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D.C. Historic Preservation Review Board
1100 4th Street SW, Suite E650
Washington, D.C. 20024

Re: *Application of Advisory Neighborhood Commission - 1A
To Designate Fisherman of Men Church a Historic Landmark, #12-06*

Dear Members of the Historic Preservation Review Board:

We have been retained by Fisherman of Men Church (the “Church”), in connection with the pending Application #12-06 filed by Advisory Neighborhood Commission - 1A to designate its church building, located at 3641 Georgia Avenue Northwest, Washington, D.C., 20010. Such potential designation implicates two federal civil rights laws, the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C §§ 2000cc *et seq.*, and the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. §§ 2000bb *et seq.*, each of which protects the right to free exercise of religion. As discussed in further detail below, it is this Firm’s opinion that the designation of Fisherman of Men Church’s building as a historic landmark would violate the Church’s civil rights under RLUIPA and RFRA. Such action would expose the District to years of litigation, potentially millions of dollars in damages and attorneys’ fees,¹ together with a substantial likelihood of eventual de-designation of the Church.

This Firm has represented many clients in religious liberty matters, and specifically in bringing cases under RLUIPA’s land use provisions. We have represented Buddhist, Hindu, Jewish, Moslem, Native American, Sikh, Zoroastrian and Christian clients. Storzer & Greene has recently represented both the Third Church Christ, Scientist in its litigation with the Historic Preservation Review Board concerning the structure at Sixteenth and Eye Streets, Northwest, and St. John’s United Church of Christ against the City of Indianapolis over a similar historic landmark designation.

¹ Among the notable settlements and verdicts in RLUIPA litigation have included *Reaching Hearts International v. Prince George’s County*, 368 Fed. Appx. 370 (4th Cir. 2010) (affirming a jury award of \$3,714,822.36 in damages); *Hollywood Community Synagogue v. City of Hollywood, Fla.*, Case. No. 04-61212-CIV (S.D. Fla. Jul. 7, 2006); *Hale O Kaula Church v. Maui Planning Comm’n*, Civ. No. 01-615 (D. Haw. 2004); *Sts. Constantine and Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895 (7th Cir. 2005); *Reaching Hearts International v. Prince George’s County*, 2012 WL 1417725 (4th Cir. 2012) (approving an award in excess of \$765,000.00); *Rocky Mountain Christian Church v. Board of County Commissioners*, 2010 WL 148289 (D. Colo.) (awarding \$1,252,327); *Anne Arundel settles religious discrimination lawsuit; County will pay church \$3.25 million and admit to violating federal laws*, THE BALTIMORE SUN (Nov. 18, 2010).

The actions of the Historic Preservation Review Board are subject to the requirements of RFRA and RLUIPA. RFRA requires that the “Government may substantially burden a person’s exercise of religion only if it demonstrates that application of the burden to the person-- (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. § 2000bb-1(b). “[T]he term “government” includes a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States, or of a covered entity; . . . the term “covered entity” means the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States; . . .” *Id.* § 2000bb-2(1) (emphasis added).

RLUIPA mandates that “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 imposition of the burden on that person, assembly, or institution-- (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(a). The statute includes any governmental “branch, department, agency, instrumentality or official” in its definition of those subject to its terms. *Id.* § 2000cc-5(4).² Furthermore, “[t]his chapter shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.” *Id.* ¶ 2000cc-3(g). RLUIPA also prevents governments from discriminating between religious denominations, favoring nonreligious assemblies and institutions over religious assemblies and institutions, and unreasonably limiting religious assemblies, institutions or structures. *Id.* § 2000cc(b). Thus, to the extent that any HPRB action would treat the Church differently and worse than any other religious or nonreligious entity (*i.e.*, leaving similarly situated structures undesignated), it is subject to the requirements of RLUIPA.

RLUIPA and RFRA apply to landmarking designations. The text of RLUIPA explicitly states that historic designations of church property are subject to RLUIPA: “The term ‘land use regulation’ means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant’s use or development of land (including a structure affixed to land).” 42 U.S.C. § 2000cc-5(5) (emphases added). RFRA’s broader protections, which apply to any governmental action, also clearly encompass historic designations. 42 U.S.C. § 2000bb-1.

Historic landmark designations such as that faced by the Church burden religious exercise and violate federal law. As the HPRB well knows, in *Third Church of Christ, Scientist*, the United States District Court made clear that designation imposes a burden on a church’s religious exercise:

The [HPRB’s] motion asserts, among other things, that historic preservation designation alone imposes no burden, it’s only a process. That argument frankly blinks reality. It is very clear that a burden is imposed by historic designation; it’s a financial burden, it’s a burden on the alienability of land, on what you can do with land.

² The HPRB is subject to the terms of RFRA and RLUIPA as it is a branch, department, agency or instrumentality of the District of Columbia government acting under color of law. The HPRB is empowered by D.C. Code § 6-1103(c)(3) to designate historic landmarks.

Third Church of Christ, Scientist v. District of Columbia Historic Preservation Review Board, Civil Action No. 08-1371, Transcript of Hearing at 49-50 (Apr. 7, 2009). Landmarking of a church property is immediately ripe for federal challenge. See *Roman Catholic Bishop of Springfield v. City of Springfield*, 760 F. Supp. 2d 172, at 182 (D. Mass. 2011); *Third Church of Christ, Scientist v. D.C. Historic Preservation Rev. Bd.*, Civ. No. 08-1371, Transcript of Hearing on Motion to Dismiss at 49:7-50:3, 51:8-9 (Apr. 7, 2009); *First United Methodist Church of Seattle v. Hearing Examiner for Seattle Landmarks*, 916 P.2d 374 (Wash. 1996).

To the extent that the HPRB was not previously aware of these legal requirements, it has been placed on notice that its actions are subject to them, as the federal court in *Third Church of Christ, Scientist*, noted: “I am troubled to hear that the D.C. government declines even to entertain the religious freedom claims of the plaintiffs here, but the invitation to take that to a court of their choice probably will serve just as well.” Transcript at 50-51. In addition to the experience of the Third Church of Christ, Scientist, the HPRB should note the experience of the Indianapolis Historic Preservation Commission, the Metropolitan Development Commission of Marion County, and the City of Indianapolis when it attempted to landmark the St. John United Church of Christ. After the church filed suit, the municipality issued a new resolution, removing the designation.³

Several courts have held that historic preservation regulations that impact churches substantially burden religious exercise. See *First Covenant Church v. City of Seattle*, 120 Wash. 2d 203, 219 (1992) (holding that designation substantially burdens religious exercise both administratively and financially); *Society of Jesus of New England v. Boston Landmarks Com'n*, 409 Mass. 38, 41-43 (1990) (holding that the historical landmark designation of a church—without more—unconstitutionally restrained religious worship. “In short, under our hierarchy of constitutional values we must accept the possible loss of historically significant elements of the interior of this church as the price of safeguarding the right of religious freedom.”); *Munns v. Martin*, 131 Wash. 2d 192, 207-209 (1997) (ordinance that creates administrative burden on church with historically designated property substantially burdened its religious exercise); *Mount St. Scholastica, Inc. v. City of Atchison, Kansas*, 482 F. Supp. 2d 1281, 1295 (D. Kan. 2007) (plaintiffs’ Free Exercise rights violated by historic landmark regulation of property); *Keeler v. Mayor of Cumberland*, 940 F. Supp. 879, 885 (D. Md. 1996) (inability to demolish building that was a financial drain on the church substantially burdened its religious exercise).

A church’s architecture is religious expression entitled to protection under the Constitution and the aforementioned civil rights laws.

Religious buildings have always been imbued with important meanings. . . . By conveying such meanings, churches form a connection between abstract idea and physical expression, function as what Victor Turner has called a ritual process, linking the abstraction of the divine to the physicality of human existence. In other words, churches connect the divine with the human, values with social forms, and aspiration with present reality. At once messengers and agents, mirrors and actors, they enable people to think through their ideas about religiosity and convey them to the rest of the world while, in turn, influencing those ideas and shaping religion and society.

³ The relevant discussion begins at 0:20:10 of the videotaped proceedings, located at http://indianapolis.granicus.com/MediaPlayer.php?view_id=17&clip_id=7278.

J. KILDE, *WHEN CHURCH BECAME THEATRE* ch. 2 (Oxford University Press 2002). *See also First Covenant Church of Seattle v. City of Seattle*, 120 Wash. 2d 203, 217 (1992) (“First Covenant claims, and no one disputes, that its church building itself ‘is an expression of Christian belief and message’ and that conveying religious beliefs is part of the building’s function.”).

Religious architecture, through its shapes, symbols, decorations, ornamentations, and monumentality, represents a strong intention to communicate a particularized message about a group’s religious beliefs. “The history of church building demonstrates that the urge to express faith through architecture is basic.”

Thomas Pak, *Free Exercise, Free Expression, and Landmarks Preservation*, 91 COLUM. L. REV. 1813, 1840-41 (1991) (footnotes omitted).

Houses of worship possess semiotic qualities for their religious communities and for others. Ecclesiastical structures reify particular theological, moral and social assertions. They express, among other things, the religious community’s purpose, theology, identity, hope, unity and reverence for the divine and its identification with or separation from certain aspects of the culture. They constitute “an image of an entire religious program, a world view.”

Carmella, *Houses of Worship and Religious Liberty: Constitutional Limits to Landmark Preservation and Architectural Review*, 36 VILL. L. REV. 401, 450 (1991) (footnotes omitted). The dangers of governmental interference with such religious expression are obvious:

In governing the appearance of the worship structure, the state sits as arbiter between the religious community and the individual worshipper in identifying beliefs appropriate for transmission and inculcation. The state consequently becomes involved in the process of defining beliefs for the adherents. Thus, the state distorts the process in which the adherent interprets, gives meaning to and internalizes his or her environment and, in so doing, interferes with the individual’s spiritual development, as well as with his or her communal experience.

Id. at 498 (footnote omitted). To impose upon the Church a requirement that it may not alter its façade or other architectural elements—or to impose the requirement of being subject to the whims of this body for approval when it attempts to do so—is to restrain its ability to express its faith as it sees fit.

Here, the proposed Historic Landmark designation of Fisherman of Men Church would create obstacles to the Church’s religious mission that would substantially burden it. That mission, “to evangelize Jesus Christ to the World, equip every believer to become true Disciples of Christ and to engage those social problems that challenge the community that we have been called to serve,” calls for it to serve and educate the children and youth of its congregation and community. Its facilities are inadequate for such important parts of the Church’s mission as religious education, childcare, after school care and safe, secure facilities for community youth.

Bishop Clarence Groover has stated that, based on various Christian Scriptures, “the mindset of a Christian leader is to improve, beautify, and be creative with the facility where God’s people Worship.” When Fisherman of Men began its rehabilitation, the building was decaying, unattractive, covered with graffiti, unsafe and unidentifiable as a church. After twelve years of work, much of the decay has been arrested and the building is clean and neat. However, it is still virtually unidentifiable as a church and uninviting from the exterior.⁴ As noted above, it is a vital part of religious practice to manifest the spiritual nature of a church’s place of worship. As you are aware, the Church has plans to further improve the building to allow it to be seen as a church and a more welcoming presence in its community. The landmark designation will prevent or obstruct those efforts, and will thus interfere with the Church’s mission to attract souls and to manifest itself as a beautiful place for God’s people to worship, learn and practice their faith.

Designation of the church building would most definitely burden the Church’s religious exercise, and there is simply no compelling governmental interest to do so, as the HPRB’s interests are purely aesthetic in nature. Consequently, it is this Firm’s opinion that it is unlikely that the Historic Preservation Review Board would prevail in defending this designation.

Yours truly,



Roman P. Storzer

⁴ An important part of the Church’s mission is to assist with the problems of the needy in its community. Presently many people in the community are not even aware that the Church exists because of the nondescript nature of the exterior of the building.