



Rabbi sues to overturn zoning rules

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BY NICK PETRUNCIO
FREEHOLD BUREAU

FREEHOLD TOWNSHIP — A dispute between an Orthodox Jewish rabbi and the township is being couched as a clash between religious freedom and municipal zoning rules.

The township contends that Rabbi Avraham Bernstein is using his home on Stillwells Corner Road as a house of worship and that the number of people frequently gathering in his backyard are constitutes an infringement on the residential character of the neighborhood.

"This is a zoning issue. We have a zone in which houses of worship are a conditionally permitted use, and in order to establish such a use you have to meet certain conditions," said Duane Davison, the township attorney.

Davison added that Bernstein's property does not meet those conditions.

However, Gerald Marks, a Red Bank attorney who represents Bernstein, said the rabbi is protected by law as a clergyman who is pursuing his religious beliefs in his own home. The gatherings in the backyard are family celebrations being generally mistaken by neighbors as religious ceremonies, Marks said. The rabbi has eight children.

"The importance of this case is the attempted abridgement of the constitutional right to practice your own religion in your home, and that is guaranteed by the First Amendment of the United States Constitution, it's further guaranteed by the New Jersey Constitution and a further act of Congress," the Religious Land Use and Institutionalized Persons Act, Marks said.

The legislation was signed into law in 2000.

The act "prohibits federal, state and local governments, with certain exceptions, from implementing any land-use regulation that imposes a substantial burden on religious activity," said Stuart Meck, the director of the Center for Government Services at Rutgers University.

Meck added, though, that the law does not say what a substantial burden is.

To prevail, a town must show it is acting in furtherance of a compelling governmental interest and the means selected to enforce the law is the least restrictive means, said Meck, who also is a licensed professional planner.

Without commenting specifically on the Bernstein case, Meck said: "Governments tend to lose (cases involving the land-use act) because they often don't have a good defense. It's very hard to come up with a defense where you have to meet both of those prongs."

The federal law also addresses the religious rights of institutionalized people such as prisoners.

Crowds excessive

Davison said that while the state Supreme Court has ruled people have a right to religious use in a home, the meetings of 30 to 70 people at Bernstein's home goes beyond that use.

"It's crossed over to a substantial degree such that it needs the municipal approvals to have a house of worship, and that's all it comes down to," Davison said.

Marks said that even if those gatherings were religious ceremonies, they still would be protected under the law. He said the only thing the rabbi is doing is praying in his house, and in order to pray appropriately, according to Orthodox Jewish law, a minyan, or group of 10 men, is needed. Otherwise, the Torah cannot be read and other prayers cannot be recited, he said.

Moreover, Bernstein — as a part of Chabad, one of the largest branches of Hasidic Judaism — organizes community, educational and social activities, Marks said, but all of those take place at locations such as the Freehold Raceway Mall.

Township zoning officials had sent Bernstein notices before and after he applied to build an addition, informing him he is in violation of municipal land-use ordinances. His application also was denied because the township said he was using his home as a house of worship.

Zoning Officer Guy Leighton, who could not be reached for comment, filed a complaint in Municipal Court. A hearing was set for May 15 but was adjourned until June 26.

Marks filed a lawsuit Tuesday in Superior Court in Freehold. He said he does not expect the Municipal Court to act before there is a resolution in the higher court.

Davison said the Bernstein suit is premature because he has not exhausted other avenues of appeal. Davison said Bernstein can declare his home a house of worship on an undersized lot and apply for proper variances for that use from Zoning Board of Adjustment. Or the rabbi can apply to have the board interpret the zoning ordinance with the possibility the building will not be considered a house of worship, Davison said.

Nick Petruncio: (732) 308-7752 or npetruncio@app.com