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In re: Appeal of Syaroopa Vidya Ashram

Before the Zoning Hearing Board of
West Bradford Township

Appeal No. 436

**BRIEF OF WEST BRADFORD TOWNSHIP
IN OPPOSITION TO THE APPEAL OF SYAROOPA VIDYA ASHRAM**

West Bradford Township (the “Township”) by and through its attorneys, Gawthrop Greenwood, PC, files this Brief of West Bradford Township in Opposition to the Appeal of Syaroopa Vidya Ashram (“Applicant”) as follows:

PROPOSED FINDINGS OF FACT

1. The Township issued a notice of violation to Applicant on July 29, 2020, regarding its use of the property located at 1400 Hampton Drive, West Bradford Township, County of Chester, Pennsylvania, UPI No. 50-2-91 (the “Property”), in violation of Section 450-12.B of the Township Zoning Ordinance (“Notice of Violation”). Bd. 1.
2. The Notice of Violation was based on the Applicant’s use of the Property as a religious use, which is not a permitted use within the R-1C Residential District. Bd. 1; N.T. 18-21.
3. Applicant filed an appeal of the Notice of Violation with the West Bradford Township Zoning Hearing Board (“Board”). Bd. 1.
4. Hearings were held before the Board on February 3, 2021 and March 4, 2021.
5. The Property is located in the R-1C Residential District of the Township. Bd. 1.

6. Prior to or on July 10, 2020, the Property was owned by Nirmalandanda Saraswati. Bd. 1.
7. On or about July 10, 2020, Nirmalandanda Saraswati conveyed the property to Applicant. Bd. 1.
8. At all times relevant, Nirmalandanda Saraswati resided at the Property. Bd. 1.
9. Nirmalandanda Saraswati was and is the leader or head of Applicant. N. T. 133; Twp. 3 p.6 (ln. 3), 42 (ln. 4-14).
10. The use of the Property as a monastery is not contested. N.T. 32 (ln. 11-17), 44 (ln. 22-24), 45 (ln. 1, 4-8), 46 (ln. 3-7, 11-15), 72 (ln. 11-15), 116 (ln. 1-9), 133 (ln. 1-5); Twp. 1; Twp. 3 p.5, 6, 9, 42, 69 (exhibits P-2, P-11, P-12).
11. On July 21, 2016, Nirmalandanda Saraswati filed an application for exemption from real estate taxation with the Office of Board of Assessment Appeals of Chester County Pennsylvania. Twp. 1.
12. Item no. 6 on the application for exemption, “legal basis for exemption,” was marked as “[a]ctual place of regular stated religious warship.” Twp. 1.
13. Item no. 8 on the application for exemption, “exempt category,” was marked “religious organization” and the full name of the organization was listed as “Svaroopaa Vidya Ashram.” Twp. 1.
14. The word “yes” was checked in item no. 9 on the application for exemption, in response to the questions, “[i]s your predominant purpose to hold and conduct religious activities or religious education in Pennsylvania and [d]oes your organization hold regular religious services?” Twp. 1.

15. The Property is and has been used as “a place of regularly stated religious worship.” Twp. 1; Twp. 2; Twp. 3 p.6 (ln. 21-23), 11 (ln. 7-9); 18-19, 37 (ln. 5-9); Twp. 4.

16. The Property is currently “used for a religious purpose” by Applicant. N.T. 24 (ln. 15-17); Twp. 4.

17. Applicant submitted a Verification of Residential Use of the Property (“Verification”). App. 1.

18. Those signing the Verification did so subject to the penalties for unsworn falsification. App. 1.

19. The Verification states, in part that, “[w]e do not pay rent, but each of us contributes to the financial obligations attendant to maintenance of the home as a family, sharing living quarters and household responsibilities and expenses.” App. 1.

20. When asked if any of the residents pay money for the payment of expenses, Swami Samvidaananda Saraswati testified “[n]ot that I know of.” N.T. 52 (ln. 12-14).

21. The residents do not contribute any money to the payment of expenses. N.T. 83 (ln. 18-21).

22. Food, rent, utility and other household expenses are paid by the Applicant. N.T. 83 (ln. 13-18); N.T. 134 (ln. 13-16).

23. The Verification further states, in part that, “[n]one of us reside in the home on a transient or temporary basis. We all have lived in the home for a lengthy period of time and intend to continue to live in the home along with all others whose names appear below, on a permanent basis, or until such time as we are called upon to serve others in a different location.” App. 1.

24. Lynn Cattafi represented that she began living at the Property on October 1, 2016, and that “I reside at a home in Delaware and have a Delaware driver’s license. I am a junior monk, and have two residences, neither of which is transient or temporary.” App. 1.

25. Ms. Cattafi, a junior monk, maintains a separate residence. N.T. 53 (ln. 6-8); N.T. 84 (ln. 6-7).

26. Ms. Cattafi drives to the Property, from her residence in Delaware, to participate in Applicant’s religious activities. N.T. 85 (ln. 1-13).

27. The density of those districts within the Township, which permit religious uses by right or special exception, is higher than in the R-1C District where the property is located. N.T. 31.

28. Nirmalandanda Saraswati purchased the Property for the Ashram. N.T. 131.

29. Nirmalandanda Saraswati never checked the zoning for the Property prior to purchasing it. N.T. 130 (ln. 18-24), 131 (ln. 1-4).

30. In response to an enforcement notice, Nirmalandanda Saraswati signed an agreement in January of 2011, representing that the Property would not be used “for educational use or religious use.” N.T. 128-129.

ARGUMENT

A. The Township’s exhibits are admissible.

Applicant, the current owner of the property, and the former owner Nirmalandanda Saraswati, both filed documents in a prior proceeding and subsequent appeals seeking an exemption from real estate taxation. Twp. 1; Twp. 2; Twp. 4. Nirmalandanda Saraswati also testified, under oath, in those proceedings regarding the activities on the property and as well as

its use. Twp. 3. Counsel for Applicant objected to the Township's exhibits on the basis of hearsay. N.T. 21. That objection was correctly overruled by the Board. N.T. 22.

Generally, an out of court statement "is inadmissible hearsay unless it is corroborated by other evidence *or falls within an exception to the hearsay rule.*" Uptown Partners v. City of Pittsburgh Zoning Bd. of Adjustment, No. 528 C.D. 2017, 2017 WL 6598450, at *6 (Pa. Cmwlth. 2017) (emphasis added) (finding affidavits that would otherwise constitute hearsay could be relied upon based on corroborating evidence). In the present case the evidence submitted by the Township falls within an exception to the hearsay rule. Pa.R.E. 803 states, in part, that "[t]he following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:"

An Opposing Party's Statement. The statement is offered against an opposing party and:

- (A) was made by the party in an individual or representative capacity;
- (B) is one the party manifested that it adopted or believed to be true;
- (C) was made by a person whom the party authorized to make a statement on the subject;
- (D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or
- (E) was made by the party's coconspirator during and in furtherance of the conspiracy.

The statement may be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

Pa.R.E. 803(25).

In the present matter, Nirmalandanda Saraswati was the "head" of Applicant both prior to and after its incorporation. N. T. 133; Twp. 3 p.6 (ln. 3), 42 (ln. 4-14). The use of the Property as a monastery is not contested and Nirmalandanda Saraswati has, through prior testimony and court filings, adopted or believes the truth of her representations regarding the activities on the property. See, In re: Nirmalananda, 540 C.D. 2019, 2020 WL 901455 (Pa. Cmwlth. 2020) (addressing representations regarding activities and use of Property in deciding appeal of denial

of motion for new trial based on after discovered evidence). As the former owner of the property and the head of the Applicant, Nirmalandanda Saraswati was and is authorized to make statements on the used and activities on the property, and her testimony and court filings were made in in those capacities.¹ Id.; Twp. 1-4. The statements and admissions of Nirmalandanda Saraswati in the Township’s exhibits are admissible and the Board’s ruling was correct. Pa.R.E. 803(25); and see, Linefsky v. Redevelopment Authority of the City of Philadelphia, 698 A.2d 128, 133 (Pa. Cmwlth. 1997) (judicially admitted facts in one proceeding, may be admitted as evidentiary admission in another proceeding); Ham v. Gouge, 257 A.2d 650, 653 (Pa. Super. 1969) (pleadings in prior action admissible as admissions, which party had a right to contradict).

B. The Property is used for a religious use in violation of the Township Zoning Ordinance.

It is uncontested that the building located on the Property is a monastery. N.T. 32 (ln. 11-17), 44 (ln. 22-24), 45 (ln. 1, 4-8), 46 (ln. 3-7, 11-15), 72 (ln. 11-15), 116 (ln. 1-9), 133 (ln. 1-5); Twp. 1; Twp. 3 p.5, 6, 9, 42, 69 (exhibits P-2, P-11, P-12). The head of the monastery/ashram, Nirmalandanda Saraswati, as well as the Applicant have admitted that the Property is used as an “[a]ctual place of regular stated religious warship,” the predominant purpose of which is to hold and conduct religious activities or religious education and religious services. Twp. 1; Twp. 2; Twp. 3 p.6 (ln. 21-23), 11 (ln. 7-9); 18-19, 37 (ln. 5-9); Twp. 4. It also appears to be uncontested that the Property is used for a religious purpose by Applicant. N.T. 24 (ln. 15-17); Twp. 4.

The term “religious use” is not defined by the Township Zoning Ordinance. However, where, as here, a use is not defined by ordinance, a dictionary definition may be relied upon. THW Group, LLC v. Zoning Bd. of Adjustment, 86 A.3d 330, 336 (Pa. Cmwlth. 2014) (where a

¹ Both Nirmalandanda Saraswati and Applicant “were always involved” with the Property. N.T. 131 (ln. 19).

court needs to define an undefined term, it may consult dictionary definitions for guidance). The term “religious” is defined, in part, as “those or one bound by monastic vows, or sequestered from secular concerns, and devoted to a life of piety and religion; a monk or friar; a nun.” WEBSTER’S NEW INTERNATIONAL DICTIONARY, p. 2105 (2d ed. 1956). The term is also defined as “manifesting devotion to, or the influence of, religion; pious; godly as, a religious man, life, behavior, etc.” *Id.* In looking to other sources, the term is also defined, in part, as “relating or devoted to the divine or that which held to be of ultimate importance 2: of or relating to religious beliefs or observances.” THE NEW MERRIAM-WEBSTER DICTIONARY, p. 617 (1989 Ed.).

It is not disputed that monks reside at the Property. Twp. 1; Twp. 3 (p. 5, 22 (ln. 8-10), 42 (ln. 4-14)). It is also does not appear to be disputed that the predominant purpose of the use of the Property is to hold and conduct religious activities or religious education and religious services. Twp. 1; Twp. 2; Twp. 3 p.6 (ln. 21-23), 11 (ln. 7-9); 18-19, 37 (ln. 5-9); Twp. 4. At least one junior monk commutes from Delaware, on an intermittent basis, to participate in the religious activities at the Property. N.T. 53 (ln. 6-8); N.T. 84 (ln. 6-7); N.T. 85 (ln. 1-13). Finally, the Property is used as a monastery, which is defined as “a house for persons under religious vows.” THE NEW MERRIAM-WEBSTER DICTIONARY, p. 473 (1989 Ed.); WEBSTER’S NEW INTERNATIONAL DICTIONARY, p. 1583 (2d ed. 1956).²

The Applicant’s use of the Property constitutes a religious use, which is not among those uses listed as being permitted in the R-1C District of the Township by right, special exception or conditional use. Twp. ZO §450-12. Applicant’s use of the Property constitutes a violation of the

² The word “ashram” is defined as “a place where a group of Hindus live together away from the rest of society, or a place where Hindus can go in order to pray.” <https://dictionary.cambridge.org/us/dictionary/english/ashram>.

Township's Zoning Ordinance and the Notice of Violation must be sustained. Glenside Center, Inc. v. Abington Twp. Zoning Hearing Bd., 973 A.2d 10 (Pa. Cmwlth. 2009) (affirming violation of zoning ordinance where building limited to an "office use" was used for Alcoholics Anonymous meetings).

C. The residents of the property are not living as a "family" as defined by the Township Zoning Ordinance.

Applicant represented, to the extent relevant, that the residents' living arrangement included terms set forth in the definition of "family," in the Township's Zoning Ordinance. App. 1; see, Twp. ZO §450-8 (definition of family). However, two of the elements of that definition are not present in this matter. The residents do not pay expenses for food, rent, utilities or other household expenses. N.T. 52 (ln. 12-14); N.T. 83 (ln. 18-21). All expenses are paid by Applicant. N.T. 83 (ln. 13-18); N.T. 134 (ln. 13-16). In addition, not all the residents are permanent because at least one commutes and splits time between her Delaware residence and the Property. App. 1; N.T. 53 (ln. 6-8); N.T. 84 (ln. 6-7); N.T. 85 (ln. 1-13).

The facts of record make clear that the residents of the Property are not living as a "family" as that term is defined by the Township Zoning Ordinance. It is also clear from the record that the residents are monks living in a monastery/ashram, which constitutes a religious use in violation of the Township Zoning Ordinance.

D. The Religious Land Use and Institutionalized Persons Act does not require the Township to permit the continued violation of the Township Zoning Ordinance.

Applicant has given every indication that it intends to argue that enforcement of the zoning ordinance will violate the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. §2000cc. The enforcement of the Township's zoning will not result in a violation of the Equal Terms or Substantial Burden provisions of RLUIPA and therefore does

not preclude the Township's enforcement of its zoning. The Property is located R-1C District, the purpose of which "is to provide for low-density housing and open space on large parcels in which the natural features are such that it is desirable to retain large portions of the tract in permanent open space." Twp. ZO §450-12.A. In addition to religious uses, no comparable secular use, such as meeting halls, clubs and anything similar is permitted in the R-1C District. Id.; N.T. 30 (ln. 9-16). Religious uses *are* permitted in other zoning districts either by right or by special exception in the R-1, R-2, R-2A, R-2B, R-3, R-4, TND/Village Overlay, TND-2. Twp. ZO §450-11, 12, 13, 14, 15, 16, 17, 28, and 46. All of these zoning districts permit a higher density of uses than the R-1C District. N.T. 31 (ln. 14-18). Because the R-1C District does not permit any use similar to Applicant's use, but the religious use *is* permitted in other districts, there is no violation of the Equal Terms provision of RLIUPA. See, Lighthouse Institute for Evangelism, Inc. v. City of Long Branch, 510 F.3d 253 (3d Cir.2007) (RLIUPA's Equal Term provisions violated only when institution is treated less well than similarly situated secular assemblies).

Nirmalandanda Saraswati *and* Applicant were at all times involved in the purchase of the property. N.T. 131 (ln. 19). When Nirmalandanda Saraswati purchased the Property for the Applicant, she never checked the zoning to determine if a religious use would be permitted. N.T. 130 (ln. 18-24), 131 (ln. 1-4). Thereafter, when she received a violation notice regarding her use of the Property, Nirmalandanda Saraswati agreed that the Property would not be used for an "educational use or religious use." N.T. 128-129. At all times relevant, both Nirmalandanda Saraswati and Applicant knew or should have known that a religious use was not permitted on the Property.

The facts of record make clear that enforcement of the Township’s Zoning Ordinance will not place a substantial burden on the religious exercise of Applicant or its resident monks in violation of RLUIPA. No substantial burden will be found under RLUIPA where, as here, an interest in land is obtained in the absence of a reasonable expectation that the land can be used for a religious purpose or use. Livingston Christian Schools v. Genoa Charter Township, 858 F.3d 996, 1004 (6th Cir. 2017) (so stating in addressing substantial burden analysis under RLUIPA and finding none); Andon, LLC v. City of Newport News, Va., 813 F.3d 510, 515 (4th Cir. 2016) (no substantial burden under RLUIPA where hardship is self-imposed); Petra Presbyterian Church v. Village of Northbrook, 489 F.3d 846, 851 (7th Cir. 2007) (no substantial burden under RLUIPA where purchaser had no reasonable expectation of use being permitted); see also, Lighthouse Institute for Evangelism Inc. v. City of Long Branch, 100 Fed.Appx. 70, 77 (3rd Cir. 2004) (no substantial burden under RLUIPA where, *inter alia*, church could be operated in other districts within city). Therefore, any claim of a substantial burden violation under RLUIPA in the present matter must fail.

CONCLUSION

Based on the foregoing, West Bradford Township respectfully requests that the Zoning Hearing Board deny the appeal filed by Svaroopaa Vidya Ashram, LLC.

Respectfully submitted,
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