219-02155-2018

CAUSE NO. _____

RABBI YAAKOV RICH and CONGREGATION TORAS CHAIM, INC. DBA CONGREGATION TORAS CHAIM	§	**IN THE DISTRICT COURT**
Petitioner,	§	**COLLIN COUNTY, TEXAS**
v.	§	
THE CITY OF DALLAS and DALLAS BOARD OF ADJUSTMENT,	§	**___ JUDICIAL DISTRICT COURT**
Respondent.		

VERIFIED PETITION FOR WRIT OF CERTIORARI AND ORIGINAL PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

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Petitioners Rabbi Yaakov Rich and Congregation Toras Chaim, Inc. ("CTC") file this petition for writ of certiorari pursuant to Texas Local Government Code § 211.011. Petitioners respectfully request that this Court issue a writ of certiorari, issue a temporary restraining order to prevent enforcement of an unlawful decision, hold an evidentiary hearing, and reverse the Dallas Board of Adjustment's ("BOA" or "Board") decision to deny a parking variance to CTC.

Petitioners also seek declaratory and injunctive relief to prevent additional attempts by the City of Dallas to impose a substantial burden on CTC's religious practices through unlawful enforcement of code provisions.

I. Introduction and Summary of Argument

1. CTC is a small Orthodox Jewish congregation that meets at [redacted], Dallas, Texas 75252 (the "Property"), where about twenty-five neighborhood congregants walk to gather for worship on Saturdays, and a smaller number of congregants gather to worship throughout the week. CTC started its worship at the Property in 2013. Since then, the congregation has faced several attempts to prevent its existence at a location where it has a fundamental and legal right to exist.

2. The City of Dallas filed suit on March 3, 2015, to enforce a City ordinance in Dallas County district court (the "Code Enforcement Lawsuit") and ensure CTC obtained a certificate of occupancy in light of its religious use.[1] After years of cooperative efforts between CTC, the City Attorney's office, and city enforcement officials to narrow the issues preventing CTC from obtaining a certificate of occupancy (handicap accessibility issues, fire code issues, building code issues, etc.), the last remaining issue to be resolved is *parking*. The City initially required CTC to have twenty-seven (27) off street parking spaces on the Property – a staggering number that is

1 The Code Enforcement Lawsuit is *City of Dallas v. Gothelf*, Cause No. DC-15-02336 (116th Judicial District Court of Dallas County, Texas).

greater than the number of members worshipping at CTC. The Code Enforcement Lawsuit was ultimately stayed pending CTC's request for a variance to the number of off-street parking spaces required by the City.

3. At the suggestion of the City Attorney's office, CTC applied for the aforementioned variance with Dallas's Board of Adjustment (a zoning board referred to as "BOA" or "ZBA" in case law). In the midst of its pending variance applications, CTC worked tirelessly with the City to lower the number of required spaces from twenty-seven (27) spaces to twelve (12) spaces, including substantial and costly modifications to the Property, aimed at reducing the capacity. Additionally, at the BOA's request, CTC successfully obtained a shared parking agreement with the Torah Day School, a Jewish community right down the street from the Property, which covered half of the required spaces. Therefore, CTC only needed *6 off-street parking spaces*.

4. CTC can legally park one to two cars in front of the Property and can also park five to six cars behind the Property. These spaces, however, do not count towards CTC's required total because the first two spaces are considered on-street and the remaining spaces face a screening issue which will be discussed below. Regardless of whether these available spaces count towards the required total, they are available for and used by CTC's members to park. Cars parked in these spaces in no way obstruct any road or alley, nor do they present any safety concern. They simply do not count toward the requirement because of the unique features of the Property.

5. After four hearings related to this request, the Board ultimately denied with prejudice CTC's request for a variance – providing no reason—literally *no* reason—for its decision other than its mere recitation of the three factors at issue when seeking a variance.

6. The first factor, whether a variance would be in the public interest, is met as it is never in the public interest to violate religious liberty rights, and because the variance presents no

valid safety concerns. The zone in which the Property resides specifically provides for religious use. Dallas Dev. Code § 51A-4.112(f)(1). Despite neighbors affirmatively stating that they simply did not want a place of worship in their neighborhood, the City has provided for and specifically allows for this type of worship and religious use in this zoning area, as it is required to do by constitutional law. *Id.*; Tex. Const. art. 1, §§ 3, 3a, 6, 8, and 27; U.S. Const. amend. I. Neighbors also noted that they did not like the way the five to six cars "looked" behind the Property. An aesthetic concern that does not implicate safety is not a sufficient reason (nor it is a compelling state interest, as will be discussed below) for preventing members of the Jewish faith from worshiping in accordance with their beliefs, and it is irrelevant to this factor. Neighbors also noted that they were concerned about "safety issues" in the neighborhood due to the number of cars on the street. The original stated concern was with cars parked on Saturdays, the only day the full congregation meets. CTC has, however, sedulously ensured that not a single car is parked on the street on Saturdays (*i.e.*, left from the night before), even though it is their right to park cars on the street. The attached pictures that CTC's counsel took unannounced on multiple occasions demonstrate that CTC parks not a single car on the street on Saturdays, as the HOA was forced to admit at the hearing. Ex. 1 p. 18 ("[O]n Saturday it isn't a problem.").[2] At the most recent hearing, the apparent concern shifted to parking during the week. But as the attached pictures show, CTC parks, at most, one or two cars on the street during the week, and only legally (in terms of applicable distance requirements). *See* Ex. 5.[3] Notably, other neighbors often park multiple cars on the street during the week for nonreligious use. *Id.* Other than unfounded assertions, neither the

[2] A true and correct copy of the transcript of the June 2017, August 2017, October 2017, and April 2018, Board Hearings are attached and incorporated by reference into this Petition as Exhibits 1 through 4, sequentially. These transcripts were transcribed internally from the recordings of the hearings.

[3] A collection of photographs which are a fair and accurate depiction of parking on various dates is attached and incorporated by reference into this Petition as Exhibit 5.

City nor any neighbors have ever presented any valid evidence to the contrary. Finally, *the members of CTC are all neighbors within this community that live within walking distance*. CTC exists in this neighborhood for the very purpose of serving them. The public interest captures both members and non-members. And, if the "concerned" neighbors' only cognizable concern is the purported safety issues related to cars on the street, there are less restrictive means available to address that alleged concern. Shutting down a place of worship is not a reasonable solution.

7. The second factor, whether a variance is necessary to permit development due to the restrictive area, shape, and slope of the Property, is met due to the two front yards, the HOA brick wall, the size of the Property, and the screening issues that prevent *any* parking spaces behind the Property from counting towards CTC's required total, a fact which has never been disputed and uniquely prohibits the Property from being developed similarly to other properties. *See* Ex. 6.[4] The pictures and maps illustrate the unique features of CTC's Property and its disadvantages in seeking to comply with the City's requirements.

8. The third factor, whether this variance was requested to relieve a self-created hardship, is met because CTC did not commit an affirmative action that brought an otherwise conforming property into non-conformance. Some neighbors contend that since CTC knew it wanted to use the Property for a religious use when it purchased the Property (and knew the obstacles it would face) and yet started worshipping there anyway, CTC in fact created this hardship. Binding case law forecloses this argument. The case law below will further explain that a self-created hardship only occurs when a party physically does something to the Property that

[4] A collection of photographs which are a fair and accurate depiction of the unique features of the Property and a true and correct copy of the Property's site plan are attached and incorporated by reference into this Petition as Exhibit 6.

brings it entirely into non-conformance. In other words, CTC did not make physical changes to the Property that now render it impossible to comply with the parking requirements.

9. Not only did the Board fail to properly apply the factors to CTC's request for a variance of six (6) parking spaces, the Board's decision also independently violates the Religious Land Use and Institutionalized Persons Act ("RLUIPA") and Texas Religious Freedom Restoration Act ("TRFRA"). Furthermore, the Board's decision, as applied to CTC members, discriminates against CTC members based on their religious beliefs and inhibits their ability to freely exercise their religion, violating Article I, Sections 3, 3a, 6, and 8 of the Texas Constitution, as well as the First and Fourteenth Amendments of the United States Constitution. Therefore, Petitioners respectfully request that the Court issue a temporary restraining order, temporary injunction, and permanent injunction to prevent the imminent harm to Petitioners. Petitioners further respectfully request a declaratory judgment that the Board's decision was in violation of the U.S. Constitution, the Texas Constitution, and the state and federal statutes effectuating the protections of constitutional rights.

II. Factual Background

10. CTC, a small congregation of Orthodox Jews, was founded in 2007 and started meeting at the Property in 2013.

11. The Property's location is essential to the CTC's existence because under its members sincerely held religious beliefs they are prohibited from: (i) driving on the Sabbath (observed on Saturdays); (ii) carrying anything on the Sabbath, including children, unless within predefined neighborhood boundaries; and (iii) walking long distances on the Sabbath, unless within predefined neighborhood boundaries. Accordingly, the location was selected for use by the

congregation so that Orthodox Jews in the neighborhood had a place to worship[5] that comports with scriptural limitations. These limitations also mean that CTC cannot grow its membership beyond the people living in the neighborhood who wish to attend. It also means that the meeting place cannot move outside the immediate area. Most meetings of the CTC at the Property have five (5) to ten (10) attendees, with approximately twenty-five (25) attendees on the Sabbath.

12. Since moving to the Property, CTC and its members have expended significant effort, time, and money to defend lawsuits, bring the Property into code compliance, and address the concerns of neighbors. These efforts have been largely successful as the Property is now compliant with every requirement except off-street parking. Despite these efforts, a persistent minority in the neighborhood continues to pursue a goal of preventing CTC from using the Property in its neighborhood—with a current focus on parking issues.

13. In 2014, the Highlands of McKamy Homeowner Association ("HOA") and certain neighbors sued CTC (the "Deed Restriction Lawsuit") in an attempt to enforce deed restrictions that would have effectively forced CTC to close its doors to congregants. In the Deed Restriction Lawsuit[6], Judge Jill Willis granted CTC's motion for summary judgment, correctly recognizing that enforcing the deed restrictions against CTC violates the Religious Land Use and Institutionalized Persons Act[7] ("RLUIPA") and the Texas Religious Freedom Restoration Act[8] ("TRFRA"), which are statutory extensions of the constitutional right of the free exercise of religion.

[5] There is only one other congregation of Orthodox Jews in the entire Dallas-Fort Worth area that shares CTC's particular outlook on spiritual life.

[6] The Deed Restriction Lawsuit is *In re David R. Schneider*, Cause No. 429-04998-2013 (429th Judicial District Court of Collin County, Texas).

[7] Codified at 42 U.S.C. § 2000cc *et seq*.

[8] Codified at Tex. Civ. Prac. & Rem. Code § 110.001 *et seq*.

14. Despite this setback, some area residents are undeterred in their desire to have CTC banished from the neighborhood. These residents have organized a persistent campaign to agitate City officials to enforce code restrictions, a campaign which ultimately resulted in the City of Dallas filing suit (and also led, to some degree, to the BOA's decision that is the subject of this petition for injunctive relief).

15. The City of Dallas filed the Code Enforcement Suit—seeking a $1,000 per day, per violation penalty for continued use of the Property for religious purposes. After years of cooperation between CTC, the City Attorney's Office, and enforcement officials to narrow the issues in dispute, that suit was stayed pending CTC's request for a variance to the City's off-street parking requirement. In the Code Enforcement Lawsuit, the City raised several issues related to CTC's failure to obtain a certificate of occupancy, including issues concerning the fire code, building code compliance, handicap accessibility, and, most importantly for the instant issues—parking. CTC asserted counterclaims against the City under RLUIPA, TRFRA, and several constitutional provisions. The City of Dallas's attorneys, planning department, code enforcement division, and CTC representatives have worked collaboratively to resolve every issue regarding the certificate of occupancy with one exception—the City's off-street parking requirements.

16. In February 2017, CTC applied for a variance with the BOA. *See* Ex. 7.[9] At the initial hearing before the BOA on June 20, 2017, Rabbi Rich and CTC submitted substantial evidence demonstrating that they met the BOA's required standard for purposes of obtaining a variance. Hesitant to grant the variance on the basis of some of the so-called "safety concerns" raised by a few of the neighbors and without citing specific variance factors that the BOA believed CTC did not meet, the BOA instructed CTC and area residents to resolve any outstanding concerns

[9] A true and correct copy of CTC's first application for variance is attached and incorporated by reference into this Petition as Exhibit 7.

– and also encouraged CTC to work with the City to submit the appropriate permitting applications which might ultimately impact the number of required spaces. *See* Ex. 1. CTC and the City subsequently continued their discussions and worked collaboratively to reduce the number of required spaces from twenty-seven (27) spaces to twelve (12) spaces.

17. At the second hearing on August 15, 2017, CTC sought a continuance so that it could await the permitting decisions of the City. *See* Ex. 2. The BOA granted CTC's request for continuance and set the next hearing for October 2017. *Id.*

18. At the third hearing in October 2017, CTC updated the BOA regarding the facts that: (1) CTC recently received feedback from city officials David Session and Ann Hamilton that its permit application should be approved shortly and that the number of required spaces is twelve (12); and (2) CTC was continuing to pursue a remote shared parking agreement with the Torah Day School ("TDS"). *See* Ex. 3. CTC explained that since the walking distance between TDS and CTC is beyond 600 feet, the remote shared parking agreement with CTC can satisfy fifty percent (50%) of CTC's required spaces. In other words, the remote shared parking agreement with TDS can cover six (6) of CTC's required twelve (12) spaces. At the hearing, the Board explained that it was not inclined to grant a variance unless the Shared Parking Agreement was *executed*. *Id.* CTC requested a variance contingent upon the granting of the application, which was within the Board's power to do, but the Board insisted that CTC return only after executing the agreement. Thus, the Board denied CTC's request for variance *without prejudice* and encouraged CTC to re-submit its variance application once a shared parking agreement was executed. *Id.*

19. As instructed by the Board, CTC obtained (after a significant amount of work) a shared parking agreement with Torah Day School (Ex. 8)[10] that reduced the number of required

[10] A true and correct copy of the Shared Parking Agreement is attached and incorporated by reference into this Petition as Exhibit 8.

parking spaces from 12 spaces to 6 spaces. CTC also sedulously enforced policies stating that (1) CTC's members would not park a single car on the street on Saturdays – given that Saturdays was one of the chief alleged concerns raised by the neighbors (even though CTC certainly had a right to park on the street just as any other property owner on the street); (2) CTC would park no more than two cars in front of the Property at any time during the week; (3) CTC would park across the street at the Torah Day School (via the shared parking agreement (if it ever hosted an event); and (4) no one would park in violation of the red tape Rabbi Rich placed in front of the Property to ensure no one parked within 30 feet of a stop sign or 15 feet of the alley. CTC's counsel also paid unannounced visits to CTC *numerous* times following the hearing and took photos demonstrating CTC's strict adherence to the Rabbi's policy. *See* Ex. 5.

20. After meeting every one of the Board's stated concerns, Petitioners filed a new variance request with the Board of Adjustment. Ex. 9.[11] Disregarding the actions taken by CTC and the evidence shown by counsel at the fourth and final hearing on April 17, 2018, and without a single stated reason, the Board, after going into "executive session," voted unanimously to deny the variance with prejudice.[12] This decision was finalized the next day when the Board's decision was filed in the Board's office. *See* Ex. 12.[13] This decision by the Board was illegal because the

[11] A true and correct copy of CTC's second application for variance is attached and incorporated by reference to this Petition as Exhibit 9.

[12] The City's Assistant Director of Engineering, Lloyd Denman, recommended that the Board deny CTC's first application. *See* Ex. 10.1. Mr. Denman stated that the "[o]riginal use had two off-street parking spaces. The other home lots also have two off-street parking spaces." *Id.* Not only is Mr. Denman's comment unrelated to the factors the Board must apply, Mr. Denman's concern was rendered moot when CTC submitted its second application given the shared parking agreement CTC obtained for at least six (6) off-street parking spaces. Additionally, CTC does have additional off-street parking spaces behind the Property; however those spaces do not count towards the required total of spaces given the screening issue discussed herein. The City Engineer assigned to CTC's second application, David Nevarez, recommended a denial *without any reasoning*. *See* Exhibit 10.2. Finally, the Board's Staff recommended denial of both the first and second applications *without any reasoning* other than a simple recitation of the factors used to determine the appropriateness of a variance. *See* Ex. 11.1 and 11.2. A true and correct copy of the City Engineer recommendations and the Board's Staff recommendations are attached and incorporated by reference into this Petition as Exhibits 10.1, 10.2, 11.1 and 11.2, respectively.

[13] A true and correct copy of the decision is attached and incorporated by reference into this Petition as Exhibit 12.

Board failed to apply the factors correctly, its decision was arbitrary and capricious, and the Board's decision violates RLUIPA, TRFRA, RFRA, and various constitutional provisions. Therefore, Petitioners respectfully request that the Court issue a writ, issue a temporary restraining order pending the resolution of this appeal, hold an evidentiary hearing, and reverse the Board's illegal decision.

21. To emphasize, the Board gave no reasoning to support its decision, merely quoting the three variance factors without explanation. The little discussion that the Board offered was self-contradictory. For example, at the beginning of the hearing, the Board indicated that the first variance factor—public interest—was satisfied. But, when citing its reasons for denial after holding an executive session, it then listed this first factor as one of the factors supporting its decision to deny the variance.

22. Granting the variance would allow CTC members to continue practicing their faith within City regulations and religious limitations. Denying the variance would force dozens of members to sell their homes and relocate to an entirely different neighborhood. The Board's variance denial prohibits congregants from meeting at the Property to worship, pray, and teach in accordance with their faith. In addition to the fact that the Board should have granted the variance because the standard properly applied necessitates the variance, this government action is further prohibited by the protections of both the United States and Texas Constitutions as well as the statutory enactments that effectuate those protections.

III. Parties and Service

23. Petitioner Rabbi Yaakov Rich is an individual residing in Collin County at [redacted] Dallas, Texas 75252.

24. Petitioner Congregation Toras Chaim, Inc. dba Congregation Toras Chaim is a Texas corporation that occupies and controls the Property.

25. Defendant/Respondent City of Dallas is a municipal corporation existing under the laws of the State of Texas with its principal office in Dallas County. The City may be served with process by serving the Interim City Secretary, Bilirae Johnson, at [redacted] Dallas, Texas 75201.

26. Defendant/Respondent Dallas Board of Adjustment is an established board of the City of Dallas and may be served with process by serving the Interim City Secretary, Bilirae Johnson, at [redacted], Dallas, Texas 75201.

IV. Rule 47(c) Disclosure

27. Pursuant to Tex. R. Civ. P. 47(c), Petitioners seek non-monetary relief as well as attorneys' fees and costs of court.

V. Discovery Control Plan

28. To the extent discovery is necessary in this action, Petitioners intend to conduct such discovery under a Level 3 discovery control plan. Tex. R. Civ. P. 190.3.

VI. Jurisdiction, Standing, and Venue

29. This Court has jurisdiction over this Petition pursuant to Tex. Loc. Gov't Code § 211.011(a) and because the petition was filed within 10 days of the Board's decision. *Id.* § 211.011(b). This Court also has jurisdiction over the declaratory judgment sought by Petitioners pursuant to the Uniform Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code § 37.001 *et seq*. This Court also has jurisdiction over the temporary restraining order, temporary injunction, and permanent injunction sought by Petitioners pursuant to TRFRA, Tex. Civ. Prac & Rem. Code § 110.001 *et seq*.

30. Petitioners have standing to pursue this Petition because they are persons aggrieved by a decision of the Board, and because they are taxpayers. Tex. Loc. Gov't Code § 211.011(a)(1)–

(2). Petitioners have standing to pursue injunctive remedies because they are threatened with imminent harm to their practice of protected religious rights.

31. This Court has venue over this petition because a substantial part of the events or omissions occurred in Collin County. Tex. Civ. Prac. & Rem. Code § 15.002(a)(1). The Property is located in Collin County, the parking variance at issue was denied to residents of Collin County, and the parking concerns at issue in this matter all occurred in Collin County. *Id.* Additionally, the decision of the Board affects an interest in real property which is located wholly within Collin County. *Id.* § 15.011.

VII. Petition for Writ of Certiorari

32. This petition seeks a writ of certiorari because the Board's decision was illegal for several reasons and therefore was a clear abuse of discretion.

A. Legal Standard to Obtain Writ of Certiorari and Review of the Board's Decision.

33. Pursuant to Tex. Loc. Gov't Code § 211.011(a) and (b) any person aggrieved by the decision of the Board or any taxpayer may file a writ of certiorari seeking review of the Board's decision within ten (10) days of the date the decision is filed in the board's office. On presentation, the Court may grant the writ of certiorari directed to the Board. *Id.* § 211.011(c). The writ must indicate the time by which the Board's return must be made and is served on the petitioners' attorney. *Id.* While the writ is pending, the Court may grant a temporary restraining order staying any proceedings on the decision under appeal. *Id.* The standard for a temporary restraining order pursuant to this statute is "due cause shown." *Id.*

34. The Board's return must be verified and must "concisely state any pertinent and material facts that show the grounds of the decision under appeal." *Id.* § 211.011(d). The Board must also return either the original documents on which the Board acted, or certified or sworn

copies of the documents. *Id.* The Court may determine that testimony is necessary for the proper disposition of the matter and may take evidence or appoint a referee to take evidence as directed. *Id.* § 211.011(e). If a referee is appointed, the referee must report the evidence taken to the Court, findings of fact, and conclusions of law. *Id.*

35. The Petitioners bear the burden of demonstrating that the Board's decision was a clear abuse of discretion. *Tellez v. City of Socorro,* 296 S.W.3d 645, 649 (Tex. App.—El Paso 2009, pet. denied). A clear abuse of discretion exists when the Board acted arbitrarily and unreasonably, "without reference to any guiding rules or principles." *See Garcia v. Martinez*, 988 S.W.2d 219, 222 (Tex. 1999). The only question before the Court on a petition for writ of certiorari is whether the Board's decision was illegal. *Tellez,* 296 S.W.3d at 649. Whether the decision was illegal is a question of law. *Pick-N-Pull Auto Dismantlers v. Zoning Bd. Of Adjustment of the City of Fort Worth*, 45 S.W.3d 337, 340 (Tex. App.—Fort Worth 2001, pet. denied).

B. The Board Failed to Apply the Variance Factors Correctly, and Its Decision Was a Clear Abuse of Discretion.

36. The Dallas Development Code requires any religious use of land to be accompanied by a certificate of occupancy. *See* Dallas Dev. Code § 51A-1.104. Relevant here, to obtain a certificate of occupancy, the code requires a certain number of off-street parking spots based on the number of seats in the sanctuary. Dallas Dev. Code § 51A-4.204(4)(C)(i). Therefore, CTC must provide the required off-street parking, or obtain a variance. Pursuant to Dallas Development Code section 51A-3.102(d)(10), the Board has authority:

> To grant variances from the . . . off-street parking . . . regulations provided that:
>
> (A) the variance is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
> (B) the variance is necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area,

> shape, or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
> (C) the variance is not granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land within the same zoning.

The burden is on the party seeking a variance to provide evidence that sufficiently proves the factors' application to the facts of the specific request. Here, Petitioners met this burden, yet the Board still denied the request for variance.

1. Petitioners Met Their Burden to Establish that the Variance Was Not Contrary to the Public Interest.

37. The first factor required the Board to consider whether the variance was "not contrary to the public interest when, owing to special conditions, a literal enforcement of [the Dallas Development Code's Zoning Regulations] would result in unnecessary hardship." Dallas Dev. Code § 51A-3.102(d)(10)(A).

38. As an initial matter, the variance at issue was not contrary to the public interest. The variance was requested to allow CTC members to practice their sincerely held beliefs—an issue at the heart of what it means to live under the Texas and United States Constitutions. It is never in the public interest to violate religious liberty rights. *See Opulent Life Church v. City of Holly Springs Miss.*, 697 F.3d 279, 298 (5th Cir. 2012). Furthermore, the CTC has a legal right to use the land for religious purposes under the zoning applicable to the location. The Property is zoned R-7.5(A) which expressly provides for religious use. *See* Dallas Dev. Code § 51A-4.112(f)(1) ("This district is intended to be composed of single-family dwellings together with . . . churches . . . to create basic neighborhood units."); *Id.* § 51A-4.112(f)(2)(D) (providing list of permitted institutional and community service uses which includes "church"); Dallas Dev. Code § 51A-4.204(4)(B) ("Districts permitted [for church]: By right in all residential and nonresidential

districts except the P(A) district.").

39. Furthermore, due to special conditions, a literal enforcement of the Dallas Development Code would result in unnecessary hardship. The Dallas Development Code requires off-street parking for religious uses. Dallas Dev. Code § 51A-4.204(4)(C). Here, based on the size of the sanctuary at the Property, the code requires a total of twelve (12) off-street parking spaces. Up to half of the required spaces can be obtained through the use of an off-site or shared parking arrangement. Accordingly, CTC would still be required to provide six (6) off-street spaces on its property under the literal enforcement of the code. In short, a literal enforcement of the code would prevent the Property's use for religious purposes for failure to obtain a certificate of occupancy.

40. As noted above, the members of CTC are religiously restricted from driving, walking long distances, or carrying anything on the Sabbath. This requires the members of CTC to live within a very short distance of their place of worship. If CTC is unable to use the Property for worship, all of its members would be required to move to an entirely different neighborhood where they could practice their sincerely held religious beliefs. These religious beliefs satisfy the requirement of a special condition. And preventing CTC congregants from exercising their religious practice through meeting to worship, pray, and teach imposes an unnecessary hardship. Even more, this result of every CTC member moving to another neighborhood would clearly impose an unnecessary hardship. Accordingly, CTC presented significant evidence to prove that the use of the Property is not contrary to the public interest, and that literal enforcement of the code would impose an unnecessary hardship.

41. In contrast, the primary focus of the comments and evidence submitted in opposition to the variance was a purported safety concern. For example, Maura Schrier-Fleming voiced concerns about parking in front of the Property and the ability of EMS to reach a home at

the end of the cul-de-sac. Ex. 4 pp. 16–17. Fleming told the Board that "a person on Mumford Court would have to pray that their emergency occurs on a Saturday so that they are not impacted by any of the cars on the front of Mumford Court." *Id.* at p. 18. Fleming also offered a letter submitted by another neighbor discussing concerns about EMS reaching her home in a timely manner. *Id.* at p. 17. However, these concerns about public safety are not supported by the facts.

42. First, the letters submitted to the Board by neighbors of the Property demonstrate that the alleged safety and parking issues are merely pretexts to ensure CTC cannot use the Property for religious purposes—despite the fact that the zoning allows for religious use. For example:

- "Although we support all religious freedoms, **we do not support having a synagogue in a residential neighborhood**." Ex. 13 (emphasis added).
- "**I am not in favor of any residence being used as any type of house of worship** no matter what the religion because the neighbors have a right to enjoy their properties as homes within a specified zoning class." Ex. 14 (emphasis added).
- "Homeowners [] **rightfully expect a community of residential property**." Ex. 15 (emphasis added).[14]

Likewise, at the hearing a neighbor was asked by the Board "[I]f some religious establishment was operating out of that house and there were no cars every day, there were no parking issues, no issues coming out of that house would you and the other residents here be standing in front of us." He replied "***Probably*** not." Ex. 4 p. 23. During the hearing, the HOA even admitted there are two commercial group homes in this residential neighborhood parking on the streets. The HOA representative admitted that no one has complained about the parking associated with these group homes. *Id.* p. 19. These statements indicate that, regardless of the fact that CTC has resolved the parking issues originally at issue with neighbors, the neighbors will not be happy until CTC is

[14] True and correct copies of letters submitted to the Board by persons opposing the variance are attached and incorporated by reference into this Petition as Exhibits 13 through 15.

removed from their neighborhood. Accordingly, the Board should have given these purported safety concerns little weight in their analysis.

43. Yet, the Board previously echoed the neighbors' arguments to jurisdictionally exclude CTC. At the June 27, 2017 hearing, the Board Chairman stated the goal was to "keep the status quo." Ex. 1 p. 45. He said, "I love the fact that they have a place to worship but there is a reason churches don't go into neighborhoods into a house in a residential lot..." The Board Chairman went on to set forth his explicit issue with granting the variance, without regard to the three-factor variance standard. He argued his "biggest problem with this application" was that the Board could not insert "conditions…to protect the neighborhood from what may be going on [at CTC] five years from now." *Id*. At the October 2017 hearing, the same chairman emphasized that although CTC was focused on the law, the Board's "concern" is "it's a neighborhood." Ex. 3 p. 32. He stated that it was not about whether CTC could practice its religion but where it could practice. *Id*. Ignoring recitation to the law that establishes religious use is in the public interest, the Chairman reiterated that to him, "the public interest is that this is a neighborhood." The Board's prior statements reflect its failure to apply the three-factor variance standard as well as its primary issue with CTC's variance application—the very existence of CTC's religious land use in a residential neighborhood.

44. Second, these purported safety concerns are not supported by the facts. Several photographs submitted by Petitioners at the hearing show no concerns with access to the street. *See* Ex. 5. Furthermore, streets in the City of Dallas are generally large enough to allow one car to be parked on each side of the street and still allow access for an ambulance or emergency vehicle. Additionally, evidence was submitted at the hearing showing other vehicles, not associated with CTC, parked on the street across from one another. Ex. 5 pp. 15 and 35–36. No one at the hearing

suggested that these other cars (parked for a secular use) presented any safety risk. Accordingly, CTC members parking two cars in front of the Property would not inhibit access from an ambulance or other emergency vehicle. Additionally, CTC has space in the back of the Property where it can park up to six cars without blocking any street and without creating any safety concern. In fact, the only concern some of the neighbors have cited is "the way it looks." In short, the alleged safety concerns raised by neighbors do not undermine the evidence presented by Petitioners.

45. Further, the City did not submit any evidence, such as a traffic study, demonstrating actual safety concerns on the street. The only concerns were the unsubstantiated assertions of neighbors, many of whom were avowedly biased and demonstrably willing to stop at nothing to excise CTC from the neighborhood.

46. Even if the Board accepted the concerns of neighbors at face value, and not as a pretext to remove an Orthodox Jewish synagogue and its members from the neighborhood, the weight of this factor still tips in favor of granting the variance. With the Board's denial, the CTC's existence in a place it is legally allowed to exist is threatened. Had the variance been granted, the only harm to the neighbors was having one to two cars parked legally on the street or four to five cars parked behind the Property.

47. For other variance applications before the Board, the Board conceded as much. At the June 2017 hearing, a restaurant also applied for a variance. During this portion of the hearing, the Board presented the restaurant with its concerns about why it did not meet the standard and allowed the restaurant to address them. While evaluating the public interest factor of the restaurant's request, the Board explicitly stated that parking concerns should not be considered when evaluating the public interest element of the variance standard. Ex. 1 p. 22. Contrastingly,

when considering CTC's variance application, one Board member asked how the parking of friends for a private gathering was different than the parking of CTC's congregants. Another Board member answered, "it's because it's a church, and they are open and notorious." Ex. 1 p. 37.

48. In fact, the Board Chairman's comments during the April 2018 hearing seemed to recognize that the first factor had been met. During the hearing, the Chairman of the Board suggested that the public interest factor had been established, "I think [the first factor], there is evidence there already, but I don't see much with 2 and 3 if you want to focus on that." Ex. 4 p. 10. However, the motion to deny the variance cited all three factors and was approved unanimously. *Id.* p. 37. In conjunction with providing *no reasoning to support its denial of the variance based on the factors*, this internal inconsistency further shows the Board had no interest in applying the public interest factor faithfully, and therefore denied the variance arbitrarily and capriciously.

2. Petitioners Met Their Burden to Establish that the Variance Was Necessary to Permit Development of the Property Due to the Restrictive Area, Shape, or Slope of the Property.

49. Petitioners also met their burden to prove the variance was necessary to permit development of this parcel of land because it is such a restrictive area, shape, or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning. Dallas Dev. Code § 51A-3.102(d)(10)(B). The appropriate uses of a parcel of land zoned R-7.5 expressly include religious uses. *Id.* §§ 51A-4.112(f)(1) and (f)(2)(D). Accordingly, the issue here is whether the Property is such that its area, shape, or slope prevents its development as a place of worship. In other words, is Property so unique that it cannot be developed for a proper purpose?

50. Here, the Property at issue is not typical of the normal property and lot in the neighborhood. The following issues were submitted to the Board by Petitioners. First, the Property is surrounded by three Dallas City streets. *See* Ex. 6 p. 7. Mumford Court to the South, Meandering Way to the west, and Frankford Road to the north. *Id.* This is atypical of homes in the area that are more typically adjacent to only one street and an alleyway. Second, the Property has two front yards that face a City street. *Id.* pp. 2 and 7. This means that the Property faces specific set-off requirements that other homes in the neighborhood do not face as both the yard at the front (south side of the house) and the side (west side of the house) are considered "front" yards. Third, the Property has a substantial brick wall owned by the HOA running along the west and north sides of its lot. *Id.* pp. 3–5 and 7. This brick wall prevents access from the street to the west of the Property and therefore prevents the use of the backyard as parking. Most other homes in the neighborhood do not have an HOA owned brick wall on two sides of the lot. Fourth, the Property has an alleyway running on the east side of the Property. *Id.* pp. 1 and 6–7. Most homes in the neighborhood have an alleyway only running along the back of the home. This alleyway also means that any parking spaces behind the Property (north side of lot) cannot count towards the total number of required parking spaces as the Dallas Development Code requires at least a 20 foot set-back and screening of any off-street parking from the alleyway. Dallas Dev. Code § 51A-4.301(a)(10) (20 foot set-back from alley); Dallas Dev. Code § 51A-4.301(f)(1)–(2) (screening requirements). Even installing a gate that remained closed virtually all the time would not be permitted under the code. *Id*. § 51A-4.301(f)(3) ("Screening for off street parking . . . may not contain any openings or gates for vehicular access."). Fourth, the Property has limited useable square footage. Ex. 6 p. 7. In short, the Property is surrounded on all sides by streets, alleyways, and HOA-owned brick walls and cannot use the full lot due to set-off requirements. *Id.* pp. 1–7.

51. These unique features of the Property distinguish it from other homes in the neighborhood and make it literally impossible to install a parking lot on the Property *that could comply with the code requirements*. CTC does in fact use the backyard to park four (4) or five (5) cars on the premises, but because of the screening requirement on the alley (the only physical way for ingress and egress), these parking spaces do not count toward the total number of required spaces. The set-back requirements (and a specimen tree) also prohibit parking spaces that could count toward the required total on the sides or in front of the house. There was never one shred of evidence presented at the BOA hearings to refute the fact that these unique features of the Property prevent its development to include sufficient parking spaces, and the Board neither provided reasoning nor cited relevant evidence that is contrary to this conclusion. Therefore, Petitioners met their burden to prove the Property is of such a restrictive area and shape that it cannot be developed for a proper purpose as other parcels of land in the neighborhood could be developed.

52. One neighbor at the hearing suggested that the lot in question was not restrictive because it is larger than the other lots in the neighborhood. Ex. 4 p. 19. While the Property may be slightly larger than some lots because it is on the corner, the aforementioned unique features of the lot (two front yards, HOA wall, and alley screening requirement) nevertheless prohibit counting any parking spots on the Property towards the requirements. Accordingly, the fact that the lot has additional, but useless, square footage is simply irrelevant to factor two.

53. Ignoring the only relevant evidence before it, the Board concluded without reason or explanation that the Property "is not a restrictive parcel of land by being of such a restrictive area, shape or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning." Ex. 4 p. 37. Therefore, the Board's decision—

made without regard to the only evidence before the Board and without reference to the guiding standard—was arbitrary, capricious, and a clear abuse of discretion.

3. Petitioners Met Their Burden to Establish that the Variance Was Not Requested to Relieve a Self-Created or Personal Hardship.

54. Petitioners also met their burden to establish that the variance was not needed to relieve a self-created or personal hardship. Dallas Dev. Code § 51A-3.102(d)(10)(C). Of course, every variance will in some way implicate personal hardship. *See City of Dallas, Bd. of Adjustment v. Vanesko* 189 S.W.3d 769, 776 (Tex. 2006) (O'Neill, J., dissenting) ("It is hard to imagine the need for a variance that does not in some way implicate personal hardship. Rather, the logical interpretation is that personal hardship cannot be the *sole* basis for a variance.") (emphasis in original). A self-created hardship requires an affirmative action by a landowner that brings an otherwise conforming property into non-conformance. *Currey v. Kimple*, 577 S.W.2d 508, 513 (Tex. Civ. App.—Texarkana 1978, writ ref'd n.r.e). Importantly, even if the landowner knew the property would not work for a particular purpose, this factor can still be met. *Id.* at 512–13.

55. Here, CTC members' request for a variance is not sought solely to relieve a personal or self-imposed hardship. As noted above, religious use of the Property is proper as a matter of right. *See* Dallas Dev. Code §§ 51A-4.112(f)(1) and (f)(2)(D). Accordingly, the desire to use the Property for religious purposes is not a personal hardship, nor is the variance sought solely to alleviate a financial hardship. CTC has no desire to destroy the outward appearance of the Property by developing a parking lot on the Property. Even assuming a parking lot could be built to meet the City code, such a drastic alteration of the Property would certainly not be in the best interests of the neighborhood. Accordingly, the variance was not sought solely to alleviate a personal, self-created, or financial hardship.

56. At the hearing, neighbors suggested that this factor was not met by CTC because: (1) a 2-car garage on the Property had been converted into a classroom for children (Ex. 4 p. 19); (2) CTC knew at the time it started using the home that it was "in a tiny cul-de-sac" and "parking was a major impediment to their planned use" (*Id.* p. 22); (3) CTC had previously purchased contiguous lots in another location and "elected not to do that for whatever reason." (*Id.* p. 22). However, these comments do not address the standard the Board is required to apply.

57. First, even assuming the garage had not been converted into interior space, the parking variance would still be necessary. CTC seeks a variance of six (6) spaces. Assuming the two spaces in the garage counted towards the off-street parking requirements, the CTC would still be required to obtain a variance for four (4) spaces. There is insufficient room on the Property to place even four (4) spaces of off-street parking and comply with the screening and ingress/egress requirements imposed by the code. Accordingly, this act by CTC did not change a conforming property into a non-conforming property.

58. Second, CTC's prior property purchases are irrelevant to the analysis. CTC has a right to use the Property for religious purposes under its current zoning. The fact that CTC previously had access to another parcel of land does not address the focus of the Board's required analysis—whether the use of this parcel of land is appropriate under the spirit of the Dallas Development Code.

59. Third, the fact that CTC knew it was going to worship at the Property when evaluating the purchase of the Property is legally irrelevant. To illustrate why CTC's intention to use the property in a certain way is irrelevant, in *Currey v. Kimple*, property owners purchased a triangular or pie-shaped lot on which the owners wished to build a tennis court. 577 S.W.2d at 512. Importantly, the owners knew a variance would be required in order to build a tennis court. *Id.* at

511. The City of Dallas Board of Adjustments granted the variance to the City's set-back requirements to allow the owners to build a tennis court. *Id.* at 510. Neighbors, upset by the decision, appealed to the district court. *Id.* at 510. The trial court affirmed the decision of the Board of Adjustment and the neighbors appealed again, arguing in part that the variance was the result of a self-created or personal hardship. *Id.* at 511. The court of appeals held that "the fact that the [owners] wanted to build a tennis court on their irregularly shaped property would not constitute a self-created or personal hardship. The configuration of the lot created the hardship." *Id.* at 513. The court further explained "[a]n example of a personal or self-created hardship might be a situation in which the owner of a square lot divides it into two triangles and then tries to secure a variance in order to sell the property at a high price." *Id.* The court also rejected an argument that the restrictions permit the use of the property as a residence. *Id.*

60. Here, the facts alleged by the neighbors are indistinguishable from the *Currey* case. The configuration of the lot—surrounded by streets on three sides, an HOA-owned brick wall on two sides, and an alley on the remaining side—necessitates the variance. Most properties in this neighborhood do not have these same restrictions on their use for religious purposes. Accordingly, even assuming CTC knew it would need a parking variance when it decided to hold religious services at the Property, this fact does not mean the variance is requested to relieve a personal or self-created hardship. Other than the garage (discussed above), the Board considered no legally relevant evidence that the hardship was self-created. And it is beyond dispute that CTC did not create the features that cause the hardship—the HOA wall, the alleyway, or the two front yards. In sum, the arguments and evidence submitted permitted only one conclusion—the variance is not requested solely to relieve a self-created, personal, or financial hardship.

C. Request for Temporary Restraining Order Pursuant to CPRC § 211.011.

61. Pursuant to Tex. Loc. Gov't Code § 211.011(c) Petitioner's request a temporary restraining order staying the Board's decision until this appeal has been fully adjudicated. The standard to grant a temporary restraining order under this section is "due cause shown." *Id.* As discussed above, if the City begins enforcing a $1,000 per day penalty or otherwise begins restricting CTC members' religious practice it would immediately harm their protected rights. "Injunctions protecting First Amendment freedoms are always in the public interest." *Opulent Life Church*, 697 F.3d at 298 (internal quotations and modifications omitted). Accordingly, this Court should grant a temporary restraining order to prevent enforcement of the Dallas Development Code requirements pending full resolution of this appeal.

VIII. The Board's Decision Illegally Violates Petitioners' Statutory and Constitutional Religious Liberty Rights.

62. Separate from the petition for writ of certiorari, Petitioners request a temporary restraining order, temporary injunction, and permanent injunction enjoining the City of Dallas from enforcing the Board's unlawful decision, as allowed under RLUIPA, TRFRA, the U.S. and Texas Constitutions and the Declaratory Judgment Act.

A. Count One – The Board's Decision Violates the Equal Terms Clause of RLUIPA, 42 U.S.C. § 2000cc(B)(1), As Applied to Petitioners

1. Petitioners incorporate and adopt by reference for all purposes each and every allegation in the preceding paragraphs and sections.

2. RLUIPA provides that "[n]o 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).

3. Upon information and belief, nonreligious groups meet in similar numbers and frequency across the City of Dallas as CTC; however, the City of Dallas uses its discretion to not

enforce the City of Dallas' ordinance in the same way against these nonreligious groups as it does against CTC.

4. The Board's variance denial treats religious institutions on less than equal terms to similarly situated nonreligious institutions. Particularly, the Board denied CTC's parking variance application but grants parking variances to similarly situated nonreligious institutions.

5. By requesting CTC obtain a shared parking agreement before considering their parking variance application, the Board treated CTC unequally to similarly situated nonreligious entities.

6. The Board's failure to neutrally apply the variance three-factor standard to CTC's application violates the Equal Terms Clause because similarly situated nonreligious entities are afforded application of the law for their variance requests.

7. The Board's decision also violates the Equal Terms Clause as applied to Petitioners because Petitioners are prohibited from operating on the Property as a result of the decision, even though similarly situated nonreligious institutions are permitted to operate.

8. Petitioners are entitled to a declaration that the Board's decision violates RLUIPA's Equal Terms Clause, as applied to Petitioners, and a permanent injunction enjoining enforcement of the Board's illegal parking variance denial.

9. Pursuant to 42 U.S.C. § 1988, when pursuing a claim under RLUIPA, the prevailing party may be awarded attorney's fees as part of the costs.

B. Count Two – The Board's Decision Substantially Burdens CTC's Religious Exercise, in Violation of RLUIPA, 42 U.S.C. § 2000cc(A)(1).

10. Petitioners incorporate and adopt by reference for all purposes each and every allegation in the preceding paragraphs and sections.

11. RLUIPA provides that "[n]o 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." 42 U.S.C. § 2000cc(a)(1).

12. By requiring Petitioners to implement a number of unnecessary changes to its place of worship which either (1) are impossible for CTC to achieve or (2) are exorbitantly expensive for Petitioners to accomplish, Dallas Dev. Code § 51A-1.104 and the City of Dallas' imposed requirements substantially burden Petitioners' free exercise of religion.

13. The Board's denial of the parking variance application substantially burdens Petitioners' religious exercise by forcing congregants to relocate, as Petitioners' sincerely held religious beliefs require them to live walking distance to the place of worship.

14. The Board's denial of the parking variance application substantially burdens Petitioners' ability to meet at the Property for religious teaching and worship.

15. The Board's denial of Petitioners' parking variance application substantially burdens its religious exercise because it prohibits the congregation from operating in the City of Dallas.

16. The Board's continuous requests that Petitioners' congregation not grow in size or impact to the neighborhood substantially burdens Petitioners free exercise of religion.

17. The City of Dallas' ordinance, as applied to Petitioners, does not further a compelling governmental interest. Parking and maintaining the residential characteristics of a neighborhood are not compelling government interests.

18. Even if the City of Dallas' ordinance as applied to CTC furthered a compelling government interest, which it does not, the ordinance as applied to CTC is not the least restrictive means of furthering that alleged interest.

19. As stated in *Barr v. City of Sinton*, "[a]lthough the government's interest in the public welfare in general, and in preserving a common character of land areas and use in particular, is certainly legitimate when properly motivated and appropriately directed, the assertion that zoning ordinances are per se superior to fundamental, constitutional rights, such as the free exercise of religion, must fairly be regarded as indefensible." 295 S.W.3d 287, 305 (Tex. 2009)

20. Despite the substantial burden on Petitioners' free exercise of religion, the Board cannot justify its denial of the parking variance as the least restrictive means of furthering any compelling government interest.

21. Petitioners are entitled to a declaration that the Board's decision violates the Substantial Burden Clause of RLUIPA as applied to Petitioners, and a permanent injunction enjoining enforcement of the Board's illegal parking variance denial.

22. Pursuant to 42 U.S.C. § 1988, when pursuing a claim under RLUIPA, the prevailing party may be awarded attorney's fees as part of the costs.

C. Count Three – The Board's Decision Violates the Non-Discrimination Clause of RLUIPA, 42 U.S.C. – 2000cc(B)(2), As Applied to Petitioners.

23. Petitioners incorporate and adopt by reference for all purposes each and every allegation in the preceding paragraphs and sections.

24. RLUIPA provides that "[n]o government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination." 42 U.S.C. § 2000cc(b)(2).

25. The Board's decision violates the Nondiscrimination Clause as applied to Petitioners by preventing Petitioners from obtaining a certificate of occupancy and prohibiting them from operating in the neighborhood, even though similarly situated nonreligious institutions are permitted to operate.

26. Although houses of worship are permitted in almost all City of Dallas zones as a matter of right, the Board's statements at its hearings and parking variance denial prohibit Petitioners from existing in this zone because of its religious nature.

27. Upon information and belief, the Board has granted parking variances to similarly situated nonreligious institutions without subjecting those institutions to the same scrutiny given to Petitioners.

28. Petitioners are entitled to a declaration that the Board's decision violates RLUIPA's Nondiscrimination Clause Petitioners, and a permanent injunction enjoining enforcement of the Board's illegal parking variance denial

29. Pursuant to 42 U.S.C. § 1988, when pursuing a claim under RLUIPA, the prevailing party may be awarded attorney's fees as part of the costs.

D. Count Four – The Board's Decision Violates the Unreasonable Limitations Clause of RLUIPA, 42 U.S.C. § 2000cc(B)(3).

30. Petitioners incorporate and adopt by reference for all purposes each and every allegation in the preceding paragraphs and sections.

31. The Unreasonable Limitations Clause of RLUIPA provides that, "[n]o government shall impose or implement a land use regulation that…unreasonably limits religious assemblies, institutions, or structures within a jurisdiction." 42 U.S.C. § 2000cc(b)(3)(B).

32. The Board deprived and continues to deprive Petitioners of its rights to the free exercise of religion by imposing and implementing a land use regulation that unreasonably limits

religious assemblies within a jurisdiction. Specifically, the Board's parking variance denial jurisdictionally excludes Petitioners from operating within the neighborhood.

33. The Boards' variance denial is unjustifiable by any compelling government interest and is unreasonable considering Petitioners' obtained a shared parking agreement to accommodate all required parking spaces, at the Board's request, and in light of the fact that congregants walk to the synagogue on the Sabbath, in accordance with their sincerely held religious beliefs.

34. Petitioners are entitled to a declaration that the Board's decision violates RLUIPA's Unreasonable Limitations Clause, and a permanent injunction enjoining enforcement of the Board's illegal parking variance denial.

35. Pursuant to 42 U.S.C. § 1988, when pursuing a claim under RLUIPA, the prevailing party may be awarded attorney's fees as part of the costs.

E. Count Five – The Board's Decision Violates Texas Religious Freedom Restoration Act, Tex. Civ. Prac. & Rem. Code § 110.001 *et seq*.

36. Petitioners incorporate and adopt by reference for all purposes each and every allegation in the preceding paragraphs and sections.

37. TRFRA provides that "a government agency may not substantially burden a person's free exercise of religion [unless it] demonstrates that the application of the burden to the person . . . is in furtherance of a compelling governmental interest [and] is the least restrictive means of furthering that interest." Tex. Civ. Prac. & Rem. Code § 110.003.

38. TRFRA "requires the government to tread carefully and lightly when its actions substantially burden religious exercise." *Barr v. Sinton*, 295 S.W.3d 287, 289 (Tex. 2009).

39. By requiring CTC to implement a number of unnecessary changes to its place of worship which either are (1) impossible for CTC to achieve or (2) exorbitantly expensive for CTC to accomplish, Dallas Dev. Code § 51A-1.104 and the City of Dallas' imposed requirements have

substantial burden on Petitioners' free exercise of religion.

40. The Board's denial of the parking variance does not further a compelling governmental interest. As *Holt v. Hobbs* makes clear, the government "shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, unless the government demonstrates that application of the burden to the person – (1) is in furtherance of a compelling government interest; and (2) is the least restrict means of furthering that compelling governmental interest." 135 S. Ct. 853, 860 (2015).

41. The Board's denial of the parking variance application substantially burdens Petitioners' religious exercise by forcing congregants to relocate, as Petitioners' sincerely held religious beliefs require them to live walking distance to the place of worship.

42. The Board's denial of the parking variance application substantially burdens Petitioners' ability to meet at the Property for religious teaching and worship.

43. The Board's denial of Petitioners' parking variance application substantially burdens its religious exercise because by prohibiting the congregation from operating in the City of Dallas.

44. The Board's continual requests that Petitioners' congregation not grow in size or impact to the neighborhood substantially burdens Petitioners free exercise of religion.

45. The City of Dallas' ordinance, as applied to Petitioners, does not further a compelling governmental interest. Parking and maintaining the residential characteristics of a neighborhood are not compelling government interests.

46. Even if the City of Dallas' ordinance as applied to CTC furthered a compelling government interest, which it does not, the ordinance as applied to CTC is not the least restrictive means of furthering that alleged interest.

47. As stated in *Barr v. City of Sinton*, "[a]lthough the government's interest in the public welfare in general, and in preserving a common character of land areas and use in particular, is certainly legitimate when properly motivated and appropriately directed, the assertion that zoning ordinances are per se superior to fundamental, constitutional rights, such as the free exercise of religion, must fairly be regarded as indefensible." 295 S.W.3d 287, 305 (Tex. 2009)

48. Despite the substantial burden on Petitioners' free exercise of religion, the Board cannot justify its denial of the parking variance as the least restrictive means of furthering any compelling government interest.

49. Petitioners are entitled to a declaration that the Board's decision violates TRFA, and a permanent injunction enjoining enforcement of the Board's illegal parking variance denial.

50. Petitioners are entitled to recover its reasonable attorneys' fees and costs pursuant to Tex. Civ. Prac. & Rem. Code 110.005, in an amount to be proven at trial.

51. TRFRA contains a general requirement that a person may usually not bring an action under TRFRA until 60 days have passed since they provided the government agency with notice "(1) that the person's free exercise of religion is substantially burdened by an exercise of the government agency's governmental authority; (2) of the particular act or refusal to act that is burdened; and (3) of the manner in which the exercise of governmental authority burdens the act or refusal to act." Tex. Civ. Prac. & Rem. Code § 110.006

52. Petitioners may bring this action prior to waiting for the 60-day notice period in TRFRA to expire, because it is an action for declaratory and injunctive relief, as well as associated attorneys' fees, court costs, and other reasonable expenses. As TRFRA provides, Petitioners may bring this declaratory and injunctive relief action on behalf of CTC immediately, because (1) the exercise of government authority that threatens to substantially burden Petitioners' religious

exercise is imminent—indeed, it is currently ongoing; and (2) Petitioners could not reasonably provide such notice prior to the exercise of government authority, since that government authority is already being exercised at this time. See Tex. Civ. Prac. & Rem. Code § 110.006(b).

F. Count Six – The Board's Decision Violates the Free Exercise Clause of the First Amendment of the United States Constitution.

53. Petitioners incorporate and adopt by reference for all purposes each and every allegation in the preceding paragraphs and sections.

54. As set forth in the First Amendment of the United States Constitution, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

55. "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law . . . ." 42 U.S.C. § 1983.

56. The Board's parking variance denial does not further a compelling governmental interest. As *Holt v. Hobbs* makes clear, the government "shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, unless the government demonstrates that application of the burden to the person - (1) is in furtherance of a compelling government interest; and (2) is the least restrict means of furthering that compelling governmental interest." 135 S. Ct. 853, 860 (2015).

57. According to *Employment Division, Department of Human Resources v. Smith*, the Free Exercise Clause exempts religious conduct from burdens imposed by neutral laws of general applicability if the claims are brought in contexts that entail individualized governmental assessment of the reasons for the relevant conduct. 494 U.S. 872, 884 (1990).

58. The Board's parking variance denial prohibits Petitioners' religious institution from operating in the neighborhood, while allowing similarly situated nonreligious entities to operate in the same neighborhood. The Board's decision treats Petitioners differently and substantially burdens its religious practices, while imposing no such burden on similarly situated nonreligious institutions. Further, the Board offers significant exceptions to the Dallas ordinance by granting parking variances for numerous nonreligious entities throughout the city. In this way, the Board's parking variance denial is neither neutral nor generally applied and instead discriminates against Petitioners' religious institution due to its religious nature.

59. The Board's actions do not serve any compelling governmental interest and are not narrowly tailored to serve any legitimate government interest.

60. Even if the Board's decision furthered a compelling government interest, which it does not, the ordinance as applied to Petitioners is not the least restrictive means of furthering any alleged interest.

61. Thus, Petitioners are entitled to a declaration that the Board's decision violates the Free Exercise Clause of the First Amendment of the U.S. Constitution, and a permanent injunction enjoining enforcement of the Board's illegal parking variance denial.

62. Petitioners are entitled to recover its reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988(b), in an amount to be proven at trial.

G. Count Seven – The Board's Decision Violates the Free Assembly Clause of the First Amendment of the United States Constitution.

63. Petitioners incorporate and adopt by reference for all purposes each and every allegation in the preceding paragraphs and sections.

64. The First Amendment of the United States Constitution states that Congress shall make no law prohibiting "the right of the people peaceably to assemble."

65. The Board's decision limits the locations where members of CTC may assemble to fully exercise their religious beliefs, including worship, prayer, teaching and religiously motivated activities.

66. Petitioners are entitled to a declaration that the Board's decision violates the Free Assembly Clause of the First Amendment of the U.S. Constitution, made applicable to the States under the Fourteenth Amendment, as applied to Petitioners, and a permanent injunction enjoining enforcement of the Board's illegal parking variance denial

67. Petitioners are entitled to recover its reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988(b), in an amount to be proven at trial.

H. Count Eight – The Board's Decision Violates the Free Speech Clause of the First Amendment to The United States Constitution.

68. Petitioners incorporate and adopt by reference for all purposes each and every allegation in the preceding paragraphs and sections.

69. The Board's decision limits Petitioners from exercising its free speech rights by prohibiting or severely impeding them from operating in the Property as a religious institution.

70. The Board's actions inhibit Petitioners from fully and effectively expressing its religious message and teaching to congregants and the community. These limitations are imposed against Petitioners as a religious institution but not other similarly situation nonreligious institutions in the neighborhood.

71. Petitioners are entitled to a declaration that the Board's decision violates the Free Speech Clause of the First Amendment of the U.S. Constitution, made applicable to the States under the Fourteenth Amendment, as applied to Petitioners, and a permanent injunction enjoining enforcement of the Board's illegal parking variance denial.

72. Petitioners are entitled to recover its reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988(b), in an amount to be proven at trial.

I. Count Nine – The Board's Decision Violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

73. Petitioners incorporate and adopt by reference for all purposes each and every allegation in the preceding paragraphs and sections.

74. The Board's decision discriminates against religious institutions in favor of similarly situated nonreligious institutions by denying Petitioners request for a parking variance but granting similar requests to nonreligious institutions.

75. This unequal treatment does not serve any compelling governmental interest, nor is it narrowly tailored to serve any such interest.

76. Accordingly, Petitioners are entitled to a declaration that the Board's decision violates the Equal Protection Clause as applied to Petitioners, and a permanent injunction enjoining enforcement of the Board's illegal parking variance denial.

77. Petitioners are entitled to recover its reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988(b), in an amount to be proven at trial.

J. Count Ten – The Board's Decision Violates the Free Exercise Clause of the Texas Constitution (Article I, Section 6).

78. Petitioners incorporate and adopt by reference for all purposes each and every allegation in the preceding paragraphs and sections.

79. The Board's parking variance denial prohibits Petitioners from operating in its neighborhood, while allowing similarly situated nonreligious institutions to operate in the neighborhood.

80. As previously addressed, the Board treats Petitioners differently and burdens its religious practices, without a compelling government interest that is narrowly tailored.

81. Accordingly, the Board deprived Petitioners of its right to free exercise of religion—as secured by article I, section 6 of the Texas Constitution—by discriminating against Petitioners because of its religious character and by inhibiting its right to freely exercise its religious faith.

82. Petitioners are entitled to a declaration that the Board's decision violates the Free Exercise Clause of the Texas Constitution and a permanent injunction enjoining enforcement of the Board's illegal parking variance denial.

K. Count Eleven – The Board's Decision Violates the Free Assembly Clause of the Texas Constitution (Article I, Section 27).

83. Petitioners incorporate and adopt by reference for all purposes each and every allegation in the preceding paragraphs and sections.

84. The Board's decision denies Petitioners the right, "in a peaceable manner, to assemble together for their common good" as stated in Article I, Section 27 of the Constitution of Texas – by prohibiting congregants from meeting at the Property to exercise their religious beliefs, including worship, prayer, teaching or other activities of religious expression.

85. The burden imposed on Petitioners' right to assembly serves no compelling governmental interest.

86. Petitioners are entitled to a declaration that the Board's decision violates the Free Assembly Clause of the Texas Constitution and a permanent injunction enjoining enforcement of the Board's illegal parking variance denial.

L. Count Twelve – The Board's Decision Violates the Free Speech Clause of The Texas Constitution (Article I, Section 8).

87. Petitioners incorporate and adopt by reference for all purposes each and every allegation in the preceding paragraphs and sections.

88. As previously set forth, the Board limits the ability of Petitioners to exercise its free speech rights by prohibiting or severely impending them from operating in the neighborhood as a synagogue.

89. Further, the Board deprived Petitioners of its right to speak on matters of religion—as secured by Article 1, Section 8 of the Constitution of Texas—by inhibiting its right to freely express its religious faith to congregants and the community.

90. These limitations were imposed on the basis of the religious nature of the expression that Petitioners wished to undertake, while no such burdens were imposed on similarly situated nonreligious institutions.

91. The Board's parking variance denial is not narrowly tailored to serve any compelling government interest.

92. Petitioners are entitled to a declaration that the Board's decision violates the Free Speech Clause of the Texas Constitution and a permanent injunction enjoining enforcement of the Board's illegal parking variance denial.

M. Count Thirteen – The Board's Decision Violates the Equal Protection Clause of the Texas Constitution (Article I, Section 3*).*

93. Petitioners incorporate and adopt by reference for all purposes each and every allegation in the preceding paragraphs and sections.

94. The Board deprived Petitioners of its right to equal protection of the laws—as secured by Article 1, Section 3 and 3a of the Constitution of Texas—by discriminating against Petitioners as a religious institution and by denying Petitioners request for a parking variance but granting similar requests to nonreligious institutions.

95. The Board also violates the Equal Protection Clause because it prohibits Petitioners from operating in the neighborhood while permitting similarly situated nonreligious institutions to continue to operate.

96. This unequal treatment does not serve any compelling governmental interest, nor is it narrowly tailored to serve any such interest.

Accordingly, Petitioners are entitled to a declaration that the Board's decision violates the Equal Protection Clause as applied to Petitioners, and a permanent injunction enjoining enforcement of the Board's illegal parking variance denial.

IX. Prayer for Relief

WHEREFORE, PREMISES CONSIDERED, Petitioners respectfully request that this Court:

- issue a writ of certiorari to the Board;
- issue a temporary restraining order pursuant to Tex. Civ. Prac & Rem. Code § 211.011 pending the final resolution of this appeal;
- hold an evidentiary hearing on and reverse the Board's decision;
- issue a temporary restraining order to enjoin enforcement of the Board's decision;
- issue a temporary injunction to enjoin enforcement of the Board's decision;
- issue a permanent injunction to enjoin enforcement of the Board's decision;
- enter a final declaratory judgment; and
- grant such further relief at law or equity to which Petitioners show themselves entitled.

Dated: April 30, 2015

Respectfully submitted,

By: /s/ *Chad B. Walker*

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