



April 27, 2023

To the New Philadelphia Zoning Board,

I am writing to you to express our support of Friends of the Homeless (“FOTH”) and the variance request to site their adult and family shelter at the Brightwood and Reiser property. Both the city and FOTH agree that the property is a workable compromise, meeting the needs of all involved. As such, I urge you to approve the variance request so that FOTH can move forward with plans for a new facility quickly and avoid the displacement of the people currently in their care.

As you know, the Brightwood and Reiser property is located in the Business District. The Business District encompasses a wide range of land uses, from commercial to civic to residential. It is important here to reiterate that just because “homeless shelters” are not specifically listed in the City’s current zoning code, it doesn’t mean that they can’t exist. Permitted uses cannot be so specific as to completely prohibit “similarly situated” land uses that are alike for “all relevant purposes.”¹ Relevant purposes include things like traffic safety concerns, whether the project will overburden public utilities, or create an environmental hazard that can’t be mitigated. Different treatment in zoning must be based on actual distinctions between the proposed use and other permitted similarly situated uses.²

If the zoning decisions of a city prevent projects that are similarly situated to others in that zone from going forward, it will not survive an Equal Protection claim under the Fourteenth Amendment of the U.S. Constitution unless there is a “rational basis” for the difference in treatment.³ However, the Supreme Court has made it clear that “negative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding” is not a rational basis to treat one group differently than another similarly situated one.⁴ The news coverage surrounding the issues with finding a site for the FOTH shelter make it clear that there are negative attitudes and stereotypes about unhoused people in New Philadelphia. It is imperative that the zoning board does not base its decision on these unsubstantiated biases and fears; otherwise, the city could face legal liability under federal constitutional claims.

¹ *Williams v. Vermont*, 472 U.S. 14, 23–24 (1985)

² See *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985) at 449

³ See *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340 (1923); *Allegheny Pittsburgh Coal Co. v. Commission of Webster Cty.*, 488 U.S. 336, 109 S.Ct. 633, 102 L.Ed.2d 688 (1989)

⁴ *Cleburne Living Ctr.*, 473 U.S. at 448



Furthermore, as a nonprofit with a mission based in religious belief and practice⁵, FOTH may be protected under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA).⁶ RLUIPA prohibits land use regulations that imposes a “substantial burden” on religious exercise except when justified by a “compelling governmental interest” pursued in the least restrictive way possible.⁷ In deciding whether there is a substantial burden under RLUIPA, the question is how likely is the individualized zoning decision to impair the ability of the group to engage in the religious exercise in question?⁸ Does it impose a significant restriction on religious use of a property?⁹ In the case of FOTH, denial of a variance would make it very likely that FOTH will be substantially restricted in their ability to engage in acts of charity that are central to their faith. As to whether there is a compelling government interest to proceed with a burdensome zoning decision, courts have ruled that a municipality’s asserted interests in revenue generation and economic development¹⁰ or aesthetics¹¹ were not compelling. In light of this and the constitutional issues described above, there is no legally permissible path to deny a variance for a project like FOTH in the Business District where there are already many similar permitted uses.

The decision of FOTH and the city to move forward with the Brightwood and Reiser property represents the successful conclusion of many months of discussion and compromise. But the delay has made the need to move forward with the project even more urgent. We urge the zoning board to quickly approve the needed variance.

Sincerely,

A handwritten signature in black ink that reads "Katie Scott". The signature is written in a cursive, slightly slanted style.

Katie Meyer Scott, Directing Attorney
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⁵ See <https://fohtusc.org/>: “The mission of the Friends of the Homeless of Tuscarawas County is to assist families and individuals in a faith-based environment to achieve stability, sobriety and permanent housing.”

⁶ 42 U.S.C. §§ 2000cc to 2000cc-5

⁷ RLUIPA, 42 U.S.C. § 2000cc(a)

⁸ See *World Outreach Conference Ctr. v. City of Chicago*, 591 F.3d 531, 539 (7th Cir. 2009); *Vision Church v. Vill. of Long Grove*, 468 F.3d 975, 1000 (7th Cir. 2006)

⁹ *Guru Nanak Sikh Soc’y v. Cty. of Sutter*, 456 F.3d 978, at 988 (9th Cir. 2006)

¹⁰ *Cottonwood Christian Ctr. v. Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203 at 1228-29 (C.D. Cal. 2002).

¹¹ See *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338 at 353.