

DATE: October 4, 2023

TO: Andria Wingett, Interim Director Development Services, City of Hollywood, Florida

FROM: Barbara J. Riesberg, Taylor English Duma, LLP, Outside Staff Counsel

SUBJECT: Analysis of Bet Midrash Zoning Relief Request to establish a K-12 Educational School Facility

Request

On July 21, 2023, Bet Midrash Ohr Ha Chayim Ha-Kadosh, Inc. (“Bet Midrash” or the “Applicant”) submitted a General Application for Zoning Relief requesting “under [Section] 5.8 of Land Development Reg[ulations] – Zoning Approval Under RLUIPA” for property located at 1720 Harrison Street, Hollywood, Florida (the “Application”). No further information has been submitted by Applicant in support of the Application despite request from the City. *See* August 8, 2023, Letter to Jason Gordon seeking additional information, including a Criteria Statement in accordance with the City’s Zoning and Land Development Regulations. The August 8 Letter and the Application can be found in Attachment VIII.

Previously, the Applicant sought a special exception for K-12 Jewish educational school. Accordingly, this analysis assumes the Applicant seeks zoning relief for the establishment of a K-12 Jewish educational school.

Zoning Relief Procedures

The City’s Zoning Relief Procedures are codified at Section 5.8 of the City of Hollywood Zoning and Land Development Regulations and appear in Attachment XV. The first sentence of section 5.8 reads as follows:

In order to comply with federal and state laws implementing this Code and to avoid the possibility of costly litigation, zoning relief from this Code may be granted by the City Commission pursuant to this Section.

Section 5.8(E) sets out the criteria to be considered in determining whether the zoning relief request shall be granted or denied. As stated therein,

... the applicant shall be required to establish:

1. The applicant is a potential claimant under a federal or state law; and
2. The applicant believes in good faith that the city through implementation of its Zoning and Land Development Regulations has intentionally or unintentionally

violated federal or state law for the reasons stated in the Zoning Relief Request. *The law(s) the city has allegedly violated shall be identified, and the ways in which they have been allegedly violated by the City's Zoning and Land Development Regulations shall be explained with specificity.* (emphasis added)

Analysis of Zoning Relief Criteria

This analysis considers whether the Applicant has established it meets the criteria for zoning relief.

1. Whether the Applicant has established it is a potential claimant under a federal or state law.

Answer: No.

The Applicant references RLUIPA¹ in the Application though it does not claim to be a potential claimant, nor has the Applicant submitted any evidence that it is a potential claimant.

RLUIPA by its terms prohibits a local government from applying zoning laws or regulations in a way that:

- Substantially burdens religious exercise without a compelling justification pursued through the least restrictive means;
- Treats religious uses less favorably than nonreligious assemblies and institutions;
- Discriminates based on religion or religious denomination; or
- Totally or unreasonably restricts religious uses in the local jurisdiction.

It is the Applicant's burden to establish it is a potential claimant. It has not established itself to be a potential RLUIPA claimant based upon the Application.

2. Whether the Applicant has established a good faith belief that the city through implementation of its Zoning and Land Development Regulations has intentionally or unintentionally violated federal or state law for the reasons stated in the Zoning Relief Request.

Answer: No.

The Applicant has presented no evidence to establish it believes in good faith that the City has violated RLUIPA through implementation of its Zoning and Land Development Regulations. Accordingly, it has not established its good faith belief that the City has violated RLUIPA.

¹ "RLUIPA" is the Religious Land Use and Institutionalized Persons Act of 2000. It is codified as federal law.