

THE STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

SUPERIOR COURT

DOCKET NO.: 07-E-0101, 08-E-0006

Saint Benedict Center

v.

Town of Richmond, Richmond Planning Board, and Richmond Zoning Board of Adjustment

DOCKET NO.: 08-E-0005

John Boccalini and Kathleen Whitham, et al

v.

Town of Richmond and Richmond Zoning Board of Adjustment

PARTIALLY ASSENTED-TO MOTION TO DISMISS
ACCESSORY USE CLAIM AS MOOT

NOW COMES the Saint Benedict Center, by and through their attorneys, Wadleigh, Starr & Peters, PLLC, and files this Partially Assented-to Motion to Dismiss and moves as follows:

1. These consolidated cases pertain to Saint Benedict Center's [SBC's] attempts to obtain municipal approvals for its proposed church/school building.
2. Pursuant to a Joint Settlement Stipulation dated April 8, 2010, the Town invoked its authority under 42 U.S.C. § 2000cc-3(e) and modified its Zoning Decision of December 19, 2007 to hold that SBC is neither required to obtain a special exception nor a variance for either its current nor its proposed new church/school buildings.
3. The sole issue in the Appeal in Docket # 08-E-0005, Boccalini v. Town of Richmond, is whether SBC's religious school is an allowable accessory use to SBC's house of worship.
4. Boccalini argued in Docket # 08-E-005 that SBC's religious school is not accessory to its house of worship because SBC did not obtain a special exception for its house of worship and therefore SBC must obtain a variance for its religious school.

5. Whereas the Town has invoked its authority under RLUIPA to hold that neither a special exception nor a variance is required for SBC's church/school, Boccalini's claim that SBC must obtain a variance for its school because it did not obtain a special exception for its house of worship is moot and should be dismissed.

6. There are no factual issues regarding the mootness or the merits of Boccalini's appeal. Nevertheless, to the extent that the Court determines that there are factual issues that would require a hearing, SBC and the Town jointly and respectfully requests that the Court immediately schedule a hearing on the mootness and/or merits of Boccalini's appeal.

7. Atty. Dan Mullen, for the Town of Richmond and the Richmond ZBA, has been contacted and indicates that the Town and the ZBA join in this Motion to Dismiss. Atty. John Bisson for Boccalini, et al. has been contacted and does not assent to this Motion to Dismiss.

WHEREFORE, Saint Benedict Center respectfully requests that this Honorable Court:

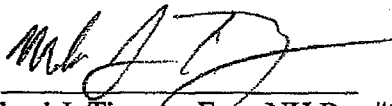
- a. Dismiss the claim at Docket #08-E-0005; or in the alternative
- b. Schedule a hearing, not to exceed two hours, on why Boccalini's appeal should not be dismissed as moot and/or the merits of Boccalini's appeal in Docket # 08-E-005; and
- c. Such other and further relief as may be just and equitable.

Respectfully submitted,

Saint Benedict Center,

By its attorneys,
Wadleigh, Starr & Peters, PLLC

Dated: April 13, 2010

By: 
Michael J. Tierney, Esq., NH Bar #17173
95 Market Street