the house of worship from 27,000 to 16,900 square feet, to reduce the sanctuary space from 5,600 square feet to 4,187 square feet, and to increase the number of parking spaces from 143 to 154 in order to address the Board's concerns stated at the February 6, 2014 hearing.

162. The Plaintiff reduced the prayer hall area at the mosque's mezzanine area.

163. The Plaintiff also eliminated the cafeteria area and a kitchen in the basement.

164. The Plaintiff also eliminated a large portion of the basement.

165. A second hearing on the Application was held on June 5, 2014.

166. The Plaintiff presented seven expert witnesses as part of its use variance application, including Dr. Khalid Blankenship, an expert in Islamic theology, James Miller, a professional planner, Adnan Khan, a civil engineer, and Nasir Almkhtar, a licensed architect.

167. The Plaintiff also presented three expert traffic engineers: Jeffrey Fiore, Maurice Rached and Mohammad Afzal.

168. The proposed facility complied with all parking regulations.

169. The proposed facility would be consistent with all traffic regulations.

170. As testified to by three different traffic experts, any impact on traffic by the proposed facility would be nominal, with no traffic of any significance in the a.m. hours, and regular traffic only one afternoon a week in the p.m. hours.

171. Traffic will not be measurably increased along Hulmeville Road by the proposed mosque.

172. Currently, the levels of service at the two main intersections near the Property (Byberry & Hulmeville and Park & Hulmeville) would remain unaffected by the proposed mosque if built.

173. Even when measured with various growth rates, the future use of the Property as a mosque would not affect the level of service at those intersections.

174. PennDOT has commented on the proposed facility, as Hulmeville Road is a state road, and did not comment that the facility would be inappropriate based on traffic concerns.

175. Plaintiff would be required to obtain a highway occupancy permit from PennDOT in order to construct a driveway and obtain access to Hulmeville Road.

176. Many permitted uses on the BP parcel of the Property would generate far greater traffic impacts than a mosque.

177. Many permitted uses on the BP parcel of the Property would generate greater traffic impacts during peak a.m. and p.m. times than a mosque.

178. The proposed facility would comply with all landscaping requirements, and any landscape plan would be reviewed by the Township.

179. The proposed facility would comply with the Township lighting code.

180. There would be no appreciable noise from the proposed use.

181. The planned setbacks for the proposed facility complied with the requirements for houses of worship in the IN zone, which is the only zoning district that permits such use.

182. The Plaintiff was and is willing to accept any reasonable condition on their proposed use, including being flexible regarding the start time of its Friday prayer service.

183. Plaintiff met all criteria for a use variance under the laws of Pennsylvania and Bensalem Township.

184. The Masjid has suffered unnecessary hardship through the inability to use its Property as a house of worship and the lack of available IN-zone property within the Township.

185. This unnecessary hardship was not caused by the Plaintiff.

186. The use variance would not alter the essential character of the neighborhood, nor impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

187. The proposed mosque will advance the public welfare.

188. The requested variance was the minimum relief necessary to address the Plaintiff's hardship.

189. The Board voted to deny the application on November 6, 2014.

190. The reason stated on the record for denial of the use variance was:

MR. CHAMPION: And I know for us as a Board there are five requirements that the law says that the applicant needs to approve. One is if the property is unique or irregular, and that as a particular condition that creates the hardship; that because of this condition there is no possible way it can be developed in conformity with the zoning ordinance; that the applicant didn't create the hardship; that it would not alter the character of the neighborhood, and that it is the minimum variance required.

Since there is three parcels, I kind of looked at them all separate to make sure all of them fulfilled the requirements, and I believe it was the applicant's own witness who said that two of them carefully have a reasonable use and that the third could be developed within the ordinance of the law.

So because of that, I don't think that they have proven by the law what they need to approve this, so because of that, I would like to make a motion that the decision for the Bensalem Masjid, appeal number 372 of 2014 be denied.

The four members of the Board in attendance voted in favor of the Motion, and the use variance was denied.

191. Upon information and belief, the Board has not required other applications by religious institutions for a use variance to demonstrate that their properties “could [not be] developed within the ordinance of the law.”

192. Upon information and belief, the Board has not required other applications by secular entities for a use variance to demonstrate that their properties “could [not be] developed within the ordinance of the law.”

193. Thus, the stated basis for the Board’s denial of the Plaintiff’s use variance application was made in bad faith to target the Masjid and prevent construction of its mosque.

194. The stated basis for the Board’s denial of the Plaintiff’s use variance application was arbitrary and capricious.

Discrimination Against Religious Institutions in Bensalem Township
and Against the Bensalem Masjid

195. The Board discriminates against religious institutions generally in the application of the Township’s land use regulations.

196. The Board also treated the Bensalem Masjid’s application to build a mosque differently and worse than the applications of other similarly situated religious institution applicants.

197. The Board was advised by its counsel regarding the standard for a use variance as follows:

You have to establish a hardship which means that the property that’s zoned residential cannot be used for a residential use, that the part of the property zoned BP, business professional, cannot be used for a business professional use, and the property that’s zoned RA rural, that portion of it cannot be used for an RA rural purposes.

198. However, Board member Al Champion described a different standard that was

actually applied by the ZHB to churches as:

A multiple of different religions, and I think we put them all to the same standard of, does that make sense at that location, is the future growth of that spot going to work because we had -- you know, Christian Life used to be on Street Road, and they outgrew their location and moved to where they are now. . . . They have some growth issues. We had some traffic issue there as well. That's what this board has to concern itself with is once we make this decision, that parcel keeps that record and while we understand we don't have a mosque, does it fit or will there be future growth expansions, and I think some of the ones you use are perfect examples of, yes, they found a lot or they found a parcel that fit their use, that fit the size of their building and were able to work within -- with the township and within the zoning laws

. . . .

And that's why I guess for institutional uses there is definitely different standards I think we use to say, okay. It doesn't fit the area. Will it handle it? Can it handle the growth that may occur during the life cycle in that location? (Emphasis added.)

199. Upon information and belief, the standard relied upon by the Board to deny the Plaintiff's Application was not applied to other secular use variance applicants.

200. Upon information and belief, the Board has not questioned whether non-religious land uses can "handle the growth that may occur during the life cycle in that location" when issuing determinations on use variance applications.

201. Board member Champion stated that he had greater concerns about the Plaintiff's proposed use because he was not familiar with the uses of a mosque.

202. The Board also scrutinized the Bensalem Masjid's claim of a "hardship" entitling them to a use variance, while taking at face value other applicants' claims of hardship.

203. The Board denied the Bensalem Masjid's application by applying a narrower definition of hardship that it does not apply to other religious institutions, and by improperly focusing on a single witness's testimony to the exclusion of others.

204. In recent years, at least three non-Muslim religious institutions received use variances without demonstrating any of the required use variance standards listed above, including hardship arising from the unique physical features of the property at issue and the impossibility of using the property for the permitted uses because of such physical circumstances or conditions.

205. Furthermore, at least two additional non-Muslim religious institutions received substantial non-use zoning variances with a similar lack of scrutiny of claims to hardship or concern about parking and traffic.

206. On April 3, 2014, Shree Bhaktinidhi, Inc. at 2746 Bristol Pike received use variances to construct a Hindu temple in the site of a restaurant, and a variance from the Township's parking requirements so they could have only 89 of the legally required 130 parking spots.

207. The evidence offered in support of the finding of necessary "hardship" for the Shree Bhaktinidhi application consisted only of statements that the restaurant had declining profits, and that the owner had attempted to sell the property unsuccessfully. These facts did not concern "physical features" or "physical circumstances or conditions" necessary to demonstrate the specific type of hardship required for a use variance.

208. Although some township residents raised concerns over traffic during the Shree Bhaktinidhi application hearing, the Board did not raise such concerns.

209. The Shree Bhaktinidhi use variance was granted after a single meeting in which counsel for the applicant simply summarized anticipated witness testimony and called witnesses to confirm the summary.

210. On December 12, 2013, the Samarpan Hindu Temple at 2746 Mechanicsville

Road received a use variance to develop and construct a Hindu temple on the site of an unused swim club.

211. The evidence offered in support of a “hardship” finding to the Board on the Samarpan Hindu Temple application consisted of statements that the buildings of the swim club prevented the property’s use for residential development. This fact does not concern “unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property” necessary to demonstrate the specific type of hardship required for a use variance.

212. No substantial parking concerns were raised about the Samarpan Hindu Temple’s 24,000 square foot proposed temple with 142 parking spaces.

213. While some concerns about traffic caused by the Samarpan Hindu Temple’s proposed use were raised, the Board was instructed by its counsel that traffic concerns are not relevant to an application for use variance.

214. The Samarpan Hindu Temple’s use variance application was granted after a single meeting.

215. On January 9, 2014, the Love Fellowship Tabernacle at 3900 Hulmesville Road, located only 0.1 mile from the Plaintiff’s Property, received variances concerning environmental regulations and the size of the lot for the subdivision of the lot to develop a youth recreational center.

216. The evidence offered in support of a “hardship” finding to the Board consisted of a statement that the Love Fellowship Tabernacle needed to create the non-conforming new lot in order to finance its operations. This fact does not concern “physical features” or “physical circumstances or conditions” necessary to demonstrate the specific type of hardship required for

a variance. Love Fellowship Tabernacle also contended that the property had a “bump” on the north end, rendering it less than perfectly rectangular, but did not ever explain how this was relevant to the relief sought.

217. The new Love Fellowship Tabernacle development featured a 10,000 square foot recreation center and 7,500 square feet of outdoor recreation with 110 parking spots. Upon information and belief, although parking was raised by other Township officials, no concerns about parking or traffic were raised by the Board.

218. The Love Fellowship Tabernacle’s variance application was granted after a single meeting.

219. On August 10, 2006, St. Gregorios Malankara Orthodox Church at 4136/4150 Hulmesville Road received variances related to its re-plotting of its lots to create a smaller lot that did not satisfy the zoning ordinance requirements for minimum lot area and width, buffer yards, and impervious surface coverage.

220. The evidence offered in support of a “hardship” finding consisted of a statement that the St. Gregorios Malankara Orthodox Church needed to create and sell the non-conforming smaller lot in order to finance its operations. This fact does not concern “physical features” or “physical circumstances or conditions” necessary to demonstrate the specific type of hardship required for a variance.

221. St. Gregorios Malankara Orthodox Church’s variance application was granted after a single meeting.

222. On October 3, 2007, St. Gregorios Malankara Orthodox Church was granted a use variance and several non-use variances to allow for the development of a commercial monument business on part of its property.

223. Upon information and belief, the only hardship asserted by the St. Gregorios Malankara Orthodox Church concerned the financial benefit to the Church of the nonconforming use. This fact does not concern “physical features” or “physical circumstances or conditions” necessary to demonstrate the specific type of hardship required for a variance.

224. On October 3, 2007, the Mongkoltepmunee Temple at 3308 Knight Road received a use variance to construct a Buddhist Temple.

225. Upon information and belief, there was no legally sufficient basis for finding hardship sufficient to support the use variance granted to the Temple.

226. On October 6, 2011, School Lane Charter at 2350 Bristol Pike received a use variance to construct an addition to its charter school on GC-zoned property, and also received other variances related to impervious surface coverage along with dimensional variances.

227. On information and belief, the evidence offered in support of the finding of necessary “hardship” for the School Lane Charter application was that they had a long waiting list of students for the existing school space and that the improvements to the property would make it closer to the zoning requirements even though still non-conforming. These facts did not concern “physical features” or “physical circumstances or conditions” necessary to demonstrate the specific type of hardship required for a use variance.

228. On information and belief, the Board based its approval in part based on a finding that the proposed use was preferable to the potential impact of other allowable uses in that zone, such as a five-story hotel.

229. In contrast to these grants of variances to other religious organizations with minimal scrutiny, the Defendant Board held five meetings concerning the application of the Bensalem Masjid in which it scrutinized the Masjid’s claim of hardship and interrogated

witnesses about parking and traffic.

230. Despite being instructed by its own counsel that parking concerns were not relevant to an application for use variance, the Board closely scrutinized and questioned the Bensalem Masjid's parking plans.

231. The Board's scrutiny over the irrelevant issue of parking continued even after the Bensalem Masjid agreed to increase the parking and reduce the facility from 27,000 to 16,900 square feet.

232. The Defendant Board also closely scrutinized issues of traffic regarding the Bensalem Masjid's Application, even though traffic is also irrelevant to a use variance, as the Board had been previously instructed.

233. Upon information and belief, the Masjid has been treated differently from other places of worship in Bensalem Township by the Board in its application of land use regulations.

234. Upon information and belief, the Board has never denied a use variance for a religious institution prior to the Plaintiff's application.

235. The Board has also granted significant dimensional variances for religious institutions despite traffic and/or parking concerns with such uses.

236. Upon information and belief, the Defendants have treated the Masjid on less than equal terms in their promulgation and application of land use regulations, as compared to nonreligious assemblies and institutions in Bensalem Township.

237. Upon information and belief, some nonreligious institutions or assemblies that have applied for use variances have had their applications approved without being subject to multiple extensive public hearings in advance of the Board's decision.

238. During the several hearings on the Application, members of the Board exhibited

hostility toward Plaintiff and its proposed use.

239. Board member Joanne Redding questioned the Masjid's witness regarding whether the proposed mosque would bring in other Muslims from New Jersey and Philadelphia, stating:

Don't you think that this mosque would -- I would think it would be the desire that you built your congregation that they would come from other areas maybe very close to New Jersey and Philadelphia and, you know, other areas because you are building this 27,000 square foot building. If I was building a thousand foot restaurant, now I only The hope would be I would bring a lot more people in.

. . . .

I would assume that you would expect or certainly desire a lot of people to come. You are not going to build this to keep the congregation the same.

. . . .

You are building a big mosque, whether the basement is smaller or -- there are still the same amount of people, and I would think it would be your intent to bring more people, any church or religious, synagogue, whatever you choose to worship, wants a bigger congregation, and this -- we are very very local -- we're not just a local place, but people would come from Jersey, Philadelphia, because we are so easy to get to, and Hulmeville Road is a tough road to be on.

. . . .

I would think this would become a regional mosque if there isn't any nearby, as you are stating, you know, people from all over.

240. Upon information and belief, the Board has not questioned any other religious organization about whether it would "bring more people" or draw people from New Jersey or Philadelphia.

241. The Board's attorney advised the ZHB that:

As we indicated just for the record, the board should consider this as a use application only and assume that the applicant will comply with all of the Bensalem Township dimensional requirements. So we have heard that

there is going to be enough parking. Take that as there will be enough parking, that there will be appropriate ingress and egress, that there will be appropriate buffers, and all of that will comply with the township ordinance, and it has not been reviewed by the township, but we also, for the record, have indicated to Mr. Goldberg that he's not bound by this plan, so that if it does not comply, he can certainly -- as is the standard in Bensalem Township, after it goes through the different review processes, can come back and request any dimensional relief that would be required.

242. However, the Board did inappropriately consider such dimensional requirements.

243. Board member Al Champion stated that the proposed facility's library for use by its members was a "concurrent use because it's a separate facility," and stated that "[t]here's no parking calculation regarding that."

244. Upon information and belief, the Board has never required separate parking calculations for libraries of other places of worship.

245. Board member Redding similarly stated:

We can't control what goes on in any facility, so we know that there is mixed uses. We know that you want to enrich the community by having billiards for the teenagers and having things. There is going to be more traffic, and there's going to be more use, and there's going to be more parking needed.

246. Upon information and belief, the Board has never required separate parking calculations for youth activities or other church activities for other places of worship.

247. Board member Al Champion stated that a "problem" of the Board's with Plaintiff's Application was "say in five years if they outgrow this facility and something else comes in, that's a large building and not enough parking," although upon information and belief this has never been the basis for the Board's denial of a use variance for any other house of worship.

248. Champion also stated: "I think that's a concern I think that comes is if there is future expansion, there is no room in the current location for that future expansion."

249. Upon information and belief, the Board has never denied a use variance application for a religious organization based on the growth potential of such organizations.

250. Board members and its attorney also rigorously questioned the Plaintiff about its religious practices and services, including weddings, Sunday school and prayer services, in a manner that was inappropriate for a use variance application.

251. Upon information and belief, the Board has not questioned other religious organizations about its religious practices and services so intently.

252. Board members also investigated other Muslim places of worship in other jurisdictions and other states, and drew comparisons between the Plaintiff's use and theirs, questioning whether the Plaintiff would engage in activities that other groups engage in.

253. Upon information and belief, the Board has not investigated other Christian, Jewish, Buddhist and Hindu places of worship when applicants of those faiths were before them.

254. There are places of worship for Christian, Jewish, Buddhist and Hindu faiths in Bensalem, but no Muslim place of worship.

255. Members of the Bensalem community expressed heightened concern over the Plaintiff's proposed use as distinct from other religious centers.

256. Various residents have opposed the Bensalem Masjid's efforts to use its Property as a place of worship.

257. The attorney for certain local residents questioned the Plaintiff about whether its membership would increase.

258. One member of the community stated: "He never mentioned anything about community service, you know, what the mosque would do for Bensalem Township, what it would do for our residents. You know, churches and synagogues have programs like that. He did

not mention anything about that. So I myself am curious what the mosque would do for Bensalem Township.”

259. That community member stated that since Muslims pray five times daily, the traffic impact would be like having five churches.

260. That community member continued, “mosques have patterns and the pattern of mosques has been that when they -- when the congregants outgrow the mosque, they spill out on to the streets. And what they do is they – they block -- pull up blockades and they bring out their rugs, and they put them down on the street, and they do their prayers out on the streets. I have a video of this if you would like to see to back it up, in several cities around the world. . . . What they do is they put up their barricades and they lay their carpets down on the street and they pray. And it takes the 45 minutes. It draws a lot of people, and it creates problems for the businesses on that street because they cannot do commerce because nobody can get in or out of their stores.”

261. Many people in attendance at the Board meeting applauded these comments.

262. Concerning the Bensalem Masjid’s application and hearings, Board members stated “This hearing went from February until this month, so it is nine months, so it’s a very long span. . . . [I]t has been a very lengthy hearing. So for me I think it’s been the longest one since I have been on the Board” and “It’s been the longest once since I’ve been on the Board.”

263. The ZHB’s actions in this case departed from the normal use variance application review.

264. Further, the record of the public’s reaction to Plaintiff’s Application shows that the Board’s decision was made in the context of strong, discriminatory opposition to a favorable disposition of the Application.

265. The ZHB’s refusal to allow the Masjid to construct its religious facility severely

impedes and prevents the Plaintiff's exercise of its religion.

266. The Defendants' laws and actions have rendered the Masjid's religious exercise effectively impracticable.

267. The construction of the Masjid's proposed mosque, at an estimated cost of \$5.4 million, would affect interstate commerce. The construction's effect on interstate commerce would result from, amongst other things, the Masjid's fundraising activities related to the construction of the mosque; the transfer of funds to those it engages to construct the mosque; the engagement of a construction company to build the mosque; the employment of and payments to construction workers either by the Masjid or by companies engaged by it; the purchase of necessary materials to build the mosque; the engagement of a landscaping company; the use of interstate highways for the transportation of persons and materials used to construct the mosque; the use of interstate communication related to the construction of the mosque; and other activities related to the construction of the mosque.

268. In the event that the Masjid's proposed mosque were to be constructed, its operation subsequent to its construction would affect interstate commerce. The mosque's operation would affect interstate commerce by or through, amongst other things, serving as a site for ongoing fundraising; its receipt of charitable donations from persons working or living outside of the Commonwealth of Pennsylvania; providing a place of worship for the families of congregants visiting from other states; the use of means of interstate communication to facilitate the mosque's ongoing operations; the use of interstate travel related to the mosque's ongoing operations; the employment of any part-time or full-time employees; the purchase of goods and services related to the mosque's ongoing operations and maintenance; and the hosting of any religious leaders visiting the Masjid's religious community from out of state.

269. The Defendants' actions described above all took place under color of state law.

270. The Board was informed of the applicability of RLUIPA to its actions.

271. On November 26, 2014, by certified mail, Plaintiff notified each Defendant that Plaintiff's free exercise of religion has been and is about to be substantially burdened by the denial of the use variance and described how the denial burdened Plaintiff's free exercise of religion.

272. Defendants did not communicate with Plaintiff after this notice was provided or act to remedy the burdens imposed by their actions.

273. The harm to the Masjid caused by the Defendants' laws and actions, which prevent it from building a mosque to accommodate its religious needs, is immediate and severe.

274. Defendants' laws and actions imminently threaten to substantially burden Plaintiff's free exercise of religion.

275. There are no quick, reliable and viable options for the Plaintiff and other Muslims in the Bensalem area to construct a mosque in Bensalem.

276. Plaintiff has no adequate remedy at law for the harm and damage caused by Defendants' wrongful laws and actions.

277. The Bensalem Masjid has also suffered significant financial damages as a result of the Defendants' laws and their application to the Masjid, such as costs related to the use variance application (including extraordinary expenditures not required of similarly situated applicants), preventing Plaintiff from receiving significant dues, fees and promised donations for construction, contributions from members who have left the Bensalem Masjid, required additional expenditures to conduct activities and gatherings at rented locations, and increases in construction costs resulting from delay.

COUNT I

**Violation of Religious Land Use and Institutionalized
Persons Act of 2000 – “Substantial Burdens”
42 U.S.C. § 2000cc(a)**

278. Paragraphs 1 through 277 are incorporated by reference as if set forth fully herein.

279. Defendants have deprived and continue to deprive the Bensalem Masjid of its right to the free exercise of religion, as secured by RLUIPA, by imposing and implementing land use regulations in a manner that places substantial burden on the Masjid’s religious exercise without using the least restrictive means of achieving a compelling governmental interest.

COUNT II

**Violation of Religious Land Use and Institutionalized
Persons Act of 2000 – “Nondiscrimination”
42 U.S.C. § 2000cc(b)(2)**

280. Paragraphs 1 through 279 are incorporated by reference as if set forth fully herein.

281. Defendants have deprived and continue to deprive the Bensalem Masjid of its right to the free exercise of religion, as secured by RLUIPA, by imposing and implementing land use regulations in a manner that discriminates against the Masjid on the basis of religion and religious denomination.

COUNT III

**Violation of Religious Land Use and Institutionalized
Persons Act of 2000 — “Exclusion and Limits”:
Unreasonable Limitation
42 U.S.C. § 2000cc(b)(3)(B)**

282. Paragraphs 1 through 281 are incorporated by reference as if set forth fully herein.

283. Defendants have deprived and continue to deprive Bensalem Masjid of its right to the free exercise of religion, as secured by RLUIPA, by imposing and implementing land use regulations in a manner that unreasonably limits religious assemblies, institutions, and structures within their jurisdiction.

COUNT IV

**Violation of Religious Land Use and Institutionalized
Persons Act of 2000 — “Equal terms”
42 U.S.C. § 2000cc(b)(1)**

284. Paragraphs 1 through 283 are incorporated by reference as if fully set forth herein.

285. Defendants have deprived and continue to deprive Bensalem Masjid of its right to the free exercise of religion, as secured by RLUIPA, by treating the Masjid on terms that are less than equal to nonreligious assembly and institutional land uses.

COUNT V

**United States Constitution
42 U.S.C. § 1983: First Amendment
Prior Restraint**

286. Paragraphs 1 through 285 are incorporated by reference as if fully set forth herein.

287. Defendants’ zoning ordinance and variance approval process together constitute a prior restraint on expressive religious speech and conduct.

288. Specifically, the limitation of religious institutions to “IN”-zoned property, together with the unavailability of IN-zoned property in the Township and the Defendant Board’s ad hoc implementation of the Township’s land use regulations regarding use variances, do not provide a person of ordinary intelligence a reasonable opportunity to understand whether

a religious institution land use and associated religious expression and expressive conduct is permitted or prohibited in the Township and, as such, constitutes an unconstitutional prior restraint on Plaintiff's protected religious exercise and expression under the First Amendment. Such standards unconstitutionally afford the Defendants unbridled discretion in determining whether a religious institution and its associated uses for religious expression and expressive conduct will be permitted within their jurisdiction.

COUNT VI

**United States Constitution
42 U.S.C. § 1983: First Amendment
Free Exercise of Religion**

289. Paragraphs 1 through 288 are incorporated by reference as if set forth fully herein.

290. Defendants have deprived and continue to deprive the Bensalem Masjid of its right to free exercise of religion, as secured by the First Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment, by substantially burdening the Masjid's religious exercise without using the least restrictive means of achieving a compelling governmental interest, and by discriminating against the Masjid on the basis of religion in a manner that is not the least restrictive means of achieving a compelling governmental interest.

COUNT VII

**United States Constitution
42 U.S.C. § 1983: Fourteenth Amendment
Equal Protection**

291. Paragraphs 1 through 290 are incorporated by reference as if set forth fully herein.

292. Defendants have deprived and continue to deprive the Bensalem Masjid of its right to equal protection of the laws, as secured by the Fourteenth Amendment to the United States Constitution, by discriminating against Plaintiff in the imposition and implementation of their land use regulations.

COUNT VIII

Pennsylvania Municipal Planning Code

293. Paragraphs 1 through 292 are incorporated by reference as if set forth fully herein.

294. The action of the ZHB, in denying the Plaintiff's application, was arbitrary, capricious, and an abuse of discretion and contrary to the law in that the Plaintiff demonstrated that it had satisfied all of the applicable criteria required for a use variance. The Plaintiff has, and continued to have an unnecessary hardship as it is unable to practice its religion absent a use variance.

295. As of the time of this Complaint, the Board has issued a decision denying the requested variance, but there are no additional findings of fact or conclusions of law. The Plaintiff shall supplement its Complaint if and when the Board issues findings of fact and/or conclusions of law in this matter.

COUNT IX

Pennsylvania's Religious Freedom Protection Act, 71 Pa. Cons. Stat. § 2401 *et seq.*,

296. Paragraphs 1 through 295 are incorporated by reference as if set forth fully herein.

297. Defendants have deprived and continue to deprive the Bensalem Masjid of its right to the free exercise of religion, as secured by the PA-RFPA, by substantially burdening the

Masjid's religious exercise without using the least restrictive means of achieving a compelling governmental interest.

PRAYER FOR RELIEF

WHEREFORE, the Bensalem Masjid respectfully requests that this Court grant the following relief:

1. A declaration that Bensalem Township's land use ordinances regulating religious institution uses are void, invalid and unconstitutional on their face and as applied to the Bensalem Masjid on the ground that they violate the Free Exercise and Free Speech Clauses of the First Amendment to the United States Constitution, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the Religious Land Use and Institutionalized Persons Act, and the PA-RFPA;
2. A declaration that the denial of the Bensalem Masjid's use variance application is void, invalid and unconstitutional on the ground that it violates the Free Exercise and Free Speech Clauses of the First Amendment to the United States Constitution, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the Religious Land Use and Institutionalized Persons Act, and the PA-RFPA;
2. A declaration that the standards set forth in the Bensalem Township's land use regulations governing use variance applications for religious institutions, and the standards applied by the Zoning Hearing Board in reviewing and denying the Masjid's use variance, are an unconstitutional prior restraint on religious exercise and expression under the First Amendment;
3. An order reversing the decision of the Bensalem Zoning Hearing Board and an order declaring that the Plaintiff's application to use the subject property as a mosque is hereby approved;
4. An order directing the Defendant Zoning Hearing Board to reverse its denial of the use variance and grant the Bensalem Masjid such use variance necessary to construct its house of worship on the Property as applied for in its initial application;
5. An order that Plaintiff's application needs no other zoning relief;
6. An order enjoining the Defendants, their officers, employees, agents, successors and all others acting in concert with them from applying their laws in a manner

that violates the Free Exercise and Free Speech Clauses of the First Amendment to the United States Constitution, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the Religious Land Use and Institutionalized Persons Act, and the PA-RFPA, or undertaking any and all action in furtherance of these discriminatory and disparate acts, and specifically enjoining the Defendants to approve all plans and applications submitted by the Bensalem Masjid in furtherance of its development of the Property without delay or condition;

7. An award of compensatory damages against Defendants in favor of the Bensalem Masjid as the Court deems just for the loss of the Masjid's rights under the First and Fourteenth Amendments to the United States Constitution, and the Religious Land Use and Institutionalized Persons Act, incurred by the Bensalem Masjid and caused by the Defendants' laws and actions;
8. An award to the Bensalem Masjid of full costs and attorneys' fees arising out of Defendants' actions and land use decisions and out of this litigation; and
9. Such other and further relief as this Court may deem just and appropriate.

Respectfully submitted by the Plaintiff this 8th day of December, 2014.

By: 

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Roman P. Storzer, application for admission *pro hac*
vice pending

Robert L. Greene, application for admission *pro hac*
vice pending

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