



February 26, 2010

Mr. Joe Sutherland, Pastor
Oasis of Truth Church

RE: Zoning Interpretation: Religious Assembly within a Single-Family Residence in the SF-7 PAD Zoning District

Dear Mr. Sutherland:

This interpretation responds to your letter received on January 26, 2010 requesting an official Zoning Interpretation regarding operating a small church out of your residence. In your letter you ask several questions as outlined below:

1. Does the Land Development Code's (LDC) definition of "Religious Assembly" include church meetings of the size of Oasis of Truth's?
2. If so, does that preclude you from holding church meetings in your home?
3. Are other types of church-sponsored activities, such as Bible studies, church leadership meetings or fellowship activities allowed? Would the size matter?
4. What makes an event church-sponsored?
5. If there is a distinction in the LDC's treatment of church meetings and other types of church-sponsored activities, what is the basis for that?
6. How does the "qualifying event" definition relate to allowable church activities in single-family residential structures?

Relevant Sections of the Zoning Code:

Table 2.103: Land Use Regulations – Single Family Residential Districts identifies "religious assembly" as a use subject to certain limitations and additional regulations, which are contained in LDC Section 4.505. One of the three limitations, L2, provides that "Public and Private Schools and Religious Assembly uses shall be located on collector or arterial streets." Another

limitation, L3, provides that “Public and Private Schools and Religious Assembly uses are not permitted in single family residential structures.

Section 4.505 Religious Assembly provides as follows:

Religious assemblies are not exempt from the requirements of the Zoning Code.

Request for Determination. If a religious assembly use believes any requirement of the Zoning Code imposes a substantial burden on its exercise of its religion, the religious assembly use shall submit to the Zoning Administrator a written statement as to why any requirement imposes a substantial burden on its exercise of religion and a description of any requested accommodation. The Zoning Administrator shall review the statement and determine:

1. Whether the proposed use is a religious assembly use under the Religious Land Use and Institutionalized Persons Act;
2. Whether the requirement imposes a substantial burden on the exercise of religion by the religious assembly use;
3. If the requirement imposes a substantial burden, whether the requirement furthers a compelling governmental interest of the Town, and if so, whether it is the least restrictive requirement necessary to further that compelling governmental interest; and
4. The nature and extent of any accommodation, waiver, or adjustment to a requirement of the Zoning Code, if any.

Senior Housing. Senior housing incidental to Large-Scale Religious Assembly uses may be permitted upon approval of a Conditional Use Permit.

Article 6.1 Use Definitions contains the following definitions:

Religious Assembly. Facilities for worship and other religious ceremonies with incidental religious education, religious bookstores, rectories and parsonages, offices, social services, day care, and community programs.

Large-Scale. Facilities on 10 acres or more.

Small-Scale. Facilities on less than 10 acres.

The LDC’s **Glossary of General Terms** contains the following:

Temporary Directional Signs Relating to a Qualifying Event. *Temporary Directional Signs Relating to a Qualifying Event* means a *Temporary Sign* intended to direct pedestrians, motorists, and other passersby to a “qualifying event.” A “qualifying event” is any assembly, gathering, activity, or meeting sponsored, arranged, or promoted by a religious, charitable, community service, educational, or other similar non-profit organization.

Analysis:

- 1) The LDC definition of “Small-Scale Religious Assembly” does not indicate a minimum number of participants in religious assembly. You have described that services in your home consist generally of only seven adults. Without guidance from the Code, the Zoning Administrator must apply his best professional judgment.
- 2) Given that the church is considered to be religious assembly and given the LDC provisions prohibiting that use on Local streets without a Use Permit and prohibiting it in single family residential structures, it follows that the church meetings cannot be held in the home.
- 3) The assembly activities associated with the church, including Bible studies, church leadership meetings and church fellowship activities are not permitted. Given that the size of the group of people participating may change over time, it is not a critical consideration.
- 4) The LDC contains no definition of “church-sponsored” activities therefore a standard dictionary definition will be applied. “Sponsored” means that a person or an organization has paid for or planned and carried out a project or activity. This is the standard that will be applied when determining the activities that are church-sponsored.
- 5) The LDC makes no distinction between church meetings and any other type of church-sponsored activities like Bible studies or ministry events.
- 6) The Code’s definition of “qualifying event” is contained in the Glossary of General Terms. A “qualifying event” is any assembly, gathering, activity, or meeting sponsored, arranged, or promoted by a religious, charitable, community service, educational, or other similar non-profit organization. The term “qualifying event” is used to determine whether temporary signage is allowed for a particular use. It has no bearing on the types of church activities permitted in single-family residences.

Interpretation:

Based on the applicant’s description of the Oasis of Truth Church, on the observations of our Code Compliance staff and on the analysis above, the Zoning Administrator finds as follows:

- The Oasis of Truth Church is a Small Scale Religious Assembly use. It is located at [REDACTED], a Local Street in the Single Family-7 (SF-7) Residential Zoning District. The church is operating within a single-family residential structure. This use is not permitted on a Local Street and is not permitted within a single-family residential structure per LDC Section 2.103. The church is therefore, a prohibited use.

- The activities described by the applicant, including Bible studies, church leadership meetings and church fellowship activities, if sponsored by the church, constitute “religious assembly” and are not permitted at this location.
- If Oasis of Truth Church believes any requirement of the Zoning Code imposes a substantial burden on its exercise of its religion, the church may submit to the Zoning Administrator a “Request for Determination” as described in LDC Section 4.505.

Appeal Process

Please be advised that you may appeal a decision of the Zoning Administrator to the Town’s Board of Adjustment within 10 calendar days pursuant to the procedures set forth in Land Development Code Section 5.2011: Procedures for Appeals. The appeal shall be filed with the Planning & Development Services Division on a form established by the Director of Planning. The appeal shall set forth the decision or decisions being appealed and the grounds upon which the appeal is based. The appeal shall be accompanied by any applicable fees.

The Gilbert Town Council will be considering an amendment to the Land Development Code to permit religious assembly uses in single family residences under certain conditions. Pending resolution of the amendment, the Town will forbear enforcing the current Code provisions unless the use gives rise to significant public health, safety and welfare issues, which may be related to parking, traffic, building or fire safety conditions, or other conditions that may be impacted by such use.

If you have any questions about my determination please contact me at 480-503-6747 or via email at: michaelm@ [REDACTED]

Sincerely,



Mike Milillo
Senior Planner/ Zoning Administrator
Planning & Development Services Division

C: Zoning Interpretations File
Adam Adams, Code Compliance Administrator
Town Attorney