



## Court Upholds Township's Denial of Variance to Build a Church - Even though Church would be Used for Other Activities

Administrative & Municipal Practice Group

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**PRACTICE AREAS**

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In a brand new published decision, the Michigan Court of Appeals has upheld a township's decision to reject an application by a religious organization for a variance to construct a building for worship purposes – even though that building would be used for other uses. *Great Lakes Society v Georgetown Charter Twp* (Docket Nos. 270031/280574, dec'd 10/3/08). In *Great Lakes Society*, Great Lakes Society, a religious organization, sought a special use permit to construct a two-story building for worship services and other activities.

The building was to consist of a sanctuary for worship services; a ministry area; a tape/publication ministry area with recording studio; a training ministry area; an administration area, health area, youth center, and a garage.

While GLS's SUP request was pending, the township amended its zoning ordinance to now require a church built in a residential district to have 200 feet of frontage on a major street. The ZBA denied GLS's subsequent variance request from the frontage requirement. GLS's SUP request was also denied. GLS then sued the township and raised various claims.

The Michigan Court of Appeals sided with the township. It made these relevant rulings:

1. A building to be used for public worship does not lose its status as a "church" merely because it is used for other purposes. The proper test to determine whether a building that hosts public worship activities and other activities is a "church" – if the township's zoning ordinance does not define that term – is whether the building is used to some extent for public worship and whether those other uses of the building are reasonably closely related, in substance and space, to that public worship use. The Court concluded here that all other uses of the building were reasonably closely related to the building's main public worship use.



2. The township's amended ordinance, which included the new 200-foot frontage requirement, was the applicable ordinance. This is because the township did not adopt the amendment to merely concoct a defense. Instead, the township adopted the amendment to merely clarify the township's longstanding intent to always require 200 feet of street frontage.
3. The township ZBA's denial of GLS's variance request was proper. The township helped itself by presenting evidence that (a) the purpose of the 200-foot requirement was to ensure adequate sight distance for traffic entering and exiting the sight; (b) GLS's application could present traffic and public safety issues; and (c) GLS did not meet all requirement in the ordinance to get a variance.
4. The township ZBA's variance denial did not violate the Religious Land Use and Institutionalized Persons Act (RLUIPA). The ZBA's decision did not substantially burden GLS's religious exercise since GLC could locate a church on another location as long as it has 200-foot street frontage and otherwise complies with the ordinance. Also, if another property did not comply with the ordinance, the Court noted that such alternative property might more closely comply with the ordinance thereby perhaps qualifying it for a variance.
5. The 200-foot frontage requirement and the ZBA's variance denial did not violate GLS's Constitutional rights. Specifically, the Court rejected GLS's claims under the free exercise, freedom of association, and equal protection rights in the Constitution.