UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CATHOLIC HEALTHCARE INTERNATIONAL, INC. et al., Plaintiffs, v. GENOA CHARTER TOWNSHIP et al., Defendants.	Case No. 21-cv-11303 Honorable Shalina D. Kumar Magistrate Judge David R. Grand

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS (ECF NO. 59)

I. Introduction

Plaintiffs Catholic Healthcare Inc. (CHI), a non-profit corporation recognized as a private association of the faithful by the Catholic Diocese of Lansing, Michigan, and Jere Palazzolo, CHI's president and director, sued Genoa Township and its ordinance officer, Sharon Stone, alleging that the Township's denial of CHI's special land use application and its mandated removal of religious symbols from and prohibition of religious assemblies on CHI's property within the Township violated the Religious

Land Use and Institutionalized Persons Act, 42 U.S.C. §2000cc *et seq.* (RLUIPA), their First Amendment rights to religious exercise, religious expression, and expressive association, as well as their Fourteenth Amendment right to equal protection. ECF No. 55. Plaintiffs allege these same actions by the Township violated the Michigan Constitution. *Id.*

Defendants move to dismiss plaintiffs' supplemented first amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6). ECF No. 59. The motion is fully briefed and the Court heard oral argument from the parties on November 30, 2022. ECF Nos. 59, 62, 64.

II. Factual and Procedural Background

In 2020, CHI acquired title to a parcel of undeveloped property located at 3280 Chilson Road in Genoa Township, Michigan (Property). The Property is zoned as "Country Estate," which is defined as "a district where the principal use is residential, with small scale farming and raising horses and livestock typically an accessory use. The health, safety, and welfare contribution of this district is to retain the rural atmosphere and quality of life while accommodating compatible, very low density, residential development." ECF No. 59-9, PageID.3117; ECF No. 55, PageID.2242.[1]

[1] In ruling on a motion to dismiss, the Court may consider the complaint as well as (1) documents that are referenced in the plaintiff's complaint and that are central to plaintiff's claims, (2) matters of which a court may take

Sometime before July 27, 2020, CHI requested Township approval to construct a grotto/prayer area with associated parking and drive access on the Property. ECF No. 59-2, PageID.2890. In response, the Township informed a CHI representative that the proposed construction would be considered a "similar place of worship" under the Township's zoning ordinance (Zoning Ordinance) and that the Country Estate zoning district permits churches, temples, and similar places of worship and related facilities as a special land use requiring special land use and site plan approval. *Id.* The Zoning Ordinance defines church or temple as "any structure wherein persons regularly assemble for religious activity." *Id.* at PageID.2893; *see* ECF No. 55, PageID.2249. ¶57. "Structure" is further defined as

> anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground. Structures include, but are not limited to, principal and accessory buildings, radio, television and cellular phone towers, decks, fences, privacy screens, walls, antennae, swimming pools, signs, gas or liquid storage facility, mobile homes, street directional or street name sign and billboards.

ECF No. 59-9, PageID.3147.

---

judicial notice, (3) documents that are a matter of public record, and (4) letters that constitute decisions of a governmental agency. *Thomas v. Noder-Love*, 621 F. App'x 825, 829 (6th Cir. 2015).

The Township based its response to CHI's request on the opinion of its outside planning consultant, which it provided to CHI. ECF No. 59-2, PageID.2887, 2893-94. The planning consultant noted that, notwithstanding his opinion, "other options include a similar use determination by the Planning Commission (Section 11.02.02) or an interpretation of the Zoning Ordinance text by the ZBA [Zoning Board of Appeals] (Section 23.02.03)." *Id*.

Despite the Township's response that CHI's proposed grotto/prayer area required special land use and site plan approval, CHI erected religiously symbolic structures, a Station of the Cross, similar in size and appearance to a birdhouse, and a shrine consisting of an image within a brick wall, referred to as a "grotto," on the Property without approval or permits from the Township. ECF No. 55, PageID.2245-2248, ¶¶ 45, 51, 55.

CHI ultimately submitted a special land use application in December 2020. *Id.* at PageID.2255-56, ¶¶ 85, 86; ECF No. 55-2, PageID.2308-09. The application encompassed "outdoor features, like an outdoor Stations of the Cross walkway, natural nature trail, and outdoor grotto sign," but primarily sought approval for a 6,084 square foot adoration chapel (St. Pio's Chapel) with associated drives and parking areas. CHI's application

contemplated a low-density use "with the largest traffic generating event filling an approximate 80 seat church." *Id*.

The Township's Planning Commission first addressed CHI's special land use application at its February 2021 meeting. The Planning Commission tabled CHI's application based in part upon concerns about increased traffic and noise, and the unclear scope of the proposed use. ECF No. 55-3.

CHI's resubmitted special land use application, including an operational plan for St. Pio's Chapel requested by the Township's Planning Commission, was considered again at its meeting in March 2021. ECF No. 55-4. Public comment at the March meeting raised continued concerns about future planned use of the Property for medical facilities[2], the promotion of the Property as a pilgrimage destination, as well as excess noise, light, and traffic. *Id*. at PageID.2352-61. Despite the opposition expressed by residents attending the meeting and by those who signed a petition opposing Township approval, the Planning Commission voted, four

[2] Several members of the public attending the March 2021 Planning Commission meeting commented about a website, which advertised a plan for a hospital, residential care facility, and/or a medical school as a second phase of development for the Property. ECF No. 55-4, PageID.2355-56.

votes to three, in favor of recommending the Township Board approve CHI's special land use application. *Id.* at PageID.2360-61.

The Township Board considered CHI's special use application, environmental impact assessment, and site plan at its regular public meeting on May 3, 2021. ECF No. 55-6. The Township Board denied the application and the associated impact assessment and site plan, finding that the proposed use of the Property for a 6,090 square foot church with a parking lot, site lighting, building lighting, and outdoor accessory structures to be used for daily gatherings and outdoor special events with an unknown number of visitors was inconsistent with the standards of the Zoning Ordinances. *Id.* at PageID.2388-94. Specifically, the Township Board determined that "[t]he amount of traffic, visitors, lighting, noise, and activity associated with the use is not compatible with and will significantly alter the existing and intended character of the general vicinity." *Id.* at PageID.2392.

Defendant Stone, the Township's ordinance enforcement officer, notified CHI that, with the denial of its special land use application, the violating signs and structures on the Property were to be removed. ECF No. 55, PageID.2264, ¶¶110, 111. CHI ignored the Township's notice and plaintiffs filed the instant action June 2, 2021. ECF No. 1. The Township initiated an enforcement action in state court in September 2021. ECF No.

55, PageID.2269-71, ¶¶131-137. The Township sought injunctive relief from CHI's alleged continuing violations of the Zoning Ordinances related to structures erected without permit and to enforce restrictions against organized gatherings based on a driveway permit issued to CHI. *Id.* On September 20, 2021, the state court issued a Temporary Restraining Order immediately requiring CHI to remove the structures erected on the Property until it applied for and obtained all necessary permits, and prohibiting the "unlawful use and occupancy of the Property for organized gatherings." *Id*. at PageID.2271, ¶136.

After a day of testimony, the state court's hearing on CHI's motion to dissolve the state court's TRO was adjourned so that the parties could negotiate a resolution. *Id*. at PageID.2275, ¶149. The parties ultimately entered into a consent order[3] under which CHI would submit to the Township "a special application for land use, site plan, and associated documents to permit the display of religious symbols and the use of [the Property] for religious worship. This submission will include the prayer trails with prayer stations, Stations of the Cross, altar, mural wall . . . and a commercial driveway with parking." *Id*. at PageID.2282, ¶165.

[3] CHI reserved all rights, claims, and defenses, specifically the ones asserted in this action, as a part of its agreement to the consent order. ECF No. 55, PageID.2282, ¶ 166.

CHI submitted the special application to the Planning Commission in October 2021. ECF No. 55-10. The October 2021 application was similar to the February 2021 application, as amended, with the exception of the removal of the 6,000 square foot chapel. *Id*. It continued to call for thirty-nine parking spaces, prayer trails with prayer stations, Stations of the Cross, alter and mural wall, as well as a bi-monthly Mass in all but the winter months and bi-annual special events. *Id*. at PageID.2437.

The resubmitted special application came before the Planning Commission at its December 2021 regular meeting. The Planning Commission did not consider the resubmitted application, finding that it did not provide new grounds or substantial new evidence and thus was prohibited under Zoning Ordinance § 19.07 until May 3, 2022, one year after the denial of CHI's original application. ECF No. 55, PageID.2284, ¶169. CHI appealed the Planning Commission's decision to the Zoning Board of Appeals (ZBA), which affirmed the Planning Commission's determination that the re-application was not reviewable. *Id.* at PageID.2285, ¶173.

In April 2022, the state court issued a preliminary injunction extending the terms of the TRO and otherwise stayed the matter pending the outcome of the case in this Court. ECF No. 51-3. The Michigan Court of

Appeals denied leave to appeal the order granting the Township a preliminary injunction and CHI filed an application for leave to appeal the issuance of the preliminary injunction to the Michigan Supreme Court.

Plaintiffs' allegations of RLUIPA and constitutional violations arise from three distinct Township actions: 1) its denial of CHI's special land use application for the construction of St. Pio's Chapel and prayer campus on the Property; 2) its prohibition and mandated removal of religiously symbolic structures from the Property; and 3) its prohibition of organized gatherings on the Property. ECF No. 55. Plaintiffs allege generally that the defendants' implementation and enforcement of the Zoning Ordinance continue to deprive them of their statutory and constitutional rights to develop the Property for the purpose of religious exercise. *Id*.

Defendants move to dismiss plaintiffs' claims on several grounds. First, they challenge individual plaintiff Palazzo's standing to bring these claims, as well as plaintiffs' standing to assert a facial challenge of the sign regulations within the Zoning Ordinance. ECF No. 59, PageID.2623-26. Second, they argue that plaintiffs' claims relating to the removal of, and/or the inability to legitimately install or erect, the proposed religiously symbolic structures on the Property are not ripe because they never sought a permit under the Zoning Ordinance to install or erect those structures on the

Property. Finally, defendants argue that plaintiffs have failed to state a viable claim under RLUIPA, the First Amendment, Fourteenth Amendment, or the Michigan Constitution. Defendant Stone also argues she is entitled to qualified immunity from plaintiffs' claims against her.

Plaintiffs counter that they have standing to bring their claims and that those claims are ripe. They further argue that they have plausibly alleged viable claims under RLUIPA, as well as the federal and state constitutions. They also argue that defendant Stone violated their clearly established constitutional and statutory rights and is thus not entitled to qualified immunity.

III. Analysis

A. Standards of Review

Dismissal under Rule 12(b)(1) is appropriate if a party lacks standing to bring its claim. *See Gerber v. Herskovitz*, 14 F. 4th 500, 505 (6th Cir. 2021).

To survive a motion to dismiss under Rule 12(b)(6), a plaintiff must allege facts sufficient to state a claim for relief that is plausible on its face, and, when accepted as true, are sufficient to "raise a right to relief above the speculative level." *Mills v. Barnard*, 869 F.3d 473, 479 (6th Cir. 2017) (citation omitted). Plausible claims contain factual content that allows the

court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Bell Atlantic v Twombly*, 550 U.S. 544, 556 (2007). Courts must review Rule 12(b)(6) motions in the light most favorable to plaintiff, accept all of plaintiff's factual allegations as true, and draw all reasonable references in plaintiff's favor. *Directv, Inc. v. Treesh*, 487 F.3d 471, 479 (6th Cir. 2017).

B. Standing

1. Plaintiff Palazzolo

Defendants challenge plaintiff Palazzolo's standing to bring RLIUPA and constitutional claims arising from the Township's actions in relation to the Property. Palazzolo is the president and director of CHI. By definition, the protections of RLUIPA extend to claimants with "an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest." 42 U.S.C. § 2000cc-5. "RLUIPA only requires a plaintiff to have 'a legally recognized property interest in the property.'" *United States v. City of Troy*, 592 F. Supp. 3d 591, 603 (E.D. Mich. 2022) (quoting *Adam Comm. Ctr. v. City of Troy*, 381 F. Supp. 3d 887, 904 (E.D. Mich. 2019)). Principals of religious institutions have standing to challenge zoning ordinances under RLUIPA. *See DiLaura v. Ann Arbor Charter Twp.*, 30 F. App'x 501, 507 (6th Cir.

2002). Indeed, individuals "may challenge municipal officials whose actions allegedly deny rights granted by the Constitution or federal statute" under 42 U.S.C. § 1983. *Id.* This is precisely what Palazzolo has done with this action. ECF No. 55, PageID.2236, ¶4. Defendants' arguments that Palazzolo lacks standing to bring the claims advanced in this case are without merit.

2. Facial Challenge to Sign Regulations

CHI claims that it was prohibited from installing and then forced to remove the religious symbols it installed without Township permission based on Article 16 of the Zoning Ordinance (Sign Ordinance). ECF No. 55-7. Plaintiffs assert the Sign Ordinance violates the First Amendment on its face because its permit requirements and exemptions are based on content. ECF No. 62, PageID.3256-60.

Defendants contend that the religiously symbolic structures violated unchallenged, constitutionally acceptable provisions of the Sign Ordinance. On this basis, defendants, citing *Midwest Media Property, L.L.C. v. Symmes Township*, argue that plaintiffs lack standing to bring a facial challenge to the Sign Ordinance because, even if successful, such a challenge would not redress any injury to CHI. 503 F.3d 456, 461 (6th Cir. 2007).

To meet Article III standing requirements, plaintiffs must demonstrate (1) that they "have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical;" (2) that a causal link exists between the injury and the conduct complained of, or, in other words, that the injury can be fairly traced to the challenged action of the defendant; and (3) that it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (internal quotation marks and citations omitted).

The Court agrees that, under *Midwest Media*, plaintiffs' facial challenge to the Sign Ordinance cannot meet the redressability element for standing. 503 F. 3d at 461. In that case, the Sixth Circuit determined that if the plaintiff's desired signs violated non-content related regulations, which were not challenged as unconstitutional, the "plaintiffs cannot tenably show that success in challenging *other* regulations of the sign ordinance will redress any injury caused by [the offending] regulations." *Id*.

As was the case in *Midwest Media*, even if the content-based regulations here did not exist, or if the court invalidated them, CHI's injury would not be redressed because unchallenged, non-content-based restrictions would still preclude the approval and erection of the signs. *See*

id. at 461-62. The Sign Ordinance prohibits all but temporary signs on vacant land. ECF No. 55-5, PageID.2404, § 16.04.14. Temporary signs are defined as, among other things, "not constructed from an enduring material such as masonry and metal which remains unchanged in position, character, and condition . . . ." *Id.* at PageID.2401, § 16.02.21. Additionally, temporary signs may not be taller than six feet, and may not be in place for more than forty-five consecutive days. *Id.* at PageID.2402, § 16.03.02(f)(6). CHI's erected religiously symbolic structures—masonry-constructed, twelve-feet high, and in place for a full year—violated each of these non-content-based, unchallenged provisions of the Sign Ordinance. ECF No. 55, PageID.2245, 2247-48 ¶ ¶ 45, 51, 55; A ruling invalidating any content-based provisions of the Sign Ordinance would not permit the installation of these structures under the Sign Ordinance;[4] thus, plaintiffs are without standing to bring a facial challenge to the Sign Ordinance.

C. Ripeness

[4] The Court is not suggesting that CHI is prohibited from erecting its desired religiously symbolic structures on the Property; it concludes only that it may not do so without a permit, as temporary signs. As discussed elsewhere in this opinion, CHI never applied for a permit to erect the symbolic structures under any section of the Zoning Ordinance.

Defendants urge the Court to dismiss CHI's claims relative to the display of religious symbols on the Property[5] because they are not ripe.

"Ripeness is a justiciability doctrine designed to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Nat'l Park Hospitality Ass'n v. Dep't of Interior*, 538 U.S. 803, 807 (2003) (internal quotation omitted). "Haste makes waste, and the premature adjudication of legal questions compels courts to resolve matters, even constitutional matters, that may with time be satisfactorily resolved at the local level . . . ." *Miles Christi Religious Order v. Twp. of Northville*, 629 F.3d 533, 537 (6th Cir. 2010).

To decide whether a dispute has ripened into an action appropriate for judicial resolution, a court must first determine "whether 'the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at

[5] The Court understands CHI's claims and defendants' argument to address both the Township's denial of permission to install or erect the Stations of the Cross, the grotto and/or the altar and its ordered removal of those items displayed without Township permission.

issue.'" *Id.* at 537-38 (quoting *Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985), overruled on other grounds, *Knick v. Twp. of Scott, PA*, 139 S. Ct. 2162, 2169 (2019)). Second, courts must determine if the plaintiff has shown that it will suffer hardship by delaying a federal court decision until the ultimate zoning authority acts. *Id.* at 538. This ripeness analysis applies to both RLUIPA claims, as well as to constitutional challenges to land-use requirements. *Muslim Community Ass'n of Ann Arbor v. Pittsfield Charter Twp.*, 2015 WL 1286813, at *11 (E.D. Mich. March 20, 2015) (citing *Miles Chrisit*, 629 F.3d at 537 and *Grace Community Church v. Lenox Twp.*, 544 F.3d 609, 618 (6th Cir. 2008)).

The finality requirement is critical to the ripeness inquiry. *Miles Christi*, 629 F.3d at 538 (citing *Insomnia Inc. v. City of Memphis*, 278 F.App'x 609, 613 (6th Cir. 2008)). The Sixth Circuit explained the policy considerations underlying this finality requirement. *Insomnia*, 278 F. App'x at 613. First, a final decision from the local building authority aids in the development of a full record. *Id.* Relatedly, only if the local regulatory process was exhausted will a court know precisely how a regulation will be applied to a particular parcel or use. *Id*. Third, exhausting the building authority's process "might provide the relief the property owner seeks

without requiring judicial entanglement in constitutional disputes." *Id.* "[R]equiring a meaningful variance application as a prerequisite to federal litigation enforces the long-standing principle that disputes should be decided on non-constitutional grounds whenever possible." *Id.* Finally, federalism principles buttress the mandate that a property owner obtain a final, definitive position from zoning authorities; such a requirement "evinces the judiciary's appreciation that land use disputes are uniquely matters of local concern more aptly suited for local resolution." *Id*.

In the land-use context, "the relevant administrative agency must resolve the *appropriate application* of the zoning ordinance to the property in dispute" before a dispute is ripe for this court's consideration. *Miles Christi*, 629 F.3d at 537 (emphasis added). "Finality requires the input of the zoning board on . . . *unresolved questions*." *Id.* at 538 (emphasis added); *see also Grace Community Church*, 544 F.3d at 616. That the Township reached a final decision on CHI's special use application for the St. Pio Chapel prayer campus does not define its position regarding the installation of the Stations of the Cross, grotto, and altar.

CHI argues that the Planning Commission and ZBA's refusal to review its resubmitted special use application for the prayer campus without the chapel serves as the final regulatory body decision necessary

to ripen its claim regarding its challenged display of the religious symbols. But the Planning Commission did not substantively consider the resubmitted application because it was advanced within a year of the original application's denial and it failed to provide new evidence to support changed conditions from the Township's original denial,[6] as required by Zoning Ordinance § 19.07. That procedural action shed no light on the material question of what Township officials would do if presented with a plan consisting of the Stations of the Cross, a mural wall with altar, and other religious symbols such as statues, without the chapel. As of May 3, 2022, plaintiffs were free to submit the October 2021 plan for the prayer campus without the chapel to the Planning Commission for substantive consideration, but they did not do so. Even if they had or do so, the carried over or slightly modified features from the rejected February 2021 plan, as amended—the thirty-nine parking spaces, the regular scheduled use for Mass services, and the incorporated plan for a future chapel, which the Planning Commission and the ZBA deemed too similar to the original rejected plan to consider inside the year—could thwart approval for

[6] Despite the removal of the 6,000 square foot chapel, the resubmitted application continued to call for thirty-nine parking spaces and the use of the Property for regular Mass services, as well as designate a location for a future chapel. ECF No. 55-10, PageID.2435, 2445.

reasons not related to the installation or erection of CHI's religiously symbolic structures.

Nonetheless, plaintiffs have never sought approval from the Township to simply install or erect the desired religious symbols. Palazzolo did make initial inquiries to the Township's Assistant Manager/Community Development Director about displaying religious pictures, a statue, and a small stone wall with a mural for meditative prayer and reflection. ECF No. 59-2, PageID.2887-92. But after the Township planning consultant opined that CHI's proposal required a special land use and site plan approval applications, CHI decided to accelerate its future plan for a chapel on the Property and submitted its special land use and site plan applications for the St. Pio's Chapel prayer campus. ECF No. 55-2; ECF No. 59-2, PageID.2890-94. It did not pursue the other options, provided under the Zoning Ordinance and referenced in the planning consultant's opinion, to secure permission for the display of the religious symbols by way of a similar use determination by the Planning Commission (§ 11.02.02) or an interpretation of the Zoning Ordinance by the ZBA (§ 23.02.03). *Id.* In sum, the Township never reached a final decision on how the Zoning Ordinance applies to the installation or erection of the religiously symbolic structures CHI seeks to place on the Property. Without input from the Township on

these unresolved questions, the litigation before this Court over the disallowance and removal of these symbols is premature.

Moreover, the delay necessitated by bringing this issue squarely before the Township will not cause undue hardship to plaintiffs. *See Miles Christi,* 629 F.3d at 538. It will certainly define the contours of the parties' dispute and could possibly provide plaintiffs with some of the relief it seeks: permission to install and erect its religious symbols on the Property. *See id*. For these reasons, plaintiffs' claims over the proscription and removal of these symbolic structures are not ripe.

D. RLUIPA Claims

The Township argues that CHI fails to plead any plausible claim for relief. Specifically, it argues that CHI fails to adequately state a claim under RLUIPA because it does not allege facts to establish the Township placed a substantial burden upon their exercise of religion, fails to allege facts to establish it was treated on less equal terms than a secular institution subject to the same special use approval, and fails to allege facts that the Zoning Ordinance deprives CHI opportunities to practice its religion. The Township's motion generally ignores the Rule 12(b)(6) standard, advancing arguments which rely upon or integrate factual development more appropriate for summary judgment motions or trial. The caselaw it cites is

almost uniformly not Rule 12(b)(6) jurisprudence. Nevertheless, the Court addresses defendants' arguments in turn.

1. Substantial Burden

Under RLUIPA, no government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that the imposition of the burden (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest. 42 U.S.C. § 2000cc.

The statute defines "religious exercise" to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief" including "[t]he use, building, or conversion of real property for the purpose of religious exercise . . . of the person or entity that uses or intends to use the property for that purpose." *Id*. § 2000cc–5(7). The statute, however, does not define "substantial burden." *See Living Water Church of God v. Charter Twp. of Meridian*, 258 F. App'x 729, 734 (6th Cir. 2007). The Sixth Circuit identifies several factors to aid in determining whether a land use regulation imposes a substantial burden. *Livingston Christian*

Schools v. Genoa Charter Township, 858 F.3d 996, 1004–05 (6th Cir. 2017).

These factors nearly all require analysis of evidence outside of the complaint itself. One such factor is "whether the religious institution has a feasible alternative location from which it can carry on its mission." *Id.* CHI alleges that it does not. ECF No. 55, PageID.2263, ¶106.

Several circuits have held that, when a plaintiff has imposed a burden upon itself, the government cannot be liable for a RLUIPA substantial-burden violation. *Livingston Christian Schools,* 858 F.3d at 1004. For example, when an institutional plaintiff has obtained an interest in land without a reasonable expectation of being able to use that land for religious purposes, the hardship that it suffered when preexisting land use regulations were enforced against it has been deemed an insubstantial burden. *Id.*

The Township asserts CHI's own actions as a defense, but that cannot operate to defeat CHI's claims as a matter of law either. Whether CHI had a reasonable expectation of being able to use the land, where the land was zoned to allow churches as special use, necessitates a factual inquiry. *See Bethel World Outreach Ministries v. Montgomery County Council*, 706 F.3d 548, 558 (4th Cir. 2013) (plaintiff offered evidence raising

question of fact as to whether it had reasonable expectation of being able to build a church).

The Township cites several cases where courts found no substantial burden created by the denial of a zoning or land-use application. In all but one of the cases, the courts' findings were made on a developed record, following discovery, in summary judgment proceedings, rather than on a motion to dismiss. *See Muslim Community Ass'n of Ann Arbor v. Pittsfield Charter Twp.*, 947 F. Supp. 2d 752, 768 (E.D. Mich. 2013) (substantial burden claims are generally too fact intensive to resolve on a motion to dismiss). Like the defendant in *Muslim Community*, the Township cites a single case that was a decision on a motion to dismiss, *Wesleyan Methodist Church of Canisteo v. Village of Canisteo*, 792 F. Supp. 2d 667 (W.D.N.Y. 2011).

The *Muslim Community* court distinguished that case in a manner that is applicable here too.

> In *Wesleyan Methodist Church of Canisteo*, the district court granted the defendants' motion to dismiss the plaintiff's RLUIPA substantial burden claim which the plaintiff filed following the defendant's denial of its application to build a church in a light industry zone. The court dismissed the claim, finding it "clear" from the plaintiff's complaint "that the light industrial zoning requirements are a generally applicable burden that is neutrally imposed on churches and secular organizations." *Id.* at 674. The court also found from the allegations in the complaint that the plaintiff had options available to it, other than building its church

> in the light industrial zone, "including building new structures on its existing property."

Muslim Community, 947 F. Supp. 2d at 768.

As the court found in *Muslim Community*, the facts presented in CHI's supplemented first amended complaint do not suggest that it currently is engaged in religious exercise within the Township. It is not evident from its pleading that other land is available in the Township where it would be allowed to engage in religious exercise and to find that an alternative location exists would require looking beyond the complaint. Finally, CHI specifically alleges that the zoning laws have not been applied neutrally to it and that parks and Protestant churches have been treated more favorably. These are facts not before the Court that will need to be analyzed in deciding whether CHI can prevail on its RLUIPA substantial burden claim.

In short, the determination of whether the Township's conduct has substantially burdened CHI's religious exercise is too fact intensive to resolve on defendants' motion to dismiss.

2. Discrimination and Exclusion

The Township also seeks dismissal of CHI's other RLUIPA claims. CHI alleges that the Township applied the Zoning Ordinance to it on less than equal terms with other religious and non-religious assemblies and

institutions (i.e., violated RLUIPA's "equal terms" provision) and that the decisions to deny its special land use applications were based on anti-Catholic sentiment (i.e., violated RLUIPA's "nondiscrimination" provision). ECF No. 55, PageID.2288, ¶¶ 182, 183.

a. Equal Terms

No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution. 42 U.S.C. § 2000cc-2(b). RLUIPA explicitly places the initial burden on the plaintiff to establish a prima facie case supporting its claim. *Id.* at § 2000cc–2(b). For an "equal terms" violation, the plaintiff's prima facie case is comprised of four elements: "(1) the plaintiff must be a religious assembly or institution, (2) subject to a land use regulation, that (3) treats the religious assembly on less than equal terms, with (4) a nonreligious assembly or institution." *Muslim Community*, 947 F. Supp. 2d at 766.

The statute does not define the meaning of "equal terms," but the Sixth Circuit has filled in this gap. *Tree of Life Christian School v. City of Upper Arlington*, 905 F.3d 357, 367 (6th Cir. 2018). The phrase "on less than equal terms" requires a plaintiff to show a comparator that is similarly situated to the plaintiff "with regard to the regulation at issue." *Id.*

CHI must identify a similarly situated comparator that received more favorable treatment. In its supplemented first amended complaint, CHI identifies at least one park and two non-Catholic churches that it alleges are similarly situated comparators. ECF No. 55, PageID.2253-54, ¶ 75. Other courts have noted that the determination of whether entities are "similarly situated" to a plaintiff is a fact intensive analysis. *See, e.g.*, *Muslim Community*, 947 F. Supp. 2d at 766 (collecting cases). "For example, the court will likely need to compare the timing of the applications, the body with the authority to decide the applications, the details of the proposed plans, the reasons for the decisions, and the zoning laws applicable to the requests." *Id.*

CHI's allegation that there are at least two similarly situated comparators zoned in districts which require special land use approval by the Township satisfies the pleading obligation for a RLUIPA equal terms claim and is sufficient to withstand a motion to dismiss.

b. Nondiscrimination

No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination. 42 U.S.C. § 2000cc(b). To survive a motion to dismiss a § 2000cc(b) RLUIPA claim, a plaintiff must allege facts to create

an inference that the decision to deny its land use application was based on its religious faith. *Muslim Community*, 947 F. Supp. 2d at 765. The Court finds that CHI's allegation that anti-Catholic sentiment fueled the public opposition to its land use application adequately pleads its RLUIPA discrimination claim. ECF No. 55, PageID.2260-62, ¶¶ 101, 103, 104.

c. Exclusions and Limits

RLUIPA's "limitations and exclusions" provision prohibits government entities from imposing or implementing a land use regulation that "(A) totally excludes religious assemblies from a jurisdiction; or (B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction." 42 U.S.C. § 2000cc(b)(3). To state a claim under this provision, a plaintiff must allege that the land use regulation, "as applied or implemented, has the effect of depriving both plaintiff *and* other religious institutions or assemblies of reasonable opportunities to practice their religion, including the use and construction of structures, within [the jurisdiction]." *Alger Bible Baptist Church v. Twp. of Moffat*, 2014 WL 462354, at *10 (E.D. Mich. Feb. 5, 2014) (quoting *Rocky Mt. Christian Church v. Bd. of County Comm'rs*, 613 F.3d 1229 (10th Cir. 2010) (marks omitted)) (emphasis added). CHI does not allege that other religious institutions have been deprived reasonable opportunities to practice their

religion. Accordingly, this portion of CHI's RLUIPA claim (ECF No. 55, PageID.2288, ¶ 184) should be dismissed.

E. First Amendment Claims

1. Free Exercise

The First Amendment's Free Exercise Clause, made applicable to state and local governments by the Fourteenth Amendment, proscribes the making of any law "prohibiting the free exercise [of religion]." U.S. Const. amend. I. The meaning of "religious exercise" in the First Amendment context is far narrower than under RLUIPA. Under RLUIPA, "religious exercise" encompasses "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). In the First Amendment context, it means "'first and foremost, the right to believe and profess whatever religious doctrine one desires.'" *Mt. Elliott Cemetery Ass'n v. City of Troy*, 171 F.3d 398, 403 (6th Cir. 1999) (quoting *Dep't of Human Resources of Oregon v. Smith*, 494 U.S. 872, 878 (1990)).

The First Amendment, however, "'does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).'" *Id*. (quoting *Smith*, 494 U.S. at 878) (internal quotation marks and additional citation omitted). To assess whether a law

is neutral and of general applicability, courts must determine whether the law is: 1) generally applicable; 2) aimed at particular religious beliefs or practices; and 3) subject to a system of particularized exemptions. *Kissinger v. Bd. of Trustees of Ohio State Univ.*, 5 F.3d 177, 179 (6th Cir. 1993) (citing *Smith*, 494 U.S. at 877-78)).

Zoning laws, even ones restricting religious assemblies to designated districts and requiring those assemblies to complete conditional use applications, may legitimately distinguish, select, and categorize uses, and still be considered generally applicable. *See Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1234-35 (11th Cir. 2004). On its face, the Zoning Ordinance's Country Estate district requirement that churches and other religious assemblies apply for a special use permit does not violate general applicability because it applies not only to religious uses, but also to educational, utility, commercial stable and kennel, and certain residential care and hospitality uses. ECF No. 59-9, PageID.3119-20; *see Alger*, 2014 WL 462354, at *5.

Nevertheless, the Country Estate zoning district restrictions could run afoul of the Free Exercise Clause if they target religious conduct for distinctive treatment. *See id.* Again, CHI's allegations that the Township granted special use applications to a public park and to at least two non-

Catholic churches are sufficient to plausibly assert that the Township targets certain religious conduct for distinctive treatment for purposes of stating a claim under the Free Exercise Clause. *See Midrash*, 366 F.3d at 1235; *cf. Alger*, 2014 WL 462354, at *6. Plaintiffs claim under the Free Exercise Clause withstands defendants' motion to dismiss.

2. Freedom of Speech

CHI's Freedom of Speech claims relate to the Township's disallowance and removal of the religiously symbolic structures from the Property under the Zoning Ordinance. As discussed above, CHI lacks standing to bring a facial challenge to the Sign Ordinance and plaintiffs' claims arising from the disallowance and removal of the religiously symbolic structures under the Zoning Ordinance as applied are not ripe.

3. Expressive Association

Defendants argue that plaintiffs' freedom of association claim fails as a matter of law as it pertains to the construction of St. Pio's Chapel. CHI maintains that the Township's prohibition of organized gatherings on the Property violates the First Amendment's protection of expressive association. Indeed, the First Amendment clearly protects against actual restrictions to an individual's ability to join with others to further shared goals. *See Americans for Prosperity Foundation v. Bonta*, 141 S. Ct. 2373,

2389 (2021). CHI's allegations regarding the prohibited organized gatherings on the Property state a plausible claim for relief under the First Amendment. But, to the extent CHI asserts that the denial of permission to build St. Pio's Chapel violates its freedom of expressive association, the claim fails as a matter of law. The act of constructing houses of worship, and the analysis of the constitutionality of zoning regulations limiting such construction, implicates the Free Exercise Clause, not freedom of expressive association. *Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly*, 309 F.3d 144, 163 (3d Cir. 2002) (citing *Lakewood*, 699 F.2d 303, 307-08 (6th Cir. 1983)); *see, e.g.*, *DiLaura,* 30 F. App'x at 508.

F. Fourteenth Amendment/Equal Protection Claim

The Fourteenth Amendment's Equal Protection Clause provides that "[n]o State shall deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. This provision is "essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985).

To make out a viable selective treatment Equal Protection claim, a plaintiff must allege that it was treated differently than others who were similarly situated and that the selective treatment was based on an impermissible consideration like religion. *Mt. Elliott Cemetery Ass'n*, 171

F.3d at 406. A plaintiff may also assert an Equal Protection claim with allegations of intentional discrimination based on religion. *Id*.

As discussed under the RLUIPA Equal Terms section, Plaintiffs' identification of at least one park and two non-Catholic churches as similarly situated comparators also satisfies its pleading obligations under Rules 8 and 12(b)(6) for its Equal Protection claim. Plaintiffs' allegation that its special land use application was denied based on the public's expressed anti-Catholic sentiment is also sufficient to defeat defendants' motion to dismiss the Equal Protection claim. ECF No. 55, PageID.2260-62, ¶¶ 101, 103, 104.

G. State Law Claim

Because CHI makes clear that it is relying on the same facts to plead violations of its rights under the Michigan Constitution that are set forth in discussing the violations of the same rights under the U.S. Constitution, to the extent facts render CHI's federal constitutional claims plausible, they also sustain its state constitutional claims. *Muslim Community,* 947 F. Supp.2d at 771-772.

H. Qualified Immunity

Defendant Stone seeks dismissal from this action under the qualified immunity doctrine. "The doctrine of qualified immunity protects government

officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). The Supreme Court has established a two-step inquiry to determine if qualified immunity protects an official's actions: (1) whether "[t]aken in the light most favorable to the party asserting the injury, . . . the facts alleged show the [official]'s conduct violated a constitutional right[ ]," and (2) whether that right was "clearly established." *Saucier v. Katz*, 533 U.S. 194, 201 (2001), *overruled on other grounds by Pearson*, 555 U.S. at 236.

It certainly was clearly established at all times pertinent to this action that individuals have a right to be free from discrimination by the government that burdens a fundamental right such as the free exercise of religion, see *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 531–32 (1993), or that targets a suspect class such as a religious group, see *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). To the extent CHI pleads sufficient factual matter to show that the Township implemented the Zoning Ordinance not for a neutral, legitimate reason but for the purpose of discriminating on account of religion, then defendant Stone is

not entitled to qualified immunity. *See Muslim Community*, 947 F. Supp 2d at 772.

IV. Conclusion

For these reasons, the Court **GRANTS** defendants' motion to dismiss (ECF No. 59) with respect to:

- plaintiffs' claims arising from the prohibition and removal of CHI's religiously symbolic structures from the Property and **DISMISSES** them without prejudice as unripe;
- plaintiffs' First Amendment facial challenge to the Sign Ordinance and **DISMISSES** it for lack of standing;
- plaintiffs' RLUIPA Exclusions and Limitations claim under 42 U.S.C. § 2000cc(b)(3) for failure to state a plausible claim for relief.

The Court **DENIES** defendants' motion in all other respects for the reasons set forth in detail above.

In summary, these claims survive the motion to dismiss:

- RLUIPA claims for substantial burden (42 U.S.C. § 2000cc(a)), equal terms (§ 2000cc(b)(1)), and nondiscrimination (§ 2000cc(b)(2));
- First Amendment claims under the Free Exercise Clause and for interference with expressive association (as to prohibited organized gatherings on the Property);

- Fourteenth Amendment claims under the Equal Protection Clause; and
- Claims under the Michigan Constitution.

IT IS SO ORDERED.

s/Shalina D. Kumar
Shalina D. Kumar
United States District Judge

Dated: December 20, 2022