

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

BE THE BUSH RECOVERY MINISTRIES,	)	
	)	
	)	
Plaintiff,	)	
	)	Case No. 22-cv-00016
vs.	)	
	)	
COFFEE COUNTY TENNESSEE,	)	
	)	
	)	
Defendant.	)	

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

Plaintiff seeks a preliminary injunction to prevent Coffee County from applying its discriminatory zoning resolution which, on its face, violates several federal laws including the Fair Housing Act (FHA), Americans with Disabilities Act (ADA), the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the Equal Protection Clause of the Fourteenth Amendment.

STATEMENT OF FACTS

The present case arises from Plaintiff, Be the Bush's ("BTB") attempts to relocate its faith-based non-profit residential program to a more suitable property within Defendant County, and Defendant County's discriminatory, illegal and unfair treatment of BTB.

Plaintiff is a long-term religious non-profit organization that provides housing to individuals struggling to overcome addiction and protected under the FHA and ADA. Verified Complaint (Doc. 1) at ¶¶4, 6, 13. Residents of the BTB face significant

limitations on their lives as a result of their addiction, including disruptions in personal relationships and impairments on their ability to advance in school and/or employment. *Id.* at ¶ 20. Residents coming to live at BTB have already stopped using drugs and alcohol and voluntarily enroll in the twelve (12) month program which offers a stable, accountable environment to help them achieve long-time sobriety. *Id.* at ¶¶ 16, 21.

BTB believes in the power of the gospel of Jesus Christ to rescue, heal and transform men recovering from addiction. *Id.* at ¶¶ 13,16. It has been operating since September 1, 2018, to help men break free from the destructive cycle of addiction by providing a residential program that combines a family-like living environment for its residents and community support and accountability, structure, biblical counseling and education, and job skill development. *Id.* at ¶ 7, 8.

At the end of last year in 2021, BTB was presented with the opportunity to purchase approximately 8 acres in Coffee County, commonly known as 2140 Riley Creek Road, Tullahoma, Tennessee 37388 (“the Property”) for \$935,000. *Id.* at ¶ 24, 27. The Property is currently owned by the Keats and is used as a private residence. *Id.* at ¶ 25. However, the Property previously served as an elementary school. *Id.* at ¶ 26.

Because BTB is a newer non-profit organization, it was unable to secure a loan for the amount needed to purchase the Property, but a generous supporter of BTB offered to provide the organization with a low interest loan in the amount of \$800,000

to purchase the Property. *Id.* at ¶ 28. Other donors and supporters have also offered to provide large donations to BTB to help them purchase the Property. *Id.* at ¶ 29.

The Property is located in a rural area in the RS-1, low density residential zoning district (i.e. rural area) and also lies within the Urban Growth Area for the City of Tullahoma. *Id.* at ¶¶ 30, 31. Current uses permitted by right in the RS-1 zone, in addition to single-family residential, include civil defense, fire and police department facilities and “educational facilities, private kindergartens, parochial and public.” *Id.* at ¶ 32; Exhibit¹ 1, Art. IV-8 and 9. Additional uses permitted by special exception in the RS-1 zone include travel trailer parks and overnight campgrounds, private clubs and lodges, meeting halls and recreational centers, art galleries, museums, indoor and outdoor commercial entertainment and sporting events, and recreational centers. *Id.* at ¶ 33; Exhibit 1, Art. IV-8 and 9. Churches and/or religious organizations and institutions are, however, excluded altogether from the RS-1 zone, as are group homes. *Id.* at ¶ 34; Exhibit 1, Art. IV-8-9.

Upon learning that the Property was for sale, BTB met with the County to determine zoning, at which time the County informed BTB that its use was not one contemplated and/or adequately defined in the zoning resolution and, thus, not permitted in the RS-1 district. *Id.* at ¶ 35-36.

BTB then proposed an amendment to the zoning resolution to recognize and permit a new use in the RS-1 zoning district defined as “Non-profit Church, ministry,

¹ All exhibits cited to herein are to the exhibits attached to the Verified Complaint filed in this case.

and/or other religious facility, funded solely by private donations or other fundraising activities, that provides education, skills training, and recovery support to its members, who may be housed at the facility.” *Id.* at ¶¶ 37-40; Exhibit 2.

The Planning Commission considered and denied BTB’s proposed amendment on two occasions – first to allow the use by right and then as a special exception – consistent with similar uses such as private clubs and lodges. *Id.* at ¶¶ 38-40, 50. *See also* Exhibit 2. At the public hearing, several people spoke in opposition to BTB and expressed unfounded fears and concerns regarding Be the Bush and the residents it serves. Complaint, at ¶¶ 41-49. The Planning Commission voted to reject BTB’s proposed amendment, sending the matter on to the County Commission for a final decision at the next regularly scheduled meeting on January 11, 2021. *Id.* at ¶ 50.

In the weeks leading up to the County Commission’s meeting scheduled on January 11, 2021, the County received letters from two different law firms placing the County on notice that denial of the proposed amendment could open them up to a lawsuit under both federal and state law. *Id.* at ¶¶ 52-54; Exhibits 4-5. Undersigned counsel notified the County that BTB is a protected organization under the FHA and ADA and that the proposed amendment was a formal request for reasonable accommodation under the law. *Id.* at ¶¶ 53-54; Exhibit 5.

On January 11, 2022, the County Commission heard and considered BTB’s proposed amendment and voted to reject it. *Id.* at ¶ 55. Once again, several neighbors spoke up and voiced unfounded concerns. *Id.* at ¶¶ 58-59.

Contrary to these unfounded and unsupported fears, BTB has operated without incident for more than three years. *Id.* at ¶ 48. It is not a halfway house and does not provide housing to the criminally dangerous or mentally unstable. *Id.* at ¶¶ 21-22, 45, 46, 48. Unlike other uses permitted in the RS-1 district, BTB will produce very little to no traffic and activity because the residents live together in a manner that resembles a family and most residents do not have vehicles while enrolled in the program. *Id.* at ¶ 63, 98.

No evidence was presented at the hearings to demonstrate that BTB's use was inconsistent with the RS-1 zoning and/or more intensive than the uses already permitted by right or by special use. No legitimate or valid reasons for denial were given. *Id.* at ¶¶ 61-67; Exhibit 6 (The minutes of the County Commission meeting denying BTB's proposed amendment are devoid of any reasoning). One Commissioner, Dennis Hunt, who also serves on both the planning commission and the zoning board of appeals, acknowledged that the zoning resolution does not contemplate BTB's use at all and that BTB's proposed amendment to add its use in the RS-1 zone was good and fair. *Id.* at ¶ 57.

Following the Commissioners' denial of the proposed amendment, BTB decided to explore other options and to request that the Property be rezoned to R-2. *Id.* at ¶ 68. All of the following uses are permitted in the R-2 zone as conditional uses: assisted living facilities for the elderly or handicapped, convalescent homes, day care facilities for elderly persons, family care facilities, group care facilities, nursing homes, private clubs and lodges, meeting halls and recreational centers, art galleries, athletic

associations, libraries, and museums. *Id.* at ¶ 69; Exhibit 1, at Art. IV-7. Once again, religious facilities and/or churches are not a recognized permitted use at all in the R-2 zoning district. *Id.*; Exhibit 1, at Art. IV-7. The R-2 zoning district is the only other designated residential zoning district in the County. *See generally* Exhibit 1, Art. IV.

Once again, BTB was rejected by the City and County officials. On January 14, 2022, BTB submitted an application for rezoning of the Property to R-2 to the City of Tullahoma.² *Id.* at ¶ 72. When BTB first spoke with the City’s Senior Planner, Mary Samaniego, she indicated that its proposed use would likely be permitted in the R-2 district. *Id.* at ¶ 73. The zoning resolution defines “special personal group care facilities” as follows:

This is a general term that is intended to include residential facilities for the care of elderly or infirm persons who may require special care and/or supervision. The term is intended to include facilities that are principally residential in nature but wherein long term medical or rehabilitative services are provided for the residents. This term is not intended to include facilities for the criminally dangerous or psychotic.

Id. at ¶ 74; Exhibit 1, Appendix 1, at p. 23. Facilities falling under “special personal group care facilities” include “assisted living facilities for elderly or handicapped

² Because the Property is located in the Urban Growth Boundary of the City of Tullahoma, any request to rezone is first heard by the City of Tullahoma.

persons,”³ “convalescent homes,” “family care facilities,” “group care facilities,”⁴ and “day-care facilities for elderly persons.” *Id.*

On January 18, 2022, however, Ms. Samaniego (after speaking with the County) contacted BTB via email and informed it that its use “would be considered a “special institutional care facilities” and that such “use is only allowed as a Conditional Use in the C-2 zoning district.” *Id.* at ¶78; Exhibit 7, at p. 5-6. The zoning resolution defines “special institutional care facilities” as follows:

This is a general term that is intended to include all facilities that involve forced residency, full time supervision and care for: (1) individuals who are legally confined due to violations of law; (2) *individuals who are addicted to drugs and/or alcohol*; and (3) individuals who are mentally ill, including the criminally dangerous or others who for their own protection or the protection of society must be confined.”

Exhibit 1, Appendix at p. 23 (emphasis added); Compl, at ¶ 80.

BTB has explained to the City and County that it is not a house for the mentally ill or criminally dangerous, it does not provide medical care or treatment, and that its residents are not there by forced or for the purpose of confinement to protect others in society. *Id.* at ¶¶ 11-12, 45-46. Nonetheless, City and County officials

³“Assisted living facilities for elderly and handicapped is defined as “a residential facility other than a dwelling unit (as defined above) intended for occupancy by unrelated individuals who are handicapped, aged, or disabled and wherein meals are prepared and served in a common dining facility and limited assistance is provided for daily activities.” Exhibit 1, Appendix, at 23.

⁴ “Group care facilities” is defined as “a licensed facility wherein residential services are provided to nine (9) or more unrelated individuals, who are handicapped, aged, disabled or otherwise in need of adult supervision in accordance with their individual needs. This grouping does not include facilities providing residential services to delinquent minors, the criminally dangerous, the addicted, and/or mentally ill individuals.” *Id.*

refuse to consider BTB a group home or assisted living facility and have insisted it is, instead, a “special institutional care facilities” and is confined to the C-2 General Commercial District. *Id.* at ¶¶ 78-79, 93-95. *See generally*, Exhibit, Art. IV.

The C-2 General Commercial District is defined as an area in which

the principal use of land is devoted to general and highway commercial activities along roadways classified as arterials as shown on the Major Thoroughfare Plan of Coffee County.

Exhibit 1, at Art. IV-5 and 6. The C-2 zone is inconsistent with BTB’s mission and purpose to provide a stable, family-like environment for its residents far from the temptations of drug and alcohol. *Id.* at ¶ 18. In contrast, all twenty-one (21) permitted uses listed in the C-2 district are non-residential including, for example, automotive sales and services, general business and communications, outdoor material and equipment sales, warehousing goods, restaurants and convenience retail sales and services. Exhibit 1, at Art. IV-5 and 6.

On numerous occasions, BTB has requested that the County provide sufficient reasoning for the disparate treatment of BTB, compared to other group homes, assisted living facilities and private clubs and lodges – all uses permitted in the R-2 and/or RS-1 zone. The County has not provided any reason. *Id.* at ¶¶ 94-97; Exhibit 10.

BTB has written several letters to the County explaining the application of federal law and requesting that the County rectify the violations, treat BTB the same as similarly situated uses and grant BTB the opportunity to reside in a residential zone like similar comparators. *See* Exhibits 5, 8. BTB’s proposed use of the Property

is practically identical in all zoning respects to that of assisted living facilities, group care facilities and other “special group care facilities.” The only difference is the type of residents served by BTB – *i.e.*, individuals struggling to overcome addiction. *Id.* at ¶ 100.

Defendant County’s conduct has prevented BTB from purchasing the Property and operating its mission, and now it is likely to lose the funding it had obtained to purchase the Property. *Id.* at ¶¶ 101-106.

LEGAL ARGUMENT

“The purpose of a preliminary injunction is always to prevent irreparable injury so as to preserve the court’s ability to render a meaningful decision on the merits.” *United Food Com. Workers Union, Local 1099 v. Southwest Ohio Reg’l Transit Auth.*, 163 F.3d 341, 348 (6th Cir. 1998) (citation omitted). The court must consider and balance four factors in determining whether to grant a preliminary injunction: “(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury absent the injunction; (3) whether the injunction would cause substantial harm to others; and (4) whether the public interest would be served by the issuance of an injunction.” *Bays v. City of Fairborn*, 668 F.3d 814, 818-19 (6th Cir. 2012). However, “the likelihood of success and irreparable harm factors predominate the preliminary injunction inquiry.” *Tree of Life Christian Schs v. City of Upper Arlington*, 2011 U.S. Dist. LEXIS 175205, at *14 (S.D. Ohio Apr. 27, 2011) (citing *Capobianco, D.C. v. Summers*, 377 F.3d 559, 561

(6th Cir. 2004); *Gonzales v. Nat'l Bd. of Med. Examiners*, 225 F.3d 620, 625 (6th Cir. 2000))

I. PLAINTIFF IS LIKELY TO SUCCEED ON THE MERITS OF ITS CLAIMS.

For purposes of this motion for preliminary injunction only, Plaintiff asserts that it is likely to succeed on its intentional discrimination and reasonable accommodation claims against the County for violations of the FHA and ADA, as well as its equal terms and substantial burden claims under the RLUIPA, and the Equal Protection Clause of the Fourteenth Amendment.

While Plaintiff must show a likelihood of success on the merits, this burden is lowered when a claim involves a constitutional right. Then, Plaintiff need only demonstrate that the legal issues raised are substantial enough to constitute “fair ground[s] for litigation and thus [require] more deliberate investigation.” *Roth v. Bank of Commonwealth*, 583 F.2d 527, 537 (6th Cir. 1978). *See also Brandeis Machinery & Supply Corp. and State Equipment Co., v. Barber-Geene Co.*, 503 F.2d 503 (6th Cir. 1974). As explained below Plaintiff has met its burden under either standard.

A. The County’s Zoning Resolution and Subsequent Denial of Plaintiff’s Proposed Amendment Violates the FHA and ADA.

The FHA and the ADA prohibit housing discrimination by governmental entities against handicapped persons or persons with disabilities. Courts generally apply the same analysis to claims under the FHA and ADA. *Jones v. City of Akron*, 2020 U.S. App. LEXIS 35650, at *5-6 (6th Cir. Nov. 12, 2020) (other citations omitted).

The FHA makes it unlawful “to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap.” 42 U.S.C. § 3604(f)(1). In sum, the FHA prohibits the exclusion of disabled persons (or their housing providers)⁵ from housing because of their disability and applies to municipal zoning ordinances that affect housing opportunities for the disabled, as well as to discriminatory actions taken pursuant to a zoning ordinance. *Smith & Lee Assocs. v. City of Taylor*, 13 F.3d 920, 924-25 (6th Cir. 1993) (citing *Marbrunak, Inc. v. City of Stow, Ohio*, 974 F.2d 43 (6th Cir. 1992) (other citation omitted). “Handicap” is defined as follows under the FHA:

(1) a physical or mental impairment which substantially limits one or more of such person’s major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21).

42 U.S.C. § 3602(h). The FHA’s implementing regulations define physical and mental impairment to include “drug addiction (other than addiction caused by *current*, illegal use of a controlled substance) and alcoholism.” 24 C.F.R. § 100.201.⁶

Similarly, the ADA prohibits discrimination by public entities based on disability and provides that “no qualified individual with a disability shall, by reason

⁵ “Sober living homes can constitute a dwelling”. *Caron Found. of Fla., Inc. v. City of Delray Beach*, 879 F. Supp. 2d 1353, 1364 (S.D. Fla. 2012) (citing *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1212-16 (11th Cir. 2008)).

⁶ In 1988, Congress passed the Federal Fair Housing Amendments Act of 1988 (FHAA) to add “handicap” to the list of protected individuals in the original Act. This amendment was “a clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream.” *Helen L. v. DiDario*, 46 F.3d 325, 333 n. 14 (3d Cir.) (quoting H.R.Rep. No. 711, 100th Cong., 2d Sess. 18, reprinted in 1988 U.S.C.C.A.N. 2173, 2179).

of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity.” 42 U.S.C. § 12132.⁷ Under the ADA, qualified individuals include those “participating in a supervised rehabilitation program and is no longer engaging in such use.” 42 U.S.C. § 12114(b)(2).

Three theories of discrimination are available to a disabled individual or an organization associated with disabled individuals. Two are applicable here: (1) intentional discrimination (or disparate treatment) and (2) a refusal to make a reasonable accommodation. *Smith & Lee Assocs.*, 13 F.3d at 924. For the reasons provided below, Plaintiff is likely to succeed on the merits of both claims.

- i. The County’s zoning resolution is facially discriminatory and constitutes intentional discrimination in violation of the FHA and ADA.

Under the theory of intentional discrimination, a plaintiff must typically establish a violation by showing that the defendants were motivated by an intent to discriminate against the handicapped. *Larkin v. Mich. Dep’t of Soc. Servs.*, 89 F.3d 285, 289 (6th Cir. 1996). However, where – as here – the resolution is facially discriminatory, no showing of intent is required and “a plaintiff makes out a prima facie case of intentional discrimination under the [FHA] merely by showing that a protected group has been subjected to explicitly differential . . . treatment. *Id.* A facially discriminatory ordinance is one that “single[s] out for regulation group homes

⁷ Similar to the FHA’s interpretation of “handicap,” “disability” under the ADA is defined as “(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment” 42 U.S.C. § 12102(1).

for the handicapped.” *Id.* at 290 (citing *Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1500 (10th Cir. 1995). *See e.g., Children's Alliance v. City of Bellevue*, 950 F. Supp. 1491, 1495 (W.D. Wash. 1997)) (“Differential treatment on the face of an ordinance demonstrates an intent to discriminate; additional evidence of discriminatory animus is not required.”)

In *Larkin*, the court found restrictions to be facially discriminatory in violation of FHA’s intentional discrimination provision where they were applied only to facilities housing disabled individuals, and not to other living arrangements. 89 F.3d at 289-90.⁸

Most notably here, courts have made unequivocally clear that the FHA and

ADA

prohibit local governments from applying land use regulations in a manner that will exclude people with disabilities entirely from zoning neighborhoods, particularly residential neighborhoods, or that will give disabled people less opportunity to live in certain neighborhoods than people without disabilities.

Lapid-Laurel, L.L.C., v. Zoning Bd. of Adjustment, 284 F.3d 442 at 457 (3d Cir. 2002) (quoting *Bryant Woods*, 911 F. Supp. 918, 946 (D.Md. 1996)). *See also Dr. Gertrude A. Barber Ctr., Inc. v. Peters Twp.*, 273 F. Supp. 2d at 651 (W.D. Pa. 2003) (collecting cases finding the FHA was violated “where municipalities have attempted to prevent or restrict persons with disabilities from living in the single-family zoned homes of their choice”).

⁸ Similarly, in *Marbunk*, the court affirmed the district court’s decision finding a zoning ordinance violated the FHAA because it imposed more stringent safety requirements on homes for disabled compared to other single-family residences. 974 F.2d 43, 47.

In the present case, the County's zoning resolution facially discriminates against BTB by expressly excluding it from every residential zone in the County. The discriminatory treatment is blatant here where a host of other group living arrangements (homes for children, the elderly and other disabled individuals) are all permitted in residential zones. The County's discrimination is precisely what the amendment to FHA in 1988 was intended to prohibit.

Because the County's resolution is facially discriminatory, the County bears the burden of demonstrating that its restriction is justified – specifically that the differential treatment is “warranted by the unique and specific needs and abilities of those handicapped persons to whom the regulations apply.” *Larkin*, 89 F.3d at 290. Defendant cannot satisfy this burden. Notably, Plaintiff has specifically inquired as to the reason for the discriminatory treatment of recovery homes. The County has, time and again, failed to give any reasoning, much less one that justifies discrimination. The County simply redirects Plaintiff to the single zoning district in which it is permitted – the C-2 commercial district where primarily commercial uses are contemplated. This reasoning certainly won't carry the day. As one court summarized, “repeatedly, the federal courts have held that the FHA protects the right to live in the particular dwelling chosen by the residents, or by the agency providing such housing.” *Dr. Gertrude A. Barber Ctr., Inc.*, 273 F. Supp. 2d at 654 (citing *Housons, Inc. v. Twp. of Brick*, 89 F.3d 89 F.3d 1103-1106 (3rd Cir. 1996) (township's willingness to allow homes in other areas did not constitute reasonable accommodation); *City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d

802, 806 (9th Cir. 1994) (“Congress intended the FHA to protect the right of handicapped persons to live in the residence of their choice in the community”), *aff’d sub nom, City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995)).⁹

The County’s resolution in this case banning Plaintiff from the residential zones must be invalidated. *Id.* at 651 (“The [FHA] operates so as to invalidate ‘any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice’ 42 U.S.C. § 3615”).

- ii. Defendant has denied Plaintiff a reasonable accommodation in violation of the FHA and ADA.

“The FHA makes it unlawful to discriminate against a person with a handicap by refusing ‘to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.’ 42 U.S.C. § 3604(f)(3)(B).” *Howard v. City of Beavercreek*, 276 F.3d 802, 805-06 (6th Cir. 2002). “This creates an affirmative duty on municipalities . . . to afford its disabled citizens reasonable accommodations in its municipal zoning practices if necessary to afford such persons equal opportunity in the use and enjoyment of their property.” *Id.* (citing *Smith & Lee Assocs.*, 102 F.3d at 794-795).

⁹ See e.g., *Oxford House, Inc. v. Babylon*, 819 F. Supp. 1179, 1185 n. 10 (E.D.N.Y. 1993) (FHA “dictates that a handicapped individual must be allowed a particular dwelling, not just some dwelling somewhere in the town”); *Oxford House-Evergreen v. Plainfield*, 769 F. Supp. 1329, 1344 (D.N.J. 1991) (holding that a defense based upon the availability of alternative locations was without merit).

The Sixth Circuit has explained that “equal opportunity” is defined as “giving handicapped individuals the right to choose *to live in single-family neighborhoods*, for that right serves to end the exclusion of handicapped individuals from the American mainstream.” *Smith & Lee Assocs.*, 102 F.3d at 795 (emphasis added).¹⁰ The term “necessary” is linked to “the goal of equal opportunity,” and thus “plaintiff must show that, but for the accommodation, they will likely be denied an equal opportunity to enjoy the housing of their choice.” *Id.* at 795. Finally, an accommodation is “reasonable” unless it requires “a fundamental alteration in the nature of a program” or imposes “undue financial and administrative burdens.” *Id.* at 795-96.

In *Smith & Lee Associates*, the Sixth Circuit upheld the district court’s determination that the city unlawfully refused to provide a reasonable accommodation to plaintiff (an adult foster home specializing in the care of elderly disabled persons) where its ordinance limited the number of unrelated residents living in a single-family neighborhood to six and plaintiff requested that it be permitted to house more than six. *Id.* at 785. The court explained that the accommodation was “necessary” “because the elderly disabled can no longer live independently, and AFC [adult foster care] homes often provide the only means by which this population can continue to live in residential neighborhoods,” and AFC needed to house more than six to maintain proper funding. *Id.* at 796. Likewise, the

¹⁰ See e.g., *id.* (citing *Bryant Woods Inn, Inc. v. Howard Cnty, Md.*, 911 F. Supp. 918, 946 (D. Md. 1996); *City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 806 (9th Cir. 1994), *aff’d*, 115 S. Ct. 1776 (1995) (“Congress intended the FHAA to protect the right of handicapped persons to live in the residence of their choice in the community.”)).

court found the accommodation “reasonable” where no evidence was presented that the accommodation would alter the nature of the zoning scheme and neighborhoods. *Id.* (noting that those living in AFC homes eat together and rely on each other for social activities and succor and traffic and parking would not be an issue).

BTB has explained that a residential zone will enhance residents’ quality of life and the recovery process. Just like individuals who are related to each other and/or living together in similar group homes, these residents live together, share meals together, ride together, attend social events together and rely upon one another for accountability and support.¹¹ Excluding these residents from living as all other residents are permitted to do in the County, and confining them to a general commercial zone, will have detrimental effects and flies in the face of the FHA and ADA. BTB is currently denied any semblance of equal opportunity to live in a housing of their choice. The “necessity” of a residential location far from the temptation of drugs and alcohol – compared to a strictly commercial zone filled with restaurants, bars, retail stores and the like – has long been recognized as essential to successful recovery. *Oxford House, Inc.*, 819 F. Supp. at 1185 (“a residential neighborhood is an important component to a stable, affordable and drug-free living situation so as to increase the likelihood that a person will stay sober”); *Oxford House, Inc. v. Twp. of Cherry Hill*, 799 F. Supp. 450 (D.N.J. 1992) (finding the same and noting “the crucial

¹¹ See *Howard*, 276 F.3d at 806 (citing *Bronk v. Ineichen*, 54 F.3d 425, 429 (7th Cir. 1995)). (“The concept of necessity requires at a minimum the showing that the desired accommodation will affirmatively enhance a disabled plaintiff’s quality of life by ameliorating the effects of the disability.”).

role a single-family neighborhood plays in an individual's recovery by helping create an incentive not to relapse and avoiding the temptations that the presence of drug trafficking can create").

Finally, Plaintiff's request is reasonable. As noted above, the County permits a host of other residential and *non-residential* uses in the RS-1 zone where BTB seeks to reside. Travel trailer parks are permitted by special exception, as are private clubs and lodges, meeting halls and recreational centers, art galleries, museums, indoor and outdoor commercial entertainment and sporting events. Notably, a commercial business currently operates just down the road from the Property. These uses would be far more offensive and/or disruptive to the area than BTB's *residential* home in an unaltered, pre-existing building. BTB's use will in no way fundamentally alter the zoning in the RS-1.

B. The County's Zoning Resolution Violates the Equal Protection Clause of the Fourteenth Amendment.

The Fourteenth Amendment to the United States Constitution provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV § 1. The Supreme Court has stated that this provision is "essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). The Equal Protection Clause safeguards against the disparate treatment of similarly situated individuals as a result of government action that "either burdens a fundamental right, targets a suspect class, or has no rational basis." *Ctr. for Bio-Ethical Reform*,

Inc. v. Napolitano, 648 F.3d 365, 379 (6th Cir. 2011) (internal quotation marks omitted).¹²

In *City of Cleburne*, the Supreme Court found a city violated the Equal Protection Clause where the plaintiff, seeking to establish a group home for the mentally handicapped, was forced to submit to a special zoning process not required of similar uses. The Supreme Court held that “the constitutional issue is clearly posed” where the city did not require a special use permit in the same zone for apartment houses, boarding and lodging houses, nursing homes, dormitories, private clubs and fraternal orders, and the like, but insisted on a special permit for the plaintiff because they were a facility for the mentally retarded. *Id.* at 447-48. The Court found the city’s numerous reasons¹³ for the differential treatment to be insufficient. *Id.* at 448 (noting the differences raised by the city were insignificant and unpersuasive “unless the home and those who would occupy it would threaten legitimate interests of the city in a way that other permitted uses such as boarding houses and hospitals would not”). The Court concluded, “the short of it is that requiring the permit in this case appears to rest on an irrational prejudice against the mentally retarded.” *Id.* at 450. As the Court further noted,

¹² See also *Campbell v. Rainbow City*, 434 F.3d 1306, 1313-1314 (11th Cir. 2006) (explaining that in the zoning context, a violation of the Equal Protection Clause occurs where similarly situated property owners are treated differently and there is no rational basis for the different treatment).

¹³ The City objected based on the negative attitudes of property owners, the location of the home near a school and on a flood plain, and the number of people to occupy the home and potential congestion of streets. The court found all of these reasons to be insufficient where similar uses would pose all the same problems but were, nonetheless, permitted. *Id.* at 449-50.

negative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding, are not permissible bases for treating a home for the mentally retarded differently from apartment houses, multiple dwellings, and the like. It is plain that the electorate as a whole, whether by referendum or otherwise, could not order city action violative of the Equal Protection Clause, and the city may not avoid the strictures of that Clause by deferring to the wishes or objections of some fraction of the body politic.”)

Id. at 448 (internal citations omitted).¹⁴

The facts here are eerily similar to the *City of Cleburne* case, except that the County has taken its prejudice and unequal treatment a step further by completely banning BTB from all residential zoning districts while permitting every other similar use. As explained above, the County lacks a rational basis, much less a compelling one.¹⁵

C. The County’s Zoning Resolution and Subsequent Denial of Plaintiff’s Proposed Amendment Violates RLUIPA.

RLUIPA is a federal law designed to protect religious assemblies and institutions from land use regulations that interfere with their religious exercise. A

¹⁴ See also *Open Homes Fellowship, Inc. v. Orange County*, 325 F. Supp. 2d 1328, 1364 (M.D. Fla. 2004) (finding equal protection violation where no rational basis existed for requiring a ministry to obtain a special use permit when other similarly situated uses such as a fraternity, sorority or other club were not required to do the same); *Vineyard Christian Fellowship of Evanston, Inc. v. City of Evanston*, 250 F. Supp. 2d 961, 978 (N.D. Ill. 2003) (finding equal protection violation where city sought to require a religious institution to obtain a special permit while other similar uses, including cultural facilities, were permitted as of right).

¹⁵ See *Human Res. Research & Mgmt. Grp. v. Cty. of Suffolk*, 687 F. Supp. 2d 237, 256 (E.D.N.Y. 2010) (explaining that most circuits including the Sixth Circuit to consider the proper standard to be met when defending unequal treatment as to handicapped individuals under the FHA is heightened scrutiny and citing *Larkin*, 89 F.3d at 290).

land use regulation is a zoning or landmarking law “that limits or restricts a claimant’s use or development of land.” 42 U.S.C. 2000cc-5(5). As Senators Hatch and Kennedy recognized in their support of enacting RLUIPA,

Zoning codes frequently exclude churches in places where they permit theatres, meeting halls, and other places where large groups of people assemble for secular purposes.

See 146 Cong. Rec. S7774, S7775 (joint statement of Senators Hatch and Kennedy on the RLUIPA). As the Sixth Circuit has further noted,

under RLUIPA, the use of the land does not have to be a “core religious practice.’ Rather, ‘the term religious exercise includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.’ 42 U.S.C. § 2000cc-5(7)(A).

DiLaura v. Ann Arbor Charter Twp., 30 F. App’x 501, 508-09 (6th Cir. 2002).¹⁶

Everything from gathering for prayer as groups to running Christian retreats and/or camps constitutes a religious exercise for purposes of RLUIPA. *Id.* at 509 (citing *Murphy v. Zoning Comm’n of the Town of New Milford*, 148 F. Supp. 2d 173 (D. Conn. 2001) (involving city’s attempts to shut down plaintiff’s use of his house for group prayer-meetings which drew as many as 60 participants)).

Plaintiff is engaged in religious exercise for purposes of RLUIPA. It is a religious non-profit organization and incorporates religious practices into its program daily. Residents regularly engage in worship and biblical education on the property.

¹⁶ See also *id.* (noting further that “the statute states explicitly that ‘the use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.’ 42 U.S.C. § 2000cc-5(7)(B)”).

The relevant provisions of RLUIPA here include the prohibition on (1) different or unequal treatment of religious organizations; and (2) imposing a substantial burden on religious exercise. Each is analyzed below.

i. The County's zoning resolution facially differentiates between religious and non-religious assemblies in clear violation of RLUIPA's equal terms provision

RLUIPA's "equal terms" provision provides:

Equal Terms. No 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.

42 U.S.C. § 2000cc(b)(1). "The equal-terms provision is violated whenever religious land uses are treated worse than comparable nonreligious ones." *Tree of Life Christian Schs. v. City of Upper Arlington*, 2011 U.S. Dist. LEXIS 175205, at *28-30 (S.D. Ohio Apr. 27, 2011) (citing *Digrugilliers v. City of Indianapolis*, 506 F.3d 612, 616 (7th Cir. 2007) (other citations omitted). "It is a violation of RLUIPA if a statute facially differentiates between religious and nonreligious assemblies or institutions." *Yetto v. City of Jackson*, 2019 U.S. Dist. LEXIS 18285, at *24 (W.D. Tenn. Feb. 5, 2019).

Case law makes unequivocally clear that the County's zoning resolution in this case excluding religious institutions and uses from all residential zoning areas while permitting a host of similar non-religious uses – i.e., private clubs and lodges, theatres, museums, and the like violates RLUIPA. *See Dorman v. Charter Twp. of Clinton*, 2019 WL 3322352, 2019 U.S. Dist. LEXIS 122873, at *8 (E.D. Mich. July 24, 2019) (holding zoning ordinance violated RLUIPA where it permitted schools,

libraries, and swim clubs by right, but required churches to first obtain a special use permit in the same zoning district); *New Life Ministries v. Charter Twp. of Mt. Morris*, 2006, WL 2583254, 2006 U.S. Dist. LEXIS 63848, at *15 (E.D. Mich. Sep. 7, 2006) (holding zoning ordinance violated RLUIPA where it permitted private clubs, civic and fraternal organizations, lodge halls and theatres, but excluded religious assemblies in the same zoning district). Once again, there is no evidence that Plaintiff's ministry will pose a greater harm than the uses already permitted. See *Lighthouse Inst. for Evangelism v. City of Long Branch*, 510 F.3d 253, 273 (noting the ordinance was devoid of any apparent reason or explanation as to why a church would pose greater harm than the other uses permitted). Indeed, Plaintiff is proposing a less intensive use than operated in the same building on the same property previously (an elementary school).

ii. The County's zoning resolution substantially burdens Plaintiff's religious exercise in violation of RLUIPA.

Section 2000cc(a)(1) of RLUIPA provides:

(1) General rule. No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

In a substantial burden challenge, "the question then becomes whether gatherings of individuals for the purposes of prayer (the activity at issue) is a use of land constituting a religious exercise that is substantially burdened, under RLUIPA, by a

zoning ordinance that prevents such gatherings. Recent federal precedent answers in the affirmative.” *DiLaura*, 30 F. App’x at 508-09 (citing *Murphy*, 148 F. Supp. 2d 173).

Importantly, a substantial burden can result from the government’s mere denial of a conditional use variance of the like to a religious ministry without a sufficient compelling interest. *Id.* (denial of a variance to a plaintiff seeking to establish a Christian retreat constituted a substantial burden in violation of RLUIPA); *Murphy*, 148 F. Supp. 2d at 188 (zoning determination that a home bible study in private residence constituted an impermissible “accessory use” posed substantial burden on religious exercise in violation of RLUIPA); *Jesus Center v. Farmington Hills Zoning Bd.*, 544 N.W.2d 698, 704 (Mich. App. 1996) (denial of permission to operate homeless shelter posed a substantial burden in violation of RLUIPA).

BTB’s operation of its ministry is undoubtedly burdened and, in fact, is prohibited altogether. To remedy this, BTB proposed an amendment to allow non-profit religious ministries on the same terms as private clubs and lodges, recreational facilities, and the like. The County denied the amendment without sufficient reasoning, much less a compelling one.

II. PLAINTIFF WILL SUFFER IRREPARABLE HARM AND THE BALANCE OF INTERESTS WEIGHS IN PLAINTIFF’S FAVOR.

A strong likelihood of success on the merits outweighs the need for a strong showing of irreparable harm. *United States v. Edward Rose & Sons*, 384 F.3d 258, 264 (6th Cir. 2004).

Further, where, as here there is a deprivation of a constitutional right, irreparable harm is presumed. *Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th

Cir. 1998); *Ross v. Meese*, 818 F.2d 1132, 1135 (4th Cir. 1987) (“the denial of a constitutional right . . . constitutes irreparable harm for the purposes of equitable jurisdiction”).

Once more, when “Congress expressly authorizes a grant of injunctive relief to halt or prevent a violation of a statute, traditional equitable criteria do not govern the issuance of preliminary injunctions under that statute, traditional equitable criteria do not govern the issuance of preliminary injunctions” and a showing of irreparable harm is not required. *Id.* at 264 (citing *CSX Transp. v. Tenn. State Board of Equalization*, 964 F.2d 548, 551 (6th Cir. 1992)). The FHA specifically provides for an award of an injunction “for a violation” of the statute “as is necessary to assure the full enjoyment of the rights granted.” 42 U.S.C. § 3614(d)(1)(A). Accordingly, no further showing of irreparable harm is needed. The harm of discrimination does not require any imagination or elaboration. Plaintiff’s interest in being free of that discrimination outweighs any asserted by the County. Until the County’s facially discriminatory resolution is corrected, BTB is banned from all residential zones and is unable to carry out its mission to provide services to handicapped/disabled individuals. It is also likely to lose funding to purchase the new Property.

CONCLUSION

For the foregoing reasons, the Court should grant the Preliminary Injunction and enjoin Defendant from applying its facially discriminatory zoning resolution to exclude Plaintiff from its residential zoning district, and from denying Plaintiff use as a non-profit church ministry as already proposed by Plaintiff.

Dated: March 22, 2022

Respectfully submitted,

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