

February 6, 2025

VIA EMAIL

Bartlett Municipal Planning Commission
c/o Mayor David Parsons
c/o Vice Mayor/Alderman Jack Young
c/o Planning & Economic Development Director Kim Taylor
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Bartlett City Clerk's Office
c/o City Clerk Penny Medlock
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Dear Board of Mayor and Aldermen:

We write again regarding the Bartlett Muslim Society's application for a special-use permit to construct a mosque at 0 Broadway Road (Parcel B0149 00261). Our initial letter and public-records request, dated December 1, 2023, provided an overview of federal and state laws that govern religious land-use zoning requests. As a reminder, both the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA),¹ and Tenn. Code Ann. §4-1-107, impose demanding standards of review for government actions that substantially burden religious practice. Given that the Society's traffic study concludes that the proposed mosque **will not impose any significant changes in traffic**, the City must grant the Society's permit application. Denial would constitute an impermissible and unlawful burden on the Society's religious exercise.

Background: The Bartlett Muslim Society's Special-Use Permit Application

The Society's application first came before the Bartlett Planning Commission at its regularly scheduled meeting on October 2, 2023. Public comment at this meeting was animated and divisive. While several members of the public commented on the proposed building's potential impact on neighborhood traffic, one community member stated in opposition to the permit that "Muslims do not believe in God." Another community member (who also opposed the permit) invited members of the Society to attend his Christian church instead of practicing their Muslim faith. The Planning Commission postponed its decision on the application and directed the Society to conduct an in-depth traffic study.

¹ 42 U.S.C. § 2000cc *et seq.*



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At *significant* cost, the Society retained Dr. Martin E. Lipinski, Ph.D., to conduct the traffic impact study. Dr. Lipinski is an emeritus professor of civil engineering at the University of Memphis, where he previously served as the Chairman of the Civil Engineering Department and the Director of the Intermodal Freight Transportation Institute. He has over 35 years of experience in transportation engineering and has contributed research to several national transportation resources.

Over the course of a year, Dr. Lipinski worked in conjunction with the City’s Engineering Department to conduct a traffic study within the City’s specific parameters. In September 2024, he produced a report that includes over 120 pages of observations, data, and conclusions regarding the impact of the proposed mosque over a three-year timespan.² Dr. Lipinski went to extraordinary lengths to collect the relevant data, even recording traffic patterns at existing mosques in the greater Memphis area so as to better understand how traffic flows specifically at mosques.³ He collected additional data from March 18 through 22 by observing traffic flow and volume at the intersection of Broadway, Memphis-Arlington, and Centralia Roads, as well as the other intersections between Broadway and nearby streets.⁴ Using two metrics—average delay and queue length—he determined the “level of service” at the six-leg intersection during two peak traffic periods (afternoon and evening) and projected any change to the level of service posed by the proposed mosque for both 2025 and 2028.⁵

Dr. Lipinski concluded that, in both 2025 and 2028, there would be “no significant changes in levels of service” at either the six-leg intersection or any of the smaller, nearby intersections if the mosque were to be built.⁶ Even at peak traffic periods, the average delay time and queue lengths are projected to be *virtually unchanged* by the presence of the mosque.⁷

On December 2, 2024, the Planning Commission again reviewed the special use permit application, which now included Dr. Lipinski’s traffic study. Based on the study, Planning & Economic Development Director Kim Taylor provided a “favorable recommendation to Board of Mayor and Alderman with conditions.”⁸ During discussion with Director Taylor, Vice Mayor Jack Young said, “I am absolutely opposed to any kind of facility . . . You can do all the studies you want, but I drive through there a lot. It doesn’t matter to me about a study, I actually live through it.”⁹ Project engineer David Bray and Bartlett Muslim Society representative, Badrul Hossain, then answered several questions posed by commission members regarding the proposed use of the mosque. Mr. Hossain explained that the Society seeks to build this space to accommodate space

² A copy of the traffic study was previously submitted to the Planning Commission. Please contact counsel below if additional copies are needed.

³ Martin E. Lipinski, *Traffic Impact Study*, 4-5 (Sept. 2024).

⁴ *Id.* at 4.

⁵ *Id.* at 5.

⁶ *Id.* at 28, 47.

⁷ *Compare id.* at 19 tbl.10, *with id.* at 39 tbl.23.

⁸ These conditions were “engineering” conditions regarding upgrades to the sewer and drainage systems, among other things. *See* City of Bartlett, *Planning Comm’n Staff Comments*, 2-3 (Dec. 2, 2024).

⁹ City of Bartlett, [Planning Comm’n Regular Meeting](#), (Dec. 2, 2024), at 13:30-14:10.

for both men and women—but mostly young, professional men—to pray during morning and evening prayer times. Mr. Hossain also explained that mosques require separate areas for men and women to pray, which adds to their overall footprint. No questions were asked of Dr. Lipinski regarding his traffic study. The Planning Commission then unanimously voted to provide an “unfavorable recommendation” of the application to the Board of Mayor and Alderman—rejecting the Planning & Economic Development staff’s recommendation.

On February 11, 2024, the Board of Mayor and Aldermen will consider the Bartlett Muslim Society’s application. We urge you to grant the application.

Legal protections for houses of worship in zoning proceedings

As we previously outlined in our December 2023 letter, for decades, cities and towns across the country improperly denied zoning permits and other approvals for houses of worship and congregations seeking to use their property for religious purposes.¹⁰ These denials were often rooted in discrimination against a particular faith or religious practice, even as local officials cited ostensibly “neutral” reasons—such as traffic, parking, or noise concerns—for their decisions.¹¹ To put an end to these harmful zoning procedures, Congress passed the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). Under RLUIPA, if denying a zoning permit would substantially burden an applicant’s religious exercise, the City must demonstrate that the burden is “in furtherance of a compelling governmental interest” and “is the least restrictive means of furthering that compelling governmental interest.”¹²

This legal standard, known as “strict scrutiny,” is “rigorous” and “exceptionally demanding.”¹³ Specifically, “it requires the government to show that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion.”¹⁴ Generalized and speculative concerns relating to traffic, parking, noise, safety, or other factors will *not* overcome the applicant’s religious-freedom rights.¹⁵

¹⁰ See U.S. Dep’t of Justice, [*Report on the Twentieth Anniversary of the Religious Land Use & Institutionalized Persons Act*](#), 3-5 (Sept. 22, 2020).

¹¹ See *id.* at 4.

¹² 42 U.S.C. § 2000cc(a)(1)(A)–(B).

¹³ See *Holt v. Hobbs*, 574 U.S. 352, 364 (2015) (internal quotation marks omitted).

¹⁴ *Id.* at 364-65 (internal quotation marks omitted).

¹⁵ See, e.g., *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 726 (2014) (noting that, under strict scrutiny, the governmental interest cannot be “couched in very broad terms” but must be “focused” on the particular claimant whose religious exercise is substantially burdened) (internal quotation marks omitted); *Columbus Park Congregation of Jehovah’s Witnesses, Inc. v. Bd. of Appeals of City of Chicago*, 25 Ill. 2d 65, 72 (1962) (“[T]o deny plaintiffs the right of worship at this location, upon the speculative fears of traffic congestion, bears no reasonable relation to the general health, safety and welfare.”); *Westchester Day Sch. v. Vill. of Mamaroneck*, 417 F. Supp. 2d 477, 562-63 (S.D.N.Y. 2006), *aff’d*, 504 F.3d 338 (2d Cir. 2007) (“Factors bearing on the public health, safety and welfare, such as traffic, that may suffice to deny a permit for commercial use generally will not suffice to deny an educational or religious use.”); *Fortress Bible Church v. Feiner*, 734 F. Supp. 2d 409, 505 (S.D.N.Y. 2010), *aff’d*, 694 F.3d 208 (2d Cir. 2012).

The City cannot meet this stringent legal standard here. Dr. Lipinski’s traffic study is clear: Any traffic issues near the building site will not be caused by or exacerbated by the mosque. Given the breadth and thoroughness of the traffic study, and the favorable recommendation by the City’s own Planning & Economic Development Director, any purported concern about the mosque’s impact on traffic is not supported by the evidence and would be nothing more than unlawful pretext if used to justify denial of the requested permit.¹⁶ Indeed, *even if* the City could show some minor traffic issues, they would not rise to the level of a *compelling* governmental interest, and RLUIPA would require that the City adopt other, less restrictive measures—rather than outright denial of the permit—to mitigate traffic in the area.

Should the City infringe the Society’s RLUIPA rights, it risks two possible enforcement mechanisms. First, the U.S. Department of Justice (DOJ) has authority to investigate and sue local governments in response to RLUIPA violations.¹⁷ Second, RLUIPA authorizes applicants to file a civil lawsuit.¹⁸ If forced to do so, many plaintiffs also assert violations of other constitutional and statutory provisions, including the Free Exercise Clause of the First Amendment to the U.S. Constitution and state law.¹⁹ Here, Tennessee’s Preservation of Religious Freedom Act—like

(ruling that traffic, parking, and other concerns cited by town as basis for rejecting zoning requests “were contrived for the sole purpose of rationalizing the Town’s denial”); *cf.*, *e.g.*, *Beaulieu v. City of Alabaster*, 454 F.3d 1219, 1234 (11th Cir. 2006) (holding, under strict-scrutiny analysis, that city’s “interests in aesthetics and traffic safety [were] substantial but they [were] not compelling” and could not justify restriction on political signs in residential areas).

¹⁶ Denying the permit on this pretextual ground would suggest official religious bias against the Bartlett Muslim Society and would, therefore, also violate RLUIPA’s separate prohibition on “discriminat[ing] against any assembly or institution on the basis of religion or religious denomination.” 42 U.S.C. § 2000cc(b)(2). Furthermore, to the extent that the City has approved comparable permits for other, nonreligious applicants, a denial here would violate RLUIPA’s separate mandate that “[n]o government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.” *See id.* § 2000cc(b)(1).

¹⁷ *Id.* § 2000cc–2(f). The DOJ’s “Place to Worship Initiative” highlights the agency’s role in carrying out RLUIPA’s protections through investigations of local governmental entities and enforcement lawsuits. U.S. Dep’t of Justice, [Place to Worship Initiative](#) (Nov. 1, 2023).

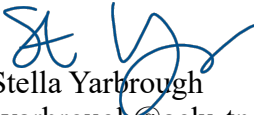
¹⁸ 42 U.S.C. § 2000cc–2(a).

¹⁹ In 2021, asserting claims under RLUIPA and the Free Exercise Clause, the ACLU and the ACLU of Mississippi sued the City of Horn Lake over its discriminatory refusal to approve a construction plan for a proposed mosque. *See Abraham House of God & Cemetery, Inc. v. City of Horn Lake*, No. 3:21-cv-00231-MPM-RP, 2021 WL 5135834 (N.D. Miss. Nov. 3, 2021). Via consent decree, the city was ordered to pay the plaintiffs \$25,000 in damages as well as the plaintiffs’ attorneys’ fees. No. 3:21-cv-00231-MPM-RP, Consent Decree, ECF No. 24, ¶¶ 5-6. The U.S. Court of Appeals for the Sixth Circuit, which covers Tennessee, also held recently that a religious organization was entitled to emergency judicial relief against a township, ruling that the township had likely violated RLUIPA by prohibiting religious gatherings at the organization’s property and demanding that the organization remove a “prayer trail” from the property. *See generally Cath. Healthcare Int’l, Inc. v. Genoa Charter Twp.*, 82 F.4th 442 (6th Cir. 2023), *reh’g & reh’g en banc denied*, No. 22-2139, 2023 WL 7384343 (6th Cir. Oct. 20, 2023).

RLUIPA—similarly prohibits the government from imposing a substantial burden on religious exercise unless the burden is justified under strict scrutiny.²⁰

As explained in our previous letter, the legal protections for houses of worship and religious exercise in this context are robust. “Churches and synagogues cannot function without physical space adequate to their needs and consistent with their theological requirements. The right to build, buy, or rent such a space is an indispensable adjunct of the core First Amendment right to assemble for religious purposes.”²¹ We urge you to take RLUIPA and other applicable laws seriously in considering the Bartlett Muslim Society’s request for a special-use permit. By approving the permit, the City will affirm its commitment to religious liberty for people of all faiths and comply with state and federal law.

Sincerely,



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²⁰ T. C. A. § 4-1-407.

²¹ *Mintz v. Roman Catholic Bishop of Springfield*, 424 F. Supp. 2d 309, 312 (D. Mass. 2006) (quoting 146 Cong. Rec. S. 7774-5 (July 27, 2000)).