

Time for this case to end

Rabbi Menachem Rivkin and Friends of Lubavitch, Inc. (Lubavitch) have tried to convince Baltimore County officials that the expansion of the Towson Chabad House was nothing more than a "residential addition." They now want to try to persuade a federal court that the structure is something else: a place of religious assembly.

They and other plaintiffs claim in *Friends of Lubavitch et al. v. Baltimore County et al.*, that the court-ordered demolition of the building violates the Religious Land Use and Institutionalized Persons Act (RLUIPA). Rabbi Rivkin and Lubavitch may have compromised that claim by their own actions, actions that the Baltimore County Board of Appeals described as dishonest.

Chabad House is an outreach center for Jewish college students located in a residential community a few blocks from Towson University run on behalf of Lubavitch by Rabbi Rivkin. Outreach activities initially took place in the 2,200-square-foot home of Rabbi Rivkin and his family owned by Lubavitch, a Hasidic organization.

In 2016, Lubavitch applied to Baltimore County for a permit to build a 4,400-square-foot "residential addition" to the house, ostensibly to accommodate the rabbi's expanding family. Neighbors protested that the structure was intended to serve not as a residence but as a community center, a use requiring a zoning special exception.

The county Department of Permits, Approvals and Inspections referred the question of whether Lubavitch was entitled to the permit to a hearing officer. The hearing officer held that the question depended upon the ultimate use of the structure, an issue he said he could

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not decide.

The neighbors appealed the hearing officer's decision to the board of appeals. For some reason, the county issued the building permit while the appeal was pending. And Lubavitch, despite being apprised of the risks, began construction.

Members of the appeals board minced no words in determining that the building permit was "dishonestly procured" and that the claim that the structure was merely an addition to a residence "was not credible." The majority found that Lubavitch "had acted in bad faith," and that Rabbi Rivkin's testimony "was not particularly credible on contested points."

The majority described much of Rabbi Rivkin's testimony as appearing "to be coy and disingenuous given all the objective circumstances." Among those circumstances was the fact that the addition has a dining room capable of seating over 120 guests served by a commercially-outfitted kitchen, a cloak room and separate powder rooms for men and women.

The board concluded that the building was not a residence and was being used as a community center. A community center is a commercial use and is not permitted as a matter of right under the property's zoning.

Place of religious assembly

Assuming that their RLUIPA claim

has merit, Lubavitch and Rabbi Rivkin should have sought approval of the addition as a place of religious assembly protected by RLUIPA and created the record accordingly. Instead, they tried to convince the board of appeals that the addition was a residential use. Lubavitch did not seek judicial review of the board's decision.

The demolition order arose out of separate litigation not involving the county. Neighbors of Chabad House sued to enforce a building setback requirement contained in a private covenant binding on the property.

The board of appeals decision came back to haunt Lubavitch in the setback case: Baltimore County Circuit Court Judge Kathleen Cox ordered Lubavitch to raze the structure rather than move it back from the street. Her order is on appeal to the Court of Special Appeals.

Here is the problem that Lubavitch created for itself: The demolition order is based on a decision by the board of appeals in which, because of choices made by Lubavitch and Rabbi Rivkin, the status of the addition as a place of religious assembly was not raised or decided. The RLUIPA claim may not be ripe, and the federal court could refuse to intervene on that basis. That would be the just outcome.

It is the neighbors of Chabad House who are the victims in this case. They already were in litigation over the building for three years when the federal RLUIPA complaint was filed.

In my opinion, Lubavitch and Rabbi Rivkin had the chance to pursue their claims properly and blew it. It is time for this case to end.

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