

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

ISLAMIC CENTER OF NORTH )  
FULTON, INC., )

Plaintiff, )

v. )

CITY OF ALPHARETTA, )  
GEORGIA, a Municipal Corporation )  
of the State of Georgia. *et al.*, )

Defendant. )

CIVIL ACTION  
FILE NO. 1:10-CV-01922-JOF

**AMICUS CURIAE BRIEF OF THE INTERFAITH COALITION ON  
MOSQUES AND THE FAITH ALLIANCE OF METRO ATLANTA**

**Interest of the Amicae**

The Interfaith Coalition on Mosques is an unincorporated association of national religious leaders. The purpose of the Coalition is to combat the disturbing rise in religious discrimination and bigotry directed at Muslims and their efforts to build or expand their houses of worship. *See* the Statement of Purpose which is attached as Exhibit A.

The Faith Alliance of Metro Atlanta is a non-profit interfaith organization formed in 2001 in response to the attacks and aftermath of September 11, 2001. Its purpose is to promote understanding, respect, prayer, interaction and unity among

diverse faiths in the greater Atlanta region. *See* the Statement of Purpose of FAMA attached as Exhibit B.

The amicae have a vital interest in the proper interpretation and enforcement of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc (RLUIPA), in a manner that will ensure that will protect the right of people of all faiths to build and expand their houses of worship freely without arbitrary and unjustified interference by local governments in the administration of the zoning and land use ordinances and regulations. The amicae will, however, confine their arguments to an explanation of the RLUIPA, and will rely on the brief of the plaintiff, Islamic Center of North Fulton, Inc. for a more detailed statement of the undisputed facts.

### **Summary of Argument**

“Congress recognized that law neutral toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise” and adopted both the Religious Freedom Restoration Act(RFRA) and the Religious Land Use and Institutionalized Persons Act (RLUIPA) to “legislate[] the compelling interest test to strik[e] [a] sensible balance[] between religious liberty and competing prior governmental interests.” *Gonzales v. O Centro Espirita*

*Beneficente Uniao do Vegital*, 546 U.S. 418, 439 (2006) (internal quotations omitted).

RLUIPA guarantees religious organizations greater protections than those afforded by the First Amendment. *Cutter v. Wilkinson*, 544 U.S. 709, 714 (2005). RLUIPA not only prohibits local governments from discriminating against religious organizations by excluding churches from zoning districts where private clubs, auditoriums, and other meeting places are permitted (42 U.S.C. § 2000cc-1(b); *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1231-35 (11<sup>th</sup> Cir. 2004)), RLUIPA also subjects local zoning and land use decisions to “strict scrutiny” if they impose a “substantial burden” on the ability of a religious organization to engage in a “religious exercise” (42 U.S.C. § 2000cc-1(a)), which includes the building or expansion of a church, synagogue, temple, mosque or other house of worship. 42 U.S.C. § 2000cc-5(7)(B). Under RLUIPA, the denial of a rezoning application or a special use permit that imposes a “substantial burden” when it prevents a religious organization from building or expanding its sanctuary or house of worship. Such a restriction is invalid unless the municipality can justify the denial by proving that the denial “(1) is in furtherance of a *compelling governmental interest*; and (2) is the *least restrictive means* of

furthering that compelling governmental interest.” 42 U.S.C. § 2000cc-1(a) (emphasis added).

Under the law of this Circuit, “substantial burden” in RLUIPA is to be interpreted according to “its ordinary or natural meaning.” *Midrash*, 366 F.3d at 1226. The burden imposed by the denial of a congregation’s application for rezoning or a special use permit is “substantial” if it has “*something more than an incidental effect ... [or] place[s] more than an inconvenience on*” a “religious exercise.” *Id.* at 1227 (emphasis added); *Smith v. Allen*, 502 F.3d 1255, 1277 (11<sup>th</sup> Cir. 2007) (“To constitute a substantial burden under RLUIPA, the governmental action must *significantly hamper* one’s religious practice.”) (emphasis added). The term “religious exercise” includes the right of a religious organization to use, build or convert its property for use as a mosque or other house of worship. 42 U.S.C. § 2000cc-5(7)(B). Even “pressure that tends to force adherents to forego religious precepts” by, for example, conditioning a special use permit on a congregation’s agreement to forego expansion of a church, is sufficient to satisfy the “substantial burden” test in RLUIPA under the Eleventh Circuit’s decision in *Midrash*. 366 F.3d at 1227.

The record in this case shows that in 1998, prior to the enactment of RLUIPA and when the Islamic Center had only 25 members, the Fulton County

Commission granted the Islamic Center special use that allowed the Center to use an existing building on its property in unincorporated Fulton County as a mosque on the condition that *only 2,254 sq. ft. of the existing structure*, with *no modifications to the exterior* could be used by the Center as a “church.” Any future “expansion of this church ... on this site” was also prohibited. Exhibit A (Pl. Ex. 79) (Doc. 99-1) (Letter from Fairfax Homeowners Association to the City of Alpharetta Planning Commission dated April 10, 2010) (attached hereto as Exhibit A).

In 2004, the Fulton County Commission restated these conditions allowing the Islamic Center to use a house on the adjacent property as a home for its imam. Exhibit B (Pl. Ex. 40) (Doc. 99-3) (attached hereto as Exhibit B). The minutes incorporated a letter from the Fairfax Homeowners Association, dated February 25, 2004. Exhibit C (Pl. Ex. 17) (attached hereto as Exhibit C). After the property was annexed by the City of Alpharetta, the City treated the conditions in the earlier special use permits as if they were a binding “agreement” between the Islamic Center and the neighborhood homeowners’ association and denied the Center’s application for a special use permit to build a new mosque on the property to meet the need of its expanding congregation. Exhibit D (Def. Ex. 260) (Doc. 100-10) (attached hereto as Exhibit D).

The imposition of conditions in rezoning ordinances and special use permits that are the result of three way agreements between private developers and homeowners' associations and zoning review boards or planning commissions may be acceptable, as a general matter, outside a religious context are *not* acceptable under RLUIPA when they are used, as in this case, to prevent the construction or expansion of a church, synagogue or mosque.

Restrictions on a special use permit that may not have been a “substantial burden” in 1998 when the restrictions on the Islamic Center’s special use permit were first imposed, may become a substantial burden over time when conditions have changed. In 1998, the Center was in its early formative stages and had only 25 members. At that time, the Center had neither the need nor the financial ability to build a new mosque. Those restrictions, however, became a “significant burden” twelve years later when they were used by the City of Alpharetta to deny the Islamic Center’s request that its special use permit be modified to allow the Center to expand and build a new mosque to meet the needs of its growing congregation.

Amicae respectfully urge the Court to hold:

- (1) that the denial of an application by a religious organization for rezoning, a variance or special use permit that prevents the organization from either building or expanding a building on its property for use as a church, synagogue, temple, or mosque – whether

to conform the design to its religious tenets or to accommodate the growth of its congregation – imposes a “substantial burden” on the congregation’s right of “religious exercise” as a matter of law under subsection (a) of RLUIPA (42 U.S.C. § 2000cc-1(a));

- (2) that the denial is invalid unless the county or municipality can prove both that the denial was (a) necessary to further a specific and identifiable compelling governmental interest, and (b) is the least restrictive means available to protect that interest (42 U.S.C. § 2000cc-1(a); and
- (3) that a county or municipality does not have a “compelling governmental interest” in the continued enforcement of an alleged “agreement” with a homeowners’ association that was incorporated years earlier as a condition of a rezoning ordinance or special use permit where the effect of that “agreement” is to prevent a religious organization from remodeling or expanding its sanctuary or other house of worship either to (a) conform to the tenets of the particular religion from a design standpoint, (b) to meet other sacramental or religious needs of its congregation, or (c) to prevent its expansion on that site.

## **ARGUMENT**

The Religious Land Use and Institutionalized Persons Act (RLUIPA) and its predecessor statute, the Religious Freedom Restoration Act (RFRA) were enacted in direct response to decisions of the Supreme Court in *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990) and *City of Boerne v. Flores*, 521 U.S. 507 (1997); *See Sossamon v. Texas*, \_\_\_ U.S. \_\_\_, 2011 WL 1485252 (Apr. 20, 2011); *United States v. Wilgus*, \_\_\_ F.3d \_\_\_, 2011 WL 1126059 (10th Cir. Mar. 29, 2011).

*Smith* held that neutral state laws of general application which impose only an incidental burden on religious practices, do not violate the Free Exercise Clause of the First Amendment and do not have to be justified by a compelling state interest. “The Court [in *Smith*] recognized, however, that [Congress] could shield religious exercise through legislat[ion]” that would provide religious organizations greater protections than those afforded by the First Amendment. *Cutter v. Wilkinson*, 544 U.S. 709, 714 (2005); *Madison v. Riter*, 355 F.3d 310, 314-15 (4th Cir. 2003) (“[T]he *Smith* Court openly invited the political branches to provide greater protection to religious exercise through legislative action.”). *Lovelace v. Lee*, 472 F.3d 174, 186 (4th Cir. 2006).

Congress responded to the invitation in *Smith* by enacting the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb (“RFRA”). The purpose of RFRA was to provide religious organizations and practices *greater protections* than those afforded by the Free Exercise Clause of the First Amendment by requiring that any federal, state or local law that imposes a “substantial burden” on a religious exercise be justified by a compelling governmental interest (*i.e.*, “strict scrutiny”), even if those laws or regulations were otherwise facially neutral. *Sossaman*, 2011 WL 1485252, at \*3; *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 439 (2006) (In RFRA, “Congress recognized that laws neutral

toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise and legislated the compelling interest test to strik[e] sensible balances between religious liberty and compelling prior governmental interests.”) (internal quotations omitted).

Congress, however, made a mistake in enacting RFRA. It relied solely on its power to legislate under section 5 of the Fourteenth Amendment as a source of its legislative power, rather than invoking its broader powers under the Commerce and the Spending Clauses. *Cutter*, 544 U.S. at 715 (RFRA was “universal in its coverage, [and] ... applied to all Federal and State laws ... but notably lacked a Commerce Clause underpinning or a Spending Clause limitation to recipients of federal funds.”).

In *City of Boerne*, the Court invalidated RFRA as applied to states and their subdivisions on the ground that Congress had exceeded its remedial powers under the Fourteenth Amendment. *See also Smith v. Allen*, 502 F.3d 1255 (11th Cir. 2007); *Madison*, 355 F.3d at 315. The Court held that while Congress had the power under section 5 to *remedy* violations of the Fourteenth Amendment by state and local governments, Congress did not have the power to create a *new*

constitutional right by overruling a prior decision of the Supreme Court declaring that no such right existed under the First and Fourteenth Amendments.<sup>1</sup>

The Religious Land Use and Institutionalized Persons Act (42 U.S.C. § 2000cc (RLUIPA)) was enacted in direct response to the ruling in *City of Boerne*. As Justice Ginsberg explained in *Cutter v. Wilkinson*, “there is room for play in the joints” between the Free Exercise and the Establishment Clauses, which left “space for legislative action” by Congress that is “neither compelled by the Free Exercise Clause nor prohibited by the Establishment Clause.” 544 U.S. at 719. In upholding the constitutionality of RLUIPA in *Cutter*, the Court held that “RLUIPA fits within the corridor between the Religion Clauses [and] ... qualifies as a permissible legislative accommodation of religion that is not barred by the Establishment Clause.” *Id.*

In enacting RLUIPA, Congress was also careful to cure the jurisdictional defects that had led the Court to declare RFRA unconstitutional. It did so in three

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<sup>1</sup> *City of Boerne* invalidated RFRA only insofar as it applied to states and their political subdivisions. It did not invalidate RFRA as a limitation on the power of the federal government to enact laws or enforce federal regulations that impinged on religious exercises or practices. *See, e.g., Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006) (holding that RFRA prohibited the DEA from enforcing the Controlled Substances Act’s ban on the use of hoasca (a tea containing a hallucinogen) in religious ceremonies where the government failed to carry its burden under RFRA of demonstrating that the ban was justified by a compelling governmental interest).

ways. First, the decision in *City of Boerne* had been based in part on the absence of a legislative record showing that discrimination against religious institutions was sufficiently widespread as to justify the enactment of remedial legislation by Congress under section 5. The Court had pointedly said that “[i]n contrast to the [legislative] record ... in the voting rights cases, RFRA’s legislative record lacks examples of modern instances of generally applicable laws passed because of religious bigotry.” 521 U.S. at 530. Congress responded by holding eight hearings over a three-year period before enacting RLUIPA. *Cutter*, 544 U.S. 717. These hearings produced a legislative record that contained “much evidence” that religious discrimination in the application of zoning and land use regulations is “very widespread.” 146 Cong. Rec. S7774-75 (daily ed. July 27, 2000) (Joint Statement of Senators Hatch and Kennedy).

Senators Orrin Hatch (R-Utah) and Ted Kennedy (D-Mass.), the bill’s co-sponsors, summarized these findings in a Joint Statement that was incorporated as a part of the Congressional Record. Joint Statement of Senator Hatch and Senator Kennedy, 146 Cong. Rec. S7774 (daily ed. July 27, 2000) (hereafter referred to as “Joint Statement”).

The right to assemble for worship is at the very core of the free exercise of religion. Churches and synagogues cannot function without a physical space adequate to their needs and consistent with their theological

requirements. The right to build ... such a space is an indispensable adjunct of the core First Amendment right to assemble for religious purposes .... *Churches in general, and new small or unfamiliar churches in particular, are frequently discriminated against ... in the highly individualized and discriminatory process of land use regulation. Zoning codes frequently exclude churches in places where they permit theaters, meeting halls and other places where large groups of people assemble for secular purposes. Or the codes permit churches only with individualized permission from the zoning board, and the zoning boards use that authority in discriminatory ways .... More often, discrimination lurks behind such vague and universally applicable reasons as traffic, aesthetics or “not consistent with the city’s land use plan.”...* The hearings record contains much evidence that these forms of discrimination are very widespread.

*Id.* at S7774-75 (emphasis added).

Second, in contrast to RFRA, which was universal in scope and banned all forms of governmental discrimination against religious organizations and practices, RLUIPA is narrower and “less sweeping than RFRA [and] ... target[ed] two areas ... land use regulations [and] ... religious exercise by institutionalized persons.” *Cutter*, 544 U.S. at 715. These were the two areas in which religious discrimination had been shown by the record developed at the congressional hearings to be widespread and of particular concern.

Third, and most importantly, Congress did not, as it had done in the case of RFRA, rely solely on section 5 of the Fourteenth Amendment as the source of its

legislative power to enact RLUIPA. Congress also invoked its broader legislative powers under the Commerce and Spending Clauses of the Constitution.<sup>2</sup>

**I. RLUIPA Invalidates any Zoning Restriction that Imposes a “Substantial Burden” on the Right of a Religious Organization to Build or Expand a House of Worship, Unless the Municipality Can Prove that (1) the Restriction Actually Furthers a Compelling Governmental Interest, and (2) is the Least Restrictive Means of Furthering that Interest.**

In enacting RLUIPA, “Congress carried over ... the compelling governmental interest/least restrictive means standard” from RFRA. *Cutter*, 544 U.S. at 717. The compelling interest standard is the “most demanding test known to constitutional law.” *City of Boerne*, 521 U.S. at 534. In the first section of RLUIPA, Congress established a “General Rule” – that prohibited state and local governments from enforcing a land use restriction that “imposes a substantial burden on the religious exercise of a person, including a religious assembly ... unless the government demonstrates that the imposition of the burden ... (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000cc-1(a)(1) (emphasis added).

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<sup>2</sup> These efforts were successful. The constitutionality of RLUIPA has been upheld by the Eleventh Circuit in *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004), and later by the Supreme Court in *Cutter v. Wilkinson*, 544 U.S. 709 (2005), and is no longer open to question.

**A. RLUIPA applies whenever the denial of a rezoning application of a religious organization (a) affects interstate commerce or (b) was based on an individual assessment of the property.**

RLUIPA requires that a local government show a compelling justification to any zoning or other land use restriction that imposes a “substantial burden” on the use of property for religious purposes if any one of three jurisdictional conditions is met:

- (1) “the substantial burden affects, or [its] removal would affect” interstate commerce, 42 U.S.C. § 2000cc(a)(2)(B),
- (2) the project involves the use of federal funds, or
- (3) “the substantial burden is imposed in the implementation of a land use regulation ... under which a government makes ... individualized assessments of the proposed uses for the property involved.” *See* 42 U.S.C. § 2000cc(a)(2)(C).<sup>3</sup>

Senators Hatch and Kennedy explained these jurisdictional provisions of RLUIPA in their Joint Statement. They said that “[t]he General Rules in § 2(a)(1) [of RLUIPA] requiring that substantial burdens on religious exercise be justified

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<sup>3</sup> There can be no doubt that the jurisdictional requirements of RLUIPA have been met in the case. The City of Alpharetta’s decision to deny the Islamic Center’s rezoning application to build a 13,942 square foot mosque and a 1,910 square foot Communing Hall was based on an individual assessment of the proposed use and also plainly affects interstate commerce. *Westchester Day Sch. v. Village of Mamaroneck*, 504 F.3d 338, 354 (2d Cir. 2007) (holding that “the jurisdictional element [was] satisfied by evidence that the construction of ... a 44,000 square-foot building with an estimated cost of \$9 million will affect interstate commerce.”).

by a compelling interest, applies only to cases within the spending power or the commerce power, or to cases where the government has the authority to make individualized assessments of the proposed uses to which the property will be put. Where the government makes such individualized assessments ... [i]t cannot exclude religious uses without compelling justification (*citing Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 537-38 (1993)).” Joint Statement, 146 Cong. Rec. S7775-76.

The events of 9/11 and their aftermath have made heightened scrutiny of individualized zoning decisions adverse to Muslim congregations especially necessary. Islam and other sects “that are not affiliated with mainstream Protestant sects or the Roman Catholic Church” are especially vulnerable to religious prejudice and are more likely to be subjected to “subtle forms of discrimination when, as in the case of the grant or denial of zoning variances, a state delegates essentially standardless discretion” to local politicians and other “non-professionals operating without procedural safeguards.” *Saints Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 900 (7th Cir. 2005).

**B. The right of a congregation to use its land for the construction or expansion of a mosque is a “religious exercise” protected by RLUIPA.**

RLUIPA was based on findings by Congress that:

The right to assemble for worship is at the very core of the free exercise of religion. Churches and synagogues cannot function without a physical space adequate to their needs and consistent with their theological requirements. The right to build ... such a space is an indispensable adjunct of the core First Amendment right to assemble for religious purposes .... Joint Statement, 146 Cong. Rec. S7774.

*Cutter*, 544 U.S. at 720 (“[T]he exercise of religion often involves not only belief and profession, but the performance of ... physical acts [such as] assembling with others for a worship service [or] participating in sacramental use of bread and wine”) (internal quotations omitted). Congress defined “religious exercise” in RLUIPA to include “*any exercise of religion, whether or not compelled by or central to, a system of religious belief.*” 42 U.S.C. § 2000cc-5(7)(A) (emphasis added). Congress also left no doubt that the right of religious exercise guaranteed by RLUIPA includes the right to use, build or convert real property for use as a church, synagogue, temple, mosque or other house of worship.

The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.

42 U.S.C. § 2000cc-5(7)(B).

**C. A land use restriction that seeks to confine a church to its existing facilities, and prohibit a church from meeting the needs of its growing congregation on site (or by acquiring adjacent property) by expansion, is a “substantial burden” as a matter of law.**

*Midrash Sephardi, Inc. v. Town of Surfside* was the first case in the Eleventh Circuit to interpret RLUIPA. The Court held that because the term “substantial burden” is not defined in RLUIPA, the Court would “give the term its ordinary and natural meaning.” *Midrash*, 366 F.3d at 1226. To determine the ordinary meaning of other terms in RLUIPA that were not explicitly defined, the Court relied on dictionary definitions in *Webster’s* and *Black’s*. *Id.* at 1230. It follows that the same general dictionaries should also be used to determine the ordinary meaning of the term “substantial burden” in RLUIPA.

“Substantial,” when used as an adjective, is defined in *Webster’s Third New International Dictionary* 2280 (1976) to mean something that has “substance,” is “not imaginary or illusive,” is “real,” or is “of moment” or “important.” *Black’s Law Dictionary* 1280 (5th ed. 1979) defines the term “substantial” as something “of real worth [or] importance,” “belonging to substance,” “actually existing,” “real,” “not seeming or imaginary,” “not illusive,” “something worthwhile as distinguished from something without value or merely nominal.”

In *Midrash*, the Eleventh Circuit recognized that in the First Amendment context it had said “that an individual’s exercise of religion is ‘substantially burdened’ if a regulation completely prevents a religious organization from engaging in religiously mandated activity....” 366 F.3d at 1227.<sup>4</sup> The Court’s prior First Amendment precedents could not, however, be used to define the term “substantial burden” as used in RLUIPA for a whole series of reasons. First, RLUIPA was intended to provide broader protections to religious exercises than that provided by the First Amendment. *Cutter*, 544 U.S. 709. Second, after the Eleventh Circuit decided these First Amendment cases, the Supreme Court held that the courts may not decide which practices of a particular religious faith are worthy of protection, nor can courts pick and choose between religious practices that are mandatory and those which are only recommended or optional.

*Employment Division, Oregon Department of Human Resources v. Smith*, 494 U.S. at 886-87 (“[C]ourts must not presume to determine the place of a particular belief in a religion.”). Third, Congress expressly rejected the notion that a religious activity must be “religiously mandated” to be protected under RLUIPA when it defined religious exercise broadly to include “any exercise of religion, whether or

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<sup>4</sup> While proof that a land use regulation “completely prevents” a religious organization from engaging in an activity that is “religiously mandated” would be *sufficient* to prove that the burden is “substantial” under RLUIPA, neither element is a *necessary* condition of a “substantial burden” finding.

not compelled by or central to a system of religious belief.” 42 U.S.C. § 2000cc-5(7)(A). Fourth, in the *Midrash* case itself, the Eleventh Circuit rejected a decision from the Seventh Circuit which had held that a zoning ordinance must make a religious exercise “effectively impractical” to constitute a “substantial burden.” *Midrash*, 366 F.3d at 1227. The Court said that the Seventh Circuit’s interpretation “renders § (b)(3)’s exclusion prohibition meaningless.” *Midrash*, 366 F.3d at 1227.<sup>5</sup>

The Eleventh Circuit chose instead to define the term “substantial burden” in RLUIPA according to its ordinary meaning in *Webster’s* and *Black’s*. The Court held that to prove that the denial of its application for a rezoning or a special use permit imposes a “substantial burden” on its right of “religious exercise” under

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<sup>5</sup> The Seventh Circuit subsequently abandoned “effectively impracticable” as a test for determining whether a burden is “substantial” under RLUIPA. In *Saints Constantine and Helen Greek Orthodox Church, Inc v. City of New Berlin*, 396 F.3d at 901, in which the court held “that the burden would not be insuperable would not make it insubstantial,” the court reasoned that “the substantial burden provision ... must mean something different from,” the separate provision in RLUIPA that prohibits a municipality from excluding churches from zoning districts where other comparable gatherings and meetings are permitted. “[T]he ‘substantial burden’ provision,” the court said, “backstops the explicit prohibition of religious discrimination” in the exclusion provision of the Act “much as the disparate-impact theory of employment discrimination backstops the prohibition of intentional discrimination.” *Id.* at 900. See also, *Westchester Day Sch.*, 504 F.3d at 349 (“[A] burden need not be found insuperable to be held substantial ... When a [religious] school has no ready alternative or where the alternatives require substantial ‘delay, uncertainty, expense, a complete denial of the school’s application might be indicative of a substantial burden.’”).

RLUIPA, a religious organization must show that the denial has “*something more than an incidental effect ... [or] place[s] more than an inconvenience on*” the organization’s right under RLUIPA to “use, build[] or convert[]” (42 U.S.C. § 2000cc-5(7)) its property for use as a church, synagogue, temple, mosque or other house of worship. *Midrash*, 366 F.3d at 1227 (emphasis added).<sup>6</sup> *See also Smith v. Allen*, 502 F.3d. at 1277 (“To constitute a substantial burden under RLUIPA, the governmental action must *significantly hamper* one’s religious practice”) (emphasis added).

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<sup>6</sup> The actual holding of the *Midrash* case was that the zoning ordinance of the Town of Surfside that banned churches and synagogues from seven of the eight zoning districts in which private clubs and secular assemblies were allowed was discriminatory and, therefore, violated the equal terms provision of section (b) of RLUIPA. 366 F.3d at 1231-35. Although this ruling disposed of the entire case, the Court nevertheless addressed the congregation’s alternative claim that the ordinance also violated subsection (a) of RLUIPA *obiter dicta*. The *Midrash* congregation had been holding services in rented space on the second floor of a bank located in the two block long business district in which churches and synagogues were prohibited. There was, however, abundant evidence that the *Midrash* congregation could have remained in its existing space which it had rented from the bank. “Surfside ... denied *Midrash*’s application for a zoning variance to operate in its current location because *Midrash* failed to provide written permission from [the bank]. *Midrash* did not appeal [that] denial, nor did it seek [the bank’s] permission to reapply.” 366 F.3d at 1220. Even though Surfside was a very small town that encompassed only one square mile (or 633 acres), the congregation contended that it would have been a “substantial burden” if its members had been required to walk a few extra blocks to a location in the RD-1 district where churches and synagogues were permitted. Based on these unique facts, the Court said *in dicta* that “we cannot say walking a few extra blocks is ‘substantial’ as the term is used in RLUIPA.” 366 F.3d at 1228.

The Court in *Midrash* also recognized that even “pressure that tends to force adherents to forgo religious precepts” is sufficient to satisfy the “substantial burden” threshold in RLUIPA and shift the burden of proof to the municipality. *Midrash*, 366 F.3d at 1227. Fulton County’s refusal to grant the Islamic Center’s applications for special use permit in 1998 and again in 2004, except on the condition that the Center “agree” to or accept conditions prohibiting future expansion demanded by the Fairfax Homeowners’ Association, is a classic example of the kind of “pressure to forgo religious precepts” that is sufficient to shift the burden of proof under RLUIPA and require the City to justify its perpetuation of that burden on the Islamic Center’s right of religious expansion.

This interpretation of *Midrash* as requiring a plaintiff to prove that the denial of an application for rezoning or a special use permit is a “substantial burden” if it has more than an incidental effect on or significantly hampers the ability of a congregation to build or expand its sanctuary is consistent with the decisions of a number of other circuits which have held that the denial of a zoning application that prevents a congregation from building a new sanctuary to replace an aging or inadequate facility is a “substantial burden” that must be justified under RLUIPA by a compelling governmental interest.

In *Saints Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, New Berlin denied the application of a Greek Orthodox congregation to rezone 14 acres owned by the congregation from residential to industrial so that the congregation could build a new \$12 million church. 396 F.3d at 898. Although the City's Planning Director recommended that it be approved by the planning commission, the city council refused, ostensibly because they were afraid that the congregation could not raise the \$12 million and might sell the property for some other institutional use. The City contended that the denial of rezoning did not impose a "substantial burden" on the congregation because it could "apply for a conditional use permit, which would allow the building of the church without altering the zoning of the land." The court, however, ruled that this option was unrealistic because "the permit would expire at the end of one year ... and it is infeasible for the Church to move that fast. If the Church waited to apply for the permit until it was within a year of starting construction, it would find it difficult to raise the necessary \$12 million, since it could not assure donors that the church would actually be built." *Id.* at 899. The Court of Appeals held that "the burden here was substantial. The Church could have searched around for other parcels of land ... or it could have continued filing applications with the City, but in either

case there would have been delay, uncertainty and expense” which was enough to establish that the burden was substantial. *Id.* at 901.

The Second Circuit reached a similar result in *Westchester Day School v. Village of Mamaroneck*, 504 F.3d 338 (2d Cir. 2007). In that case, a Jewish day school was denied a special use permit that would have allowed the school to undertake a \$12 million renovation of its aging buildings that were so deficient that they hampered the school’s “effectiveness in providing the education Orthodox Judaism mandates.” *Id.* at 345. The Second Circuit stressed two factors in determining whether the denial of the school’s application for a special use permit imposed a “substantial burden” on the school’s rights of religious exercise: “(1) whether there are quick, reliable and financially feasible alternatives WDS may utilize to meet its religious needs absent its obtaining the construction permit; and (2) whether the denial was conditional.” *Id.* at 352. The court explained that “[t]hese two considerations matter ... [because] when an institution has a ready alternative – be it an entirely different plan to meet the same [religious] needs or the opportunity to try again in line with a zoning board’s recommendations – its religious exercise has not been substantially burdened.” *Id.* The Second Circuit held that the school had met its burden under RLUIPA of proving that the denial of

the special use permit imposed a substantial burden on its right to expand and was invalid:

Here, the school could not have met its needs simply by reallocating space within its existing buildings ... because not enough space remained ... to accommodate the school's expanding needs ... [T]he planned location ... was the only site that would accommodate the new building ... [T]here were not only no quick, reliable, or economically feasible alternatives, there were no alternatives at all.

*Id.*

The Court of Appeals also found that the “denial of WDS’s application was absolute. [While] the ZBA could have approved the application subject to conditions ... to mitigate adverse effects on public health, safety and welfare ... the ZBA chose instead to deny the application in its entirety.... Second, were WDS to prepare a modified proposal, it would have to begin the application process anew. This would have imposed so great an economic burden as to make the option unworkable.” *Id.*

In *Mintz v. Roman Catholic Bishop of Springfield*, 424 F. Supp. 2d 309 (D. Mass. 2006), the court upheld the right of the Catholic Archdiocese to construct a 150-seat parish center to “serve as a meeting place for the parish council, [i]nclude an office for religious education [and] could facilitate gatherings related to church services and ... alleviate crowding in the rectory [because] the inability of St Ann’s

to build the parish center would substantially burden all these religious activities....” *Id.* at 321.

The district court held that “as applied here, the [town] bylaw would preclude *any* additional construction on property owned by a religious institution [a] concern of RLUIPA” which the court held “does not contemplate that a church’s religious exercise can be frozen in place. Thus, what might have been adequate ninety years ago, may not necessarily be adequate today. As time passes, the religious needs of an institution can grow so large that the impinging nature of zoning laws may become much more burdensome. Similarly, the construction of the parish center at another location ... would not avoid the bylaw’s substantial burden on religious exercise at St. Ann’s present location.” *Id.* at 322.

**D. RLUIPA’s compelling interest test requires a focused inquiry, and the mere invocation of “public health, safety and welfare” is insufficient to carry the government’s burden of proof.**

A religious organization has established a *prima facie* case for relief under RLUIPA once it demonstrates that the denial of its rezoning application imposes a substantial burden on the organization’s ability to build or expand its house of worship to meet the religious needs of its congregation. 42 U.S.C. § 2000cc-1(a)(1). The burden of proof then shifts to the municipality to prove “that the imposition of the burden ... (1) is in furtherance of a *compelling* governmental

interest; and (2) is the *least restrictive means* of furthering that interest.” 42 U.S.C. § 2000cc-1(a).

Compelling governmental interests are “only those interests of the highest order” (*Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972)) that are necessary to prevent “only the gravest abuses, endangering paramount interests.” *Sherbert v. Verner*, 374 U.S. 398, 406 (1963). It may be politically expedient for city or county officials to impose conditions on a church’s application for rezoning or a special use permit to satisfy the demands of a neighborhood homeowners’ association. The interests of a private homeowners’ association are not, however, either “governmental” or are they a “compelling interest.”

In *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006), the Supreme Court interpreted the compelling governmental interest provisions in RFRA (42 U.S.C. § 2000bb-1(b)) which are identical to the provisions in RLUIPA. The issue was whether the DEA was prohibited by RFRA from enforcing the Controlled Substances Act to prohibit the sacramental use of a hallucinogenic tea by a small religious sect with origins in the Amazon rainforest.

The *abstract proposition* that the government has a compelling interest in enforcement of the federal drug laws was undisputed. The Court said that “[w]e do not doubt the validity of those interests, any more than we doubt the general

interest in promoting public health and safety by enforcing the Controlled Substances Act, *but under RFRA invocation of such governmental interests, standing alone, is not enough.*” 546 U.S. at 438 (emphasis added). The Court held that the compelling interest test under RFRA requires a “focused inquiry [and] ... the Government’s mere invocation of the general characteristics ... [of] the Controlled Substances Act, cannot carry the day” and affirmed the grant of an injunction in favor of the sect. *Id.* at 432.

The Court explained that “context matters” and that “RFRA requires the Government to demonstrate that the compelling interest is satisfied through the application of the challenged law ‘to the person’ – the particular claimant whose sincere religious exercise is being substantially burdened.” *Id.* at 430-31. The Court explained that “RFRA expressly adopted the compelling interest test ‘as set forth in *Sherbert v. Verner* ... and *Wisconsin v. Yoder*...’ [in which] the Court looked beyond broadly formulated interests justifying the general applicability of government mandates and scrutinized the asserted harm of granting specific exemptions to particular religious claimants.” *Id.* at 431.

For the same reasons, a municipality cannot justify its denial of a church’s rezoning application merely by citing everything from motherhood and apple pie to the kitchen sink. The municipality must show how and why the denial of the

particular zoning application was necessary to further a specific identifiable governmental interest of compelling or permanent importance and that compelling interest could not have been protected in any other less restrictive way.

## CONCLUSION

Amicae respectfully urge the Court to hold:

- (1) that the denial of an application by a religious organization for rezoning, a variance or special use permit that prevents the organization from either building or expanding a building on its property for use as a church, synagogue, temple, or mosque – whether to conform the design to its religious tenets or to accommodate the growth of its congregation – imposes a “substantial burden” on the congregation’s right of “religious exercise” as a matter of law under subsection (a) of RLUIPA(42 U.S.C. § 2000cc-1(a);
- (2) that the denial is invalid unless the county or municipality can prove both that the denial was (a) necessary to further a specific and identifiable compelling governmental interest, and (b) is the least restrictive means available to protect that interest (42 U.S.C. § 2000cc-1(a); and
- (3) that a county or municipality does not have a “compelling governmental interest” in the continued enforcement of an alleged “agreement” with a homeowners’ association that was incorporated years earlier as a condition of a rezoning ordinance or special use permit where the effect of that “agreement” is to prevent a religious organization from remodeling or expanding its sanctuary or other house of worship either to (a) conform to the tenets of the particular religion from a design standpoint, (b) to meet other sacramental or religious needs of its congregation, or (c) to prevent its expansion on that site.

This 2<sup>nd</sup> day of May, 2011.

Respectfully submitted,

/s/ *Emmet J. Bondurant*

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Local Rule 7.1D of the Local Rules for the United States District Court for the Northern District of Georgia, I hereby certify that the foregoing brief has been prepared in Times New Roman, 14 point font, as permitted by Local Rule 5.1B.

*/s/ Emmet J. Bondurant* \_\_\_\_\_

Emmet J. Bondurant

Georgia Bar No. 066900

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed the foregoing **AMICUS CURIAE BRIEF OF THE INTERFAITH COALITION ON MOSQUES AND THE FAITH ALLIANCE OF METRO ATLANTA** with the Clerk of Court using the CM/ECF filing system which will automatically send e-mail notification of such filing to all counsel of record as follows:

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This 2<sup>nd</sup> day of May, 2011.

*/s/ Emmet J. Bondurant*  
\_\_\_\_\_  
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Georgia Bar No. 066900

# Exhibit A

## FAIRFAX HOMEOWNERS ASSOCIATION

Date: April 12, 2010

To: City Alpharetta Planning Commission

From: Fairfax Homeowners Association (Bridget Rummell – President, Fergal Brady- Vice President)

Re: Points of concern of Islamic Center of North Fulton

It is the recommendation of the Fairfax Homeowners Association to deny the application PH-10-03 by the Islamic Center of North Fulton, Inc.

To give a brief documented background:

1. In 1998, 98-1421 Petition #98U 0046 FCN, Rucker Road – application of Riaz Faroqui, et al. seeks a use permit for a church in an AG-1 (agricultural) zoning classification. (approved)
  - a. During this petition Alice Wakefield, Assistant Director, Environment and Community Development presented – “This is a use permit for a church to use an existing structure (emphasis added) with 25 members. The recommendation of the staff is approval. The recommendation of the Planning Commission is approval.”
  - b. Commissioner Fulton made the motion to approve the Petition 98U 0046 as recommended and conditioned by Staff, which was amended by Commissioner Joyner and carried a vote of 5-0-0.
  - c. Use permit for a Church/Place of Worship CONDITIONAL subject to the following enumerated conditions....
    - i. To the owner's agreement – to restrict the use of the site to a church/place of worship in the existing structure (emphasis added). No modifications (emphasis added) will be made to the exterior of the structure, other than normal maintenance.
    - ii. To the owner's agreement to the following site development considerations
      1. – No more than one exit / entrance on Rucker Road. Curb cut location and alignment are subject to the approval of the Fulton County Traffic Engineer.
      2. – Lighting of the parking shall be prohibited.
2. In 2004, March 3<sup>rd</sup>, Petition #2003U 0025 FCN application of Islamic Center of Alpharetta, by Riaz Faroqui seeks a use permit in an AG-1 zoning classification and #2003VC 0264 FCN application of Islamic Center of Alpharetta by Riaz Faroqui seeks use permit in an AG-1 zoning classification. (approved)
  - a. Commission Chair Handel – “I have one question. Was there a – I thought there was a private agreement with Fairfax (emphasis added)? Can we get that put in the record as well?”
  - b. Mr. Hendricks – “I just handed that to the Clerk.”
  - c. Commission Chair Handel – “Super”
  - d. Mr. Hendricks – “It's from the president of Fairfax. And I just submitted that in.”
  - e. Commission Chair Handel – “Excellent”



- f. Commissioner Lowe – “I make a motion to approve with that spread on the minutes and all conditions established (emphasis added) by staff.”
  - i. RECOMMENDED CONDITIONS – To the owners agreement to restrict the use of the property to a place of worship in existing structures (emphasis added) and accessory uses at an overall density of 596.7 gross square feet per acre zoned or a total gross floor area or 2,524 square feet, whichever is less (emphasis added).

In 1998 and again in 2004, the Islamic Center of Alpharetta had committed repeatedly to the homeowners of Fairfax subdivision the following:

1. The worship center would remain in existing structures and that no modifications other than routine maintenance would be made to the structures.
2. The restricted use would be at 2,524 square feet or whichever is less.
3. An expansion of this church would not be on this site.
4. The church would maintain the residential quality of the property.

In a letter dated February 25, 2004, the Fairfax Homeowners Association addressed Mr. Stephen Cover, Director Fulton County Department of Community Development with the following agreed to terms such that our understanding of the development is not an expansion of the existing structure, but only an addition of one residence, which is to be used by their Imam, and a new drive/parking area. The Fairfax HOA approval was based on the following:

1. Staff's recommendation was in fact made part of the special use permit.
2. The drive access was limited to one entrance and exit.
3. The size of the worship building is restricted to its existing structure.
4. The Land Disturbance Permit was limited to the construction / demolition necessary for the entrance drive.
5. The Islamic Center would be responsible for installing a landscape buffer area of at least 10 feet on all sides and rear property lines.

*The Fairfax Homeowners Association still concurs with these recommendations and does not support the Islamic Center of North Fulton, Inc. (a new name) to construct a new structure for the purposes of increasing its congregation due to the following reasons:*

1. Traffic Congestion on Rucker Road- According to the Islamic Center of North Fulton, the congregation has grown from 150 participants in 1998 to over 600 participants currently. The proposed expansion from the existing structure will attract additional participants and place a greater burden of congestion on Rucker Road. Regardless of any amended traffic patterns by the ICNF, the surrounding communities will be impacted by the growing congestion in this residential community. Unless the GADOT presents a suitable plan for handling the additional demand from the ICNF, the current restrictions placed on the subject property should continue to hold without debate.
2. Structural Conformity with Surrounding Structures- The proposed plan from the ICNF presents structural inconsistencies within the residential community. The proposed plan details a modern contemporary design set against a backdrop of traditional residential structures. The new design would create an obvious inconsistency with the surrounding communities.

3. *Insufficient Parking on the Subject Property-* The proposed request includes a variance to the current required parking spaces on the subject property. A shortfall of 17 parking spaces has been identified on the subject property. The surrounding property owners have witnessed the congregation parking their vehicles outside the subject property due to a lack of required parking spaces on the site. The proposed expansion would only create a greater hazard to the surrounding communities. A traffic pattern study has not been presented for any consideration. Please reference photos that were taken that reflect cars parked in the front lawn of the subject property during a meeting of the congregation (attached).
4. *Extended Period of Construction-* The proposed request outlines a four year plan to construct portions of the structure at a time. While the plan is cost effective to the property owner, the burden of constant noise and construction traffic is felt by the surrounding property owners. In addition, the limited restrictions for this time table could be even worse than expected. The constant construction could impede the ability of surrounding property owners to market their property for a fair market value thus impacting property values in whole for the area.
5. *Structural Conformity within the Subject Property-* The proposed expansion plan requests that one of the existing structures remain as the other would be torn down. This plan would create a subject property that has one large 17,000 sf modern contemporary design with domes and minarets alongside a 2,300 sf brick ranch style residential home. The plan not only creates a structure that does not conform with the surrounding architectural setting but creates a site that has pronounced structural contrast.
6. *Growing Congregation and Future Expansion Plans-* The Islamic Center of North Fulton stated in the Public Meeting dated Tuesday, March 16, 2010 that the congregation has grown from 150 participants to the current estimated congregation of 600. The ICNF continues to conceal the actual count as the numbers might be even higher than suggested. Based upon the stated count, the congregation grew four times during a 12 year period. If the proposed plan were to be approved, the congregation would grow by an even greater multiplier as members would be attracted to the new facility and amenities. This type of growth along an exhausted Rucker Road provides a greater hazard to all of the communities and property owners that use this street to gain access to their homes. A formal GADOT plan must be considered before adding additional demand to Rucker Road. Without consideration and review of the formal GADOT plan, any consideration of the proposed plan would be considered reckless and place harm against surrounding property owners and their families.
7. *Previous Conditions on Existing Structure have set Precedence-* The application submitted by the ICNF details another effort to change the conditions that have held for over twelve years. These previous conditions to restrict the place of worship to the existing structures have protected the surrounding communities against to proposed expansion. These conditions have been uncontested and agreed upon by the applicant in previous meetings and requests. The Planning Commission and the City Council of Alpharetta have a responsibility to uphold the previous conditions and avoid any further expansion of the subject property. The conditions set forth in 1998 and again in 2004 show that the applicant has been aware of the restrictions but continue to disregard the concerns of surrounding property owners.

# Exhibit B

FULTON COUNTY  
MARCH 3, 2004 MINUTES

- j. Where paved parking areas (including access aisles) are proposed to exceed 5,000 square feet, the storm water management facilities shall be designed to remove pollutants such as oil, grease and other automobile fluids that may leak from vehicles. A description of the storm water management facilities proposed to achieve the removal of such pollutants shall be submitted with the Storm Water Concept Plan.
- k. With the application for an LDP, provide documentation (such as channel cross-sections, centerline profile, etc.) describing the geometry of all existing natural streams, creeks, or draws within the proposed development boundary and provide details on the Storm Water Management Plan of the post-development channel bank protection measures.
- l. The developer/engineer shall demonstrate to the County by engineering analysis submitted with the LDP application, that the discharge rate and velocity of the storm water runoff leaving the site is restricted to seventy-five percent (75%) of the pre-development conditions for the 1-year frequency storm event, up to and including the ten (10)-year frequency storm event.

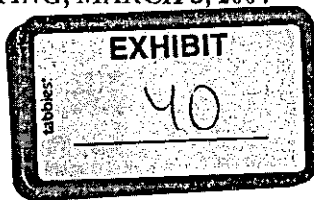
04-0311 PETITION #2003U 0025 FCN, RUCKER ROAD - APPLICATION OF ISLAMIC CENTER OF ALPHARETTA, BY RIAZ FAROQUI, SEEKS A USE PERMIT IN AN AG-1 (AGRICULTURAL) ZONING CLASSIFICATION (APPROVED)

04-0312 PETITION #2003VC 0264 FCN, RUCKER ROAD - APPLICATION OF ISLAMIC CENTER OF ALPHARETTA, BY RIAZ FAROQUI, SEEKS A USE PERMIT IN AN AG-1 (AGRICULTURAL) ZONING CLASSIFICATION (APPROVED)

Mark Massey, Clerk to the Commission - "Page 28. Two Related Cases. 04-0311. Case No. 2003U 0025. And 04-0312. Case No. 2003VC 0264. Rucker Road. Staff."

Ms. Wakefield - "This is a Use Permit request for a place of worship. The proposal is for the property owner to acquire the adjacent property with an existing structure and to use the structure as a place of residence from the imam. The applicant is also requesting a four-part concurrent variance. Staff's recommendation is approval of the Use Permit. And we have condition the place of worship to the existing structure. We have conditioned the resident to the residence. The -- And staff's recommendation is also approval of part 1 of the concurrent variance. Denial of parts 2, 3 and 4. And the Community Zoning Board concurs with staff's recommendation."

REGULAR MEETING, MARCH 3, 2004



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*Certified this 31<sup>st</sup> day  
of August, 2010.  
Sue Ramwater  
City Clerk*

Commission Chair Handel - "Okay."

Mr. Hendricks - "Madam Chair, members of the Commission, Pete Hendricks, 230 The Prado, Ansley Park. I practice law at 6085 Lake Forest Drive, Sandy Springs. A couple of years ago I had the property known as 1265 Rucker Road end. Which is this part of the property right here, for a worship center. You approved that. Well, since that time, the 1255 property which is contiguous and next-door, become available. And so the -- the center folks have bought that piece of property and they simply want to have it all under the same envelope. Well, what will that do? That will give the ability to get rid of the drive servicing here. The drive servicing here. And have only one curb cut coming in off of Rucker. Unfortunately, when it was advertised and put out, it was advertised as an expansion. Well, yes, it is an expansion adding some land. But we asked the staff to go ahead and condition so that 1265 may only be used in an existing structure for worship. And that 1255 in an existing structure, may only be used for residential reasons. The reasons that we ask for the variances, is at the time that we came forward with the original Use Permit, the development standards that were in place at that time, and to which we planned it and we developed the property, were 25 feet off the side and 50 feet off the rear. We now got a requirement for 50 foot off the side and 75 foot off the rear. So we're asking if we could please have that relief to put us back to exactly the way we had originally planned it and had the property under our Land Disturbance Permit. The staff has seen fit to grant this variance right here, which allows the existing 1255 house to be within that in that side. So that's the reason for the variance request. It's just to let us keep on keeping on the way we originally planned out and developed the property because the development standards have changed since the original Use Permit."

Commission Chair Handel - "Okay. Is there anyone here in opposition to this? Okay. With that, then, I'll close the public hearing, unless you'd like to speak briefly."

Mr. Riaz Faroqui - "Yeah. There's a couple of things in there. We -- We have the letters from the neighborhood here on this side, that side and the front of the property also at the back of the property, trying to get the variance. And they're very pleased with it. We had the meeting with them, they all agreed with it. Initially, in the Planning Commission, we did not have the right contact. And after that we had a meeting with six different associations. Everything worked out okay."

Commission Chair Handel - "Good."

Mr. Faroqui - "The second thing I'd like to request the Commissioner to include is the traffic report was incorrectly done. The number seems to be too high. The new report came out this morning. But apparently they could not add it to the final report. I request if they could add it, that would be great."

Commission Chair Handel - "Okay. Okay, with that, we'll close the public hearing. Yes. Vice Chair."

Vice Chair Boxill - "I just have a question."

Commission Chair Handel - "Yes, please."

Vice Chair Boxill - "If -- If we -- If someone makes a motion to approve this application as condition by staff, how will that affect the east-side variances?"

Alice Wakefield - "It would affect their ability to put their parking closer than 75 feet to the - that property line."

Vice Chair Boxill - "Okay."

Alice Wakefield - "It will not affect the existing structure because we -- the zoning ordinance allows us to write conditions for existing structures. But it would impact the parking that they're showing in that location."

Vice Chair Boxill - "Okay. And Pete, on that diagram, would you show me where the residence is? The residence is there and the space that's used for worship is? Okay. I can't see it from here. Got it. Thank you."

Commission Chair Handel - "I have one question. Was there a -- I thought there was a private agreement with Fairfax? Can we get that put in the record as well?"

Mr. Hendricks - "I just handed that to the Clerk."

Commission Chair Handel - "Super."

Mr. Hendricks - "It's from the president of Fairfax. And I just submitted that in."

Commission Chair Handel - "Excellent."

Commissioner Lowe - "Does that cover the variance for putting the parking closer?"

Mr. Hendricks - "Yes."

Commissioner Lowe - "Madam Chairman."

Commission Chair Handel - "Commissioner Lowe."

Commissioner Lowe - "I make a motion to approve with that spread on the minutes and all conditions established by staff."

Commission Chair Handel - "Okay."

Commissioner Pitts - "Second."

REGULAR MEETING, MARCH 3, 2004

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Commission Chair Handel - "All right. Any other comment? Please vote. Okay. That's approved. Thank you very much. Next item, please."

Mr. Faroqui - "Thank you."

A motion was made by Commissioner Lowe and seconded by Commissioner Pitts to approve as recommended and conditioned by Staff, and with the agreement spread on the minutes. The motion carried by a vote of 5-0-0. Commission Chair Handel, Vice Chair Boxill, and Commissioners Pitts, Lowe and Edwards voted yes. Commissioner Darnell did not vote.

There being no objections, Petitions 2003U 0025 and 2003VC 0264 were approved subject to the following Recommended Conditions, and Legal Description:

PETITION No.	2003U -0025 NFC
	2003VC-0264 NFC

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#### RECOMMENDED CONDITIONS

If this petition is approved by the Board of Commissioners, it should be approved Use Permit for an Islamic Center (Article 19.4.10) subject to the following enumerated conditions. Where these conditions conflict with the stipulations and offerings contained in the Letter of Intent, these conditions shall supersede unless specifically stipulated by the Board of Commissioners.

1. To the owner's agreement to restrict the use of the property as follows:
  - a. Restrict the use of the subject property to a place of worship in existing structures and accessory uses at an overall density of 596.7 gross square feet per acre zoned or a total gross floor area or 2,524 square feet, whichever is less. Restrict the structure at 1265 Rucker Road and accessory uses for a place of worship. Restrict the structure at 1255 Rucker Road and accessory uses for the residence of the Imam or equivalent.
2. To the owner's agreement to abide by the following:
  - a. To the site plan received by the Department of Environment and Community Development on December 11, 2003. Said site plan is conceptual only and must meet or exceed the requirements of the Zoning Resolution and these conditions prior to the approval of a Land Disturbance Permit. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of the first Certificate of Occupancy.
3. To the owner's agreement to the following site development considerations:

- a. No more than the one (1) existing exit/entrance on Rucker Road. Curb cut location and alignment are subject to the approval of the Fulton County Traffic Engineer.
  - b. Reduce the 100-foot setback along the west property line for the existing structure to remain (2003VC-0264 NFC, Part 1).
  - c. Reduce the required 75-foot buffer and 10-foot improvement setback along the west property line to a 25-foot buffer and 10-foot improvement setback (2003VC-0264 NFC, Part 2).
  - d. Reduce the required 75-foot buffer and 10-foot improvement setback along the east property line to a 25-foot buffer and 10-foot improvement setback (2003VC-0264 NFC, Part 3).
  - e. Reduce the required 75-foot buffer and 10-foot improvement setback along the south property line to a 50-foot buffer and 10-foot improvement setback (2003VC-0264 NFC, Part 4).
4. To the owner's agreement to abide by the following requirements, dedication and improvements:
- a. Dedicate at no cost to Fulton County along the entire property frontage, prior to the approval of a Land Disturbance Permit, sufficient land as necessary to provide the following rights-of-way, and dedicate at no cost to Fulton County such additional right-of-way as may be required to provide at least 10.5 feet of right-of-way from the back of curb of all abutting road improvements, as well as allow the necessary construction easements while the rights-of-way are being improved:  
  
30 feet from centerline of Rucker Road.
  - b. Reserve for Fulton County along the necessary property frontage of the following roadways, prior to the approval of a Land Disturbance permit, sufficient land as necessary to provide for compliance with the Comprehensive Plan. All building setback lines shall be measured from the dedication but at no time shall a building be allowed inside the area of reservation. All required landscape strips and buffers shall straddle the reservation line so that the reservation line bisects the required landscape strip or buffer. At a minimum, 10 feet of the required landscape strip or buffer shall be located outside the area of reservation. All required tree plantings per Article 4.23 shall be placed within the portion of the landscape strip or buffer that lies outside the area of reservation.  
  
45 feet from centerline of Rucker Road.

- c. Provide a deceleration lane for each project entrance or as may be required by the Fulton County Traffic Engineer.
  - d. Provide a left turn lane for each project entrance or as may be required by the Fulton County Traffic Engineer.
  - e. Provide a traffic impact mitigation plan to reduce the number of vehicular trips generated by the development to the Fulton County Traffic Engineer.
5. To the owner's agreement to abide by the following:
- a. Prior to submitting the application for a Land Disturbance Permit (LDP) with the Department of Environment and Community Development, Development Review Division, arrange to meet with the Fulton County Traffic Engineer. A signed copy of the results of these meetings will be required to be submitted along with the application for a Land Disturbance Permit.
  - b. Prior to submitting the application for an LDP, arrange an on-site evaluation of existing specimen trees/stands, buffers, and tree protection zones within the property boundaries with the Fulton County Arborist. A signed copy of the results of these meetings will be required to be submitted along with the application for an LDP.
  - c. Prior to submitting the application for an LDP, the developer/engineer shall contact the Public Works Department, Water Services Division, and arrange to meet on-site with an engineer from the Surface Water Management Program (SWMP), who is responsible for review of Storm Water Concept Plan submittals.
  - d. Prior to submitting the application for an LDP, the developer and/or engineer shall submit to the SWMP, through the Development Review Division, a project Storm Water Concept Plan. This concept plan shall indicate the preliminary location of the storm water management facilities intended to manage the quality and quantity of storm water. The concept plan shall specifically address the existing downstream off-site drainage conveyance system(s) that the proposed development surface runoff will impact, and the discharge path(s) from the outlet of the storm water management facilities to the off-site drainage system(s) and/or appropriate receiving waters. As part of the Storm Water Concept Plan submittal, a preliminary capacity analysis shall be performed by the engineer on the off-site drainage system(s) points of constraint. The capacity analysis shall determine the capacity of all existing constraint points, such as pipes, culverts, etc., the point in the stream channel where the 25 year storm peak flow is the greatest percentage of the channel capacity, and the hydraulic grade elevation at these points. The critical

capacity points shall be selected based upon the engineer's field observation, professional judgment and limited field survey data.

- e. Where storm water currently drains by sheet flow and it is proposed to be collected to and/or discharged at a point, the discharge from the storm water management facility outlet shall mimic pre-development sheet flow conditions. A description of the method proposed to achieve post-development sheet flow conditions shall be provided as part of the Storm Water Concept Plan.
- f. A draft of the Inspection and Maintenance Agreement required by OCGA Section 26-278 shall be submitted to the Department of Public Works with the Storm Water Concept Plan.
- g. The Inspection and Maintenance Agreement shall provide that all storm water management/detention facility outlet control structures shall be inspected, photographed and cleaned on a monthly basis, by the owner. The Inspection and Maintenance Agreement shall require that an annual operation and maintenance report for all storm water management/detention facilities be prepared by a licensed design professional and submitted to the SWMP. The annual report shall include monthly inspections, photographs, and documentation of the cleaning of storm water management/detention facilities outlet control structure(s) as well as an operational assessment of the facilities indicating that they do, or do not, function as intended/designed, and if they do not, a description of the specific actions to be taken to allow the facilities to function as intended/designed.
- h. The required Inspection and Maintenance Agreement shall be recorded with the Clerk of Superior Court prior to issuance of an LDP, Grading Permit or Building Permit associated with the development.
- i. The engineer/developer is required to submit, along with the application for an LDP, signed documentation verifying approval of the Storm Water Concept Plan.
- j. Where paved parking areas (including access aisles) are proposed to exceed 5,000 square feet, the storm water management facilities shall be designed to remove pollutants such as oil, grease and other automobile fluids that may leak from vehicles. A description of the storm water management facilities proposed to achieve the removal of such pollutants shall be submitted with the Storm Water Concept Plan.
- k. With the application for an LDP, provide documentation (such as channel cross-sections, centerline profile, etc.) describing the geometry of all existing natural streams, creeks, or draws within the proposed development boundary

and provide details on the Storm Water Management Plan of the post-development channel bank protection measures.

1. The developer/engineer shall demonstrate to the County by engineering analysis submitted with the LDP application, that the discharge rate and velocity of the storm water runoff leaving the site is restricted to seventy-five percent (75%) of the pre-development conditions for the 1-year frequency storm event, up to and including the ten (10)-year frequency storm event.

04-0313 PETITION #2003Z 0180 FCN, RUCKER ROAD - APPLICATION OF JULIA CRISLER, BY D & B DEVELOPMENT, BY NATHAN V. HENDRICKS, III., SEEKS A REZONING FROM AG-1 (AGRICULTURAL) TO R5-A (RESIDENTIAL) ZONING CLASSIFICATION (HELD)

Mark Massey, Clerk to the Commission - "Page 29. 04-0313. Case No. 2003Z 0180. Rucker Road. Staff."

Ms. Wakefield - "This is a rezoning request from an AG-1 to an R-5A for a 26-lot single-family subdivision. The recommendation of the Community Zoning Board along with staff, is approval at 25 lots at 2.87 units per acre. However, the applicant -- I mean, the applicant -- The staff has received the request from the applicant asking for a 30-day deferral. And staff can support that deferral request."

Commission Chair Handel - "Okay. Do I have anyone here? Do you need to -- Please."

Mr. Hendricks - "Pete Hendricks, 230 The Prado, Ansley Park...."

Commission Chair Handel - "We need a recording."

Mr. Hendricks - "...6085 Lake Forest Drive. The reason is as we were midway through this process, the staff -- The community was fine with the original application for R-6. Staff felt that that district was out of step with the other zonings in the area. They asked us to flip to an R-5A."

Commission Chair Handel - "All right."

Mr. Hendricks - "With that, it comes a 40-foot perimeter setback that we need to have relief on in order to develop out the way everybody has...."

Commission Chair Handel - "Okay."

Mr. Hendricks - "...seen fit to say it's okay to develop it."

Commission Chair Handel - "Okay. And you're fine with the deferral."

# Exhibit C

**FAIRFAX HOMEOWNERS ASSOCIATION, INC.**

905 COBBLESTONE COURT  
ALPHARETTA, GA 30004

04-0311/0312

February 25, 2004

Mr. Stephen Cover, Director  
Fulton County Department of Community Development  
141 Pryor Street, S.W. Suite 2085  
Atlanta, Georgia 30303

Re: **2003U-0025 NFC / 2003VC-0264 NFC:- USE PERMIT FOR A PLACE OF  
WORSHIP  
IN EXISTING STRUCTURES (ARTICLE 19.4.10) – 596.7 SQUARE FEET PER  
ACRE**

-Islamic Center of Alpharetta  
Rucker Road  
Alpharetta, Georgia

Dear Mr. Cover,

Following review of your staff's recommendations for the above referenced rezoning and special use permit for the 1.12 acre addition to the Islamic Center of Alpharetta on Rucker Road, and on behalf of the Fairfax Subdivision which is located adjacent to this facility, we do not oppose this rezoning request. Furthermore, our understanding of the development is not an expansion of the existing structure, but only an addition of one residence, which is to be used by their Imam, and a new drive/parking area. Our approval is based on the following assumptions:

1. Staff's recommendations as outlined in their report presented to the North Fulton County Zoning Board, and subsequently approved by this Board, are in fact made part of the special use permit.
2. The drive access will be limited to one entrance/exit on Rucker Road which is to be located in the near center of the property as shown on the attached drawing provided to the Fairfax HOA, Inc. by Mr. Riaz M Faroqui, the Islamic Center's representative on this petition. This new entrance drive will also require the addition of an acceleration lane as well as extend the deceleration lane that currently exists.
3. The size of the Worship building is restricted to its existing structure. No modifications will be made to the exterior of the structure, other than normal maintenance, as per previously approved Petition 98U-046 NFC.



**February 25, 2004**  
**2003U-0025 NFC / 2003VC-0264 NFC**  
**Islamic Center of Alpharetta**

4. The Land Disturbance Permit will be limited to the construction/demolition necessary for the addition of the entrance drive and rear parking lot including low level lighting as outlined in the Staff's recommendations.
5. The Islamic Center will be responsible for installing a landscape buffer area of at least 10 feet on all side and rear property lines as well as meeting all landscaping requirements for the proposed parking lot and/or as outlined by the Fulton County Arborist for all trees removed during the planned construction process.

Finally, we at the Fairfax Homeowners Association, Inc. appreciate you and your staff's attention to this matter and all of the support provided by your department. Should you have any questions please do not hesitate to contact me at your convenience.

Sincerely,

**Fairfax Homeowner's Association, Inc.**

J. Dexter Edge III  
President  
(678) 576-0235

# EXHIBIT D

*certified true & correct copy of August, 2010. Sue Rainwater City Clerk*

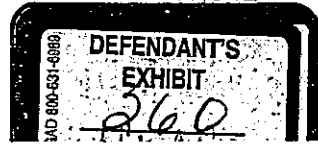
- City Council posed questions that were responded to by Staff
- The applicant came forward in support of the application
- The applicant indicated that she is in agreement with the conditions as defined by Staff
- Mayor Letchas opened the hearing to public comment
  - No member of the public came forward
- Mayor Letchas closed the meeting to public comment
- ❖ *Council Member Kennedy offered a motion to approve CU-10-01 Nails and Spa with Staff conditions*
  - *The motion received a second from Mayor Letchas*
  - *The motion was approved by unanimous vote (6-0-0)*

V. NEW BUSINESS

B. Community Development

1. ~~PH-10-03 Islamic Center of North Fulton~~

- Diana Wheeler, Director of Community Development, came forward to introduce the item
- The applicant requests consideration of a change to a previous condition of zoning in order allow an existing worship center to expand
- Current zoning and surrounding area
  - The center is located on 4.23 acres and is zoned AG
  - The surrounding area is developed with single-family residences including Fairfax Subdivision located on the north side of Rucker Road
  - Greenmont Walk Subdivision is located further northeast of the subject site
  - Northfield subdivision is located to the south and Birch Hollow Subdivision is located southwest of the subject site
  - Whispering Oaks is northwest
- This application was considered by the Planning Commission at their May 6 meeting
  - Numerous members of the public spoke for and against the application
  - The Planning Commission voted unanimously to recommend denial of the request
- If approval of PH-10-03 Islamic Center of North Fulton is considered, the following conditions are recommended:
  - The subject property shall be restricted to a place of worship and residence for the Imam. New construction shall be limited to 13,942



- square feet and used for worship, recreation, meetings, office administration, and other activities customarily associated with a religious facility, except that a private school use shall not be permitted due to property constraints.
- The proposal represented in this application maximizes the capacity of the site and no further development shall be permitted on the property.
  - The combined total area designated for prayer shall not exceed the 3600 square feet represented in the application.
  - All new construction (except parking) shall be located at least 100 feet from adjoining residential property.
  - No parking areas shall be placed in front of buildings and no vehicle parking shall occur in the open areas between any buildings and Rucker Road.
  - The applicant shall reconfigure and re-stripe the existing parking lot in order to provide maximize efficiency. Up to 20% of on-site parking shall be compact spaces. However, no required tree islands and/or landscaping shall be displaced.
  - The applicant shall add a third Friday service to mitigate parking and traffic issues. However, in order to permit timely exit for school bus peak traffic, the additional service shall end by 3:00 PM
  - An officer shall be utilized for Friday services in order to manage and direct traffic.
  - If parking demand exceeds the available spaces on-site, the applicant shall make arrangements for off-site parking (on non-residential property) and provide carpool, vanpool or shuttle options for congregants. If parking shortages occur on a recurring basis and can be documented by the City, then the applicant shall be required to submit a traffic maintenance plan to be approved by Staff. This plan shall include a valid offsite parking lease agreement (on non-residential property) or other comparable arrangement for parking together with provisions for transporting the congregants.
  - A 50' planted landscape strip shall be provided along Rucker Road. Plantings shall also be provided in the side and rear buffers where landscaping is sparse.
  - Applicant shall provide evidence of a professional landscape maintenance contract, including specimen tree area, prior to issuance of a building certificate of occupancy.
  - The recompense planting for the two specimen oaks to be removed for the building must be planted at the front of the property.
  - The two large specimen trees near the street shall be preserved. In addition, these trees shall be maintained and heavily protected during construction. Utilities shall be placed outside of the trees' critical root zones to minimize disturbance.

- Parking and outdoor play area shall be screened from Rucker Road with an evergreen hedge to be approved by Staff.
- Site impervious area shall not exceed 40%.
- The applicant shall provide a hydrology study to determine the required detention and treatment.
- The maximum building height shall be 35' as designated by the AG zoning district.
- Buildings shall be primarily brick on all sides and compatible with the residential character of the area as determined by the Design Review Board. Phased development shall have a finished appearance at the end of each phase.
- Lighting shall be designed with no spillover onto adjacent property. Lighting shall be decorative post lighting fixtures and shall be limited to a height of 12 feet. Lamps shall have deflectors to shield the light source from adjacent properties.
- There shall be no outside speakers or broadcasts including music which is audible from outside the building or off the property.
- The dumpster on site shall be enclosed and the enclosure shall match the main building.
- Only one identification sign shall be permitted for the property: The sign shall be residential in scale.
- There shall be no overnight stays within the worship buildings.
- Programs for drug, alcohol, substance abuse, chemical dependence, and/or rehabilitation programs shall be prohibited.
- Activities and facility operations shall be limited to the hours of 6:00 AM to 10:00 PM
- Background
  - The Islamic Center of North Fulton is located on Rucker Road and has been established at this location since approval was granted by Fulton County in 1998
    - In 1998, the center was approved by Fulton County for a use permit in the AG zoning with conditions that prevented an expansion
    - The request represented at that time by the applicant was to allow 25 members in the existing 2,500 square foot structure located at 1265 Rucker Road
    - The applicant's request was approved subject to several conditions, including the following:
      - To restrict the use of the site to a church/place of worship in the existing structure
      - No modifications will be made to the exterior of the structure, other than normal maintenance

- In 2004 the applicant requested approval to add the adjacent 1.12 acre property located at 1255 Rucker Road to the site in order to provide the Imam's (religious leader) residence
  - The request was approved with the following relevant condition which the applicant is now seeking to change
    - To restrict the use of the subject property to a place of worship in existing structures and accessory uses at an overall density of 596.7 gross square feet per acre zoned or a total gross floor area of 2,524 square feet, whichever is less (excludes Imam residence)
    - Restrict the structure at 1265 Rucker Road and accessory uses for a place of worship
    - Restrict the structure at 1255 Rucker Road and accessory uses for the residence of the Imam or equivalent
  - The current request is to change this 2004 condition to allow the construction of two, new buildings: a main 12,032 SF building and a 1,910 SF communing hall
- The property was annexed into the City in 2005
- Operational characteristics
  - The letter of intent states that the congregation currently has approximately 600 members with average attendance being about 25 on a daily bases from Monday through Sunday at 6:00 AM, 1:00 PM, 4:00 PM, 6:00 PM and 8:00 PM
  - About 250 members attend at each of the two Friday services held at 1:00 PM and 2:00 PM
  - Members typically attend more than one service per day and the conduct of worship services is through prayer on the floor facing Mecca with no fixed seats
  - The positioning of the structure on the property is critical for the alignment to face Mecca
  - In addition to the prayer services, the structure will provide a place for a Mother's Morning Out for families of the congregation
  - When completed, the building will have space for offices, computer and multimedia storage, conferencing and meetings, and a gymnasium for recreational use
- Site plan
  - The site plan submitted depicts the new building to be located 65' from Rucker Road which meets the required setback
  - Landscape buffer variances were approved in 2004 which reduced the required 75' landscape buffer to 50' on the rear southern line and from 75' to 25' on the eastern and western property lines

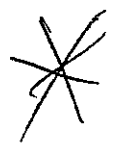
- The current proposal does depict the 1,910 square foot communing hall within 55' of the adjacent residential property; however, Alpharetta code requires a 50' undisturbed buffer adjacent to single family and not the 100' Fulton County requirement
- Trees
  - There are two large Oak trees proposed for removal in order to accommodate the new building
  - There are also two Oaks along the front of the property that will remain
  - The applicant did submit a tree replanting plan which depicts heavy planting along Rucker Road as well as in front of the Imam's residence
  - Staff notes that there are no evergreens in the replanting plan and a mix will be required
- The main building is proposed to be built in 4 phases and will total 13,942 square feet at completion
  - The Islamic Center's plan is to erect a 1,910 square foot metal building on site to use for prayer while the existing structure is demolished and the new sanctuary building is under construction
  - The application states they expect a 3-4 year time frame to complete the construction as money is raised by the congregation
  - They have submitted renderings which depict the building elevation at each phase so the building would appear as a complete building at all times and have a finished appearance from public roadways as well as interior to the site
- Parking
  - The parking spaces required for the existing structure used for prayer were calculated in 2004 by Fulton County to be 84 parking spaces for 2,500 square feet; however, the Islamic Center had sufficient land and chose to build 104 spaces
  - Although the proposed buildings designated for church activities are planned to increase from 2,500 square feet to a total of 13,942 square feet the actual prayer area which is the only space used to calculate parking increases to 3,600 square feet
  - Therefore, the code required parking changes from 84 spaces to 120 spaces
  - The site currently has 104 parking spaces, but can be reconfigured to meet the parking required through the use of up to 20% compact spaces
  - The reconfiguration would increase the parking to a total of 124 parking spaces
- Religious facilities in residential areas

- The Islamic Center is similar in size to the Church of God on Mid-Broadwell Road and proposes parking comparable to that of the North Fulton Jewish Center
- Except in the case of St. James, comparably situated religious facilities are located in Agricultural, Residential, and Special Use zoning districts
- Both St. Thomas and the Islamic Center were annexed from Fulton County
  - In Fulton County most churches in residential areas were zoned AG-1 therefore at the time of annexation the City was required to provide a similar zoning and AG was designated
- The Islamic Center's proposed development plan falls within the mid-range of comparably situated religious facilities
  - When the size, density, and parking are compared, the Islamic Center is neither at the high end nor the low end of any measure
  - The North Fulton Jewish Center has a higher density and less parking than the applicant's proposal
- The Center is comparable to densities of other religious facilities in the area and the seats per site acreage are lower than the Church of God on Mid Broadwell Road
- Addressed in the Comprehensive Plan
  - Alpharetta's previous (2020) Comprehensive Plan mentioned church uses in chapter 8, p. 18, as follows
    - The designation of land for residential uses recognizes the need to provide land for support services to the individuals living in the area. Uses such as schools, parks, and churches are compatible with the residential designation
  - Alpharetta's current (2025) Comprehensive Plan adds the following in chapter 7, p. 19:
    - Churches, though institutional in character, are not singled out in this category (Public / Institutional); rather they are included within the categories of surrounding properties
- Churches have historically been located in residential areas so that congregants could walk to services
- It is not out of character for a residential area to include a religious facility and, in fact, there are two existing churches further west of the applicant's location on Rucker Road
- Traffic
  - Traffic projections numbers show that, if approved, the project could produce an additional 71 trips during the peak hour per day
  - In order to avoid delays on Rucker Road, three prayer services may be required in place of the two currently offered

- The applicant has stated they do not intend to increase the congregation; however, since their 1998 approval, membership has increased from 25 members to 600 members
- The traffic projections are based on the prayer area's maximum capacity
- The Engineering Department has reviewed the traffic study submitted by A&R Engineering Inc. and concurs with the conclusion that the increase in traffic will not reduce the current level of service and will not be detrimental to the operation of Rucker Road
  - Based on the data contained in the traffic study, the intersection of Rucker Road at the Islamic Center driveway operates at an acceptable level of service currently during the peak Friday period concurrent with the worship service
  - Under future conditions, the A&R Engineering Inc. study assumes over 280 vehicles will use the Islamic Center driveway during the peak hour
  - While traffic operations are anticipated to degrade slightly, the intersection between Rucker Road and the Islamic Center is expected to continue to perform at the current level of service
- Concurrences
  - After reviewing this application, Staff has determined that there are comparable, similarly situated facilities to the applicant's proposal
  - If approved, the proposed expansion would not set a precedent with respect to the location of religious facilities in residential areas or along two-lane roads
  - In addition, the proposed expansion would not create a facility that is larger or denser than other religious facilities currently located in the city
  - The Islamic Center has existed since 1998 and although the expansion has the potential for more vehicle trips per day, the peak hour traffic is not expected to reduce the existing level of service on Rucker Road
  - In reviewing this request to expand a worship center, several considerations were assessed including the following:
    - Traffic and parking are key issues with this application. The public hearing process provides an opportunity to address both of these through enforceable zoning conditions and requirements that don't currently exist. For example, an additional Friday service and mandatory carpool or a shuttle service could help better manage vehicles. However, without such zoning stipulations, the opportunity to mitigate any parking or traffic impacts is much more limited.
    - There is concern about the architectural style, scale, and massing of the proposed sanctuary building as well as the aesthetics of the proposed smaller, building. While the architecture of religious facilities tends to be distinctive, it is possible to make religious buildings compatible with their surroundings through the use of

materials, colors, window types, and other design details. The best way to ensure compatibility is through the Design Review Board process. The DRB will work through the aesthetic issues with the applicant and their design professionals while being sensitive to the project's residential surroundings.

- The growth of the accessory or auxiliary functions within religious institutions (e.g. school, day care, adult education) must also be considered and limited with conditions. There is a maximum amount of development that can physically be accommodated on the site based on site constraints such as height, setbacks, and parking. Those maximum limits need to be established based on the carrying capacity of the site and adjacent roadway.
- The original commitment by the Islamic Center to limit their use of the property to the existing buildings must also be considered. It is important that commitments be honored and that surrounding property owners can rely on representations made at public hearings; however, the condition imposed on the Islamic Center at the Fulton County hearing to limit the use of the property to the two, existing buildings may have been overly restrictive because it wasn't based on specific analysis or objectives and the size of the applicant's property can clearly accommodate some code compliant expansion. As the applicant has demonstrated, the limitation on physical expansion has not imposed a limitation on the membership expansion. The space restriction has only impacted the Islamic Center's ability to provide its congregants with adequate facilities and amenities such as a gymnasium.
- Public participation
  - The applicant held an informational meeting on March 16, 2010
  - After meeting with surrounding residents, the applicant revised their proposal by reducing the size of the proposed sanctuary building
  - City Council posed questions that were responded to by Staff
    - Was the "self-imposed restriction" as to the use and size of existing buildings on the site requested by the County or voluntarily offered by the Islamic Center
      - It is the City's understanding that the applicant voluntarily offered the limitation as a means of addressing the concerns of neighboring residents
    - Can a local government place a limitation on the size of a congregation as a condition of zoning or was the County limited to conditioning the size of the buildings on a site
      - Neither the County nor the City would attempt to limit the size of a congregation but would be within its rights to restrict the size of a facility



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- The fire and building codes would limit the number of people allowed within the facility at a given time based upon the square footage of the building, but this would not limit the size of the congregation
- Pete Hendricks, an attorney representing the applicant, came forward in support of the application
- The original letter referenced as extending an offer to limit the size of the structure actually was written by neighboring property owners
  - The letter indicated that the adjoining neighborhoods would not object to the location of the Islamic Center, provided that the center would not expand in the future
  - The Islamic Center did not necessarily accept the terms defined in the letter, they simply did not object to them
  - Those terms were incorporated into the conditions of zoning that were adopted by the County
  - It is the applicant's contention that there are no two-party agreements or contracts limiting the ability of the Islamic Center to expand to meet its needs
- Within the past four years two additional Islamic Centers have been constructed in the area
  - These new facilities effectively minimize the potential for future growth of the congregation
  - The purpose of the proposed expansion is to meet the needs of the current congregation, not to accommodate future growth
- The applicant currently has the financial ability to construct the first phase of construction
- Typically a prayer service serves approximately 15 to 25 people; however, on Fridays each prayer service serves approximately 175 to 250 people
- A petition has been submitted reflecting the names of 140 residents who are in support of the application, and numerous emails and letters have been sent by proponents of the proposal
- The effort here is simply to better accommodate the existing membership of the congregation, not to serve future growth
- The applicant provided explanation of the architecture of the proposed facility and its reflection of religious motifs and practices of the Islamic faith
  - The building is designed in a manner to have a finished appearance when each phase is completed
  - This is a community center; not a mosque
  - The architects diverted from the style of a traditional mosque and attempted to go with a design that was a fresh approach and more modern in nature

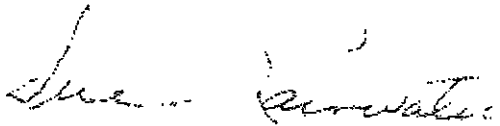
- The proposed architectural design represents the form of someone praying and bowing to God
- While the applicant is interested in working to address the concerns of surrounding neighbors, the applicant does feel that the architectural design of a place of worship should represent the values of the faith and those who attend
- The proposed orientation of the fellowship hall is designed to meet the requirement of the Islamic faith that prayers must be performed while facing Mecca
- Traffic studies performed on the project indicate that the proposed expansion would not impact the level of service on Rucker Road, even during the peak activity period of the facility
- Applicant representatives discussed specific actions taken to address concerns raised by neighboring property owners and neighborhoods with respect to noise from playgrounds and collection of solid waste and with respect to light spillover from the site
- The applicant has attempted to address the current needs of the congregation by making interior modifications to the existing facility and the building mechanics; however, these efforts cannot sufficiently meet congregation needs
- The two specimen trees that are proposed for removal actually fall within the middle of the proposed structure
- The original landscape plan required by Fulton County left a break in the landscape buffering of the site, which the applicant plans to fill with trees and/or large shrubs to provide additional visual buffering to the site
- City Council posed questions that were responded to by the applicant
  - Has an actual parking demand analysis been performed on the current facility and on the facility if the proposed expansion were to be approved
    - Yes. The current and proposed parking do meet the current and projected demands, respectively.
    - There are certainly ways, as is the case with any worship facility, to better manage traffic demand during peak periods
    - Since the completion of the parking study, the Islamic Center has taken steps to improve its parking management
  - Is the applicant stating for the record that they agreed to the conditions applied by Fulton County in 1998 and 2004
    - It is the applicant's position that they did not object to the conditions at that time but neither did they agree to them
  - Does the applicant agree that the applicant volunteered the condition limiting the size and use of the structures
    - The applicant essentially agreed to the condition

- It is the applicant's position that there are no two-party agreements stipulating that the applicant would not in the future seek to expand the facilities
- Is the applicant not in agreement with the addition of a third service on Fridays
  - The applicant does not have a disagreement with the addition of the third service but does have a concern with the rigidity of the times specified in the Staff condition
  - Practitioners of Islam worship in accordance with the movement of the sun, which makes it difficult to commit to specific times
  - Further, practitioners of Islam recognize the Holy Month of Ramadan, which requires at certain times periods of prayer for 24 hours for which attendees stay overnight in the center
- Mayor Letchas opened the hearing to public comment
  - Twenty individuals signed-up to speak in opposition to the application
  - Twenty-one individuals signed-up to speak in support of the application
  - Members of the public who did not wish to speak but who wanted their position on this application to be on record, were invited to enter their names and addresses on sheets indicating that they were in favor or in opposition to the request (*reference pages attached to this summary*)
- Mayor Letchas closed the hearing to public comment
- The applicant's representatives came forward to respond to some of the questions and concerns presented by members of the public
- ❖ *Council Member DeRito offered a motion to deny PH-10-03 Islamic Center of North Fulton*
  - *The motion to deny received a second from Council Member Kennedy*
- ❖ *Council Member Aiken offered a substitute motion to table PH-10-03 until the next scheduled public hearing so as to allow additional time for the Islamic Center and surrounding neighbors to reach a compromise proposal*
  - *The substitute motion died for lack of a second*
  - *The original motion to deny PH-10-03 Islamic Center of North Fulton passed by unanimous vote (6-0-0)*

VI. ADJOURNMENT

- ❖ *There being no further hearing items to be considered, Mayor Letchas adjourned the meeting at 10:10 PM*

*Respectfully submitted,*



**City Clerk**

**Attachments:** *Speaker – Opposition.pdf*  
*Speaker – favor.pdf*  
*Non-Speaker – favor.pdf*  
*Non-Speaker – opposition.pdf*