

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CONGREGATION KOL AMI and RABBI ELLIOT HOLIN,	:	
	:	
	:	CIVIL ACTION NO.: 01-1919
Plaintiffs,	:	
v.	:	
	:	
ABINGTON TOWNSHIP; BOARD OF COMMISSIONERS OF ABINGTON TOWNSHIP; THE ZONING HEARING BOARD OF ABINGTON TOWNSHIP and LAWRENCE T. MATTEO, JR., in his official capacity as Director of Code Enforcement of Abington Township,	:	JURY TRIAL DEMANDED
	:	
Defendants.	:	

AMENDED COMPLAINT

Comes now the Plaintiffs Congregation Kol Ami (hereinafter “the Congregation” or “Kol Ami”) and Rabbi Elliott Holin, by and through their attorneys, and for their Amended Complaint state as follows:

NATURE OF ACTION

1. This suit seeks relief from the clear and purposeful deprivation of the Plaintiffs’ rights to freedom of speech, freedom of religion, freedom of assembly, due process and equal protection of the laws by the Defendants, acting under color of the law. In this action, Plaintiffs allege that the zoning laws of Abington Township violate the United States and Pennsylvania constitutions and federal and state law by depriving Plaintiffs of the ability to use their 10.9-acre property – which has housed religious institutions for forty-four years – as a place to assemble and meet for worship. Abington Township, through its officials, wrongfully discriminates against Plaintiffs and

substantially burdens their religious exercise, expression and assembly through the enforcement of its Zoning Ordinance by denying Plaintiffs the ability to use their property and chapel – which was previously used by Catholic and Greek Orthodox orders as a place of worship and as a convent or monastery.

2. Plaintiffs seek injunctive, declaratory and compensatory relief under the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc et seq. (“RLUIPA”), 42 U.S.C. § 1983, and the Pennsylvania Municipalities Planning Code, 53 P.S. §§ 11001-A through 11006-A, for their injuries suffered as a result of Defendants’ unlawful conduct. Defendants (1) impermissibly burden Plaintiffs’ religious exercise, expression and association by prohibiting Plaintiffs’ use of the property, and by denying them either a variance or continuation of nonconforming use to allow Plaintiffs the ability to use the property and chapel for worship purposes; and (2) discriminate against Plaintiffs through that prohibition, in violation of Plaintiffs’ rights under RLUIPA, the Free Exercise, Free Speech, Free Assembly, Due Process and Equal Protection clauses of the United States and Pennsylvania Constitutions and Pennsylvania state law. Plaintiffs also seek costs and attorney's fees.

JURISDICTION AND VENUE

3. This Court has jurisdiction over all federal claims in the Complaint as arising under the United States Constitution pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and (a)(4). This Court has supplemental jurisdiction over all state law claims under 28 U.S.C. § 1367(a).

4. Venue lies in this district pursuant to 28 U.S.C. §1391. Both Defendants and Plaintiffs are located in this district. All events giving rise to this action occurred in this District.

PARTIES

Plaintiffs

5. Plaintiff Congregation Kol Ami is a Pennsylvania non-profit corporation. It has operated as a religious institution and held public worship services in and around the greater Philadelphia area since 1994. It has approximately 200 member-families, who live in and around Abington Township. Its purpose is to engage in religious exercise by conducting services and operating a two-day per week Hebrew school. Kol Ami currently holds religious activities and worship services in three different locations in Abington Township and Cheltenham Township. The disjointed nature of the Congregation's activities, together with the lack of adequate facilities and inability to participate in all of its desired religious activities, have constituted a substantial burden on its religious exercise.

6. Plaintiff Elliot Holin, 1661 Tuckerstown Road, Dresher, PA 19025, is the Rabbi of Congregation Kol Ami.

Defendants

7. Defendant Abington Township is a first-class township organized and existing by virtue of the laws of the Commonwealth of Pennsylvania and is empowered to act through its governing body, its officials, employees and official bodies. The Township is empowered by the Commonwealth of Pennsylvania to regulate and restrict the use of land and structures within the Township's borders.

8. Defendant Board of Commissioners of Abington Township (hereinafter "Board of Commissioners") is the duly elected executive body of Abington Township. The members of the Zoning Hearing Board of Abington Township (hereinafter "ZHB") are appointed by the Board of

Commissioners.

9. Defendant ZHB of Abington Township is the body that is delegated the power to hear and decide appeals from determinations made by an administrative official in the enforcement of the Revised Abington Township Zoning Ordinance (“Ordinance”), dated May 9, 1996, to hear and decide special exceptions according to the terms of the Ordinance, and to authorize, upon appeal, variances from the terms of the Ordinance.

10. Defendant Lawrence T. Matteo, Jr., is Director of Code Enforcement for Abington Township. He is sued in his official capacity only.

STATEMENT OF FACTS

The Congregation

11. Congregation Kol Ami and Rabbi Holin, as a main part of their mission, conduct weekly worship services either on Friday evenings or Saturday mornings and engage in religious education, celebrate and/or observe holidays on the Jewish calendar, and other religious activities.

12. Kol Ami currently holds worship services in rented space at Gratz College in Melrose Park. Kol Ami also holds religious school in rented space at Congregation Melrose B’nai Israel Emanuel in Cheltenham Township. The Congregation holds High Holy Days at the Keswick Theater in Glenside.

13. The Congregation’s lack of a permanent facility has been a hardship on its religious exercise. Since 1997, the Congregation has been seeking a permanent location from which to carry out its religious mission and to serve the community.

14. Among the criteria that Kol Ami deems necessary in selecting a site for worship are

existing structures readily adaptable to religious use, appropriate outdoor spaces for reflection and celebration of such religious holidays as Sukkot, access to its members, and ability to accommodate its current religious exercise and future growth.

15. The Congregation is unable to properly conduct religious services, such as Bar and Bat Mitzvahs, in a rented auditorium. The lack of a central location from which people can receive information and interact with their fellow congregants makes it much more difficult to schedule religious and educational events. Several religious events have been cancelled because of the Congregation's lack of a permanent facility. Furthermore, the Congregation has been limited in the number of new religious programs that it can offer.

16. The Congregation also requires a site that will attract new members in order to spread its religious message. The fact that the Congregation does not have a permanent physical facility deters potential members from joining the Congregation and adversely affects the members' sense of religious community.

17. The Congregation has been unable to sustain its membership without an adequate permanent facility.

18. The Congregation's religious education activities have been harmed by a lack of an adequate permanent facility.

19. Although the Congregation had spent over two years in an exhaustive search for a new property, it had not been able to find any that met its needs until it found the property and chapel located at 1908 Robert Road, Abington Township, Pennsylvania (hereinafter the "Sisters' Property").

The Sisters' Property and Its Prior Religious Uses

20. In early 1999, the Congregation began negotiations with the Sisters of the Holy Family of Nazareth (the "Sisters"), regarding the purchase of 1908 Robert Road. The Sisters' Property is located in Abington Township and its chapel and other structures occupy approximately 27,000 square feet.

21. The Sisters' Property has been used by two other Christian denominations for purposes of religious exercise, including worship services, for forty-four years.

22. The Sisters of the Holy Family of Nazareth religious Order (the "Order") converted the property to an institutional use as a convent, for religious services, for retreats, and for other religious ceremonies. The Order dramatically altered the property to accommodate this institutional use. In 1957, the Sisters added a Chapel and a one-story addition for use as a dormitory, which still exist. The Sisters' Property had accommodated up to eighty Sisters at a time.

23. The Chapel includes an altar, a sacristy, the Stations of the Cross, Confessionals, and stained glass windows.

24. Worship services occurred daily in the Chapel.

25. The Sisters' Property included, and still includes, a Library, which was used for spiritual and educational activities.

26. The Sisters' Property included, and still includes, a Hall, which was used for work and recreational activities.

27. The Sisters' Property included, and still includes, a Dining Room, which was used for group meals.

28. Certain religious ceremonies took place at the Sisters' Property on Roman Catholic

holidays such as Lent, Advent, the Feast Day of the Foundress, Thanksgiving, Christmas, Easter, and other Holy Days. These ceremonies filled the Chapel to capacity.

29. The Sisters also used the Sisters' Property for religious classes.

30. In 1957, the Sisters' Property was located in a "V" Residential Zoning District, which permitted "religious use[s]" by special exception.

31. In 1995, the Sisters leased the property to the Greek Orthodox Monastery of the Presentation of Our Lord into the Temple.

32. On May 2, 1996, Defendant ZHB approved a variance for the Greek Orthodox Monastery's religious institutional use of the Sisters' Property, finding that such use "would not adversely affect the health, safety, or welfare of the community," that denying the "application would impose an unnecessary hardship on the applicant," that the "previous non-conforming use was not abandoned," and that "the requested relief is the minimum relief necessary to avoid an unnecessary hardship." Defendant ZHB characterized the use of the Sisters' Property as "its most recent institutional use as a convent" and Defendant ZHB found that the Sisters "desired to sell the property for a similar nonconforming use".

33. The Greek Orthodox Monastery used the property as a monastery, for religious services, for family retreats, academic activity, and prayer groups until 1999.

34. The Greek Orthodox Monastery decided that it could not afford to purchase the Sisters' Property and vacated in September, 1999.

35. The Sisters' Property presently is 10.9 acres. The structures on the property contain a gross area of approximately 27,000 square feet, including a 2,500 square foot chapel. The chapel can seat two hundred fifty people.

36. The Congregation began negotiations with the Sisters in 1999 to purchase the Sisters' Property, which culminated in a purchase agreement reached in August 1999. The purchase agreement, which is contingent upon receiving zoning approval, expires during May, 2002. Under the terms of the agreement, the Congregation has paid the Sisters \$137,500.00 in deposits and carrying costs. Costs to the Congregation continue to accrue at a rate of \$20,000 per year.

The Zoning Ordinance

37. The Sisters' Property is currently located in a "R-1 Residential District," as defined by the Zoning Ordinance § 301. The R-1 District permits agriculture, livestock, single family detached, conservation/recreation preserve, estate dwelling, single family cluster, townhouse, village house uses as of right. Permitted accessory uses are residential accessory buildings, recreational vehicles, antenna systems, fences/walls, home occupation, swimming pools, tennis/sport courts and play structures. The District also permits such assembly uses as municipal complexes, outdoor recreation, riding academies by special exception. Places of worship are not mentioned in the R-1 District.

38. Places of worship are not permitted in *any* of Abington Township's other residential districts: R-2, R-3, and R-4, as defined by Zoning Ordinance §§ 302-304, either by right or by special exemption or conditional use. "Day Care Centers" are permitted by special exception in the R-4 District.

39. Places of worship are not permitted in Abington Township's TC (Town Commercial) District, as defined by Zoning Ordinance § 400, by right or by special exemption or conditional use, although permitted uses include "clubs," "libraries," "museums," "taverns," and other assembly uses. "Performing Theaters" are permitted as a conditional use.

40. Places of worship are not permitted in Abington Township's SC (Special Commercial) District, as defined by Zoning Ordinance § 401, by right or by special exemption or conditional use, although permitted uses include "Athletic Clubs," "Indoor Recreation," "Funeral Homes," "Taverns," "Day Care" and other assembly uses. "Amusement Parks" and "Movie Theaters" are permitted as conditional uses.

41. Places of worship are not permitted in Abington Township's PB (Planned Business) District, as defined by Zoning Ordinance § 402, by right or by special exemption or conditional use, although permitted uses include "Amusement Arcades," "Athletic Clubs," "Cultural Centers," "Libraries," "Museums," "Taverns," and other assembly uses. "Amusement Parks" and "Movie Theaters" are permitted as conditional uses. "Theaters" are permitted by special exception.

42. Places of worship are not permitted in Abington Township's SI (Suburban Industrial), RC (Recreation/Conservation), FP (Flood Plain), LP (Land Preservation), and SS (Steep Slope) Districts, as defined by Zoning Ordinance §§ 502, 503, 600, 601, 602 by right or by special exemption or conditional use. "Country clubs," "Hunt Clubs," and "Lodges" are permitted uses by special exception in the RC District.

43. Places of worship are permitted *only by special exception* in Abington Township's AO (Apartment/Office) District, as defined by Zoning Ordinance § 403. Uses permitted *as of right* include "Clubs," "Community Centers," "Cultural Centers," "Libraries," "Museums" and other assembly uses.

44. Places of worship *are* permitted as of right in Abington Township's CS (Community Service) and M (Mixed Use) Districts, as defined by Zoning Ordinance §§ 500, 501.

45. Through its Zoning Ordinance, Abington Township has completely eliminated the

possibility of new places of worship from locating in residential districts as permitted, conditional, or special exception uses.

46. Through its Zoning Ordinance, Abington Township discriminates against new religious institutions such as Congregation Kol Ami in favor of traditional, long-standing churches.

47. The following churches exist in residential districts in Abington Township: Abington Baptist Church, Abington Methodist Church, All Saints Pentecostal Holiness Church of God, Arosley Community Chapel, Bethel Baptist Church, Calvary Baptist Church of Northeast Phila., Carmel Presbyterian Church, First Baptist Church of Crestmont, First Baptist of Glenside, First Church of Christ Scientist, First Mennonite Church, Glenside Bible Church, Glenside Evangelical and Reformed Church, Glenside Methodist Church, New Bethel African M.E. Church, Orthodox Friends Meeting, Our Lady Help of Christian Sorrows R.C. Church, Reformed Presbyterian Covenant Church, Reorganized Church of Latter Day Saints, St. John of the Cross R.C. Church, St. Luke the Evangelist R.C. Church, St. Mark's Reformed Episcopal Church, St. Paul's Lutheran Church, St. Peter's Episcopal Church, Temple Zion, Ukrainian Catholic Church. Upon information and belief, no Jewish synagogues or other non-Christian places of worship exist in residential districts.

48. Defendant ZHB stated that the question of whether "any churches or synagogues [were] located in Abington Township within or immediately next to residential districts," had "absolutely no relevance to this case."

49. At least thirty-seven other Christian churches exist in Abington Township. Only one other synagogue exists, which is located in a PB district. Upon information and belief, Abington Township's Jewish population comprises approximately 20% of its population.

50. A “Place of Worship,” as defined by Zoning Ordinance § 706.E.10, as a “tax-exempt institution that people regularly attend to participate in or hold religious services, meetings, and other activities related to religious ceremonies.” The prior uses of the Sisters’ Property by the Sisters and by the Greek Orthodox Monastery fit in the Township’s own definition of “Place of Worship.” The Township had consistently treated those two uses of the Property as “Places of Worship” — until Congregation Kol Ami requested a continuation of that use. Mr. Penecale, Defendants' Officer in charge of Planning and Zoning enforcement, was asked why the Township then suddenly concluded that the Sisters’ prior use was not a “Place of Worship” after all, but instead, a single family residence. Mr. Penecale replied that, according to the Christian religion, the Sisters were all members of the same family, because they were all married to the same person, God.

51. The definition of religious uses in previous Abington Township zoning ordinances dating back to Ordinance No. 1189, dated July 14, 1966, included the following: “A single family residence, Church, rectory, parish house, convent, monastery, or similar religious institution”.

The Application to the ZHB

52. On October 21, 1999, counsel for the Sisters requested a determination from the Abington Township that the proposed use by the Congregation is a continuation of the prior nonconforming religious use of the Sisters’ Property. On November 12, 1999, Mark A. Penecale, Planning & Zoning Officer for Abington Township, acknowledged to the Sisters that the proposed use by the Congregation is a “non-conforming use of the property.”

53. On or about December of 1999, the Congregation submitted an application to the ZHB for a determination that the proposed use by the Congregation is a continuation of a prior nonconforming religious use under § 1110D of the Zoning Ordinance, a special exception under §

706E10(c) of the Zoning Ordinance, a special exception under § 1110J of the Zoning Ordinance, a use variance under § 301.2 of the Zoning Ordinance to permit its use at the Sisters' Property and such other relief as may be necessary and appropriate in connection with the Congregation's proposed use. In the alternative, the Congregation requested that the ZHB find that the proposed use of the Sisters' Property was the continuation of a nonconforming religious use under § 1110D of the Zoning Ordinance.

54. The ZHB held hearings on this Application on January 18, February 29, March 2, March 21, June 20, June 28, July 18, September 26, November 2, December 19, 2000, January 30, 2001 and February 6, 2001.

55. The Congregation's request was to use the Sisters' Property for most of the same purposes as the Sisters and the Greek Orthodox Monastery: for worship, prayer, religious education, religious meetings, religious gatherings and ceremonies, but not as residences.

56. The Congregation's requested use would have had no scheduled activities for Mondays, Tuesdays, Thursdays and alternate Fridays and Saturdays. Hebrew classes would have taken place on Wednesdays from 4:00pm to 8:00pm. On alternate Fridays, Shabbat services would have taken place from 7:30pm to 9:00pm. On alternate Saturdays, Shabbat services would have taken place from 10:00am to 11:45am. Religious classes would have taken place from 10:00am to 12:00 noon on Sunday mornings. This totals less than eight (8) hours of scheduled activities on a weekly basis.

57. The Congregation's requested use would also have included four (4) High Holiday services per year, religious meetings, and occasional Bar and Bat Mitzvah services.

58. The Congregation would hold its worship services in the Chapel. The Dining Room

would be used for receptions. The Hall would be used for Oneg Shabbat gatherings, which are light food and refreshment following worship services. The areas used as classrooms by the Sisters would be used as classrooms by the Congregation. The area used as dormitory rooms by the Sisters would be used for administrative purposes and classrooms by the Congregation.

59. The Application did not request permission to alter any of the structures on the Sisters' Property (other than to add a corridor which would constitute less than 0.9% of the total square footage). The Application requested an alteration of the driveways and parking areas to comply with current Abington Township standards and to provide improved vehicular circulation.

60. The Applicant presented substantial evidence during the course of the hearings in support of the Application, which included testimony from Charles Guttenplan, AICP, PP, a land planner; John Leapson, PE, a civil engineer; Kevin Johnson, PE, a traffic engineer, Stuart Rosenberg, AIA, an architect, and Sondra Slade, Esquire, an attorney, all of whom were accepted by the ZHB as expert witnesses in their respective fields. Sister Michael Ann Delaney, Provincial Superior of the Sisters of the Holy Family of Nazareth, David Sloviser, President of the Congregation and Elliot Holin, Rabbi of the Congregation, also testified in support of the Application. Expert testimony presented by the Congregation clearly demonstrated that the proposed use would not be detrimental to the health, safety, and welfare of the community. The neighbors who own properties immediately adjacent to the Sisters' Property also testified in favor of the Application.

61. Strong opposition to the Congregation's Application was voiced by various neighbors of the Sisters' Property. Certain neighbors testified before the ZHB that they objected to the Congregation's proposed use regardless of any conditions or restrictions that may be agreed to or imposed. One of these neighbors stated that "I don't want a synagogue in my backyard."

62. On March 20, 2001, the ZHB issued its Opinion and Order denying the relief requested by the Congregation in the Application (the “2001 Opinion”). Defendant ZHB in its 2001 Opinion rejected all arguments and legal positions propounded by the Congregation. The 2001 Opinion stated that most of the witnesses who testified were not credible. The 2001 Opinion found the testimony offered by the opposition neighbors to be credible.

63. The ZHB, in its 2001 Opinion entered findings which were diametrically opposed to findings entered on similar issues on the same set of facts in Appeal No. 95-33. Similarly, though claiming elsewhere that the Congregation’s religious activity at the Sisters’ Property would somehow threaten the health, safety and welfare of Abington citizens, the ZHB later admitted that the Congregation would “not adversely affect the health, safety and welfare of the community” and “is consistent with the spirit, purpose, and intent of the Ordinance.”

64. The Congregation related to the neighbors and to the ZHB that it would make any reasonable alterations necessary to minimize whatever impact the proposed use may have had, such as installing berms, landscaping, and fencing, relocating interior driveways, hiring traffic monitoring personnel, if and when needed, and curtailing hours of evening activities. These suggestions were dismissed by the neighbors out of hand.

65. The Congregation informed the ZHB of the applicability of the Religious Land Use and Institutionalized Persons Act of 2000, on November 2, 2000; however, the ZHB held that Kol Ami and the Sisters failed to properly develop and timely raise a claim under the Act and that such claims were therefore waived.

66. Abington Township’s variance procedure, as described by Zoning Ordinance §§ 1201-1202, incorporates a system of individualized assessments for making such determinations.

In considering a request for a variance, the ZHB must:

- A. Give full consideration to the size, scope, extent and character of the exception or variance desired and assure itself that such request is consistent with the spirit, purpose, and intent of this Ordinance.**
- B. Consider the suitability of the particular property for the kind of modification, change, or use requested within the context of the zoning classification of the area concerned.**
- C. Take into consideration the character and type of development in the area surrounding the location for which the request is made, considering, among other things, the zoning classification(s) in the area; the kinds of uses in the vicinity; and the presence or absence in the neighborhood of conditions or uses which are the same as or are similar to the condition or use for which the applicant seeks approval.**
- D. Make certain that the proposed modification or change is appropriate, will not substantially injure or detract from the use of surrounding property or from the character of the neighborhood, and is consistent with the Comprehensive Plan.**
- E. Make certain that the grant of a special exception or a variance will not:**
 - 1. Overcrowd the land or create an undue concentration of population.**
 - 2. Impair an adequate supply of light and air to adjacent property.**
 - 3. Increase the danger of fire or otherwise endanger the public safety.**
 - 4. Substantially increase congestion in the public streets or adversely affect Township transportation.**
 - 5. Adversely affect or unduly burden public water, sewer, school, police, fire, park or other public facilities.**
 - 6. Adversely affect in any other manner the public health, safety, morals or general welfare.**
- F. Impose such conditions, in addition to those required in this Ordinance, as are necessary to ensure that the general purpose and intent of this article is complied with, and that the use of the property adjacent to the area included in the proposed change or modification is adequately safeguarded. Such conditions may relate to, but are not limited to, harmonious design of buildings, aesthetics, landscaping and screening, hours of operation, lighting, numbers of**

persons involved, allied activities, ventilation, noise, sanitation, safety, smoke and odor control and the minimizing of noxious, offensive or hazardous elements.

- G. In the case of a request for a special exception or variance, it shall be the responsibility of the applicant to present such evidence as is necessary to demonstrate that the proposed use or modification complies with the pertinent criteria or standards set forth in this Ordinance.**

Section 1201.3 Provision for Variance Consideration

- A. In the case of a variance, make certain that any approval is clearly and specifically consistent with laws governing the grant of variances.
- B. That the request is based upon exceptional circumstances or conditions applicable to the property for which the variance is sought; which circumstances or conditions are not generally present in the district or neighborhood in which such property is located;
- C. That a strict interpretation or literal enforcement of the provisions of this chapter would result in an unnecessary hardship; which hardship is caused by the particular physical surroundings, shape or topographical conditions of the specific structure or land involved.
- D. That the special conditions or circumstances forming the basis of the request for the variance are not the result of actions of the applicant or the owner.
- E. That in the case of a variance from the area or dimensional requirements of this Ordinance, the unique circumstances resulting in the hardship make it clearly impracticable to develop the property in strict conformity with the Ordinance for a use permitted in the district.
- F. That in the case of a variance from the use requirements of this Ordinance, the use or continued use of the property for any use permitted in the district is virtually impossible because of unique circumstances applying solely to the property in question, and a literal interpretation of this Ordinance would deprive the owner of the beneficial use of the property.
- G. That the variance, if authorized:
 - 1. Complies with each requirement of law contained in the statement of Board powers.

2. Is not contrary to the public interest and will not be detrimental to the public welfare.
3. Will represent the least possible modification necessary to afford the required relief.
4. The ZHB shall have exhausted all remedies to variances and non-conforming properties which are outlined and expressed in this Ordinance.

67. § 1110C of the Ordinance sets forth Abington Township's discretionary procedures for registering non-conforming uses. The Zoning Ordinance does not contain any specific regulations concerning the determination as to what is a non-conforming use and what non-conforming uses may be continued. However, the Township has never adhered to its own procedure.

68. Section 1110J of the Ordinance permits the expansion of a nonconforming use subject to the following: "A use that does not conform to the use regulations of the district in which it is located may not be expanded by more than twenty-five percent (25%) of the total ground-floor square footage devoted to the non-conforming use that existed on the date that such use first became nonconforming. Such expansion shall be permitted only by special exception, provided:

- a. The proposed expansion shall take place only on the lot containing the nonconformity or upon lots bordering the lot containing the nonconformity, provided all such lots were held in single and separate ownership at the time the use became nonconforming.
- b. The proposed expansion shall conform with the dimensional requirements of the use to be expanded, or the requirements of the district in which the said expansion is located, whichever is the more restrictive, as continued in this Ordinance. Such requirements shall include but not be limited to those pertaining to area, building height, parking, sign, yard, and buffer yard."

69. Many of the statements set forth in the 2001 Opinion evidence the Defendants' intent to violate the Plaintiffs' constitutional and statutory rights, including but not limited to:

- a. "Sister Michaelann Delaney did not have first hand knowledge of the use of the Property."
- b. "As a growing congregation desiring to meet the needs of those who wish to join, Kol Ami has no intention of limiting the size of its congregation."
- c. "David Sloviter, President of Kol Ami, testified that it has no intention of limiting the number of classes or classrooms that are to be used for these classes."
- d. The Congregation "will not agree to a condition limiting the number of services or the number of rabbis who conduct these services."
- e. "Property values will be adversely affected by the proposed use of the Property."
- f. "Charles W. Huntoon, a licensed real estate broker, testified that property values would be adversely affected by Kol Ami's proposed use of the Property, as it would take a longer amount of time to sell property which would reduce the value of the home."
- g. "There will be an adverse impact on the surrounding neighborhood from the proposed use of the Property by Kol Ami."
- h. "Sister Michaelann Delaney's testimony regarding the use of the Property from 1951 to 1995 is not credible as to the time period other than when she resided there, as she only resided at the Property from 1963 to 1965. . . ." that "she did not have firsthand knowledge of the use of the Property. . . ." and that the testimony of the opposing neighbors was more credible than the testimony of Sister Michaelann Delaney.
- i. "The testimony presented on behalf of the application regarding the usage of the Property and the space devoted to those uses was not credible."

Legal Challenge

70. Congregation Kol Ami intends to use the Sisters' Property for purposes of religious exercise, including worship services, religious education, fellowship, and other religious meetings and programs.

71. Abington Township completely prohibits new places of worship from locating in

residential districts as permitted, conditional or special exception uses in violation of the Congregation's free exercise, free speech, freedom of assembly and due process rights, and its rights under the Religious Land Use and Institutionalized Persons Act.

72. The actions of Abington Township, acting through its ZHB, to deny Congregation Kol Ami's request for a use variance and for a continuance of the nonconforming religious use of the Sisters' Property discriminate against religious assembly uses and in favor of nonreligious assembly uses in violation of the Congregation's free exercise, free speech, equal protection, freedom of assembly, and due process rights, and its rights under the Religious Land Use and Institutionalized Persons Act.

73. The actions of Abington Township, acting through its ZHB, to deny Congregation Kol Ami's request for a use variance and for a continuation of the nonconforming religious use of the Sisters' Property discriminate against new places of worship, and in favor of established places of worship, in violation of the Congregation's free exercise, free speech, equal protection, freedom of assembly, and due process rights, and its rights under the Religious Land Use and Institutionalized Persons Act.

74. The actions of Abington Township, acting through its ZHB, to deny Congregation Kol Ami's request for a use variance and for a continuation of the nonconforming religious use of the Sisters' Property discriminate, against Jewish places of worship, in violation of the Congregation's free exercise, free speech, equal protection, freedom of assembly, and due process rights, and its rights under the Religious Land Use and Institutionalized Persons Act.

75. The actions of Abington Township, acting through its officers, to deny Congregation Kol Ami's request for a use variance and for a continuation of the nonconforming religious use of

the Sisters' Property, unreasonably limit places of worship within the R-1 District and other residential districts, in violation of the Congregation's free exercise, free speech, equal protection, freedom of assembly, and due process rights, and its rights under the Religious Land Use and Institutionalized Persons Act.

76. The actions of Abington Township, acting through its officers, to deny Congregation Kol Ami's request for a use variance and for a continuation of the nonconforming religious use of the Sisters' Property were arbitrary, capricious and unreasonable.

77. Plaintiffs' inability to hold worship services and other religious activities in a residential area, and at 1908 Roberts Road in particular, constitutes a substantial burden on its religious exercise, in violation of the Congregation's free exercise, free speech, equal protection, freedom of assembly, and due process rights, and its rights under the Religious Land Use and Institutionalized Persons Act. Plaintiffs' inability to use its property for worship services has harmed the Congregation's membership and its ability to engage in religious programs.

78. The Township's prohibiting the Plaintiffs' worship services and other religious activities in any residential zone, and at 1908 Roberts Road in particular, does not serve any compelling governmental interest.

79. Places of worship are inherently proper uses in residential districts.

80. Abington Township's Zoning Ordinance, and the application of its Ordinance preventing the Congregation from locating in the Sisters' Property, affects commerce among the several States.

81. Under the Zoning Ordinance, the Defendants have in place procedures that permit the government to make individualized assessments of the proposed uses for the property involved.

82. The 2001 Opinion was arbitrary, capricious and not supported by substantial evidence.

83. Defendant ZHB committed an error of law in failing to find that the proposed use was a continuation of a prior nonconforming religious use.

84. Defendant ZHB committed an error of law in failing to find that the Sisters and the Monks used the Sisters' Property for religious purposes.

85. Plaintiffs have been irreparably harmed by this denial of their rights under the Constitutions and Laws of the United States and the Commonwealth of Pennsylvania.

86. Congregation Kol Ami has incurred over \$500,000.00 in fees and costs.

87. Plaintiffs must continue to pay rental on three separate facilities to carry out its religious functions as a result of Defendants' discriminatory and burdensome actions against them.

88. Plaintiffs have suffered and continue to suffer injury as a result of Defendants' discriminatory and burdensome actions against them.

COUNT I

Violation of the United States Constitution Free Exercise of Religion: First and Fourteenth Amendments (42 U.S.C. § 1983)

89. Paragraphs 1 through 88 are incorporated by references as if set forth fully herein.

90. Defendants, under color of state law, have deprived and continue to deprive Plaintiffs of their right to free exercise of religion - as secured by the First Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment - by discriminating against Plaintiffs because of their religious character and by inhibiting their right to freely exercise their religious faith.

COUNT II

**Violation of the Pennsylvania Constitution
Freedom of Conscience: Article I, Section 3**

91. Paragraphs 1 through 90 are incorporated by reference as if set forth fully herein.

92. Defendants, under color of state law, have deprived and continue to deprive Plaintiffs of their right to freedom of conscience - as secured by Article I, Section 3 of the Pennsylvania Constitution - by discriminating against Plaintiffs because of their religious character and by inhibiting their right to freely exercise their religious faith.

COUNT III

**Violation of the United States Constitution
Freedom of Speech: First and Fourteenth Amendments
(42 U.S.C. § 1983)**

93. Paragraphs 1 through 92 are incorporated by reference as if set forth fully herein.

94. Defendants, under color of state law, have deprived and continue to deprive Plaintiffs of their right to speak on matters of religion - as secured by the First Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment - by discriminating against Plaintiffs based on the religious nature of their expression, by inhibiting their right to freely express their faith to their congregants and to the community, and by applying a vague ordinance against them.

COUNT IV

**Violation of the Pennsylvania Constitution
Freedom of Speech: Article I, Section 7**

95. Paragraphs 1 through 94 are incorporated by reference as if set forth fully herein.

96. Defendants, under color of state law, have deprived and continue to deprive Plaintiffs

of their right to speak on matters of religion - as secured by Article I, Section 7 of the Pennsylvania Constitution - by discriminating against Plaintiffs based on the religious nature of their expression, and by inhibiting their right to freely express their faith to their congregants and to the community, and by applying a vague ordinance against them.

COUNT V

**Violation of the United States Constitution
Freedom of Assembly: First and Fourteenth Amendments
(42 U.S.C. § 1983)**

97. Paragraphs 1 through 96 are incorporated by reference as if set forth fully herein.

98. Defendants, under color of state law, have deprived and continue to deprive Plaintiffs of their right to freely assemble for the purposes of worship - as secured by the First Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment - by prohibiting Plaintiffs from worshiping in a location where similar, but nonreligious, groups would be permitted to assemble.

COUNT VI

**Violation of the Pennsylvania Constitution
Freedom of Assembly: Article I, Section 20**

99. Paragraphs 1 through 98 are incorporated by reference as if set forth fully herein.

100. Defendants, under color of state law, have deprived and continue to deprive Plaintiffs of their right to freely assemble for the purposes of worship - as secured by Article I, Section 20 of the Pennsylvania Constitution - by prohibiting Plaintiffs from worshiping in a location where similar, but nonreligious, groups would be permitted to assemble.

COUNT VII

**Violation of the United States Constitution
Equal Protection: Fourteenth Amendment
(42 U.S.C. § 1983)**

101. Paragraphs 1 through 100 are incorporated by reference as if set forth fully herein.

102. Defendants, under color of state law, have deprived and continue to deprive Plaintiffs of their right to equal protection of the laws - as secured by the Fourteenth Amendment to the United States Constitution - by discriminating against Plaintiffs in the application of its Code of Ordinances.

COUNT VIII

**Violation of the Pennsylvania Constitution
Equal Protection: Article I, Section 26**

103. Paragraphs 1 through 102 are incorporated by reference as if set forth fully herein.

104. Defendant, under color of state law, have deprived and continue to deprive Plaintiffs of their right to equal protection of the laws - as secured by Article I, Section 26 of the Pennsylvania Constitution - by discriminating against Plaintiffs in the application of its Code of Ordinances.

COUNT IX

**Violation of the United States Constitution
Due Process: The Fourteenth Amendment
(42 U.S.C. § 1983)**

105. Paragraphs 1 through 104 are incorporated by reference as if set forth fully herein.

106. Defendants, under color of state law, have deprived and continue to deprive Plaintiffs of due process of law - as secured by the Fourteenth Amendment to the United States Constitution - by denying Plaintiffs use of their property based on an irrational and discriminatory motivation.

COUNT X

**Violation of the Religious Land Use and Institutionalized Persons Act of 2000
Discrimination on the Basis of Religion
(42 U.S.C. § 2000cc et seq.)**

107. Paragraphs 1 through 106 are incorporated by reference as if set forth fully herein.

108. Defendants, under color of state law, have deprived and continue to deprive Plaintiffs of their right to be free from religious discrimination - as secured by the Religious Land Use and Institutionalized Persons Act - by treating them on less than equal terms as a nonreligious assembly or institution, by imposing and implementing a land use regulation that discriminates against them on the basis of religion, and by unreasonably limiting Plaintiffs' religious assemblies, institutions, and structures within the R-1 District and other residential districts.

COUNT XI

**Violation of the Religious Land Use and Institutionalized Persons Act of 2000
Substantial Burden on Religious Exercise
(42 U.S.C. § 2000cc et seq.)**

109. Paragraphs 1 through 108 are incorporated by reference as if set forth fully herein.

110. Defendants, under color of state law, have deprived and continue to deprive Plaintiffs of their right to the free exercise of religion - as secured by the Religious Land Use and Institutionalized Persons Act - by imposing and implementing a land use regulation that imposes a substantial burden on Plaintiffs' religious exercise.

COUNT XII

**Violation of the Religious Land Use and Institutionalized Persons Act of 2000
Unreasonable Limitation
(42 U.S.C. § 2000cc et seq.)**

111. Paragraphs 1 through 110 are incorporated by reference as if set forth fully herein.

112. Defendants, under color of state law, have deprived and continue to deprive Plaintiffs of their right to the free exercise of religion - as secured by the Religious Land Use and Institutionalized Persons Act - by imposing and implementing a land use regulation that unreasonably limits religious assemblies within a jurisdiction.

COUNT XIII

**Pennsylvania Municipalities Planning Code
(53 P.S. §§ 11001-A through 11006-A)**

113. Paragraphs 1 through 112 are incorporated by reference as if set forth fully herein.

114. The 2001 Opinion was arbitrary, capricious and not supported by substantial evidence.

115. Defendant ZHB committed an error of law in failing to find that the proposed use was a continuation of a prior nonconforming religious use.

116. Defendant ZHB committed an error of law in failing to find that the Sisters and the Monks used the Sisters' Property for religious purposes.

117. Accordingly, Plaintiffs request that the decision of the ZHB 2001 Opinion be set aside, reversed, or modified and order that the relief sought by the Congregation in order to use the Sisters' Property for religious purposes (as a Synagogue and religious school) be granted.

COUNT XIV

**Violation of the Pennsylvania Religious Freedom Protection Act
Substantial Burden on Religious Exercise
(71 P.S. § 2401 et seq.)**

118. Paragraphs 1 through 117 are incorporated by references as if set forth fully herein.

119. Defendants, under color of state law, have deprived and continue to deprive Plaintiffs

of their right to the free exercise of religion - as secured by the Pennsylvania Religious Freedom Protection Act - by enacting and implementing a land use regulation that imposes a substantial burden on Plaintiffs' religious exercise.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

- (a) A permanent injunction restraining Defendants, their officers, agents, employees, and attorneys from enforcing or endeavoring to enforce the Abington Township Zoning Ordinance to prohibit Plaintiffs from using their property in Abington Township, Pennsylvania as a place of worship;
- (b) A declaration that the Zoning Ordinance, and the application of the Zoning Ordinance in such manner as to exclude Plaintiffs, is void, invalid and unconstitutional as violating the Free Exercise and Free Speech protections of the United States and Pennsylvania Constitutions; the right to freely assemble as protected by the United States and Pennsylvania Constitutions; the right to Equal Protection and Due Process of the law as protected by the United States and Pennsylvania Constitutions; and Plaintiffs' rights under the Religious Land Use and Institutionalized Persons Act of 2000;
- (c) Award compensatory damages against Defendants in favor of Plaintiffs as the Court deems just for the loss of Plaintiffs' free exercise of religion, freedom of speech, freedom of assembly, deprivation of Plaintiffs' right to equal protection and due process under the laws, and expenses incurred by Plaintiffs and caused by the Zoning Ordinance and Defendants' actions;
- (d) An award to Plaintiffs of full costs and attorney's fees arising out of this litigation; and
- (e) Such other and further relief as this Court may deem just and appropriate.

DEMAND FOR JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiffs hereby demand a trial by jury in this action of all issues so triable.

Dated: July 8, 2003

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Daniel C. Simons, hereby certify that on July 8, 2003, I caused a true and correct copy of the foregoing Plaintiffs' Amended Complaint to the following counsel **by First Class Mail:**

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