

THE RUTHERFORD INSTITUTE

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December 7, 2011

Todd G. Patrick, Esq.
City Attorney
Charles T. Yancey Municipal Building
503 W. Main Street, Suite 204
Waynesboro, VA 22980

Re: Waynesboro Area Refuge Ministry (WARM)

Dear Mr. Patrick,

The Rutherford Institute¹ has been contacted by Howard Miller, the pastor of Waynesboro Mennonite Church, who has raised the concern that the Waynesboro Zoning Board is unconstitutionally hindering efforts by community churches to provide shelter for the homeless during the winter. Specifically, Pastor Miller and a collection of other Waynesboro area churches are working toward instituting a rotating thermal shelter for the homeless, whereby those in need of shelter this winter may take refuge inside existing church buildings. However, it appears that the Zoning Board is erroneously interpreting the City's zoning ordinance in a manner that poses potential violations of the churches' right to freely exercise their religious beliefs under the First Amendment to the United States Constitution, the Religious Land Use and Institutionalized Persons Act (RLUIPA), and Virginia's Religious Freedom Restoration Act.

According to Pastor Miller, the Zoning Board is requiring some churches to apply for and obtain a conditional use permit as a prerequisite to sheltering the homeless of your community, and completely prohibiting other churches from doing so. Yet an examination of the zoning ordinance indicates that the proposed use of the existing church structures to provide temporary shelter for those in need is properly treated as an accessory use rather than a primary, permanent use that would require a conditional use

¹ The Rutherford Institute is a non-profit civil liberties organization that provides free legal representation to those whose civil liberties have been threatened or infringed.

permit. “Accessory uses” are defined in § 10.3 as those “of a nature customarily incidental or subordinate to, and of a character related to the principal use...”

Clearly, providing physical shelter for the homeless—particularly during the cold, winter months—is a use that is customarily incidental to the traditional function of churches. The most obvious indication of this fact comes from the Bible itself, where Jesus Christ describes His concern for the needy:

Then the King will say to those on his right, “Come, you who are blessed by my Father; take your inheritance, the kingdom prepared for you since the creation of the world. For I was hungry and you gave me something to eat, I was thirsty and you gave me something to drink, I was a stranger and you invited me in, I needed clothes and you clothed me, I was sick and you looked after me, I was in prison and you came to visit me.” Then the righteous will answer him, “Lord, when did we see you hungry and feed you, or thirsty and give you something to drink? When did we see you a stranger and invite you in, or needing clothes and clothe you? When did we see you sick or in prison and go to visit you?” The King will reply, “Truly I tell you, whatever you did for one of the least of these brothers and sisters of mine, you did for me.”

Another example of the Biblical mandate to care for the needy is provided by the well-known parable of the Good Samaritan, in which a man cares for the helpless victim of a brutal crime by, among other things, paying for his lodging at an inn.² Building on the teachings of Christ, foundational church documents describe the church’s duty to shelter the homeless, specifically.³ From ancient times, community members have sought refuge in the local church during times of war, natural disaster, and other peril.

Inasmuch as providing temporary shelter for the homeless is a traditional, customary function of churches that is incidental to the religious institutions’ primary use of their properties (which has not changed), the use is properly treated as an “accessory” use. According to §10.2.3, accessory uses are permitted by right. Specifically allowed accessory uses for religious institutions are listed in §4.6.13,⁴ and these include “fellowship hall” and “other community center,” each of which would encompass the temporary overnight sheltering of community members in need.

² Luke 10:30-37.

³ See, e.g., The Catechism of the Catholic Church, 2d. ed., Pt. 3, Sec. 2, Chap. 2, p. 2447, “The works of mercy are charitable actions by which we come to the aid of our neighbor in his spiritual and bodily necessities.²⁴² Instructing, advising, consoling, comforting are spiritual works of mercy, as are forgiving and bearing wrongs patiently. The corporal works of mercy consist especially in feeding the hungry, sheltering the homeless, clothing the naked, visiting the sick and imprisoned, and burying the dead.²⁴³

⁴ It is unclear why this provision is included in the ordinance at all, in light of the fact that §10.2.3 states that accessory uses are permitted by right. To the extent that accessory uses of religious institutions are treated less favorably than accessory uses of non-religious institutions under the Code, the Code may suffer from serious systemic defects under the First and Fourteenth Amendments to the United States Constitution and the Religious Land Use and Institutionalized Persons Act (RLUIPA).

Todd G. Patrick, Esq.

December 7, 2011

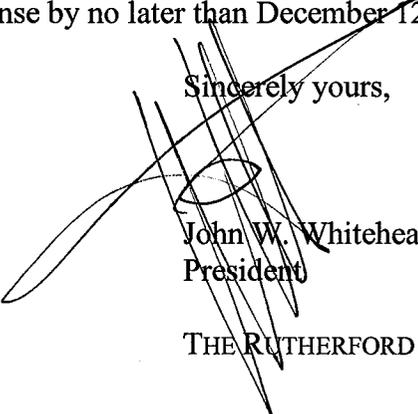
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As you are undoubtedly aware, the proposed temporary use of these church facilities to protect needy families and individuals from the elements is purely a function of religious exercise by devout individuals and groups in Waynesboro. Thus, any actions taken to impede these efforts must be carefully examined under the lens of the First Amendment to the Constitution of the United States, which guarantees individuals and churches the right to freely exercise their faith. Moreover, because any interference with the proposed use of church property constitutes a substantial burden on religious exercise, it will be subject to strict scrutiny under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. 2000cc-1 *et seq.* and Virginia's Religious Freedom Restoration Act, VA. CODE ANN. §57-2.02.

With government budgets currently stressed beyond capacity, it is difficult to comprehend any logical reason—much less the “compelling interest” that will be required under the aforementioned laws—that would justify the City's imposition of barriers for churches wishing to provide this most basic, essential function for the neediest people in your community. In this regard, the City's actions appear to be not only illegal but also unreasonable and utterly lacking in compassion.

At this time, we ask you to re-examine your treatment of this matter. Due to the time-sensitive nature of this situation in light of the falling winter temperatures, we request the courtesy of a response by no later than December 12, 2011.

Sincerely yours,



John W. Whitehead
President

THE RUTHERFORD INSTITUTE

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