



Board of Adjustment Hearing Date

December 7, 2023

**TOWN'S MEMORANDUM IN SUPPORT
OF ZONING MANAGER'S DETERMINATION**

To: Board of Adjustment

From: Tammy King, Zoning Manager

Title: Appeal of an Administrative Decision Denying the Church of the Rock Use of Campers for Temporary Housing.

Subject Property: 4881 Cherokee Drive, Castle Rock, Colorado 80109

I. INTRODUCTION

Church of the Rock ("the Rock"), owns and operates a church at 4881 Cherokee Drive, Castle Rock, Colorado 80108 ("the Property"). The Rock requested approval from the Town of Castle Rock ("the Town") to house campers on-site to provide temporary shelter for people in need. On September 29, 2023, the Town, through its Zoning Manager, denied the Rock's request because the use of recreational vehicles ("RVs")/campers is not a permissible use pursuant to the Rock's PD Zoning Regulations. The Rock appeals the Town's determination.

II. FACTUAL AND PROCEDURAL BACKGROUND

In 2000, the Rock and the Town, with the assistance of Johnston Engineering Associates, Inc., drafted Zoning Regulations for Church of the Rock Planned Development ("PD Zoning Regulations"). For approximately three (3) years, the PD Zoning Regulations were revised five (5) times, during which time the Rock was involved in the process. At no time during the drafting the PD Zoning Regulations or Site Development discussions did the Rock ever mention that it intended to use the Property to provide temporary housing with RVs/campers.

In 2003, the Town passed an Ordinance Amending the Town's Zone District Map by approving the Church of the Rock PD Site Plan, the PD Zoning Regulations and the Rock's Annexation and Development Agreement. See Ordinance No. 2003-27, with PD Zoning Regulations, attached hereto as ***Exhibit A***. As part of the approval process, public

hearings were held before the Planning Commission and Town Council to discuss the PD Zoning Regulations and Site Plan. Generally, public comments are allowed at these meetings to give citizens the opportunity to address potential issues and/or provide support to a project.

Pursuant to Section F – Use Area Regulations, of the PD Zoning Regulations, permitted uses are as follows:

b. Permitted Uses

- 1) Church
- 2) Church related educational facilities
- 3) Church related day care center subject to licensing requirements of the State.
- 4) **Parsonages (emphasis added)**
- 5) Non-profit ministry related administrative offices
- 6) Trails, pedestrian and bicycle
- 7) Open space and ponds to include storm water drainage detention areas
- 8) Indoor and outdoor church related recreational facilities
- 9) Utilities and appurtenant facilities including but not limited to water and sewer, electric service, gas service, telephone and cable service, and drainage facilities
- 10) Public and private streets, drives, and trails for pedestrian and bicycle use.

On August 12, 2003, the Town and the Rock executed the Rock's Annexation and Development Agreement ("the Development Agreement"). The Parties expressly acknowledged that the Development Agreement contained reasonable conditions and requirements to protect and enhance the public health, safety and welfare of current and future residences of the Town. The Rock acknowledged that the regulations set forth by the Town relating to the Rock's use of the premises served a compelling governmental interest. The Rock also acknowledged that the restrictions and requirements of the Town's regulations were the least restrictive means possible and did not create a substantial burden on the Rock.

In fact, the Rock affirmatively stated in the Development Agreement that the Town's regulations did not impose a substantial burden on the Rock's exercise of religion or impaired the Rock or its members' ability to worship. See Church of the Rock Annexation and Development Agreement, attached hereto as **Exhibit B**. Of note, the Development Agreement provides relief to the Rock if a subsequent Town regulation is passed and imposes a substantial burden on the Rock's exercise of religion, or impairs the Rock's ability to worship. There is no dispute that the PD Zoning Regulations are not subsequent regulations, and were in place and known to the Rock when it executed the Development Agreement.

In March 2021, an adjacent homeowner's association reported to the Town that trailers were parked on the Rock's premises and people were living in the trailers twenty-four (24) hours a day, seven (7) days a week. Temporary porta-potties were set up on site. Additionally, multiple residents that abut the Rock's property, also reached out to the Town during this time, to inform the Town of the RVs and that they had seen people living in them. See examples of complaints received by the Town, attached hereto as **Exhibit C**.

For nearly twenty (20) months, the Town fielded complaints about people living in the RVs/campers on the Property. The Zoning Manager repeatedly reached out to the Rock. Phone calls went unanswered. See correspondence dated September 26, 2022 from the Town, attached hereto as **Exhibit D**. On one occasion, the front desk refused to sign for a letter sent on behalf of the Town. Essentially, the Rock ignored the Town's efforts to enforce the PD Zoning Regulations.

On November 9, 2022, the Town, through the Town Attorney's Office, addressed the presence of three (3) RVs parked on the Rock's premises potentially violated of the PD Zoning Regulations. The Town continued receiving multiple complaints from citizens that the RVs were occupied for residential purposes. The Rock was informed that the residential use and storage of RVs was not allowed per the PD Zoning Regulations. See correspondence dated November 9, 2022, attached hereto as **Exhibit E**.

The next day, the Town issued a "Notice of Zoning Violation," stating that the storage or residency in campers on the Property violated the Town's Municipal Code. See Notice of Zoning Violation, attached hereto as **Exhibit F**. Castle Rock Municipal Code ("CRMC") 17.34.10 expressly states that the PD Plan and PD Zoning Regulations constitute the formally approved, overall zoning plan for the property. The PD zoning regulations specify the permitted uses, densities and other important development controls for each use and the property as a whole. By violating the applicable PD Zoning Regulations with the use of RVs/Campers as temporary housing, the Rock violated CRMC 17.34.10.

During the following months, the Parties continued discussing concerns related to the use of RVs/campers on the Property. The Rock claims that as part of its Compassionate Care programs, it uses the RVs on a limited basis to provide overnight shelter when it is unable to provide overnight shelter to specifically approved persons within the church building. The Rock further claims that in accordance with Biblical stewardship guidelines, it provides temporary shelter, as well as participates in the Winter Shelter Network. As support, the Rock referenced its webpage. See correspondence dated March 9, 2023 from the Rock, attached hereto as **Exhibit G**.

A review of the Rock's webpage does not reveal any information supporting the Rock's contention that the Compassionate Care programs provide limited, on-site temporary shelter through the use of RVs/campers. In fact, the Compassion Assistance link states "Page cannot be found." The tab for "Ministries" contains information related to community resources, but again does not mention the use of RVs/campers as temporary shelter. As for the Rock's participation in the Winter Shelter Network, according to the Winter Shelter

Network's webpage, "[f]ollowing a second winter where we served a very low number of guests, the churches of the Winter Shelter Network have made the difficult decision in March of 2023 to end operations and focus their efforts on how to serve the current needs of people experiencing homelessness." The webpage refers people to the Douglas County HEART program, not to the Rock's limited on-site RV/camper program. See screenshots attached hereto as ***Exhibit H***.

On September 29, 2023, the Town issued a Letter of Determination stating that the use of RVs/campers for temporary housing for people in need, is not a permissible use per the PD Zoning Regulations. See Letter of Determination attached hereto as ***Exhibit I***. The Rock filed its Board of Adjustment (BOA) Appeal of Zoning Manager's Decision on October 13, 2023. Photographs of the RVs are attached hereto as ***Exhibit J***.

III. Board of Adjustment's Authority

Pursuant to Section 17.06.020 of the Castle Rock Municipal Code, the Board of Adjustment ("BOA") shall hear and decide appeals of administrative determinations. The powers and duties of the BOA shall be exercised, subject to the laws of the State and subject to the appropriate conditions and safeguards, in harmony with the purpose and intent of CRMC Title 17, the policies of the Town Council, and in accordance with the public interest and the most appropriate development of the neighborhood.

The hearing is quasi-judicial in nature and both the applicant and the Town shall have the opportunity to be heard and present evidence. A simple majority vote, but not less than three, is required to either affirm or reverse the Zoning Manager's decision. The Board may affirm the decision, reverse the decision, or affirm the decision with conditions. The ruling of the Board shall be final, subject to judicial review.

IV. Issue Presented

Whether the Town's Zoning Manager correctly determined that the use of Recreational Vehicles/Campers on the Property for people in need is not a permitted use per the applicable PD Zoning Regulations.

V. Zoning Manager's Determination and Analysis

1. Use of RVs/Campers is not a permitted use per the PD Zoning Regulations.

As stated in Section II, the permitted uses of the Property are listed in Section F of the PD Zoning Regulations. The only acceptable residential use listed in Section F(4) is for parsonages. Although the PD Zoning Regulations lacks a definition of "parsonage", the American Planning Association ("APA") provides the following definition: "The permanent place of residence of the pastor or minister of a church." The APA's definition of parsonage is consistent with the definition provided in the Merriam Webster's Dictionary.

Applicable to the present issue, the Town's Development Services previously issued a Letter of Determination finding that when a definition for a term is undefined by the Code, the Town may, at its discretion, utilize the APA definitions. See Letter of Determination, dated November 22, 2021, attached hereto as ***Exhibit K***.

There is no dispute that the Rock's intended use for the RVs/campers is to provide temporary housing for people in need. The intended use is not to provide a permanent place of residence for the Rock's pastor or minister. In fact, the Rock has expressly confirmed that the Campers/RVs are not used as a parsonage. Therefore, as stated in the PD Zoning Regulations, the intended use of RVs is not allowed.

As stated above, the Rock was involved in the drafting of the PD Zoning Regulations. At no time did the Rock discuss including temporary shelter for people in need as a permissible use. In fact, Section F addresses the Rock's non-profit ministry work and expressly stated that the administrative offices for the ministries was acceptable. Arguably, the failure to include a residential component was intentional as the Rock's ministries did not include on-site housing for people in need. *Had the Rock's ministries included residential housing for unhoused individuals, the use of RVs/campers on-site for temporary shelter would have been subject to public comment at the Planning Commission and Town Council meetings.* (emphasis added). The public was denied the opportunity to comment on allowing temporary on-site shelter because it was not included in the initial zoning efforts.

2. Use of RVs/Campers for temporary shelter does not constitute "accessory use."

The Rock asserts that the RVs/campers as temporary shelter is a permissible use because the RVs/campers constitute an "accessory use". CRMC 17.14.010 states an accessory use is "a use naturally and normally incidental to, subordinate to and devoted exclusively to the main use of the premises." The Rock argues that providing temporary shelter, detached from its main building, is naturally and normally incidental to the main use of the premises, including the Rock's compassionate care ministries. In support, the Rock relies on *East Side Baptist Church of Denver, Inc. v. Klein*, 175 Colo. 168 (1971). The Rock notes that in that case, the Board of Adjustment found that use of buses was an accessory use within the meaning of the zoning Code.

The Rock's reliance on *East Side Baptist Church of Denver* is misplaced. The Rock failed to mention that the Court reversed the Board of Adjustment ruling. The Court found there was no evidence to support that the use and parking of buses is clearly incidental, customary to and commonly associated with church operations.

Similar to the argument presented here, the Rock has not provided any evidence that establishes the use RVs/campers to provide temporary shelter is natural and incidental to its church operations. The Town does not discount the Rock's faith and desire to help people in need. There is a long history of religious organizations providing various services for underprivileged people. However, providing such charitable services does not automatically qualify efforts to provide temporary residential quarters on the Property

as a natural and normal incidental use related to the Rock's church operations. As stated above, if such use was naturally and normally incidental to the Rock's operations, the Rock could have requested that Section F of the PD Zoning Regulations include the language "Non-profit ministry related administrative offices and temporary residential quarters."

The fact that the Rock did not inform the Town or its residents of its intent to house individuals on the Property when it initially applied for its PD Site Plan and Zoning Regulations is fatal to the Rock's incidental and normal use of its church operations argument. From March 2005 to 2021, the Rock's church operations did not include the use of RVs/campers for temporary shelter. For years, the Rock has provided multiple resources to people in need that did not involve sheltering them in RVs/campers on premises. Moreover, the Rock has not provided any evidence that churches in the Castle Rock community, or Douglas County, customarily, naturally, or normally use RVs in connection with their church and housing people in need. Churches are subject to reasonable zoning regulations. See *East Side Baptist Church of Denver*, 175 Colo. at 172-173.

The Rock cannot, after fifteen (15) plus years, attempt to provide residential quarters on the Property under the guise that such services are an "accessory use." The complaints submitted by citizens are evidence that the Rock's actions are not in accordance with the public interest and the most appropriate development of the neighborhood. Therefore, the denial of RVs/campers for temporary shelter is a reasonable zoning regulation.

3. The Zoning Manager's determination does not substantially burden the Rock's free exercise of religion and is not a violation of RLUIPA.

The Religious Land Use and Institutionalized Persons Act ("RLUIPA") states that 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 government interest; and (B) is the least restrictive means of furthering that compelling government interest." See 42 U.S.C. § 2000cc(a)(1)

The Rock has failed to establish that its religious exercise is substantially burdened by the Zoning Manager's determination to deny the use of RVs/campers as temporary shelter for people in need. Although RLUIPA does not specifically define "substantially burdened," RLUIPA's legislative history reveals that "substantial burden" is to be interpreted by reference to the Religious Freedom Restoration Act of 1993 ("RFRA"), 42 U.S.C. § 2000bbet seq., and First Amendment case law. See *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 661 (10th Cir. 2006) (citations omitted).

For a government regulation to exceed RFRA's "substantial burden" threshold, the regulation must "must significantly inhibit or constrain conduct or expression that manifests some central tenet of beliefs, must meaningfully curtail the ability to express

adherence to his or her faith, or must deny reasonable opportunities to engage in those activities that are fundamental to religion. *Thiry v. Carlson*, 78 F.3d 1491, 1495 (10th Cir. 1996).

The Zoning Manager's determination, does not significantly inhibit or constrain the Rock and its members' ability to assist with securing shelter for people in need. The compassionate care programs can provide assistance without the use of RVs/Campers. The decision does not deny the Rock and its members reasonable opportunities to engage in activities that are fundamental to the Christian religion.

Quite the opposite is true, the land regulation does not prohibit the Rock from operating its compassionate care programs through alternative means. The Rock has the opportunity to assist people in need with shelter by providing them with hotel stays, transport to nearby housing shelters, transport to the residences of church members' willing to house people in need, etc. Additionally, the Rock is able to continue operating its Food Bank and Blessing Rooms. There are other means and methods available to members of the Rock in which they may pursue their firm commitment to helping the poor and those experiencing homelessness.

As stated above, the Rock affirmed in the Development Agreement that the PD Zoning Regulations did not substantially burden it or its members' exercise of religion or impair its ability to worship. Also, there are no facts to support the PD Zoning Regulations were imposed subsequent to the execution of the Development Plan. The opposite is true, the PD Zoning Regulations are part of the Development Plan and have always been known to the Rock. It is clear, based on the language of the PD Zoning Regulations, that when the development plans were drafted, the Rock did not to keep RVs/campers on site as temporary shelter.

Arguably, the Rock's failure to include temporary housing for people on the Property as a permitted use in the PD Zoning Regulations, at best, created a self-imposed burden, not a substantial burden placed upon it by the Town for denying the Rock's request. See *Petra Presbyterian Church v. Vill. Of Northbrook*, 489 F.3d 846 (7th Cir. 2007) (a self-imposed hardship generally will not support a substantial burden claim under RLUIPA because the hardship was not imposed by governmental action altering a legitimate, pre-existing expectation that a property could be obtained for a particular land use.)

The lack of RVs/Campers usage as temporary housing from the inception of the Property until 2021, establishes the Rock did not have a pre-existing expectation that the Property could be used in such a manner. Referring back to the PD Zoning Regulations, the Rock had the pre-existing expectation that the Property could be used for a parsonage, not housing people in need. The Rock also had the pre-existing expectation that administrative offices for its ministries was allowed. Any "burden" placed on the Rock as a result of the Zoning Manager's determination is nothing more than inconvenience or a self-imposed hardship.

Despite the Rock's claim that the ministry cannot be operated at a separate location, information on its own webpage indicates that the compassionate care programs often refer people experiencing homelessness to other community programs.

VI. CONCLUSION

The Zoning Manager's determination that usage of RVs/campers on-site to provide temporary shelter on the Property is not a permitted use under the Rock's PD Zoning Regulations and Planned Development Plan is appropriate. The Rock has failed to establish, by a preponderance of the evidence that the determination was made in error. The Town met with the Rock on numerous occasions to reach an amicable resolution regarding the unauthorized use of the RVs/campers. Based on an analysis of the evidence submitted, no evidence exists that supports the conclusion that use of RVs/Campers as temporary residence to people in need is an allowed use per the RD Zoning Regulations.

VII. PROPOSED MOTION AND FINDING OF FACTS

If the Board of Adjustment determines the Zoning Manager's determination is appropriate and **denies the appeal** by Church of the Rock, the recommended motion is:

*"I move to **deny** the appeal by Church of the Rock of the Zoning Manager's determination for 4881 Cherokee Drive, based on the following findings:*

The Zoning Manager's determination IS consistent with the application of Title 17 and the Planned Development (PD) based on:

- 1. The only allowed residential use of the Property stated in the PD Zoning Regulations is for a Parsonage.*
- 2. Pursuant to Castle Rock Municipal Code ("CRMC") 17.34.10 the PD Plan and PD Zoning Regulations constitute the formally approved, overall zoning plan for the property. The PD zoning regulations specify the permitted uses.*
- 3. A parsonage is a permanent place of residence of the pastor or minister of a church.*
- 4. The Rock admits the RVs/Campers on its Property are not for a parsonage.*
- 5. The Rock's intended use of RVs/Campers on the Property is to house people in need, which does not fall within the definition of a parsonage.*
- 6. Any residential use of the Property that is not a parsonage is not allowed pursuant to the PD Zoning Regulations.*
- 7. The use of RVs/Campers is not an "accessory use" of the Property.*

8. *No evidence was provided that use of RVs/Campers to provide people experiencing homeless is a customarily, incidental or natural use related to church operations.*
9. *The Rock never informed the Town during the development of the planning documents that it intended to provide temporary shelter to people in need on the Property with RVs/Campers.*
10. *From 2005 until 2021, the Rock did not utilize RVs/Campers as temporary shelter for people in need.*
11. *The residential restrictions set-forth in the PD Zoning Regulations are reasonable and do not create a substantial burden on the Rock's ability to exercise its religion.*
12. *Alternative methods are available to the Rock and its members to assist people in need with securing shelter.*
13. *The Rock is not restricted from operating its compassionate care programs, including its food bank or blessing rooms from the Property.*
14. *The Rock did not have a pre-existing expectation that the Property could be used to house RVs/Campers for temporary shelter because it did not include it with the initial development plans, and such, the subject use was not vetted through public comment and Town Council approval.*

Exhibits:

- Exhibit A – Appeal of Zoning Manager from the Church of the Rock
- Exhibit B – Ordinance No. 2003-27 with PD Zoning Regulations
- Exhibit C – Church of the Rock Annexation and Development Agreement
- Exhibit D – Examples of Complaints
- Exhibit E – Correspondence from Town the Town dated September 26, 2022
- Exhibit F – Correspondence from Town Attorney's Office dated November 9, 2022
- Exhibit G – Notice of Zoning Violation
- Exhibit H – Correspondence from the Rock dated March 9, 2023
- Exhibit I – Screenshots
- Exhibit J – Letter of Determination for the Rock
- Exhibit K – Photographs
- Exhibit L – Letter of Determination re: definitions dated November 22, 2021