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Appeal of	:	
	:	
	:	ZONING HEARING BOARD
	:	
	:	WEST BRADFORD TOWNSHIP
	:	
SVAROOPA VIDYA ASHRAM	:	
	:	

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**APPELLANT’S PROPOSED FINDINGS OF FACT AND CONCLUSIONS  
OF LAW WITH LEGAL ARGUMENT AND DISCUSSION**

**I. Introduction.**

At the direction of the Zoning Hearing Board (“ZHB”) Solicitor, Appellant Svaroopaa Vidya Ashram (“Svaroopaa”) respectfully submits this Memorandum, including proposed findings of fact and conclusions of law, with an explanation of the Appellant’s view with respect to the constraints and directives governing the decision to be rendered. At the outset, Svaroopaa respectfully submits that much of the evidence and particularly the questions posed by neighboring parties in the proceeding pertain to matters that are immaterial and irrelevant to the question presented to the ZHB for adjudication. The determination to be made by the Board has to do with whether the challenged zoning enforcement notice is premised on a proper interpretation of the West Bradford Township Zoning Ordinance, and whether that interpretation is legally enforceable. With a proper understanding of the issue presented, it must be recognized that questions concerning the number of residents in the home, the number of vehicles in the driveway of 1400 Hampton Drive, whether visitors are transported to the home via private vans, whether people can hear music emanating from the home at 1400 Hampton Drive, and a host of other subjects might concern those who live nearby, but they are entirely irrelevant to the merits of the zoning enforcement notice and the appeal to be objectively and legally adjudicated by the ZHB.

The essential facts are that the subject real estate is used as a residence by Hindu monks who elect to participate in religious and spiritual practices in their home. The Zoning Ordinance cannot be construed as prohibiting this entirely legitimate land use, in light of the provisions of the Zoning ordinance itself, as well as the protections of religious activity provided by the United States Constitution, the Constitution of Pennsylvania, the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), and the Pennsylvania Religious Freedom Restoration Act.

## **II. Proposed Findings of Fact.**

1. Svaroopaa Vidya Ashram is a Pennsylvania nonprofit corporation, which holds title to the real estate with a mailing address of 1400 Hampton Drive, Downingtown, PA 19335. N.T. 2/3/21. p. 122, 145-146.

2. The property is located in the township R-1C Zoning District. N.T. 2/3/21, p. 16.

3. The property is used as a residence by several individuals, three of whom testified at the hearings conducted by the Zoning Hearing Board.

4. A zoning enforcement notice was issued by the Township Zoning Officer, dated July 29, 2020.

5. The Zoning Officer believed that the subject property was a monastery, based on his review of a transcript of an unrelated legal proceeding and a definition of the term “monastery.” N.T. 2/3/21, p. 19, 32.

6. The Merriam Webster Dictionary defines the term “monastery” as “a house for persons under religious vows; especially: an establishment for monks.” (emphasis added)

7. A timely appeal from the enforcement notice was filed by Svaroopaa Vidya Ashram, and hearings were timely commenced, in accordance with extension agreements provided by the Appellant, with testimony stenographically recorded as required by the Pennsylvania Municipalities Planning Code (“MPC”) , 53 P.S. §§11001, et seq. and § 10908.1(7) in particular on February 3 and March 4, 2021.

8. The residents of the free-standing 6 bedroom structure at 1400 Hampton Drive use the premises as their primary home. All but one of the residents have no other home. N.T. 2/3/21, p. 44. The residents consider their home to be a monastery. N.T., 2/3/21, p. 44-45.

9. The residents of the home are ordained monks in a Hindu religious order identified as Mahanirvani Akara, centered in Mumbai, India. One member of this resident group is a “junior monk” in that Hindu order who also has a residence in Delaware. Exhibit A-1, (e.g.) N.T. 2/3/21. P. 70-72.

10. The use of the property is described in detail in a document entitled “Verification of Residential Use” which was signed (and verified as provided by law) by each resident and received into the record as Exhibit A-1. *Id.* The accuracy of this information was verified by three witnesses, the testimony of each of whom is found to be credible. See, e.g., N.T. 2/3/21, p. 44-46,

11. Svaroopaa also owns real estate in the nearby Borough of Downingtown, at which public religious practice, training and education is offered. N.T. 2/3/21, p. 47, 177, 06, 118.

12. Members of the public are not permitted to reside, “stay at” or engage in public religious services conducted at 1400 Hampton Drive. N.T. 2/3/21, p. 20, 73, 76, 115, 118.

13. On prior occasions, some communications posted on social media postings and the Svaroopaa website might have led to the mistaken impression that members of the public could live in or participate in religious practices at 1400 Hampton Drive, but any such potentially misleading text has been (or will be) corrected. N.T. 2/3/21, p. 119-120

14. Consistent with the spiritual and religious precepts and directives of Hinduism, the monks practice their religion while living in this home. These practices include chanting, prayer, reading religious texts, participating in religious education and counseling, and other forms of religious worship, all of which are observed, engaged in and adhered to with sincerity. *See, e.g.*, Exhibit A-1; *e.g.*, N.T. 2/3/21, p. 45, 114-117.

### **III. Issues Presented.**

(1) Does the private practice of religion by monks residing in a monastery constitute an impermissible religious use under the terms of the West Bradford Township Zoning Ordinance?

Suggested answer: No.

(2) Is it permissible for a local government to prohibit the use of land for religious purposes so as to preclude the private practice of religion by residents in a home, in the absence of a compelling legal justification, if such a prohibition is not the least restrictive means of furthering that justification?

Suggested answer: No.

#### IV. Discussion

In substance, the enforcement notice asserts that Svaroopaa Vidya Ashram is permitting religious use of the home at 1400 Hampton Drive in the R-1C zoning district, in violation of the West Bradford Township Zoning Ordinance. The record evidence demonstrates that members of the Ashram reside in the subject premises, living as a family unit, and practice their Hindu faith by observing and engaging in religious worship and spiritual principles and traditions. In other words, the home is a residential monastery occupied by Hindu monks. The use of the subject parcel of real estate and the home located on it is residential. The residents practice religion in their home.

The enforcement notice asserts that it is impermissible to use land in the R-1C zoning district for religious purposes. However, the Zoning Ordinance does not provide a definition or any guidance in order to determine what constitutes religious practice. In contrast, § 450-8 of the Zoning Ordinance provides a very specific definition of the term “Church” as:

A building used for public worship and education by a congregation, excluding buildings used exclusively for residential, burial, recreational or other uses not normally associated with worship.

The most significant term used in this definition is the word “public.” *Public* religious practices are not engaged in by the resident monks of the Svaroopaa Vidya Ashram at the Hampton Drive home. Rather, any religious practices offered to members of the public are conducted in another property owned by Svaroopaa Vidya Ashram, located in the Borough of Downingtown. The record demonstrates that the religious worship and related spiritual activities in which the resident monks engage while at their residential monastery are conducted *privately*. It stands to reason that this must have been well understood by the Township Zoning Officer, since the enforcement notice he issued does not assert that Svaroopaa was violating the Ordinance by using the Hampton Drive residential structure as a church. Again, the term “Church” is clearly defined by the Zoning Ordinance, and 1400 Hampton Drive is not a church as so defined.

With this obvious point easily understood, counsel wishes to provide guidance based on decisions rendered by courts as potentially relevant issues were litigated, in light of applicable statutory and constitutional law.

Religious practice in our country is protected by a number of sources, the most familiar of which is the First Amendment of the United States Constitution, which has been repeatedly interpreted to substantially constrain the imposition or enforcement of restrictions on the practice of religion by the government at the federal, state and local level. For example, in *Murdock v. Pennsylvania*, 319 U.S. 105 (1943), the City of Jeanette, Pennsylvania prohibited the sale of goods and merchandise of by canvassing or soliciting without a license. The U.S. Supreme Court held that the ordinance was unconstitutional as applied to Jehovah's Witnesses, since their religion mandated that they proselytize through hand distribution of religious tracts. The Court found that the regulation impermissibly burdened the practice of religion, since that "those who can tax the exercise of this religious practice can make its exercise so costly as to deprive it of the resources necessary for its maintenance." 319 U.S. 105 at 112. Similarly, vesting unfettered discretion in a local government authority to adjudicate zoning applications constitutes an impermissible prior restraint on free speech. *Adhi Parasakthi Charitable v. Twp. of W. Pikeland*, 721 F. Supp. 2d 361(E.D. Pa. 2010).<sup>1</sup>

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<sup>1</sup> In this case, Judge Joyner invalidated certain parts of the West Pikeland Township ("Defendant") Zoning Ordinance, as it applied to a request to construct a temple. While the imposition of a of condition requiring compliance with a restrictive covenant concerning the area of land that could be developed was a valid decision (which condition effectively defeated the effort to obtain municipal approval of a temple construction project), the Court ruled:

[P]rior restraints are viewed with extreme disfavor and, unless they are established with a series of safeguards to prevent any undue infringement on First Amendment rights, are impermissible. Because there is no provision in Defendant's Zoning Ordinance that requires the Zoning Board to bring suit before it enforces the prior restraint, the necessary safeguards required to avoid strict scrutiny are not in place, and Defendant's Zoning Ordinance cannot be upheld. As Defendant has not even attempted to argue to the contrary, summary judgment is appropriate in Plaintiff's favor on this issue. We find, therefore, that in granting an overly broad amount of discretion to its Zoning Board in deciding whether to allow expressive religious use of land within the Township, Defendant has created a prior restraint on speech in violation of Plaintiff's First Amendment rights.

721 F. Supp. 2d 361, 377 (E.D. Pa. 2010)

Consistent with this limitation on governmental authority, Congress has adopted the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), prohibiting the imposition of any governmental burden on the practice of religion through the following provision:

(a) Substantial burdens.

(1) General rule. No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

(2) Scope of application. This subsection applies in any case in which—

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(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

42 USCS § 2000cc(a).

Federal law similarly outlaws discrimination against and prohibition of religious use of land, as follows:

**(b) Discrimination and exclusion.**

(1) Equal terms. No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) Nondiscrimination. No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

(3) Exclusions and limits. No government shall impose or implement a land use regulation that—

(A) totally excludes religious assemblies from a jurisdiction; or

(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

42 U.S.C.S. § 2000cc(b).

Pennsylvania has had its own constitutional protection of the practice of religion well before the United States Supreme Court made the First Amendment of the United States Constitution applicable to the states.<sup>2</sup> Art. I, § 3 of the Pennsylvania Constitution states:

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience, and no preference shall ever be given by law to any religious establishments or modes of worship.

Additionally, the Pennsylvania General Assembly has adopted the Religious Freedom Protection Act, 71 P.S. 2401 *et seq.*, which establishes substantially similar restrictions on the *exercise of governmental authority* with respect to the practice of religion, as follows:

(a) GENERAL RULE.— Except as provided in subsection (b), an agency<sup>[3]</sup> shall not substantially burden a person’s free exercise of religion, including any burden which results from a rule of general applicability.

(b) EXCEPTIONS.— An agency may substantially burden a person’s free exercise of religion if the agency proves, by a preponderance of the evidence, that the burden is all of the following:

- (1) In furtherance of a compelling interest of the agency.
- (2) The least restrictive means of furthering the compelling interest.

71 P.S. § 2404.

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<sup>2</sup> The Pennsylvania Constitution of 1874 was adopted by a Constitutional Convention called pursuant to the act of April 11, 1872 (P.L. 53, No. 44) and took effect January 1, 1874. The First Amendment was held to be applicable to the states about a half-century later. *Near v. Minnesota ex rel Olson*, 283 U. S. 697 (1931); *Schneider v. The State of New Jersey (Town of Irvington)*, 308 U. S. 147 (1939); *Cantwell et al. v. Connecticut*, 310 U. S. 296 (1940); *West Virginia State Board of Education et al. v. Barnette et al.*, 319 U. S. 624 (1943).

<sup>3</sup> West Bradford Township is a governmental entity; as such it is an “agency” as defined by the Religious Freedom Protection Act. 71 P.S. § 2403.

This adoption of this statute was based on the following findings and concerns of our state legislature, as stated in the law itself, 71 P.S. §2402:

- (1) Laws and governmental actions which are facially neutral toward religion, as well as laws and governmental actions intended to interfere with religious exercise, may have the effect of substantially burdening the free exercise of religion. However, neither State nor local government should substantially burden the free exercise of religion without compelling justification.
- (2) The General Assembly intends that all laws which it has heretofore enacted or will hereafter enact and all ordinances and regulations which have been or will be adopted by political subdivisions or executive agencies shall be construed so as to avoid the imposition of substantial burdens upon the free exercise of religion without compelling justification.

The record demonstrates that the religious worship and related spiritual activities in which the resident monks engage are conducted *privately*. This was evidently understood by the Zoning Officer, since the enforcement notice does not assert that Svaroopaa was violating the Ordinance by using the residential structure as a church. Again, the term “Church” is clearly defined by the Zoning Ordinance, and 1400 Hampton Drive is not a church as so defined. Further, the Zoning Officer is simply mistaken in determining that a monastery constitutes a religious use of land. A monastery is a building used as a residence. The residents of a monastery are commonly affiliated with some religious sect or organization, as they are in this case. And they can certainly be expected to engage in religious or spiritual practices in their residence. Similarly, Roman Catholic nuns undoubtedly practice Catholicism in the convents where they sleep and eat. The church that they attend with members of the public can accurately be considered a building devoted to religious use. But the convent itself is properly understood to be a residence, and the convent building itself is properly understood to be constitute a residential use. A clear understanding of this would never lead a government official that they could tell the nuns to refrain from saying a prayer over an evening meal or before retiring at night., or that they are just praying way too much. Similarly, the enforcement notice issued to Svaroopaa must be determined to be invalid, as an erroneous application of the West Bradford Township Zoning Ordinance.

With this seemingly obvious point understood, counsel wishes to provide additional guidance based on court precedent applying relevant statutory law and constitutional principles.

*Murphy v. Zoning Commission*, 148 Fed. Supp. 2d 173 (D. Conn. 2001) provides valuable instruction since the facts closely resemble those presently under consideration. In that case, the city had issued a cease and desist order directing people to terminate the prayer group meetings they had been holding over a period of seven years. The federal District Court found that the plaintiffs established that enforcement of the ordinance would cause irreparable harm by restricting the exercise of constitutional rights, and rights protected under RLUIPA. The RLUIPA claim has been found to be valid, because the cease and desist order would require the plaintiffs to face a choice between complying with the cease and desist order by ceasing the practice of their religion or facing civil and criminal penalties. The court also determined that the cease and desist order was not the least restrictive means of fulfilling the government's interest in protecting the health and safety of the neighborhood, noting in particular that the municipal defendants could have taken action to regulate the increased volume of traffic on Sunday afternoons, rather than attempting to control the number of people present in the plaintiff's home. Simply stated, the same conclusion is compelled in the instant appeal. The case is considered instructive for present purposes. Simply stated, the Township could not conceivably consider prohibiting residential use of 1400 Hampton Drive, since such use is clearly permitted by the Ordinance and residential use of land is clearly common, as demonstrated by the number of residents who live on the street and participated in the hearing. How then can the Ordinance be permissibly enforced so as to prohibit any residents of homes in the R-1C Zoning District from practicing religion, without violating federal law? To ask the question is to answer it. RLUIPA prohibits enforcement of a purported restriction on the private practice of religion in a residence in the R-1C district.<sup>5</sup>

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<sup>5</sup> Similar reasoning is applied by the appellate court with jurisdiction over appeals originating in the federal courts in Pennsylvania. *Lighthouse Inst. for Evangelism, Inc. v. City of Long branch*, 510 F.3d 253 (3<sup>rd</sup> Cir. 2007). This case is complicated and the court's opinion is difficult to summarize, but it is worth consulting because it is a Third Circuit Court decision interpreting the provisions of RLUIPA. In very brief summary, it was found that in order to show a RLUIPA violation a plaintiff must identify a secular "comparator" that is similarly situated to that which is allegedly prohibited through enforcement of a local government regulation. In this case, the Township Zoning Ordinance is asserted to prohibit religious practice within a residence. The "comparator" would be a home in which people choose to *not* practice religion. The conclusion is clear: it is not permissible to enforce a zoning regulation so as to prohibit religious practice in a home, when other people are permitted to live in their residences without practicing religion.

In a case that arose much closer to home, albeit decided some time ago, a trial court Judge in Allegheny County determined that United States *and* Pennsylvania constitutional law required the grant of permission to allow a dormitory to be constructed and occupied by non-ordained lay persons<sup>6</sup> while attending a retreat offered by the Roman Catholic Church, and affirmed a Zoning Board of Adjustment (the equivalent of a zoning hearing board) decision that approved the proposed land use on that basis. *Stark Appeal*, 72 Pa.D.&C. 168, 170 (C.P. Allegheny 1950). The activities of the retreatants, described as follows, are extraordinarily similar to the activities engaged in by the resident monks of Svaroopaa:

A retreat has been defined as "a continuous series of spiritual exercises." It is a form of divine worship, devoted to examination, contemplation, and meditation, and intended to improve and perfect the participants in serving God and their fellow men. *Id.*, 171-72.

Not surprisingly, the Judge observed, "This is not an ordinary zoning case." *Id.*, 172. Perhaps the Judge may be considered prescient. His analysis of the zoning question, as controlled by constitutional principles, seems to have anticipated the federal and state statutes adopted years later, as demonstrated by the following passage from the opinion:

The State may prescribe necessary regulations in the exercise of its police power provided such regulations do not "unduly infringe" on the freedom of religion. The Supreme Court has not defined the precise boundaries which would indicate precisely which regulations are proper and which are an undue infringement. We believe, and so hold, that to be proper and constitutional, such regulations prescribed in the exercise of the police power of the State must not be unreasonable, unnecessary, or arbitrary, and must have a real, tangible and substantial relation to the public health, safety, morals or general welfare.

*Id.* 176-77.

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<sup>6</sup> The retreatants were members of the Third Order of St. Francis, which is a religious organization of Roman Catholics, predominantly laymen, who seek "a means of serving God, without withdrawing from their worldly pursuits. The members of the third order, men and women, advocate, practice, and sponsor public worship of Almighty God, in accordance with the beliefs and practices of the Roman Catholic Church, and with special emphasis on the teachings and practices of St. Francis of Assisi. The third order was founded in the year 1122."

72 Pa.D.&C. at 170.

The Court made short work of the argument asserted by the neighbors in this exclusive neighborhood of single family homes, *Id.* at 170, who asserted that "a retreat house . . . is not a church within the usual and ordinary meaning of the word 'church', even though it has connected with it a chapel and Stations of the Cross". *Id.* 177. In response, the Court reasoned:

The contention of petitioners, if upheld, would limit the religious freedom of the Third Order of St. Francis on its own property to act upon, and put into practice its religious beliefs and to follow the methods which the order has chosen.<sup>7</sup>

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<sup>7</sup> *Id.*, at 177. Neither Svaroopu nor its attorney consider the issuance of the enforcement notice to have been motivated by animosity to the practice of Hinduism. And no statement or question posed by the other parties is to be so misconstrued. But the observations of a trial court judge of some 70 years ago in the context of a zoning case may be constructively considered. The Court stated:

[P]etitioners contend that the practice of retreats, as it originated with St. Ignatius de Loyola, and as approved by the Apostolic See, "does not contemplate that the spiritual exercises of a retreat are to be performed in a church"; that retreats "are primarily the individual meditations of the retreatant"; that they "do not require that those spiritual exercises should be performed in a church", and that "it has become the practice in most instances to incorporate into the retreat house as incidental to the primary spiritual exercises a chapel". These contentions are irrelevant. Where religious beliefs or practices are involved, the constitutional principle of freedom of religion demands that we do not concern ourselves with what is required by other religious sects, or even by the religious authorities of the same church, or what is the usual practice in performing certain religious activities. Religious freedom, as that term is used in the State and Federal Constitutions, means that the individual group or sect is *free to deviate from what is customary* or done "in most instances", or from what is approved by others. Religious freedom means *freedom to follow* not only one's own beliefs, but *one's own practices* and procedures, unhampered and uninfluenced by majority practices or by customary rules or regulations made by others, whoever they may be. Religious freedom is absolute freedom to follow one's own beliefs. As far as religious practices are concerned, society may impose limitations, but only where substantial considerations of public health, safety, morals, and public welfare so require.

The question as to what is customary or what is unusual in the religious practices of the Third Order of St. Francis is, therefore, entirely irrelevant. Neither the city, the State, the Federal Government, nor this court, has, under the Federal and State Constitutions, the right to tell the order that it should confine itself strictly to the practice of retreats as prescribed by St. Ignatius de Loyola, or even as they may be prescribed by the Holy Father. It is not for us, nor for any other branch of the Government to advise the Order of St. Francis that it should be satisfied with days of recollection which last only one day, rather than engage in closed retreats which under the practice of this order, last for two days.

Id., 178-79.

In *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279 (5th Cir. 2012), a city ordinance was challenged on that basis that it treated a church on “less than equal terms with a non-religious assembly or institution” in violation of 42 U.S.C.S. Section 2000cc(b)(1). The City of Holly Springs, Mississippi, had on its books a zoning ordinance that explicitly singled out "churches" for unfavorable treatment, but did not outright ban their presence from particular locations. The night before oral argument in the federal appeals court, the City repealed that regulation but adopted another ordinance, evidently because it knew that the previous regulation was invalid.<sup>8</sup> The new ordinance banned "[c]hurches, temples, synagogues, mosques, and other religious facilities" from the City's historic and centrally located courthouse square. 697 F.3d 279, 281-82. The appeals court remanded the case to the District Court (a federal trial court) for a determination to be made concerning the validity of the new ordinance, in accordance with the standards established by the Fifth circuit Court of Appeals (which differ somewhat from those applied by the Third Circuit). The decision is considered instructive nevertheless because it presents a rare set of facts, viz., the disparate treatment of a church in comparison to a secular land use. That unfavorable treatment was indefensible, as the municipal defendant conceded. In contrast, to sustain the validity of the enforcement notice issued in this case would require validating a total prohibition on the practice of religion in a private home. In other words, only atheist and agnostics can live in the West Bradford R-1C zoning district. From the attitude expressed by the other residents of Hampton Drive, such an interpretation and enforcement would be highly objectionable. Regardless of any such orientation, it is clear that the enforcement notice as stated is invalid.

In *City of Hope v. Sadsbury Township Zoning Hearing Board*, 890 A.2d 1137 (Pa. Cmwlth. 2006) the Pennsylvania Commonwealth Court was found that a zoning hearing board did not abuse its discretion in receiving “comments” from neighbors who were concerned about the adverse impact of additional traffic and pedestrian use of a parcel of land. So, the ZHB was found to have properly permitted the airing of complaints about the number of cars that drive to and park at the

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<sup>8</sup> In fact, the City's attorney conceded, at oral argument in the appeal, that the repealed provisions plainly violated § 2000cc(b)(1), the Equal Terms Clause of RLUIPA. The appellate court noted that those provisions imposed onerous burdens on churches not imposed on any other type of assembly or institution, similarly situated or not.

subject property.<sup>9</sup> More directly to the point to be addressed, Sadsbury Township (Crawford County) permitted a church to construct a worship center, but prohibited a campground and hiking trail. The church unsuccessfully claimed that the campground and trail were permissible accessory uses. The fact that they were *accessory uses* and not principal uses were significant; this justified the rejection of an application for approval of the trail and campground. In contrast, the principal use of the 1400 Hampton Drive residence is that of a residence. The residents use the property to sleep, eat, bathe, and live in. They *also* practice their religion in their home. There is no separate structure, land area or divisible part of the subject realty that is devoted to the practice of religion as an accessory use, any more than a kitchen table can be said to be part of an accessory use if those who partake meals while seated there choose to say a prayer before eating. To prohibit the practice of religion would constitute a “substantial burden” that is prohibited by RLUIPA, as noted by the Commonwealth Court, 890 A.2d at 1148, as follows:

The provisions of RLUIPA effect a restriction on a zoning hearing board's ability to either impose a substantial burden on a religious exercise, 42 U.S.C. § 2000cc(a)(1), or treat a religious assembly or institution in unequal terms from similar, secular institutions, 42 U.S.C. § 2000cc(b)(1).

In summary, the monks who are members of the Svaroopaa Vidya Ashram, residing in and practicing religion at 1400 Hampton Drive, are protected by both federal and state law with respect to their freedom to practice religion, as they may wish. So long as members of the public generally are not invited to attend religious rituals or practices at the home, the Zoning Ordinance cannot be construed as having been violated through the practice of religion by the residents of the monastery. Indeed, any attempt to restrict the rights of the monks to engage in the private practice of their religious beliefs will subject the Township to the risk of an award of counsel fees in favor of the Ashram and its members in any proceeding instituted to enforce their civil rights or to prevent a violation of RLUIPA, as provided by 42 U.S.C.A. § 1988(b).

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<sup>9</sup> Parenthetically, U.S. Constitutional law requires some “tolerance” of any inconvenience occasioned by the practice of religion by others. In *Martin v. Struthers*, 319 U. S. 141 (1943), the Supreme Court struck down a city ordinance which made it unlawful to knock on doors, ring door bells, or otherwise summon to the door the occupants of any residence for the purpose of distributing to them religious leaflets. The local government regulation was found to be a violation of the freedom of religion and of speech and press. The right to freedom of religion and speech was held superior to the right of persons not to be interrupted or annoyed by the ringing of a door bell.

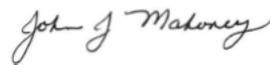
**V. Conclusions.**

(1) The Zoning Hearing Board has jurisdiction to adjudicate the appeal submitted.

(2) The use of the subject real estate is residential, a use permitted in the R-1C zoning district. The practice of religion by the residents of the home does not invalidate the validity of the permitted residential use. Accordingly, the appeal must be sustained and the enforcement notice invalidated.

(3) In the alternative, the appeal must be sustained on the basis that a ban on religious use of land in any zoning district is prohibited by federal and state law. Additionally, no compelling justification has been established by the Township or any party that would justify a restriction or prohibition on the private practice of religion by the residents of the home at 1400 Hampton Drive. Accordingly, the enforcement notice must be invalidated.

Respectfully submitted,



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