

## Fourth Circuit: Church Seeking to Operate as Brewery or Farm Winery Did Not State RLUIPA Claim

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The Fourth Circuit has ruled against the Alive Church of the Nazarene's claims that Prince William County, Virginia, violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) by denying the Church the opportunity to worship on its 17-acre property before the Church complied with relevant zoning regulations. *Alive Church of the Nazarene, Inc. v. Prince William Cty., Va.*, 59 F.4th 92 (4th. Cir. 2023).

The property in question was zoned agricultural, for which the County required a special use permit for religious use. The prior owners of the property obtained such a permit to construct a 40,000-square-foot house of worship for religious purposes; however, the permit required the owner to install costly stormwater monitoring, among other things, prior to the permit going into effect. The Church attempted to circumvent the special use permit requirements by holding gatherings on the property as a farm winery or brewery and intended to make nonalcoholic cider using fruit harvested from its fruit trees. However, the County responded that while this use category would permit religious gatherings, the Church would have to obtain a license from the state liquor commission to do so. While the Church began to venture down this path, it ultimately changed course after determining that obtaining a liquor license would violate its sincerely held religious belief against the sale or promotion of alcohol. The County took the position that without the state liquor license, or implementation of the previously-issued special permit, the property could not be used for religious gatherings.

The Church sued in the District Court for the Eastern District of Virginia, alleging that the County had violated, *inter alia*, RLUIPA's equal terms, nondiscrimination, and substantial burden provisions. The district court tossed the suit after ruling that the Church had failed to state a claim upon which relief could be granted. The Church appealed the decision to the U.S. Court of Appeals for the Fourth Circuit.

The Fourth Circuit agreed with the district court and affirmed the decision. The Court held that the Church's equal terms provision claim failed because the Church could not identify a similarly situated comparator in the subject zone. The agricultural zone allowed 14 uses by-right and 35 nonagricultural uses by special use permit, including religious institutions. By-right uses in the zone included farm

wineries, limited-license breweries, and agricultural operations, including agritourism activities. The Court concluded that the Church had failed to identify a comparator and considered the purpose of the agricultural zone – to “encourage farming and other agricultural pursuits.” According to the Court, religious institutions are similarly situated to the other 35 uses allowed by special use permit because they “are not agricultural and do not advance the [Agricultural District’s] purpose.” Even though farm wineries and limited-license breweries are allowed to host special events, the events further agricultural activity by enhancing the ability to market and sell product. By contrast, allowing religious institutions to host gatherings does not promote farming.

The Church’s nondiscrimination claim failed because the Church did not allege religious animus – a required element – in its complaint. The Church simply pointed to what it perceived to be differential treatment under the zoning regulations, but did not claim that any of the applicable regulations had been enacted with discriminatory intent.

Finally, as for the Church’s substantial burden claim, the Fourth Circuit held that any alleged burden was self-imposed by the Church when it acquired the land – with the land zoned for agricultural use, the Church had no reasonable expectation of religious land use without complying either with the terms of the special permit that had issued or following the requirements to become a brewery or farm winery. The Fourth Circuit also held that the Church’s claim failed for the independent reason that the burdens alleged were not absolute; had the Church complied with the conditions in the permit, it would be permitted to hold religious services on the property.

The Church’s claims under the First Amendment’s Free Exercise and Peaceable Assembly Clauses and the Fourteenth Amendment’s Equal Protection Clause similarly failed.

The Fourth Circuit’s decision is available [here](#).

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