

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

OHEL YIS'HAK SEPHARDIC
SYNAGOGUE OF ALLENHURST, and
RABBI MOSHE SHAMAH,

Plaintiffs,

v.

BOROUGH OF ALLENHURST, New Jersey,

Defendant.

Civ. No. _____

COMPLAINT

Plaintiffs Ohel Yis'hak Sephardic Synagogue of Allenhurst and Rabbi Moshe Shamah, by their undersigned attorneys, complain of Defendant Borough of Allenhurst (the "Borough"), as follows:

NATURE OF ACTION.

1. Plaintiffs file this action to redress violations of their civil rights caused by the Defendant's burdensome, discriminatory, and unreasonable land use regulations that have prohibited and continue to prohibit Plaintiffs from building and operating a place of worship that accommodates their religious needs on property in the Borough of Allenhurst, in violation of Plaintiff's civil rights under the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §§ 2000c, *et seq.* ("RLUIPA").

2. Plaintiffs seek to convert an existing clergy residence into a small synagogue in the midst of a Jewish community that has no synagogue. Defendant's land use regulations, however, prohibit any place of worship from locating within their jurisdiction, in clear violation of RLUIPA.

3. The Defendant's laws prohibit Plaintiffs' religious land use throughout the Borough's jurisdiction, and treat religious facilities on less than equal terms as nonreligious facilities.

PARTIES

4. Plaintiff OHEL YIS'HAK SEPHARDIC SYNAGOGUE OF ALLENHURST ("OYSSA") is a religious congregation that worships at 108 Allen Avenue, Allenhurst, New Jersey, 07711.

5. Plaintiff RABBI MOSHE SHAMAH is the Rabbi of the Ohel Yis'hak Sephardic Synagogue of Allenhurst.

6. Defendant BOROUGH OF ALLENHURST is located in Monmouth County, New Jersey, with an address of 125 Corlies Avenue, Allenhurst, NJ 07711.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction) because this action is brought under RLUIPA, 42 U.S.C. §§ 2000cc, *et seq.*

8. 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 Defendant is subject to personal jurisdiction in this District as of the commencement of this action.

FACTUAL ALLEGATIONS

9. Plaintiff Shamah owns real property at 108 Allen Avenue, Allenhurst, New Jersey, 07711 (the "Property").

10. The Property is currently improved with a 5266-square foot single-family home.

11. Rabbi Moshe Shamah purchased the property in 1998 to be used as his home.

12. Rabbi Shamah has been lawfully holding prayer services at this home for friends and family for nearly two decades during the summer months.

13. In 2007, Rabbi Shamah requested the approval of a Certificate of Appropriateness from the Planning Board of the Borough of Allenhurst (“Board”) in order to convert the existing garage into a family room and to construct a new garage.

14. The Board granted the approval to allow the construction of the family room and garage, subject to conditions.

15. The conditions agreed upon by Rabbi Shamah and the Board include a limit of six cars on-site, a requirement that all prayer services be held inside, and a maximum capacity for prayer services, which cannot exceed 125 people.

16. Rabbi Shamah is an Orthodox Sephardic Jewish rabbi who practices Judaism in accordance with his Sephardic tradition.

17. Rabbi Shamah serves as a congregational rabbi in a Sephardic synagogue in Brooklyn, New York and spends his summers in Allenhurst.

18. Rabbi Shamah is a highly respected Torah scholar whose approach to textual interpretation and teaching is unique in Orthodox Judaism.

19. Many of the homeowners in Allenhurst are members of Rabbi Shamah’s congregation in Brooklyn and spend the summer months in Allenhurst to be near their rabbi.

20. Upon information and belief, the Sephardic Jewish population in Allenhurst has grown steadily over the last twenty years, and currently, during the summer months, Sephardic Jews comprise over 50% of the population of Allenhurst.

21. To meet the religious needs of the sizable Sephardic Jewish population of Allenhurst, Plaintiffs seek to convert the existing house at 108 Allen Street into a synagogue.

22. Plaintiffs seek to build an addition on the house and to operate a small religious facility where Sephardic Jews can gather to pray and learn. Plaintiffs do not intend to hold weddings, banquets or other large-scale events at the site.

23. No synagogue currently exists in Allenhurst.

24. The growing Sephardic population in the neighborhood surrounding the Property requires a synagogue within walking distance of their residences, as Jewish law prohibits driving cars on the Sabbath and on religious holidays.

25. Plaintiffs' proposed synagogue would not generate additional traffic as congregants walk to synagogue on the Sabbath and holy days.

26. Plaintiffs are unable to operate a synagogue in the mostly Sephardic neighborhood in which their property is located because the zoning regulations for Allenhurst do not allow religious facilities anywhere in the Borough.

27. As a result, Plaintiffs have been and continues to be deprived of their right to the free exercise of religion.

The Applicable Land Use Regulations

28. The Borough regulates land use in its jurisdiction in part through Chapter XXVI of the Code of the Borough of Allenhurst.

29. The Code designates seven zoning districts in the Borough: two Residential Districts (R-1 and R-2), two Business Office Districts (B-1 and B-2), and three Commercial Districts (C-1, C-2, C-3).

30. The Code specifies the permitted and conditional uses for each zoning district.

31. The Code restricts residential uses to a one family dwelling house with garage.

32. The Commercial Districts allow the following uses by right:

1. Antique Stores
2. Art and Cultural Instruction
3. Art Galleries
4. Arts, Crafts and Hobbies Sales
5. Audiologists
6. Bakeries
7. Banks and Financial Institutions
8. Beauty Parlors, Barber Shops
9. Books
10. Business and Professional Offices
11. Butcher Shops
12. Candy Stores
13. Card and Gift Shops
14. Computer Sales and Services
15. Delicatessens and Caterers
16. Dry Cleaning Drop Stores
17. Financial Planners
18. Fitness Centers
19. Floor Covering Sales
20. Florists and Garden Centers
21. Formal Wear Sales and Rentals
22. Green Grocers

23. Grocery Stores
24. Hardware Stores
25. Health Care Professionals
26. Ice Cream Stores
27. Interior Decorators
28. Jewelry Stores
29. Liquor Stores
30. Locksmiths
31. Mailing and Shipping Centers
32. Medical Equipment and Devices Sales and Repairs
33. Music Stores
34. Musical Instrument Stores
35. New Home Furnishings and Repairs
36. New Wearing Apparel Sales
37. Office Supplies and Equipment Sales and Repairs
38. Pet Stores
39. Pharmacies
40. Photography Studio and Camera Sales, Supplies and Repairs
41. Post Office
42. Printing and Copying Centers
43. Public Utility Offices
44. Real Estate and Insurance Offices

45. Restaurants
46. Sporting Goods Stores
47. Tailors and Cobblers
48. Tanning Salons
49. Title Companies
50. Toy Stores
51. Travel Agencies
52. Video Stores
53. Vitamin Health Food Stores
54. All uses typically associated with a public utility.

33. The Code also provides for a Multifamily Overlay District in one of its commercial districts which allows multi-family residences as a conditional use.

34. Permitted uses in the Borough's Business Office District are: business offices, ticket offices, newspaper stands, and a post office.

35. The Code provides that "[e]xcept as herein provided, no building or premises shall be used except in conformity with the provisions of this chapter which apply to the district in which it is located" and that "[a]ll uses not expressly permitted in this chapter are prohibited."

36. Places of worship, including synagogues, are not permitted in any of the Borough's seven zoning districts.

37. The Code prohibits places of worship throughout the Borough.

38. Certain nonreligious assembly and institutional uses such as art and cultural instruction, art galleries, fitness centers and restaurants are permitted in the Borough as listed above.

39. Such nonreligious assembly and institutional land uses are treated on better terms under the Borough's land use regulations than are places of worship, which are prohibited in the Borough.

40. The harm to Plaintiffs caused by the Defendant's laws, which prevent them from using the Property to accommodate their religious needs, is immediate and severe.

41. Plaintiffs have been unable to fully carry out their religious mission and to exercise their religion because of the Defendant's laws.

42. The Plaintiffs have also suffered financial damages as a result of the Defendant's laws.

43. There are no quick, reliable and viable alternative options for OYSSA's operations.

44. Plaintiffs have no adequate remedy at law for the harm and damage caused by Defendant's discriminatory laws.

COUNT I

"Exclusions and Limits"

Religious Land Use and Institutionalized Persons Act of 2000

42 U.S.C. § 2000cc(b)(3)(A)

45. Plaintiffs repeats and reallege paragraphs 1 through 44 as if fully set forth herein.

46. Defendant's laws and actions deprived and continue to deprive Plaintiffs of their right to the free exercise of religion, as secured by the Religious Land Use and Institutionalized Persons Act, by imposing land use regulations that totally exclude religious facilities from its

jurisdiction and unreasonably limit religious assemblies, institutions and structures within a jurisdiction.

COUNT II

“Equal Terms”

Religious Land Use and Institutionalized Persons Act of 2000

42 U.S.C. § 2000cc(b)(1)

47. Paragraphs 1 through 46 are incorporated by reference as if set forth fully herein.

48. Defendant’s laws deprived and continue to deprive Plaintiffs of their right to the free exercise of religion, as secured by the Religious Land Use and Institutionalized Persons Act, by imposing land use regulations that treat religious assemblies and institutions on less than equal terms as nonreligious assemblies and institutions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

1. A declaration that the Borough’s land use ordinances, to the extent that they exclude places of worship from the Borough’s jurisdiction and discriminate against the Plaintiffs’ land use, are void, invalid and unconstitutional on their face and as applied to the Plaintiffs on the ground that they violate the Religious Land Use and Institutionalized Persons Act;
2. An order preliminarily and permanently enjoining the Defendant, its officers, employees, agents, successors and all others acting in concert with it from applying their laws in a manner that the Religious Land Use and Institutionalized Persons Act, or undertaking any and all action in furtherance of these acts;
3. An award of compensatory damages against Defendant in favor of the Plaintiffs as the Court deems just for the loss of their rights under the Religious Land Use and Institutionalized Persons Act incurred by the Plaintiffs and caused by the Defendant’s laws;
4. An award to the Plaintiffs of full costs and attorneys’ fees arising out of Defendant’s actions and out of this litigation; and
5. Such other and further relief as this Court may deem just and appropriate.

DEMAND FOR JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial by jury in this action on all issues so triable.

Dated: January 23, 2018

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