



## Facts

### *Land Use in Bensalem*

5. Bensalem is governed by a mayor and a Council of five members. Bensalem has the authority to regulate and restrict the use of land and structures within its borders, including by granting and denying requests for zoning variances.

6. For purposes of RLUIPA, Bensalem constitutes a "government." 42 U.S.C. §§ 2000cc-5(4)(A)(i), (ii).

7. Bensalem's zoning districts and the uses permitted within those districts are codified in the Bensalem, PA Code of Ordinances ("Bensalem Code"). Under the Bensalem Code, religious institutions are permitted only within the Institutional District. There are only approximately thirty-five properties within the Institutional District in Bensalem. To locate outside of the Institutional District, religious uses must seek zoning relief from Bensalem.

8. Non-religious assembly uses are permitted in many of Bensalem's zoning districts, and are not limited to the Institutional District. For example, private education institutions, "convalescent homes" or "sanitariums," and child, adult, or senior citizen day care centers are permitted in the R-A Rural District; municipal buildings and adult or senior citizen day care centers, are permitted in the R-11 Residential District; and businesses, professional schools, colleges, and universities, are permitted in the BP Business Professional District.

9. To use a property for a use not permitted in the property's zoning district(s) by the Bensalem Code, an entity with a property interest may seek a zoning variance through the Bensalem Township Zoning Hearing Board ("the Board"). The Board is appointed by the Council.

10. Under the Bensalem Code, the Board may grant a zoning variance if an application meets the state-wide standard set forth in the Pennsylvania Municipalities Planning Code ("Pennsylvania Code"), 53 Pa. Stat. § 910.2(a)-(b). Under the Pennsylvania Code's

standard, a zoning variance is available where “the zoning ordinance inflict[s] unnecessary hardship upon the applicant.” The Pennsylvania Code states that the applicant must demonstrate: (1) unique physical characteristics of the property that create an unnecessary hardship; (2) that the property cannot be developed according to the zoning ordinance; (3) that the applicant did not create the hardship; (4) that a variance would not “alter the essential character” of the district, nor impair appropriate use of adjacent properties, nor “be detrimental to the public welfare;” and (5) that the variance requested is the minimum variance required to provide relief. The Board may attach conditions in granting a variance.

11. Under the Bensalem Code, the Board evaluates variance applications on an individualized, case-by-case basis. For purposes of RLUIPA, the variance process is a system of regulations in which the township makes an “individualized assessment” regarding the zoning applicant’s property. 42 U.S.C. §§ 2000cc(a)(2)(A)-(C).

12. Many religious and non-religious assembly uses have received zoning variances to use properties for uses not permitted in their respective zoning districts. For example, all of the following entities have received zoning variances to operate as uses not permitted in their zoning districts:

- School Lane Charter School
- Holy Ghost Preparatory School
- Corinthian Colleges
- Gwenedd-Mercy College
- Shree Bhaktinidhi, Inc.
- Samarapan Hindu Temple
- Mongkoltepmunee Temple

13. In practice, the Board grants zoning variance applications without strictly applying the standard in the Pennsylvania Code. Most religious and non-religious assemblies

that have been granted use variances, including those in paragraph 12, did not meet the criteria for a use variance in the Pennsylvania Code, because, among other things, they did not demonstrate unique physical characteristics of their properties, nor that their properties could not be developed according to the zoning ordinance.

*The Bensalem Masjid*

14. The Bensalem Masjid, Inc. ("the Bensalem Masjid") is a non-profit, Muslim organization incorporated and existing under the laws of the State of Pennsylvania. The Bensalem Masjid is a "religious assembly or institution," as defined by RLUIPA. 42 U.S.C. § 2000cc(2)(b)(1).

15. According to their Islamic faith, members of the Bensalem Masjid believe that prayer should be conducted five times daily in a mosque and should be led by an "imam," a religious leader. Their faith places a particular focus on the Friday afternoon prayer service. In accordance with their religion, members of the Bensalem Masjid believe that there is value to conducting prayers together with a congregation. According to their faith, congregants are required to perform ablution, "wudu," before prayers, which requires the washing of hands and feet.

16. According to their Islamic faith, members of the Bensalem Masjid believe that a mosque must be a deeded property dedicated to God, and that it must include a prayer area that is oriented towards Mecca, that is specifically consecrated according to religious tenets, and that allows congregants to adhere to Islamic religious practices. A mosque has religiously significant architectural elements, such as a dome and a minaret.

17. According to their Islamic faith, members of the Bensalem Masjid have religious obligations beyond prayer. Members of the congregation are required to contribute to "zakat," a financial donation for charitable purposes. Members are also required to raise their children in the Islamic faith.

18. The Bensalem Masjid does not have a mosque. There is no mosque in Bensalem Township. The closest mosque is approximately twenty minutes away by car, which is too far for many members of the Bensalem Masjid to drive for daily prayers.

19. The Bensalem Masjid currently conducts its Friday afternoon worship in a fire hall located at 5931 Bensalem Boulevard. The fire hall is leased by Faith Unity, an unaffiliated religious organization, which permits the Bensalem Masjid to use the fire hall for this purpose.

20. Because the fire hall is the only site available to the Bensalem Masjid for religious practice, its members are limited in their ability to exercise their religion in a number of ways. The Bensalem Masjid does not usually have access to the fire hall for daily prayers, and the fire hall is not large enough to accommodate the Bensalem Masjid for large religious events. Additionally, the fire hall does not have the facilities necessary to perform "wudu," the ablution before prayers. Consequently, members of the Bensalem Masjid are required to lift their feet to restroom sinks to wash before prayer.

21. According to the Bensalem Masjid's beliefs, the fire hall is not a mosque. It is not a deeded property dedicated to God; it is not oriented towards Mecca; it is not consecrated; and it does not adequately allow for adherence to religious practice. For example, the fire hall does not adequately permit the separation of the sexes during worship, and the make-shift partition used for this purpose prevents all congregants from viewing the worship leader during prayer services. The fire hall also lacks religiously significant elements of Islamic architecture, such as a dome and a minaret. Lacking a mosque, the Bensalem Masjid is unable to attract an "imam," or worship leader.

22. The fire hall provides no location for religious activities beyond prayer, including religious education, study groups, counseling, or meetings. Lacking a mosque, the Bensalem Masjid is hindered in implementing "zakat," or charitable giving. The Bensalem Masjid is also unable to conduct religious education, including religious education for their children.

*The Subject Property*

23. Because the Bensalem Masjid cannot fully and adequately practice its religion under these circumstances, it began to search for a location to build a mosque within Bensalem Township in 2008. The Bensalem Masjid looked for an appropriate location for at least five years. As part of its exhaustive search, the Bensalem Masjid worked with real estate agents, sent a letter to all existing religious institutions in Bensalem Township in an attempt to purchase a suitable property, and seriously evaluated eleven properties for purchase. The Bensalem Masjid made every attempt to locate in the Institutional District, where places of worship are permitted by right. The Bensalem Masjid was not aware of any property in the Institutional District that was available for sale during its search.

24. In or after 2012, the Bensalem Masjid entered a lease with an option contract to purchase three adjoining properties located at 3743, 3805, and 3825 Hulmeville Road in Bensalem Township ("Subject Property"), with the intent of building a mosque on the Subject Property. The Subject Property totals over 4.5 acres. A majority of the Subject Property, approximately 2.93 acres, is zoned in the BP Business and Professional District (approximately 2.93 acres). There are no structures on or uses of the parcel in the BP Business and Professional District. One parcel of the Subject Property is zoned in the R-A Rural District. This parcel contains a single-family home. One parcel of the Subject Property is zoned in the R-11 Residential District. This parcel also contains a single-family home.

25. Religious institutions are not permitted in the BP Business and Professional District, the R-A Rural District, or the R-11 Residential District. Non-religious assembly uses are permitted in the BP Business and Professional District, the R-A Rural District, and the R-11 Residential District, as described above.

26. Hulmeville Road is classified as a minor urban arterial road. It is lined by a variety of commercial, institutional, and residential uses. Proximate to the Subject Property, for

example, are a bank, pizzeria, CVS pharmacy, office park, commercial center, gas station, places of worship, and schools. There are many zoning districts proximate to the Subject Property on Hulmeville road, including G-C General Commercial, H-C1 Highway Commercial, IN Institutional District, and several residential zones.

*The Bensalem Masjid's Variance Application*

27. Under the Bensalem Code, the Bensalem Masjid was required to seek zoning relief from Bensalem to use the Subject Property for religious use. In or around 2012, members of the Bensalem Masjid met with the mayor of Bensalem Township to express their interest in building a mosque in Bensalem Township. The Bensalem Masjid presented two potential properties for a mosque, including the Subject Property, to the mayor. The mayor expressed a preference for developing a mosque on the Subject Property, because the location of the Subject Property was proximate to commercial uses.

28. At the suggestion of the mayor, the Bensalem Masjid participated in approximately eighteen meetings with the mayor and members of the Council between 2012 and 2013 to discuss the proposed mosque. During these meetings, the mayor and members of the Council advised the Bensalem Masjid to apply for a use variance, instead of applying for a rezoning of the Subject Property. The mayor continued to advise the Bensalem Masjid to pursue a use variance rather than a rezoning throughout 2014.

29. The Bensalem Masjid believed that through a use variance it would be permitted to use the Subject Property for a religious assembly, based on its discussions with the Township and on the treatment of zoning variance applications for other assembly uses.

30. On October 24, 2013, the Bensalem Masjid applied to the Bensalem Township Building and Planning Department for permission to use the Subject Property for a mosque. Bensalem's Township Engineer denied this request on November 19, 2013, on the ground that a mosque is a non-permitted use on the Subject Property. The Bensalem Masjid applied to the

Board for a use variance on December 17, 2013. The application included a proposal to construct a mosque of approximately 27,243 square feet with 143 parking spaces.

31. The Subject Property would accommodate a mosque that would meet the religious needs of the Bensalem Masjid, as described above. The Bensalem Masjid's intended use of the property on Hulmeville Road, including the proposed construction of a mosque, constitutes "religious exercise" under RLUIPA. 42 U.S.C. §§ 2000cc-5(7)(A)-(B).

32. A zoning variance application to the Board was a proper mechanism through which to request to use the Subject Property for religious purposes. Other religious and nonreligious entities in Bensalem Township have obtained variances through this process to engage in assembly uses in districts where such uses were not permitted.

33. Between February and November 2014, the Board held six hearings on the Bensalem Masjid's use variance application. During the hearings, the Bensalem Masjid presented testimony, including expert testimony, regarding the need for a zoning variance. The Bensalem Masjid described its religious beliefs and the proposed mosque's uses, the nature of its search for a suitable property, and the inadequacies of its current worship location.

34. The Bensalem Masjid qualified for a use variance under the criteria that Bensalem applied to other use variance applications. During these hearings, the Bensalem Masjid presented testimony, including expert testimony, demonstrating that it qualified for a zoning variance. The Bensalem Masjid explained that the characteristics of the Subject Property were not conducive to uses permitted in the relevant zoning districts, because the BP Business Professional lot is too narrow and because Hulmeville Road and the surrounding areas are no longer appropriate for residential use. The Bensalem Masjid also described the surrounding institutional and commercial uses and the commercial nature of Hulmeville Road.

35. The Bensalem Masjid presented testimony that its mosque would not be detrimental to the public welfare. It explained that the parking that it proposed for the mosque



was adequate and, moreover, that its proposed parking exceeded the parking requirements of the Bensalem Code. The Bensalem Masjid also described the traffic studies that it conducted on the impacts of the proposed mosque, which revealed that a mosque would cause no substantial increase in traffic. Further, the Bensalem Masjid showed that traffic from the mosque would be less than traffic for uses that would be permitted on the Subject Property under the Bensalem Code. Nothing at the hearings indicated that the Bensalem Masjid would alter the essential character of the zoning district or impede appropriate development of adjacent properties.

36. The Board raised concerns during these hearings about the size of the proposed mosque, parking, traffic, the uses of the different areas of the mosque, and the possible growth of the mosque's membership. The Bensalem Masjid attempted to address these concerns by revising its plans for the proposed mosque, including by reducing its size by more than 10,000 square feet and by increasing the number of parking spaces to 154. It also offered to hold two Friday afternoon prayer services instead of one.

37. Members of the public opposed to the Bensalem Masjid's zoning variance application were present at the hearings, and applauded comments that questioned the propriety of a zoning variance. Several members of the public who spoke in opposition to the Masjid raised concerns that were unrelated to the zoning variance analysis.

38. Members of the Board asked questions outside of the scope of the zoning variance application during the hearings, such as whether the Bensalem Masjid's membership would increase and whether it would attract members from outside of Bensalem Township. Although the Board's solicitor advised the Board that parking concerns were outside of the scope of inquiry for the purposes of the zoning variance application before them, members of the Board repeatedly questioned whether parking at the proposed mosque would be adequate.

39. On June 5, 2014, before the second hearing for the Bensalem Masjid, an employee of Bensalem approached the Bensalem Masjid's attorney and suggested that the

Bensalem Masjid delay its use variance application with the Board, and instead pursue a rezoning through the Council. When this employee met with the Bensalem Masjid's attorney the following day, however, the employee indicated that the Bensalem Masjid would be unsuccessful at obtaining a rezoning through the Council.

40. On November 6, 2014, the Board voted four to zero to deny the Bensalem Masjid's zoning variance application. The Board issued its Decision and Order memorializing the denial on December 5, 2014.

41. For purposes of RLUIPA, Bensalem's denial of the variance application constitutes the "application" of a "land use regulation" that "limits or restricts a claimant's use or development of land." 42 U.S.C. § 2000cc-5(5).

42. Because the Bensalem Masjid did not receive a zoning variance, it cannot construct a mosque, and therefore its members cannot engage in their religious practices to the degree and in the way they believe they are compelled to do.

43. The construction and operation of a mosque on the Subject Property would affect interstate commerce in many ways, including by the transfer of funds, the purchase of materials and services, and the use of interstate highways.

44. Under the Bensalem Code, use variance applications for religious and non-religious assemblies are subject to the same procedures to apply for a use variance. However, Bensalem has treated similarly situated use variance applications for religious and non-religious assemblies, including those described in paragraph 12, more favorably than it treated the Bensalem's Masjid's application throughout the variance process. For example, the Board made determinations on many zoning variance applications, including some of those described in paragraph 12, in only one hearing, whereas there were six hearings on the Bensalem Masjid's application. As another example, the Board asked questions of the Bensalem Masjid that it did

not ask of many of these other applicants, including whether its membership would increase and whether it would attract members from outside of Bensalem Township.

45. Under the Bensalem Code, use variance applications for religious and non-religious assemblies are subject to the same criteria to qualify for a use variance. However, Bensalem has treated similarly situated use variance applications for religious and non-religious assemblies, including those described in paragraph 12, more favorably in its variance determinations than it treated the Bensalem's Masjid's application. Bensalem approved zoning variances for similarly situated entities but denied the Bensalem Masjid a zoning variance, even though the Bensalem Masjid provided equal or greater evidence to show that it met the requirements for a variance, and even though the Bensalem Masjid's requested zoning variance would not have had a greater impact than the granted zoning variances of these entities on Bensalem or on the Bensalem Code.

### **COUNT I**

#### **RLUIPA – Substantial Burden**

46. The allegations above are hereby incorporated by reference.

47. Defendant's treatment and denial of the Bensalem Masjid's variance application constitutes the imposition or implementation of a land use regulation that imposes a substantial burden on the Bensalem Masjid's religious exercise, which burden is not in furtherance of a compelling governmental interest and/or is not the least restrictive means of furthering such interest, in violation of RLUIPA, 42 U.S.C. § 2000cc(a)(1).

### **COUNT II**

#### **RLUIPA – Equal Terms**

48. The allegations above are hereby incorporated by reference.

49. Defendant's treatment of the Bensalem Masjid and its denial of the Bensalem Masjid's variance application constitutes the imposition or implementation of a land use

regulation that treated, and continues to treat, the Bensalem Masjid on less than equal terms with a nonreligious assembly or institution, in violation of RLUIPA, 42 U.S.C. § 2000cc(b)(1).

**COUNT III**

**RLUIPA - Discrimination**

50. The allegations above are hereby incorporated by reference.

51. Defendant has treated the Bensalem Masjid and its variance application differently from other applications on the basis of religion or religious denomination, in violation of RLUIPA, 42 U.S.C. § 2000cc(b)(2).

**COUNT IV**

**RLUIPA – Unreasonable Limitations**

52. The allegations above are hereby incorporated by reference.

53. Defendant has placed unreasonable limitations on religious assemblies, institutions, and structures, including unreasonable limitations on the Bensalem Masjid, through its land use regulations, in violation of RLUIPA 42 U.S.C. § 2000cc(b)(3).

**WHEREFORE**, the United States prays that this Court enter an order that:

1. Declares that Bensalem's policies and practices, as alleged herein, violate RLUIPA;
2. Enjoins Bensalem, its officers, employees, agents, successors and all

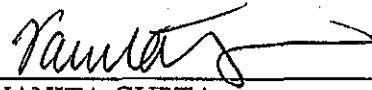
other persons in concert or participation with it, from—

- a. Imposing a substantial burden on the religious exercise of the Bensalem Masjid and its members that is not narrowly tailored to further a compelling governmental interest;
- b. Treating the Bensalem Masjid and its members on less than equal terms with nonreligious assemblies or institutions;

- c. Discriminating against the Bensalem Masjid and its members on the basis of religion or religious denomination.
  - d. Placing unreasonable limitations on the Bensalem Masjid, its members, and on other religious organizations.
3. Requires Bensalem, its officers, employees, agents, successors, and all other persons in concert or participation with it, to:
- a. Take such actions as may be necessary to restore, as nearly as practicable, the Bensalem Masjid and its members to the position they would have been in but for Bensalem's unlawful conduct, including but not limited to granting such approvals as are necessary to allow the Bensalem Masjid to use the Subject Property as a place of worship; and
  - b. Take such actions as may be necessary to prevent the recurrence of such unlawful conduct in the future, including but not limited to, providing RLUIPA training to its personnel, establishing procedures to address complaints of RLUIPA violations, and maintaining records and submitting reports relating to RLUIPA compliance.
4. Awards such additional relief as the interests of justice may require, together with the United States' costs and disbursements in this action.

Respectfully submitted,

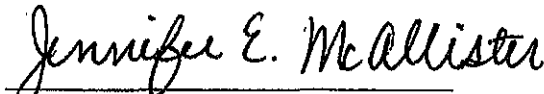
LORETTA E. LYNCH  
Attorney General



VANITA GUPTA  
Principal Deputy Assistant Attorney General  
Civil Rights Division



SAMEENA SHINA MAJEED  
Chief



CATHERINE A. BENDOR  
Deputy Chief  
ERIC W. TREENE  
Special Counsel  
JENNIFER E. McALLISTER  
VA State Bar No. 71180  
KATHARINE F. TOWT  
MA State Bar No. 690461  
Trial Attorneys  
Housing and Civil Enforcement Section  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Northwestern Building, 7th Floor  
Washington, D.C. 20530  
Phone: (202) 305-2011  
Email: [jennifer.mcallister@usdoj.gov](mailto:jennifer.mcallister@usdoj.gov)

Dated: July 21, 2016