

Township Committee of the Township of Bernards  
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**News Release**

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**STATEMENT BY: MICHAEL P. TURNER, SPOKESMAN, TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BERNARDS REGARDING: ANNOUNCEMENT OF TOWNSHIP COMMITTEE ACCEPTING SETTLEMENT TERMS OFFERED BY THE UNITED STATES DEPARTMENT OF JUSTICE AND THE ISLAMIC SOCIETY OF BASKING RIDGE**

"The Bernards Township Committee and Planning Board voted to settle litigation brought by the Islamic Society of Basking Ridge (ISBR) and the US Department of Justice (DOJ).

The US Constitution and the Religious Land Use and Institutionalized Persons Act (RLUIPA) provide religious institutions with the guarantee that the application of land use controls or zoning does not result in a substantial burden on its exercise of religion. Local planning and zoning codes are designed to mitigate the risk that such relatively intense uses do not unduly impact others' ability to peacefully and quietly enjoy their own property. Hence, a very sensitive balancing test must be applied so that the interests, Constitutional or otherwise, of all are served.

The decision to accept the ISBR's terms and the DOJ's offer was not made lightly. However, in our opinion and that of our legal counsel, settling represents the most effective path forward to mitigate the financial risk of protracted litigation as well as resolve the issue of the ISBR's proposed house of worship in Liberty Corner.

The lawsuits alleged that the Board's denial of ISBR's application for a development on Church Street was discriminatory. The Township denies the claims. The settlement agreement addresses the land use concerns of the planning board and incorporates conditions previously agreed upon by the ISBR and the planning board during the application process and deliberations. The DOJ settlement concerning ordinance #2242 maintains that the Township may include reasonable development criteria for houses of worship, such as a conditional use requiring access from a state or county road, but that such criteria be consistently applied to all institutional uses. Aside from the deductible, the monetary component of the settlement will be satisfied by our insurers, with no taxpayer funds expended.

The Township maintains that the denial of the Planning Board was based on accepted land use criteria only. Indeed, Bernards Township is a diverse and inclusive community, where for years the ISBR congregation have practiced their religion along with their neighbors unimpeded, using township facilities at the Bernards Township Community Center and at Dunham Park. Bernards Township elected Dr. Ali Chaudry as the nation's first Pakistani Muslim Mayor after the terrorist attacks of September 11, 2001. We remain a united township where all are welcome. This is the

end of a long engagement on the application and opinions may still be varied, but it is in the best interest of the Township to conclude the litigation.”

Background:

The Planning Board denial was based on legitimate land use and safety concerns which Plaintiffs refused to address. At the onset of the ISBR’s litigation, in a show of good faith, the Planning Board presented Plaintiffs an opportunity for reconsideration to address the land use issues. Plaintiffs refused and chose to pursue litigation.

*Parking:* A critical decision in the Planning Board review involved parking. A fundamental tenet of land use is that every application is unique and the Board must address the individual needs of the applicant. The Board understood the importance of addressing adequate parking at the planning stage, as they were well-aware of the Township’s problems with overflow parking at other institutions and the difficulty of enforcement.

The Township parking ordinance required that the Board consider testimony and documentary evidence to determine the parking needs of an institution.<sup>[1]</sup>

The ordinance provides a ratio of one parking space for every three worshippers acceptable for a “church,” but provides flexibility for the Board to require more spaces based upon the actual needs of the institution. Guided by counsel and testimony, the Planning Board determined that the International Traffic Engineering (ITE) Report, 2010 (introduced by Plaintiffs’ expert) best reflected the needs of the applicant ISBR. The ITE report recommended a ratio of one parking space for every 1.4 attendees for mosques. According to the applicant’s testimony, worshippers drove alone for the primary service on Friday afternoon. The Board attempted to explore alternate parking arrangements for overflow cars, but the applicant was not cooperative. Hence, the Board decided to accept the ITE report and the 1.4:1 ratio recommended therein to address the needs of the applicant.

Judge Michael Shipp <sup>[2]</sup> presiding over the ISBR lawsuit, disagreed with the Board’s decision. In a motion brought by ISBR, Judge Shipp ruled on New Year’s Eve 2016 that the Board had discriminated by applying the ITE standard to the application. Judge Shipp focused on semantics rather than the specific needs of the institution and ruled that the 3:1 ratio must be applied to every church/house of worship, without consideration of the institution’s actual needs. The Township vehemently disagrees with Judge Shipp’s decision.

*Financial risk:* After Judge Shipp’s decision, the parties resumed settlement discussions. Under RLUIPA, a fee shifting provision requires the Township to pay Plaintiff’s attorneys fees if a defendant is found to have discriminated. Plaintiffs attorneys’ fees already exceeded 1.5 million and would accrue every day. The Township weighed the costs of appeal, trial, and the likelihood of success in light of the Judge’s decision and determined that settlement with 50 parking spots and other land use adjustments was in the best interest of the township overall.

The Agreement was a product of negotiation and represented the best possible outcome, in the opinion of the majority of the Township Committee and Board, which would be acceptable to all parties. Specifically, the land use concerns presented by the Planning Board have been largely addressed and the monetary settlement costs (minus a deductible) will be borne by our insurers, not the taxpayers. If the Township had continued litigation, there was significant risk of exceeding insurance coverage and the possibility of denial of coverage under certain exclusions, which was the subject of arbitration. With Judge Shipp as the presiding judge, and his Honor's decision on parking as well as his prior ruling on similar matters, the Township believes settlement was the best option.

*Other locations:* Throughout the litigation, the Township heard from numerous residents that the mosque should be moved to another location. We wish to be clear that the Township had explored, and asked the applicant if it would consider, another location. However, it is the property owner's right to build on its property as a permitted use (subject to reasonable conditions) or choose another location. The Township has no right to force the applicant to move to another location.

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[1] Specifically the ordinance provides: "It is the intent of this chapter to provide for parking demand by requiring off-street parking except as noted for residential development. Since a specific use may generate a parking demand different from those enumerated below, documentation and testimony shall be presented to the Board as to the anticipated parking demand. Based upon such documentation and testimony, the Board may:

**(a)** Allow construction of a lesser number of spaces, provided that adequate provision is made for construction of the required spaces in the future.

**(b)** In the case of nonresidential uses, require that provision be made for the construction of spaces in excess of those required here in below, to ensure that the parking demand will be accommodated by off-street spaces."

[2] The ISBR litigation was originally assigned to Judge Mary Little Cooper. The case was reassigned without explanation to Judge Shipp who had ruled against Bridgewater Township on significant motions in a matter involving a land use application for a mosque. Bridgewater reportedly settled for \$7.5 million.