

ANSELL GRIMM & AARON, P.C.
Joshua S. Bauchner, Esq. (051242013)
365 Rifle Camp Road
Woodland Park, New Jersey 07424
Tel: (973) 247-9000
Fax: (973) 247-9199
Attorneys for the Plaintiffs

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

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

Plaintiffs,

V.

THE BOROUGH OF ALLENHURST,

Defendant.

Civil Action No.: 3:18-cv-00941 BRM-TJB

CONSENT ORDER

I. INTRODUCTION AND BACKGROUND

1. This consent order (“Order”) is entered between Plaintiffs Ohel Yis’hak Sephardic Synagogue of Allenhurst and Rabbi Moshe Shamah (“Plaintiffs”) and Defendant Borough of Allenhurst (the “Borough” or “Defendant”), (collectively “the Parties”).

2. Plaintiffs brought this action to redress alleged violations of the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc, et seq. (“RLUIPA”), that Plaintiffs contend were caused by the Borough’s land use regulations which prohibit a place of worship from locating anywhere in its jurisdiction, and also because such regulations permit nonreligious assembly and institutional land uses.

3. Specifically, Plaintiffs allege that:

a) The Borough’s regulation of land use through its zoning code in which a

house of worship is not a permitted or conditional use in any of the Borough's seven zoning districts and in which all uses not expressly permitted are prohibited, constitutes an imposition of land use regulations that totally excludes religious facilities from its jurisdiction and unreasonably limits religious assemblies, institutions and structures within its jurisdiction.

b) The Borough's regulation of land use through its zoning code in which certain nonreligious assembly and institutional uses such as art galleries, fitness centers and restaurants are permitted by right and religious assembly and institutional uses are prohibited, treats religious assemblies and institutions on less than equal terms as nonreligious assemblies and institutions.

4. The Defendant acknowledges that the statements in paragraphs 3A & 3B above are true of its outdated zoning code, which the Defendant intends to immediately address. Nevertheless, Plaintiffs' above allegations fairly describe the Borough's zoning code as it exists at this time.

5. Plaintiffs and Defendant agree that Plaintiffs' claims should be resolved amicably and without protracted and expensive litigation. Accordingly, Defendant and Plaintiffs agree to the terms of and entry of this Consent Order, as indicated by their signatures below.

6. As such, this Consent Order represents a compromise of a disputed claim, and shall not in any way be construed as an admission of wrongdoing or liability on the part of any Party. Therefore, the parties shall be responsible for their own attorneys fees and costs associated with this action.

7. As indicated by the signatures below, the Parties agree to the entry of this Order. Therefore, it is hereby ORDERED, ADJUDGED and DECREED as follows:

II. JURISDICTION AND VENUE

8. The subject matter jurisdiction of this Court is founded upon 28 U.S.C. §1331 (federal question jurisdiction) in that this action is brought under 42 U.S.C. § 2000cc, et seq. and 42 U.S.C. §1983.

9. The Parties agree that venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) in that all of the events giving rise to the claims herein occurred in the District of New Jersey, and Defendant is subject to personal jurisdiction in this District as of the commencement of this action and the service of the Summons and Complaint.

III. SETTLEMENT AGREEMENT

10. The Borough hereby agrees that Plaintiffs shall be permitted to use the real property located at 108 Allen Avenue, Allenhurst, New Jersey, 07711 as a place of worship. The Borough agrees that 108 Allen Avenue shall hereby be deemed to be zoned as having the additional permitted use of "Church or other house of worship," which permitted use shall apply for as long as the property continues to be used by the Plaintiffs, or its successors, for that purpose. The Borough shall agree to process any applications by Plaintiffs respecting the property for such use including, but not limited to, Certificate of Appropriateness, in good faith and without discrimination or undue delay.

IV. ENFORCEMENT

11. The Court shall retain jurisdiction to enforce the terms of and resolve any disputes arising under this Consent Order, including a proceeding that would nullify or have the effect of nullifying any portion of this Consent Order.

12. Upon the entry of this Consent Order, the case will be dismissed with prejudice. In the event that either Party needs to enforce this Consent Order, they can petition the Court for appropriate relief at such time.

V. COSTS OF LITIGATION


13. Each party to this litigation will bear its own costs and attorney's fees associated with this litigation.

ENTERED THIS ²⁴ DAY OF JANUARY, 2018.

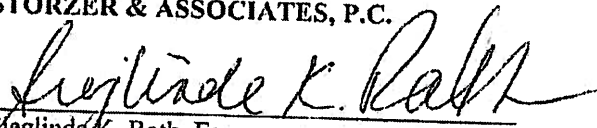

THE HON. BRIAN R. MARTWOTTI
UNITED STATES DISTRICT JUDGE

AGREED TO:


ANSELL GRIMM & AARON, P.C.


Joshua S. Batiehner, Esq. (051242013)
365 Rifle Camp Road
Woodland Park, New Jersey 07424
Tel: (973) 247-9000
Fax: (973) 247-9199

STORZER & ASSOCIATES, P.C.


Sieglinde K. Rath, Esq.
1025 Connecticut Ave., N.W. Suite 1000
Washington, D.C. 20036
Tel: 202.857.9766
Fax: 202.315.3996
Attorneys for Plaintiffs

BIRDSALL & LAUGHLIN, LLC


David A. Laughlin, Esq.
Attorneys for Defendant,
The Borough of Allenhurst