

Cities continue to put up roadblocks to church expansion

by Randy Bright <http://www.tulsabeacon.com/?p=5861>

Another example of a church's rights being violated has surfaced in Holly Springs, Mississippi, where Opulent Life Church has been denied the right to use a building it leased in a downtown area for their growing congregation.

Holly Springs is a city with a population of 8,000 located about 40 miles southeast of Memphis, Tennessee. Opulent Life Church is a small African-American congregation of about 20-25 members.

The problem began when the church leased a building in the downtown area and then began to work with the city to obtain a permit to use the building. According to one report, the city's Planning Commissioner "tabled" the church's request without specifying a reason. It turns out that the city has an ordinance that requires the approval of 60 percent of the people in the downtown area to allow a church or other religious institutions to locate there.

The ordinance also requires the approval of the mayor and a board of advisors before a permit can be granted.

It was also reported that the mayor initially refused to disclose the full content of the ordinance to the church.

In January of this year, Liberty Institute took Opulent's case and filed a lawsuit in District Court that sought a preliminary injunction against the ordinance, claiming that it violated the church's rights under the Religious Land Use and Institutionalized Persons Act (RLIUPA).

The District Court ruled against the church, claiming that because church attendance was not meeting the capacity of its current facilities, the church was not suffering harm from the denial of the use of the larger leased premises downtown, and thus were "not currently being deprived of the right to freely exercise their religion".

Hiram Sasser, the attorney with Liberty Institute said, "The Church and its membership are currently suffering harm because the City will not let them move into their new and larger space to accommodate their growing congregation. The City of Holly Springs' placing special burdens on churches is unfair and illegal and subjects them to unequal treatment."

According to Jeff Mateer, another attorney with Liberty Institute, no one other than churches or other religious institutions are subject to the ordinance. He said, "It doesn't apply to businesses. It doesn't apply to homes. It singles out churches, synagogues, and other religious buildings." On March 7, Liberty Institute filed an appeal with the Fifth Circuit US Court of Appeals in an attempt to overturn the decision of the District Court and to obtain a preliminary injunction.

This is another example of what I have been writing about for several years now – that cities are beginning to “zone” churches out of their communities. What makes this case different is that while many of the new zoning codes prohibit churches discreetly without specifically saying that churches are prohibited, apparently this city has written its ordinance to specifically do that.

For example, other cities have written their codes expressly allowing churches in all or most areas of their city, including downtown areas, but then require that churches own a certain amount of land and place a limit on the amount of parking they can have.

In one city, the minimum land requirement was a two-acre site on a corner, but if the church had a gymnasium they would have to have a ten-acre site on a corner.

While on the surface that may not seem to be an unreasonable requirement, the problem arises when the city’s urban growth boundary confines city growth to a limited area and produces land shortages – making a ten or two acre site prohibitively expensive, even if such sites were available.

In addition, the limit on parking makes it difficult for churches to accommodate the kind of attendance they need to support its facilities. It would be like telling Wal-Mart that its Supercenter could only have 20 parking spaces.

Unfortunately, I think that the problems that Opulent Life Church has encountered are going to become more common, especially if their case is lost at the US Court of Appeals. RLUIPA has been challenged since its inception in 2000 over its constitutionality. As the number of cases like Opulent’s occur, more cities will be prone to violate church rights with the belief that the courts won’t uphold RLUIPA.

Ultimately, this boils down to a matter of who will control what goes into our cities, and as planners almost universally accept the notion that humans belong only in urban areas, and that churches don’t have a place in urban areas, church facilities will eventually disappear from the urban environment – unless we are willing to fight to keep them there.

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Randy W. Bright, AIA, NCARB, is an architect who specializes in church and church-related projects. You may contact him at 918-582-3972, rwbrightchurcharch@sbcglobal.net or www.churcharchitect.net.

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