GIMME SHELTER: RELIGIOUS PROVISION OF SHELTER TO THE HOMELESS AS A PROTECTED USE UNDER ZONING LAWS

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I. INTRODUCTION

Over the past few years, there has been a dramatic increase in the amount of attention paid to the issue of homelessness[1] in our country. Though increased homelessness has captured public attention,[2] it has

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1. One author has defined homelessness as "a condition wherein an individual on a given night has no place to sleep and is forced to be on the street or seek shelter in a temporary shelter." Kaufman, *Homelessness: A Comprehensive Policy Approach*, 17 URBAN AND SOCIAL CHANGE REVIEW 21 (Winter 1984). Other experts define homelessness in this way:

> Those whose primary nighttime residence is either in the publicly or privately operated shelters or in the streets, in the doorways, train stations and parks, subways, abandoned buildings, loading docks and other well hidden sites known only to their users.

BAXTER and HOPPER, PRIVATE LIVES/PUBLIC SPACES: HOMELESS ADULTS ON THE STREETS OF NEW YORK 8-9 (1981) [hereinafter cited as BAXTER & HOPPER, PRIVATE LIVES].

2. *See, e.g.*, Alter, Stille, Doherty, Greenberg, Agrest, Smith, Raine and Junkin, *Homeless in America*, THE NEW REPUBLIC, March 18, 1985, at 19 [hereinafter cited as *Homeless in America*]; Nelson, *Street People*, THE PROGRESSIVE, March 1985; Wickenden, *Abandoned Americans*, THE NEW REPUBLIC, March 18, 1985, at 19; M. HOMBS & M. SNYDER, HOMELESSNESS IN AMERICA: A FORCED MARCH TO NOWHERE [hereinafter cited as HOMBS & SYNDER].

not yet led to comprehensive governmental planning or funding for shelters.[3] Efforts to assist those in need of shelter have come primarily from religious organizations.[4] Churches[5] across the nation have established soup kitchens and emergency shelters for those in need. Religious institutions seeking to expand or convert their basements to accommodate the need for emergency shelter have been hampered by both a lack of financial resources and resistance from community groups and local zoning boards.[6] This article's central tenet is that because of the fundamental religious obligation to shelter the homeless, providing shelter for those without homes is a valid religious or accessory use of church facilities. Because shelter provision is based on religious obligations, church efforts to provide shelter are protected by the first amendment's free exercise clause. Therefore, in a majority of states, traditional zoning principles are inapplicable. In these states, the government's interest in regulation of shelters should require a compelling state interest to overcome the guarantee of the free exercise clause.

This article examines the interaction between the zoning power of municipalities and the church's right to use property already devoted to religious use, for sheltering the homeless. Particular attention will be accorded the issue of whether use of a religious structure for a "shelter" constitutes a valid religious or accessory use within the free exercise clause of the first amendment.[7] This question, arising with increasing frequency in the courts, has, until now, been handled on an

3. Nelson, *supra* note 2, at 27-28; Fabricant & Epstein, *Legal and Welfare Rights Advocacy: Complementary Approaches in Organizing on behalf of the Homeless*, 17 URBAN AND SOCIAL CHANGE REVIEW 15 (Winter 1984). *See also* Baxter and Hooper, *Shelter and Housing for the Homeless Mentally Ill, reprinted in* THE HOMELESS MENTALLY ILL 111 (H.R. Lamb ed. 1984).

4. Fabricant and Epstein, *supra* note 3, at 15-16. *See infra* notes 58-77 and accompanying text for an explanation of the religious obligation to provide shelter for the homeless. *See also* Stoner, *An Analysis of Public and Private Sector Provisions for Homeless People*, 17 URBAN AND SOCIAL CHANGE REVIEW 3 (Winter 1984); *Homeless in America*, *supra* note 2, at 21; Leslie, *Who is my Brother's Keeper*, NEWSWEEK, January 31, 1983, at 28.

5. The term "church" is used here to represent religious organizations of all faiths and denominations.

6. Kasinitz, *Gentrification and Homelessness: The Single Room Occupant and the Inner City Revival*, 17 URBAN AND SOCIAL CHANGE REVIEW 9 (Winter 1984); *Homeless in America*, *supra* note 2, at 26-28; Leslie, *supra* note 4.

7. U.S. CONST. amend. I states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

ad hoc basis[8] as to whether the shelter is an appropriate use. The usual problems attendant to case by case adjudication include the expense of duplicative litigation, uneven results and a possible chilling effect on those engaging in charitable efforts. Therefore, this article will first examine the dimensions and nature of the homelessness crisis,[9] identifying some of the causes of homelessness as well as recent shifts in the demographic composition of those in need of emergency shelter. Second, the fundamental theological roots, focusing on the central Judeo-Christian tenet imposing a duty to provide shelter to the homeless, will be documented.[10] Next, the development of zoning laws with regard to religious use and what constitutes religious and accessory uses will be examined.[11] The principle, followed by a majority of jurisdictions, of accommodating religion in light of the free exercise clause, will be examined in the context of what constitutes valid religious and accessory uses under zoning ordinances.[12] The article concludes by arguing that sheltering the homeless does constitute a valid religious or accessory use of church property, and therefore, courts should require a compelling state interest before the use is restricted.[13]

II. THE CRISIS OF HOMELESSNESS

A. *Introduction*

Statistics showing that there are from 250,000[14] to three million[15] homeless people in America indicate that the inherent condition of homelessness accounts in large part for the wide range in the figures cited. It is not surprising that researchers have found it impossible to accurately assess the precise number[16] of homeless in America. The

8. *See infra* Section VI.

9. *See infra* Section II.

10. *See infra* Section III.

11. *See infra* Section IV.

12. *Id.*

13. *See infra* Section V.

14. HUD REPORT ON HOMELESSNESS, BEFORE THE SUBCOMM. ON HOUSING AND COMMUNITY DEV. OF THE COMM. ON BANKING, FINANCE AND URB. AFFAIRS AND THE SUBCOMM. ON MANPOWER AND HOUSING OF THE COMM. ON GOV'T. OPERATIONS, 98th Cong., 2d Sess. 327, 338 (1984) (Report to the Secretary on the Homeless and Emergency Shelters) [hereinafter cited as REPORT ON HOMELESSNESS].

15. HOMBS AND SNYDER, *supra* note 2; Wickenden, *supra* note 2, at 20; *Homeless in America*, *supra* note 2.

16. One author remarked as follows: "The fact is that no one knows how many homeless people there are. At best, it can be determined how many are sheltered on a

250,000 "floor" figure results from a Housing and Urban Development (HUD) study, and has been widely criticized by those familiar with the crisis.[17] Testimony from recent congressional hearings supports the accusation that the methodology used by HUD was flawed, resulting in a gross underestimation of the number of homeless in the United States.[18]

Just as counting the homeless is difficult, so to is defining who the homeless are[19] and determining the causes of their condition.[20] There is no single cause of homelessness. A variety of forces[21] combine to victimize those lacking shelter. Traditionally, streets, bus terminals, subway stations and park benches were thought to be the provinces of older alcoholics, the mentally ill and those who chose homelessness as a way of life.[22] Today, in addition to alcohol and drug abuse and deinstitutionalization of the mentally ill,[23] factors contributing to homelessness include the economic pressures of unemployment and inflation,

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given night." Hopper, *Whose Lives Are These, Anyway?* 17 URBAN AND SOCIAL CHANGE REVIEW 13 (Summer 1984).

Members of the District of Columbia Community for Creative Nonviolence (CCNV), a Washington group that has been a forceful advocate for the homeless by fighting for shelters, organizing protests and instituting lawsuits, has stated that "we will discover how many people are on the streets only after they have come inside." In testifying before the House District Committee, Mary Ellen Hombs and Mitch Synder (both of CCNV) answered the question of how many homeless people in this way: "Precisely how many? Who knows? Certainly not the government. Nor the professionals. Not the religious community. Not even those who work with the homeless know for sure." HOMBS AND SYNDER, *supra* note 2, at 129.

17. *See, e.g.*, Hopper, *supra* note 16. Hopper points out that HUD teams used "sleights of hand" and deceptively defined terms leading to lower figures.

18. Wickenden, *supra* note 2, at 20. Estimating the number of homeless is significant because funding and other resources often are allocated on the basis of these statistics.

19. *See infra* notes 25-42 and accompanying text.

20. Crystal, *Homeless Men and Homeless Women: The Gender Gap*, 17 URBAN AND SOCIAL CHANGE REVIEW 2 (Summer 1984).

21. Hope and Young, *The Homeless: On the Street, On the Road*, 101 THE CHRISTIAN CENTURY 48 (1984); *Homeless in America*, *supra* note 2, at 21.

22. *Homeless in America*, *supra* note 2, at 22. *See also* Fabricant and Epstein, *supra* note 3; Sloss, *The Crisis of Homelessness: Its Dimensions and Solutions*, 17 URBAN AND SOCIAL CHANGE REVIEW 18 (Summer 1984); Wickendon, *supra* note 2, at 20.

23. Problems such as homelessness do not result from deinstitutionalization per se but instead are a function of the way deinstitutionalization has been implemented. Lamb, *Deinstitutionalization and the Homeless Mentally Ill*, *reprinted in*, THE HOMELESS MENTALLY ILL 55 (H.R. Lamb. ed. 1984). Deinstitutionalization will be discussed in this light throughout the text.

cutbacks in social services, shortages of affordable housing, and domestic violence and abuse.[24]

B. *Deinstitutionalization—A Failed Promise*

In response to criticism of inhumane mental asylum conditions, due process concerns about commitment procedures, the advent of mood stabilizing drugs, and incentives to reduce state budgets, large numbers of mentally ill individuals have been diverted from psychiatric hospitals in the past two decades.[25] In theory, community-based organizations were to supplant hospitals in providing services to those in need.[26] In practice, however, lack of planning, funding cutbacks and community resistance have combined to prevent this promised fulfillment,[27] resulting in large numbers of homeless mentally ill individuals.[28] Additionally, "the condition of living without shelter itself contributes to mental illness"[29] among the homeless. Statistics indicate that mentally ill individuals comprise anywhere from twenty to sixty percent of the homeless in this country.[30]

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24. For an in depth analysis of each factor see Stoner, *The Plight of Homeless Women*, SOC. SERV. REV. (1983). *See also* Stoner, *supra* note 4, at 4; HOMBS AND SNYDER, *supra* note 2.

25. *See generally* THE HOMELESS MENTALLY ILL (H.R. Lamb ed. 1984); HOMBS AND SNYDER, *supra* note 2, at 43-52. Crystal, *supra* note 20, at 2-3; Collins, *Comment: Homelessness: The Policy and the Law*, 16 THE URBAN LAWYER 18-20 (Spring 1984).

26. Collins, *supra* note 25, at 320; Crystal, *supra* note 20, at 3; Wickenden, *supra* note 2, at 24.

27. Crystal, *supra* note 20, at 3; Hope and Young, *From Back Wards to Back Alleyways: Deinstitutionalization and the Homeless*, 17 URBAN AND SOCIAL CHANGE REVIEW 7-9 (Summer 1984); Collins, *supra* note 25, at 320-21. Community resistance to local facilities often takes the form of restrictions in zoning ordinances. Although the ordinances may be invalidated, depending on the wording of the ordinance and the zoning enabling act, facilities for the homeless often lack the resources to challenge these laws. *Id.* at 321. It also should be noted that religious organizations often face the same difficulties with regard to zoning restrictions on shelters for the homeless.

28. *See generally* HOMBS AND SYNDER, *supra* note 2, at 43-52; Hope and Young, *supra* note 27, at 7.

29. Stoner, *An Analysis*, *supra* note 4, at 4.

30. Hope and Young, *supra* note 27, at 7; HOMBS AND SNYDER, *supra* note 2, at 6. *See also* Arce and Vergave, *Identifying and Characterizing the Mentally Ill Among the Homeless, reprinted in* THE HOMELESS MENTALLY ILL 88 (H.R. Lamb ed. 1984). In fact, Arce estimated the number of homeless who are mentally ill at 84%. *See generally* Arce, Tadlock, Vergrave and Shapiro, *A Psychiatric Profile of Street People Admitted to An Emergency Shelter*, 34 HOSPITAL COMM. PSYCHIATRY 812-17 (1983).

For an examination of possible legal theories available to the homeless mentally ill see Note, *A Right to Shelter for the Homeless*, 50 BROOKLYN L. REV. 939 (1984). The

C. *Economic Pressures Causing Homelessness*

Economic factors contributing to homelessness include the loss of employment, loss of social service benefits, inflation and the absence of decent, affordable housing.[31] Many commentators view these as the primary causes of the lack of shelter.[32] Despite the decrease in official unemployment figures over the past few years, the "trickle down" theory has not been evident on the streets and in the shelters, where many attribute their homelessness to unemployment.[33] When unemployment and inflation combine with cutbacks in, and elimination of, funding for social services, victims of such measures often end up on the streets.[34]

Lack of affordable housing stems from three separate but related problems. Low-income housing starts have dwindled;[35] urban renewal and condominium conversion have eliminated existing low cost inner-city housing;[36] and housing shortages have led to rent increases in other existing housing.[37] One author has viewed the lack of affordable housing as an interplay between the rise in poverty and increased housing costs,[38] with the gap between the limited ability to pay and the

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author posits two possible legal avenues: shelter as an entitlement once it has been provided through a mental health facility and shelter as a matter of the right to community aftercare. *Id.*

31. *See supra* note 14.

32. Hope and Young, *supra* note 21; Wickenden, *supra* note 2, at 20; Nelson, *supra* note 2, at 26.

33. *See, e.g.*, Stoner, *supra* note 4, at 2-3. Even the discredited HUD study estimates that unemployment causes homelessness for a substantial number of people. *See Report on Homelessness, supra* note 14.

34. *See generally* Hombs and Snyder, *Policies that Kill, reprinted in* HOMELESSNESS IN AMERICA: A FORCED MARCH TO NOWHERE 18-42 (1982). Although President Reagan denied that cutbacks would increase homelessness, in fact, cuts in social services do account for substantial increases in homelessness. *See id.* at 18. Since 1981, reduced assistance levels have been implemented in such government programs as Aid to Families with Dependent Children, unemployment benefits, food stamps and child nutrition programs. *See* Hartman, *Why They Have No Homes*, THE PROGRESSIVE, March 1985, at 26.

35. Hartman, *supra* note 34, at 27; *Homeless in America, supra* note 2, at 22-23. Low income housing construction came to a standstill in the 1970's. This may have contributed, in part, to the fact that median rent increased twice as fast as personal income during the same period.

36. *See* Kasinitz, *supra* note 6, at 9-14.

37. *See* Hartman, *supra* note 35, at 27.

38. Hartman, *supra* note 35, at 27.

availability of housing at that price steadily increasing.[39] Many impoverished individuals end up falling through the ever widening fissures in our social service system, thus creating newer classes of homeless.

D. *The Homeless—Changing Demographics*

As the causes of homelessness have changed, so too have the victims. The average age of those without shelter has dropped to under forty. Providers of food and shelter have noted dramatic increases in the number of women, children and whole families seeking emergency assistance.[40] Two major reasons explain increases in homelessness among these groups: some are homeless because of economic disaster;[41] others ran away or were "pushed out" of homes where there was violence or abuse.[42]

E. *The Response—Shelters and Shelter Providers*[43]

Both the public and private sectors have responded to the homeless-

39. *Id.* "Homelessness is, in sum, simply an extreme manifestation of poverty, and homelessness is on the rise because poverty is too. Economic pressures on the poor and near poor are intensifying while housing costs continue to climb. The result is an ever-widening gap between the shelter people can afford and the shelter people need." Hartman, *supra* note 34, at 27; *Homeless in America*, *supra* note 2, at 22; Sloss, *supra* note 22, at 18.

40. Nelson, *supra* note 2, at 28; Stoner, *supra* note 4, at 3.

41 *See* Nelson, *supra* note 2, at 28. *See also* Arce and Vergave, *Identifying and Characterizing the Mentally Ill Among the Homeless, reprinted in* THE HOMELESS MENTALLY ILL 76 (H.R. Lamb ed. 1984).

42. Stoner, *supra* note 4, at 1. Stoner reports:

> A growing number of homeless women and adolescent females report that they fled from their homes after repeated incidents of spousal abuse, rape, incest and desertion. Cuts in expenditures for welfare programs feature severe slashes in provisions for battered females and displaced homemakers who feature predominantly among data about the growing phenomenon of the "feminization of poverty."

Id.

For a report on homeless youth, see REPORT OF THE SUBCOMM. ON THE CONSTITUTION, COMM. ON THE JUDICIARY, HOMELESS YOUTH: THE SAGA OF "PUSHOUTS" AND THROWAWAYS IN AMERICA (1980).

43. This article's focus is only on emergency shelter for the homeless. It is recognized, however, that this type of shelter is but one small temporary step in eliminating homelessness and does not begin to address long term needs or solutions. Experts in the field recommend a three tier approach to providing assistance to the homeless. The first step, and the only one specifically addressed in this article, is the provision of emergency shelter and food. Transitional shelters, the second phase, recognize the need for continuing support services while advocating responsibility and eventual independence. Assistance would include help in securing permanent housing,

ness crisis. Where they exist, public provisions for shelter usually take one of two forms. The first form, single room occupant (SRO) vouchers, provide the individual with overnight accommodations in low-cost hotels in various states of disrepair, which one author alleged are among "the most squalid conditions of the housing market."[44] The alternative public offering consists of even less attractive public shelters, which are overcrowded,[45] understaffed, dehumanizing and dangerous.[46] Public shelters often are used as a last resort, after SROs and private shelters have reached their nightly capacity.[47]

The vast majority of assistance for the homeless comes from private organizations.[48] There are two types of private shelters: large shelters, usually run by missions, and small shelters that have been established through ad hoc efforts of local churches and nonprofit groups.[49] The large mission shelters present the same shortcomings as public shelters.[50] In general, smaller shelters are more humane than larger shelters.[51] Because of this, smaller shelters reach capacity quickly and

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governmental benefits and counseling. The third tier, long term residences, would actually provide stabilization and independent living in the form of group homes or individual apartment units. Low income housing and support personnel would be integral parts of this ideal three phase comprehensive system. *See* Baxter and Hopper, *supra* note 3, at 129-30; Stoner, *supra* note 4, at 7-8; Kaufman, *supra* note 1, at 22-24; .

44. Kasinitz, *supra* note 6, at 13.

45. Stoner, *supra* note 4, at 5.

46. *Homeless in America*, *supra* note 2, at 22-23; HOMBS AND SYNDER, *supra* note 2, at 130. Hombs and Snyder remark:

> [B]y any rational and humane standards, the conditions prevailing within the two [District of Columbia] municipal shelters for men are completely intolerable and unacceptable. Despite the waste, the filth, the mismanagement, the theft, the dehumanization and the brutality, we fight to keep them open. Why? Because for those who are willing to use the shelters, in spite of the conditions, the alternative is so much worse.

Id.

47. Some homeless individuals refuse to use public shelters even if no other shelter is available for fear that they will become victims of the crime which pervades the shelters. *See Homeless in America*, *supra* note 2, at 22.

48. *Emergency Assistance Programs: An Exploratory Survey*, UNITED WAY OF LOS ANGELES (1983); Stoner, *supra* note 4, at 5-6.

49. *See Emergency Assistance Programs*, *supra* note 48.

50. Stoner, *supra* note 4, at 6.

51. *Id.* Stoner found that:

> Provisions in the larger missions vary little from those in New York's public shelters. Intake and admissions procedures are demanding and judgmental . . . there is no doubt that these traditional shelters function on a humane basis. Nevertheless,

often have high turnaway rates.[52] Because private shelters operate on voluntary contributions they have limited resources.[53] The per person operating costs for these organizations, however, tend to be substantially lower than for public shelters.[54] Religious institutions predominate the field.[55] A study done by the Los Angeles chapter of the United Way found that religious organizations provided two-thirds of the emergency assistance programs offered in their geographic area.[56] Although many churches have recognized a religious obliga-

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they do reflect many of the harsh and punitive attitudes which society holds against the homeless.

Id. Small religious providers are often the most effective and compassionate. Hope and Young observe that:

> The best shelters are small, are sponsored by the parish and reflect that community's concern. Such refuges are quietly opening up all over the country. . , . In reality, most clients and shelter providers—and even many public officials—agree that private and religious sectors can do a better job than the city. Their shelters are less bureaucratic; the staff is motivated by the belief that before God every human being has worth. . . .

Hope and Young, *supra* note 21, at 58.

52. Bassuk and Lauriat, *The Politics of Homelessness, reprinted in* THE HOMELESS MENTALLY ILL 307 (H.R. Lamb ed. 1984); Hope and Young, *supra* note 21; Stoner, *supra* note 4.

53. Stoner, *supra* note 4, at 6.

54. *Homeless in America*, *supra* note 2, at 23. Lower costs result from volunteer staff, donation of food and supplies, and the provision of no formal psychiatric or social work services. *Id. See* Wickenden, *supra* note 2, at 21-25. Some private religious shelters report costs as low as one or two dollars a day per client; public shelters usually cost from ten to twenty dollars a day per client, and SRO facilities can run even higher. Hope and Young, *supra* note 21, at 51.

55. *Emergency Assistance Programs*, *supra* note 48. Although these facilities are operated by religious organizations, that does not mean they require religious adherence on the part of the recipients of shelter. "Although a few Salvation Army missions still require a sermon for supper, most directors have come to the conclusion that you cannot force religion on others." Hope and Young, *supra* note 21, at 50.

56. *Emergency Assistance Programs*, *supra* note 48. One expert believes that this figure is representative of cities nationwide, excluding only New York City. Stoner, *supra* note 4, at 5. New York is excluded because a consent decree issued in the case of Callahan v. Carey, No. 79-42582 (Sup. Ct. N.Y. County Aug. 26, 1981) established a right to shelter in New York under the New York State Constitution, Social Services Law and City Administrative Code. The New York State Constitution reads: "[T]he aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions. . . ." N.Y. CONST. art. XVII, § 1. *See also* N.Y. ADMIN. CODE tit. A, § 604-1.0(b) (1978).

Under the decree, sanitary and safe shelter, including board, security and supervision, are to be provided for each person who meets need standards set by New York, or who is in need of temporary shelter due to physical, mental or social problems. The original consent decree applied only to men, but the National Coalition for the Homeless filed a

tion to provide for those in need, thus opening shelters in response to the growing homelessness crisis, some church and community leaders have called for still more aid from religious organizations.[57] As religious communities increasingly recognize a duty to shelter the homeless, conflicts with government zoning laws arise. Therefore, as religious organizations seek to fulfill their duty to shelter the homeless, one can predict new and continuing conflicts. The next section of this article examines the fundamental nature of the duty to provide shelter to the homeless, as perceived by the religious providers.

III. SHELTERING THE HOMELESS: A BASIC OBLIGATION OF ADHERENTS OF THE JUDEO-CHRISTIAN FAITHS

Fundamental to Judeo-Christian[58] religious tenets is the obligation

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class action suit that led to a determination that the decree was to apply to women also. *See* Eldridge v. Koch, 118 Misc. 2d 163, 459 N.Y.S.2d 960 (1983).

Unfortunately, the city often has lagged in compliance with the provisions of the consent decree. The National Coalition for the Homeless currently is suing the City of New York for its failure to limit the number of persons accommodated in each shelter to 200. Nelson, *supra* note 2, at 28.

The right to shelter also has been established in West Virginia, where the state supreme court has required adult protective services be extended to the homeless. Hodge v. Ginsburg, 303 S.E.2d 214 (W. Va. 1983). Suits also have been filed in New Jersey, Maticka v. City of Atlantic City, No. 1836-84e (N.J. Super. filed Feb. 7, 1984); Connecticut, Lubetkin v. Hartford (Conn. Super. Ct.) (filed Feb. 3, 1984); and California, Ross v. Bd. of Supervisors (Cal. Super. Ct. filed June 11, 1984). *See also* BAXTER AND HOPPER, *supra* note 3, at 130.

For other statutorily enacted duties, see DEL. CODE ANN., tit. 31, § 501 (1975); CAL. WELF. & INST. CODE § 17000 (West 1980). *See also* Note, *Shelter for the Homeless*, 50 BROOKLYN L. REV. 939, 944-47 (1984).

Although the right to shelter, if established, may lead to a minimum level of provision of basic necessities, a state by state determination of their constitutional and public assistance provisions would be necessary.

57. In calling for additional assistance from religious organizations, Mayor Koch inquired as follows: "What is the traditional role of synagogues and churches, if not to house the homeless?" *See Who Is My Brother's Keeper?*, NEWSWEEK, January 3, 1983. *See also* Editorial, D. Peerman, *The Christian Century* March 9, 1983, at 207; Bernardin, *America's Social Sin*, COMMONWEALTH September 24, 1982, at 484. Reverend Bernardin quoted the Holy Father's "Yankee Stadium" address: "We cannot stand idly by enjoying our own riches and freedom, if, in any place, the Lazarus of the twentieth century stands at our doors. In light of the parable of Christ, riches and freedom mean a special responsibility." *See id.* at 489.

58. Although this analysis focuses on Judeo-Christian tenets, providing for the poor is also "one of the essentials" of the Islamic faith. *See* S. KOTB, SOCIAL JUSTICE IN ISLAM 73 (J. Hardie trans. 1970). Charity is required of believers, and is deemed to be a sign of "religious sincerity and depth of conscience." *Id.* at 74-75.

to provide charity to those who lack life's basic necessities.[59] One author alleges that the failure to make charitable contributions to the needy "is the failure to obey a commandment of God and is thus a sin against God, but it is also to deprive other men of what they are due as a result of God's command, and is thus a sin against man . . . the two cannot be separated."[60] The duty to aid those in need has been recognized since ancient times.[61] The New Testament teachings on charity emphasize the importance of giving alms.[62] Lest the reader begin to think that charity is encouraged as a *social* good: "Give to everyone that asks thee, and do not refuse, for the *Father's will* is that we give to all from the gifts we have received" (emphasis added).[63] Among those obtaining special status as assistance recipients are widows,[64] orphans,[65] the poor,[66] sojourners,[67] strangers[68] and the homeless.[69]

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59. Basic necessities may be interpreted as food, clothing and shelter. In *Politics of Homelessness, reprinted in* THE HOMELESS MENTALLY ILL (H.R. Lamb ed. 1984), Bassuk and Lauriat claim that the Salvation Army is the prime example of a religious group following the Judeo-Christian tradition of aiding the homeless by providing such necessities.

See generally W. PILGRIM, GOOD NEWS TO THE POOR (1981); J. PRITCHARD, ANCIENT NEAR EASTERN TEXTS 36 (1955); R. SIDER, RICH CHRISTIANS IN AN AGE OF HUNGER: A BIBLICAL STUDY (1977); D'Arcy, *Worthy of Worship—A Catholic Contribution, reprinted in* RELIGION AND MORALITY (G. Outka and J. Reeder eds. 1973).

60. D'Arcy, *supra* note 59, at 142.

61. *See* A. GEORGE, J. DUPONT, S. LEGASSE, GOSPEL POVERTY: ESSAYS IN BIBLICAL THEOLOGY 12 (1977).

62. "The height to which charity leads is inexpressible. Charity unites us with God . . . Charity endures all things. . . . By charity were the elect of God made perfect. Without it nothing is pleasing and acceptable in the sight of God." 1 *Clement* NEW TESTAMENT APOCRYPHA, 21:3-8. "Above all things put on charity, which is the hand of perfectness." COLONIANS, iii, 14.

63. TEACHING OF THE TWELVE APOSTLES 1 (2nd cent.).

64. R. SIDER, *supra* note 59, at 78; *see also Exodus* 22:20-23; *Deuteronomy* 10:17-18.

65. GEORGE, DUPONT, LEGASSE, *supra* note 61, at 12; *Exodus* 22:20-23. In Islam, those that "repulse the orphan" are viewed as having repudiated their faith. *See* KOTB, *supra* note 58, at 63.

66. *See, e.g., Deuteronomy* 24:10-21, 26:12-13; *Proverbs* 14:21-31, 19:17. *See also* PILGRIM, *supra* note 59, at 74-75.

67. The stranger and the sojourner were often one and the same; a traveler stopping briefly and then continuing on his journey. "I am a stranger and a sojourner with you." *Genesis* 23:4. "If a stranger sojourn with thee in your land, ye shall not vex him . . . thou shalt love him as thyself; for ye were strangers in the land of Egypt." *Leviticus* 19:33-34; *Deuteronomy* 10:17-18. *See* SIDER, *supra* note 59, 83-84.

Today's sanctuary movement for political refugees also has its roots in Judeo-Christian theology. The movement may derive its support from Biblical commands regarding the sojourner and stranger. Additional support is derived from the duty to love

The duty to shelter the homeless therefore can be seen as a basic and fundamental part of religious obligation in the Judeo-Christian tradition.[70] Both the Old and the New Testaments contain directives to provide refuge for the homeless.[71] For example, the Book of Isaiah states: "Is not this fact that I choose: to loose the bonds of wickedness, to undo the thongs of the yoke, to let the oppressed go free, and to break every yoke? Is it not to share your bread with the hungry, and *bring the homeless into your house.*"[72] Luke, in obeying the religious mandate to care for those in need, stated: "Go out quickly into the streets and lanes of the city and bring in the poor and the maimed and the halt, and the blind . . . and compel them to come in, that my house may be filled."[73] Jesus himself was described as homeless. He had no

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one's neighbor. *See, e.g.*, Jorstad, *Sanctuary for Refugees: A Statement on Public Policy*, THE CHRISTIAN CENTURY March 14, 1984, at 275.

A national sanctuary defense fund has been established by the Franciscan Friars; sanctuary workers use religious teachings as support. There is, however, an analytical distinction between the sanctuary movement and shelters for the homeless. While religious convictions may lead churches to engage in both activities, current immigration laws forbid individual determinations of the granting of asylum. The courts grant great deference to legislative determinations involving foreign policy matters. *See, e.g.*, Rosteker v. Goldberg, 448 U.S. 1306 (1979). The fact that immigration matters involve political decisions impacting on foreign affairs likely would result in a compelling state interest overriding any stricter standard of review. These types of concerns are not present when considering shelters for the homeless, and, therefore, the analysis cannot be treated in the same manner as one would analyze shelter for refugees.

68. *Matthew* 25:35, "For I was hungry and ye gave me meat, I was thirsty, and ye gave me drink; I was a stranger and ye took me in;" *Hebrews* 8:2, "Be not forgetful to entertain strangers: for thereby some have entertained angels unawares;" *Leviticus* 25:35, "you shall maintain him, as a stranger and a resident alien he shall *live with you.*" (emphasis added). OGLETREE, HOSPITALITY TO A STRANGER (1985), and J. KOENIG, WELCOMING THE STRANGER: NEW TESTAMENT HOSPITALITY FOR THE CONTEMPORARY CHURCH (1985), explore the concept of hospitality in the New Testament. *See also* J. ELLIOTT, A HOME FOR THE HOMELESS, 146-47 (1981).

In the Islamic religion, Allah requires that a stranger be treated like one's relatives, and is entitled to receive charity. KOTB, *supra* note 58, at 81.

69. C. BOERMA, THE RICH, THE POOR AND THE BIBLE 49 (1980). Originally, provisions for the homeless may have been derived from the obligation to offer hospitality to the stranger or sojourner, who was without an available home of his own.

70. *See supra* notes 12-16 and accompanying text.

71. *See Isaiah* 14:30, 58:6-9; *Job* 31:16-22; *Matthew* 25:35.

In the Islamic faith, the residents of Medina took in the homeless and shared with them. *See* KOTB, *supra* note 58, at 76.

72. *Isaiah*, 58:3-7 (emphasis added). *See* SIDER, *supra* note 59, at 81.

73. *Luke* 14:21-23.

roof over his head, nor did he have a bed on which to sleep.[74]

If assistance is not rendered, or if it is undermined by oppression of the poor, the Bible teaches that those who fail to act will be rejected as religious hypocrites.[75] Those who fail to obey the command to shelter the homeless face condemnation and retribution.[76] The Bible states: "If I have seen any perish for want of clothing or any poor *without covering*; . . . then let my arm fall from my shoulder blade and my arm be broken from the bone."[77]

Because of the religious command to shelter the homeless, ecclesiastic organizations have taken the lead in providing lodging for those in need. The theological underpinning of what at first glance appears to be a charitable impulse is actually the fulfillment of a course of conduct mandated by, and central to, both the Jewish and the Christian faiths.

IV. RELIGOUS AND ACCESSORY USES—AN OVERVIEW

A. *Religous Use*

The question of what constitutes a religious use under zoning laws involves a complex analysis of first amendment guarantees and the legitimate planning and protective purposes inherent in municipal zoning powers.[78] Problems of religious uses conflicting with municipal zoning ordinances arise because, in most states, religious uses are perceived as contributing to public welfare and morals.[79] Furthermore,

74. *Luke* 2:7-17, 9:58; *Matthew* 8:20.

75. SIDER, *supra* note 59, at 80-81; PILGRIM, *supra* note 59, at 29.

76. *Id.*

77. *Isaiah*, 58:3-7 (emphasis added).

78. For a thorough discussion of this issue, see Walker, *What Constitutes a Religious Use for Zoning Purposes?*, 27 CATH. LAW. 129 (Spring 1982). *See also* Note, *Judicial Definition of Religous Use In Zoning Cases*, URB. LAW ANN. 291 (1973); Annot., 62 A.L.R.3d 197 (1975).

79. Some zoning ordinances permit "educational, religious or philanthropic use." *See* Schueller v. Bd. of Adjustment, 250 Iowa 706, 95 N.W. 2d 731 (1959). Others allow "religious uses." *See* Slevin v. Long Island Jewish Medical Center, 66 Misc. 2d 312, 319 N.Y.S. 2d 937 (Sup. Ct. 1971); still others allow use for "religious purposes." *See* First Free Methodist Church v. Upper Dublin Township, 76 Montg. Co. LR 316 (Pa. 1959).

Courts repeatedly emphasize the purpose and moral value of religious institutions. A religious use's contribution to public welfare is regarded as beyond discussion or dispute. "Fostering rather than hindering such uses is considered to be established policy." 2 R. ANDERSON, AMERICAN LAW OF ZONING, § 12.18, at 442 (2d ed. 1976). *See also* Diocese of Rochester v. Planning Bd., 1 N.Y.2d 508, 136 N.E.2d 827, 154 N.Y.S.2d 849 (Sup. Ct. 1956). *But cf.* Corporation of Presiding Bishop of Church of

the first amendment free exercise clause protects religious uses.[80]

A religious use might be in conflict with a municipality's zoning plan or the goals incorporated in local ordinances.[81] Typical conflicts are neighbors claiming that a religious use: increases congestion or leads to additional noise and traffic,[82] imposes an additional tax burden on the community,[83] changes the character of their neighborhood,[84] or

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Jesus Christ of Latter Day Saints v. City of Porterville, 90 Cal. App. 2d 656, 203 P.2d 823 (Cal. Ct. App. 1949), *appeal dismissed*, 338 U.S. 805 (1949) (minority view, which treats religious organizations the same as all other uses).

80. The first amendment has been held incorporated into the fourteenth amendment and thus applicable to the states. *See* Cantwell v. Connecticut, 310 U.S. 296, 303 (1940).

81. Euclid v. Ambler Realty Co., 272 U.S. 365 (1926); Nectow v. City of Cambridge, 277 U.S. 183 (1928). Zoning laws are enacted under state police powers, *Nectow*, 277 U.S. at 188, and usually are favored with a presumption of constitutionality when enacted to carry out legitimate state interests. State police powers typically include the power to zone for public health, safety and welfare. *Euclid*, 272 U.S. at 388-89, 395; Village of Belle Terre v. Boraas, 416 U.S. 1, 9 (1974).

When a fundamental right is implicated, however, a strict standard of review may be applied. *See* Moore v. City of East Cleveland, 431 U.S. 494 (1977) (invalidating zoning ordinance that used restrictive definition of family because it violated fundamental rights). Because the first amendment right to the free exercise of religion is an express constitutional right, and therefore a fundamental right, it follows that the state would need a compelling interest in order to regulate religious conduct. *See* Wisconsin v. Yoder, 406 U.S. 205, 221-24 (1972); Sherbert v. Verner, 374 U.S. 398, 406-09 (1963). The analysis is complicated further because religious institutions are viewed as contributing to benefit the public welfare and morals, thereby eliminating some of the traditional grounds for regulation. *See* Diocese of Rochester, 1 N.Y.2d at 526, 136 N.E.2d at 836-37, 154 N.Y.S.2d at 862.

82. *See, e.g., Diocese of Rochester*, 1 N.Y.2d 508, 136 N.E.2d 827, 154 N.Y.S.2d 849 (1956); Westchester Reform Temple v. Brown, 22 N.Y.2d 488, 293 N.Y.S.2d 297 (Sup. Ct. 1968); R. ANDERSON, *supra* note 79, § 12.22, at 454. Although traffic and congestion are legitimate objects of zoning regulations, many courts have downplayed the significance of these factors as applied to church properties.

Whether or not zoning laws are permitted to restrict the use of religious property, private residents still may employ restrictive covenants to limit the uses of land. Courts generally have been willing to enforce restrictive covenants that exclude churches from particular neighborhoods. *See* Evangelical Lutheran Church of the Ascension v. Salem, 254 N.Y. 161, 172 N.E. 455 (Ct. App. 1930). In fact, courts will enforce such covenants even if the applicable zoning ordinance expressly permits such use. *See* Strauss v. Ginzberg, 218 Minn. 57, 15 N.W.2d 130, (1944).

83. 2 R. ANDERSON, *supra* note 79, § 12.18, at 444. This argument rarely will succeed, particularly in light of the fact that the tax exempt determination made by the federal government embodies a policy decision on a national level. *Id.* at 443.

84. *Id.*, § 12.24, at 457. Anderson states:

[T]he courts have not been impressed with proof that a religious use would disturb the peace and quiet of a residential neighborhood or deprive it of its residential

decreases the value of their property.[85] The quandary is how to address community concerns and zoning ordinance mandates while recognizing the constitutionally protected status of religious organizations and honoring the first amendment guarantee of free exercise of religion. In general, religious uses of property are "in some degree protected from the full impact of zoning restrictions.[86] Although religious organizations are not completely immune from zoning laws or regulations,[87] the need for central, residential location has set religious uses apart and justified special treatment."[88] One expert notes the traditional view of the church as merely constituting a place for weekly prayers has changed significantly over the years.[89]

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character. Even when those factors were found acting in concert to change the character of a neighborhood, the courts have not always been so impressed as to approve the exclusion of a religious use.

See also Congregation Committee, North Fort Worth Congregation, Jehovah's Witnesses v. City Council, 287 S.W.2d 700 (Tex. Civ. App. 1956).

85. *Id.* Anderson also states:

[T]he courts have said that while the location of religious uses may be regulated in the proper case, the freedom of religious and other first amendment rights rise above mere property rights, and far above public inconvenience, annoyance or invest. An adverse effect in property values is an insufficient reason for denial of a permit to establish a religious use; the high purpose and moral values of a religious use outweigh mere pecuniary loss to a few persons.

Id. at 453. *See also* Columbus Park Congregation of Jehovah's Witnesses, Inc. v. Bd. of Appeals, 25 Ill.2d 65, 182 N.E.2d 722 (1962); West Chester Reform Temple v. Brown, 22 N.Y. 2d 488, 239 N.E.2d 891, 293 N.Y.S.2d 297 (Sup. Ct. 1968); *Diocese of Rochester*, 1 N.Y.2d 508, 136 N.E.2d 827, 154 N.Y.S.2d 849 (1956).

86. 2 R. ANDERSON, *supra* note 79, § 12.18, at 442; Brindel, *Zoning Out Religious Institutions*, 32 NOTRE DAME LAW. 627 (1957).

87. 2 A.R. ANDERSON, *supra* note 79, § 12.18, at 444. Even when a municipality cannot exclude a religious use, the institution will be subject to normal fire laws, building codes and other reasonable regulations. City of Sherman v. Simms, 143 Tex. 115, 183 S.W.2d 415 (1944).

88. 2 R. ANDERSON, *supra* note 79, § 12.18, at 444. Anderson notes that a central location is crucial because of service to only a limited area and the need for a central location for "civic and charitable" organizations. *Id.* Although cars and mass transportation may weaken this necessity, some religions prohibit driving or riding during the Sabbath. Therefore, despite technological advances, religious tenets still may mandate a central location for the religious facilities.

89. A. RATHKOPF, THE LAW OF ZONING AND PLANNING at § 20.03 (4th ed. 1979). "The concept of what constitutes a church has changed from a place of worship alone, used once or twice a week, to a church used the entire week, nights as well as day, for various parochial and community functions. . . . The question arises as to the extent to which the additional activities are covered by the cloak of immunity that traditionally has been extended to the church." *See* Unitarian Universals Church v. Shorten, 63 Misc.2d 978, 324 N.Y.S.2d 66 (1970)

Although courts have held that churches may be regulated in proper situations, religious freedom rises above "mere property rights, public inconvenience, annoyance or unrest."[90] Courts accommodate the competing interests by balancing the advantages of religious uses with the municipality's need to control land use.[91]

We now turn our focus to cases involving an alleged religious use in an area allowing churches or religious groups, either through permissive zoning or special or conditional permits.[92] Although cases are fact-specific and based on local ordinances and state judicial interpretation, several general approaches are identifiable.[93]

Texas courts exemplify the most restrictive approach.[94] The lower

90. 2 R. ANDERSON, *supra* note 79, § 12.21, at 453 (citing Columbus Park Congregation of Jehovah's Witness, Inc. v. Bd. of Appeals, 25 Ill.2d 65, 182 N.E.2d 722 (1962); *In re* Garden City Jewish Center, 2 Misc.2d 1009, 155 N.Y.S.2d 523 (1956); State *ex rel.* Anshe Chesed Congregation v. Bruggemeier, 97 Ohio App. 67, 115 N.E.2d 65 (Ohio Ct. App. 1953)).

91. 2 R. ANDERSON, *supra* note 79, § 12.18, at 444. *See also* Jewish Reconstructionist Synagogue, Inc. v. Roslyn Harbor, 38 N.Y.2d 283,379 N.Y.S.2d 747,342 N.E.2d 534, *cert. denied*, 426 U.S. 950 (1976).

92. Because the focus of this article is a determination of religious or accessory use *after* a church has located in a given area, the issue is not how the church was granted the right to build in a given area. Municipalities, however, use a number of zoning techniques to further the goals of the plan while still maintaining flexibility. *See* 2 R. ANDERSON, *supra* note 79, § 9.18, at 134. Some of these techniques include special permits, designed to permit special uses of land after administrative determination that there will be only minimal adverse impact in the surrounding neighborhood. *Id.*; 6 P. ROHAN, ZONING AND LAND USE CONTROLS § 44.01 (1985); *see also* Note, *The Use and Abuse of the Special Permit in Zoning Law*, 35 BROOKLYN L. REV. 258, (1969).

Special exceptions may be granted when application of a rule imposes unnecessary hardship for an individual. 3A RATHKOPF, THE LAW OF ZONING AND PLANNING § 1 (4th ed. 1979). Conditional use permits also may be issued, allowing use of property subject to certain restrictions, regardless of whether that use was specifically provided for under the zoning ordinance. After a plot is given a conditional use permit, the land usually is re-zoned to include the conditional use. 2 R. ANDERSON, *supra* note 79, § 9.20, at 135-40; C. CRAWFORD, STRATEGIES AND TACTICS IN MUNICIPAL ZONING 196-97 (2d ed. 1979).

Variances are authorizations from the administrative council to depart from the zoning ordinance's requirements. Variances run with the land and are applicable to subsequent purchasers. Usually, in order for a variance to be granted, the landowner must prove both hardship, and that no use contrary to public welfare will result.

93. *See infra* notes 160-75 and accompanying text for a discussion of the different approaches to religious use.

94. *See* Note, *supra* note 78, at 294. New Jersey similarly restricts the definition of religious use. *Id.* In one case, a New Jersey state court denied an application to construct a mikvah in a residential neighborhood. Sexton v. Bates, 17 N.J. Super. 246, 85 A.2d 833 (1951), *aff'd*, 21 N.J. Super 329, 91 A.2d 162 (N.J. Super. Ct. App. Div.

courts in Texas narrowly construe the meaning of religious use.[95] In *Coe v. City of Dallas*,[96] the Dallas zoning board determined that 2400 square feet of healing rooms and 600 square feet of sanctuary did not constitute a church. The court upheld the zoning board's decision.[97] Nontraditional prayer healing activity to be conducted on the site may have resulted in the board's decision to deny a building permit even though appellants planned to construct prayer rooms and hold regular congregational services.[98]

Pennsylvania courts approach the problem somewhat differently; they look at the use's purpose to determine whether the conduct in question constitutes a "religious use" of the property.[99] Under this analysis, if the purpose is found to be secular, the zoning ordinance will be upheld.[100] Thus, a cemetery was found to be a secular use because mere ownership of land by a religious entity does not render the proposed use religious in nature.[101] Under the same test, a religious, for-

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1952). For a contrary decision in New York, see Mikvah of South Shore Congregation, Inc. v. Granito, 78 A.D.2d 855, 432 N.Y.S. 2d 638 (1980). Later cases from New Jersey indicate, however, that the courts there no longer narrowly construe these items. In fact, one of the two cases holding that the provision of shelter for the homeless is a valid religious or accessory use of church facilities is a New Jersey decision. *See* St. John's Evangelical Lutheran Church v. Hoboken, 195 N.J. Super. 414, 479 A.2d 935 (1983).

California is most restrictive regarding whether churches may be excluded from certain areas. *See* Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Saints v. City of Porterville, 90 Cal. App. 2d 656, 203 P.2d 823 (Dist. Ct. App. 1949), *appeal dismissed*, 338 U.S. 805 (1949). *See also* Comment, *Zoning the Church: Toward a Concept of Reasonableness*, 12 CONN. L. REV. 571 (1980). In City of Chula Vista v. Pagard, 97 Cal. App. 3d 627, 159 Cal. Rptr. 29 (Ct. App. 1979), *vacated*, 115 Cal. App. 3d 785, 171 Cal. Rptr. 738 (Ct. App. 1981), the California Court of Appeals held that a zoning ordinance survived a free exercise challenge, finding that "[t]he proposal to use a particular property as situs for the practices of a religious belief does not cloth that property with immunity or authorize non-conformity to zoning laws." 159 Cal. Rptr. at 38. While this case is inapplicable to this discussion because it dealt with a household, rather than a religious organization, it illustrates the restrictive view California courts take regarding zoning religious organizations.

95. Heard v. City of Dallas, 456 S.W.2d 440 (Tex. Civ. App. 1970).

96. 266 S.W.2d 181, 183 (Tex. Civ. App 1953).

97. *Id.*

98. *Id. See* Walker, *supra* note 78, at 162-64. Walker argues that *Coe* is representative of cases taking a narrow view of what constitutes religious activity under a given zoning ordinance. *Id.* at 162.

99. *See generally* Note, *Church Zoning in Pennsylvania*, 22 U. PITT. L. REV. 591 (1961); Walker, *supra* note 78, at 160-62.

100. *In Re* Russian Orthodox Church, 397 Pa. 126, 152 A.2d 489 (1959).

101. *Id.* Justice McBride, dissenting, pointed out that whether the cemetery was found to be a religious use hinged on whether the ordinance was broadly or narrowly

profit radio station was held not to be a religious use.[102] In contrast, the use of property to lodge traveling missionaries, conduct office work and hold religious classes was found to be a religous use meeting the definition of a church,[103] as was the use of property for a religious retreat house for the Franciscan Fathers. In this case the court found that the term "church" was to be broadly construed to include "any purpose connected with the religious practices which the group or sect maintaining that particular church desires to pursue."[104]

A third approach in determining whether the proposed activity is a religious use focuses on the type of structure involved.[105] In *Portage Township v. Full Salvation Union*,[106] camp meetings requiring the use of tents and shacks were found to violate the local zoning ordinance.[107] In another case, the proposed use of a residential dwelling as a mikvah (ritual bath) was denied, even though the ordinance allowed churches in a residential area.[108]

One state court has explicitly called for a balancing test when determining whether a proposed use should be allowed. In *City of Sumner v. First Baptist Church of Sumner*,[109] the Supreme Court of Washington concluded that a vacation bible school is an integral part of the church's religious faith.[110] Although the court recognized the munici-

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construed. He would "operate in favor of liberty" and allow the use because "according to the tenets, precepts or ecclesiastical law of a religious faith the act of burial is a religious rite, such cemetery constitute a religious use of land permitted by the ordinance." *Id.* at 134, 152 A.2d at 493.

102. Gallagher v. Zoning Bd. of Adjustment, 32 Pa. D & C. 2d 669 (Dist. & County Ct. 1963). *See also* Walker, *supra* note 98, at 160-61.

103. Conversion Center v. Zoning Bd. of Adjustment, 2 Pa. Commw. 306, 278 A.2d 369 (1971).

104. *In re* Stark, 72 Pa. D & C. 168, 189 (1950).

105. *See* Portage Township v. Full Salvation Union, 318 Mich. 693, 29 N.W.2d 297 (1947), *appeal dismissed*, 333 U.S. 851 (1948), *reh'g denied*, 334 U.S. 830 (1948).

106. 318 Mich. 693, 699-700, 29 N.W.2d 297, 300 (1947).

107. The shacks did not meet local building code standards for construction, sanitation and facilities. *Id.* Defendants' argument was, in effect, that the structure should be categorized as a church because the meeting was held for religious purposes. *Id.* The court concluded, however, that not every place where religious services are held is a church. *Id.* The court ultimately held that the meetings constituted a nuisance. *Id.* at 703, 29 N.W.2d at 302.

108. Sexton v. Bates, 17 N.J. Super. 246, 85 A.2d 833 (1951), *aff'd*, Sexton v. Essex County Ritualarium, 21 N.J. Super. 329, 91 A.2d 162 (1952).

109. 97 Wash. 2d 1, 639 P.2d 1358 (1982).

110. *Id.*

pality's right to enact zoning requirements in the interest of health, safety and welfare, it required the state to be flexible and to weigh the church's first amendment interests before restricting the use.[111]

Other state courts take the approach that facilities are an integral part of church functioning and cannot be excluded if the church itself is permitted.[112] Under this approach, religious schools,[113] a "sisters' home" for the church school's teachers[114] and a dormitory for married graduate students at a church school[115] have all been upheld as religious uses.

The most inclusive view of religious uses is best exemplified by the approach taken by New York courts, which broadly view religious use as "conduct with religious purpose."[116] One commentator has interpreted this phrase to include "any conduct which is in accordance with the doctrines, practices or regulations of a religious organization."[117]

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111. *Id.* at 7-8, 639 P.2d at 1362-63. The court used the standard enunciated in Wisconsin v. Yoder, 406 U.S. 205 (1972), requiring a compelling state interest and the least restrictive means of achieving the public interest. 97 Wash. 2d at 10, 639 P.2d at 1363-64. "In the final analysis, accommodation between the competing interests must be the goal. Only if such accommodation is not possible should one legitimate interest overrule the other." *Id.*

112. Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Saints v. Ashton, 92 Idaho 571, 575-76, 448 P.2d 185 (Idaho 1968); Bd. of Zoning Appeals v. Schulte, 241 Ind. 339, 346-47, 172 N.E.2d 39, 42 (Ind. 1961); Board of Zoning Appeals v. Wheaton, 118 Ind. App. 38, 45-47, 76 N.E.2d 597, 600-01 (Ind. App. 1948); Scott Co. v. Roman Catholic Archbishop for Diocese of Oregon, 83 Or. 97, 163 P. 88, 91-92 (1917). *See* Note, *supra* note 78, at 294.

113. 241 Ind. at 346-47, 172 N.E.2d at 42; City of Concord v. New Testament Baptist Church, 118 N.H. 56, 382 A.2d 377, 379-80 (1980).

114. Bd. of Zoning Appeals v. Wheaton, 118 Ind. App. 38, 76 N.E.2d 597 (1948).

115. Schueller v. Bd. of Adjustment, 250 Iowa 706, 709, 95 N.W.2d 731, 733 (1959). The ordinance at issue in *Schueller* allowed "educational, religious or philanthropic use, excluding business school and college in correctional institutions." *Id.* at 711, 95 N.W.2d at 735. The court found that the dormitory was a proper educational and religious use. *Id.*

116. Slevin v. Long Island Jewish Medical Center, 66 Misc. 2d 312, 316, 319 N.Y.S.2d 937, 943 (Sup. Ct. 1971). *See generally* 2 R. ANDERSON, *supra* note 79, § 12.25, at 458-60; Walker, *supra* note 78, at 170-83; Note, *supra* note 78, at 291; Comment, *Zoning the Church: Toward A Concept of Reasonableness*, 12 CONN. L. REV. 571, 577-86 (1980).

Anderson cites cases decided by the state courts of Indiana, Oregon and Ohio as adhering to the New York view. *See* 2 R. ANDERSON, *supra* note 79, § 12.25, at 459-60. *See also* Corp. of Presiding Bishops v. Ashton, 92 Idaho 571, 448 P.2d 185 (1968); Mahrt v. First Church of Christ Scientist, 75 Ohio L. Abs. 5, 142 N.E.2d 567 (C.P. 1955).

117. Note, *supra* note 78, at 292.

As noted in *Community Synagogue v. Bates*,[118]

> A church is more than merely an edifice affording people the opportunity to worship God. Strictly religious uses and activities are more than prayer and sacrifice, and all churches recognize that the area of their responsibility is broader than leading the congregation in prayer. Churches have always developed social groups for adult and youth where the fellowship of the congregation is strengthened with the result that the parent church is strengthened. We find evidence of this in the Old Testament. . . . To limit a church as being merely a house of prayer and sacrifice would, in a large degree, be depriving the church of this opportunity of enlarging, perpetuating and strengthening itself and the congregation. . . . Each case ultimately rests on its own facts.[119]

Stated simply, activity related to the purpose of a religious organization is a religious use.[120] In *Diocese of Rochester v. Planning Board*,[121] a companion case to *Bates*, the court spoke of the high moral purposes of religious organizations, and ruled that diminished neighborhood property values, decreased enjoyment of surrounding lots, increased traffic and loss of tax revenues were insufficient grounds to bar church facilities from a neighborhood.[122] The court further found that religious activities encompassed more than just prayers.[123]

The post-*Bates* decisions occurred in two phases.[124] The first stage included cases that involved religious uses directly benefitting the religious organization's members.[125] In one case, radio and television broadcasts were held to be religious uses because these activities fulfilled the religion's mandate to spread the faith's beliefs.[126] Another

118. 1 N.Y.2d 445, 136 N.E.2d 488, 154 N.Y.S.2d 15 (1956).

119. *Id.* at 453, 136 N.E.2d at 493, 154 N.Y.S.2d at 21-22. *See also* 2 R. ANDERSON, *supra* note 79, § 12.25, at 460.

120. 2 R. ANDERSON, *supra* note 79, § 12.25, at 460.

121. 1 N.Y.2d 508, 136 N.E.2d 827, 154 N.Y.S.2d 849 (1956).

122. *Id.* at 524-25, 136 N.E.2d at 835-36, 154 N.Y.S.2d at 861-62.

123. *Id.* at 525-26, 136 N.E.2d at 836, 154 N.Y.S. 2d at 862. In *Rochester*, the court found a parish house and convent to be religious uses of church and school property. *Id.* (quoting Bd. of Zoning Appeals of Indianapolis v. Wheaton, 118 Ind. App. 38, 47, 76 N.E.2d 597, 601 (1948)).

124. Note, *supra* note 78, at 293.

125. *Id.*

126. *In re* Faith for Today, Inc., 11 A.D. 2d 718, 719, 204 N.Y.S.2d 751, 753 (App. Div. 1960). *See also* Note, *supra* note 78, at 293.

case in this stage permitted sisterhood and men's club meetings.[127]

In the second phase, New York courts held that religious use includes activities benefitting more than just the congregants of that particular group.[128] One of these cases involved a day care center.[129] Another involved a Sunday center for performing arts.[130] In both of these cases the courts held that the state interests did not meet the "stricter scrutiny" required when constitutionally protected religious and educational institutions are involved.[131] In *North Shore Hebrew Academy v. Wegman*,[132] the court rejected the evidence presented by neighbors as "motivated primarily by their speculation and fears" and stated that the record lacked "substantial evidence that the proposed center . . . will have a direct and immediate adverse effect upon the health, safety and welfare of the community."[133]

In *Slevin v. Long Island Jewish Medical Center*,[134] a church parish house established a center for youths with drug problems. The New York Supreme Court held such use valid under an ordinance allowing the use of buildings for religious purposes.[135] The court noted that other religious organizations were addressing the problem of drug

127. *In re* Garden City Jewish Center, 2 Misc. 2d 1009, 157 N.Y.S.2d 435 (Sup. Ct. 1956).

128. *See* Note, *supra* note 78, at 293; Unitarian Universalist Church v. Shorten, 63 Misc. 2d 978, 314 N.Y.S.2d 66 (Sup. Ct. 1970); Westbury Hebrew Congregation, Inc. v. Downer, 59 Misc. 2d 387, 302 N.Y.S.2d 923 (Sup. Ct. 1969); Diocese of Central New York v. Schwarzer, 23 Misc. 2d 515, 199 N.Y.S.2d 939 (Sup. Ct. 1960).

129. Unitarian Universalist Church v. Shorten, 63 Misc. 2d 978, 324 N.Y.S.2d 66 (Sup. Ct. 1970). Even though the center was to be run by a separate, but affiliated nonprofit corporate entity, the court found the day care center was a religious activity and needed no additional permit. *Id.* at 981-82, 314 N.Y.S.2d at 70-71. The court also based the ruling on the established state policy favoring the creation of day care centers. *Id.* at 980, 314 N.Y.S.2d at 69.

130. North Shore Hebrew Academy v. Wegman, 105 A.D.2d 702, 481 N.Y.S.2d 142 (App. Div. 1984) (Sunday classes in music, folk dancing and dramatics open to academy pupils and children not enrolled in the academy).

131. *Shorten*, 63 Misc. 2d 978, 981, 314 N.Y.S.2d 66, 70. The court recognized that defining religious activity is difficult, but a day care center was clearly "within the ambit of religious activity." *Id.* at 982, 314 N.Y.S.2d at 71. *See Wegman*, 105 A.D.2d 702, 705, 481 N.Y.S.2d 142, 145 ("religious and education institutions enjoy a constitutionally protected status which severely limits applications of normal zoning standards" (quoting *Shorten*, 63 Misc. 2d at 981, 314 N.Y.S.2d at 70)).

132. 105 A.D.2d 702, 418 N.Y.S.2d 142.

133. *Id.* at 706, 418 N.Y.S.2d at 145.

134. 66 Misc. 2d 312, 319 N.Y.S.2d 937 (Sup. Ct. 1971).

135. *Id.* at 315-16, 319 N.Y.S.2d at 943.

abuse and recognized that, because a breakdown of spiritual and moral value is implicit in drug abuse, drug abuse's moral allienation seems explicitly a religious problem.[136] The court held that the drug program was an effort by the congregation to meet religious duties to heal and to help others in need.[137] The court was unconcerned with the facts that some of the participants were from surrounding communities and that the program was to be run by a local hospital.[138] As the court noted:

> If a use of church property is a religious use, why should it matter that those of other religions or beliefs will benefit, or that the church engages in contracts or permits specialists or professional people on its premises to execute the religious use? The thought of limiting benefit struggles against the strong modern current of pan-ecumenicalism, and frustrates the desirable mutual interchange of use of religious institutions in our society today. . . .[139]

Despite the court's broad view, it did recognize that some activities might present such a danger to the community that the state's interest would have to overrule the religious use.[140] In order to prove that its interest is paramount, the state must show convincingly that the religious use will cause a "direct and immediate adverse impact"[141] upon the community. The court stated that community fears would not suffice and imposed a requirement of accommodation whenever possible. As the *Slevin* decision was to ultimately rest on determinations of fact,[142] the court remanded the case for a determination of whether the dangers were "unreasonable," and in need of "reasonable regulation weighed in relation to the total safety, health and morals of the community."[143]

In sum, at least four different approaches exist to enable courts to attempt to define religious uses and reconcile competing fundamental

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136. *Id.* at 317, 319 N.Y.S.2d at 944.

137. *Id.* at 317-18, 319 N.Y.S.2d at 945-46. "The drug center program seeks to discharge a spiritual duty felt by clergymen and their congregants . . the drug center program is a "specific effort to be obedient to Christ's command to heal." *Id.* at 317, 319 N.Y.S.2d at 945 (quoting Rt. Rev. Jonathan G. Sherman, Episcopal Bishop of Long Island).

138. *Id.* at 318, 319 N.Y.S.2d at 946.

139. *Id.*

140. *Id.* at 319, 319 N.Y.S.2d at 947.

141. Walker, *supra* note 78, at 177.

142. *Slevin*, 66 Misc.2d at 321, 319 N.Y.S.2d at 948.

143. *Id.* at 329, 319 N.Y.S.2d at 947.

interests. Although New York presents the broadest view, one author notes that "most uses held to not qualify as 'religious use' . . . seem more remote from traditional concepts of church and religion than those held to qualify."[144] Even if a use does not meet the standard employed to determine a protected religious use of property, however, it may qualify as a valid accessory use of religious property.

B. *Accessory Use*

Accessory uses[145] are those uses usually accompanying and subordinate to a particular property's primary use.[146] An accessory use generally must be one which is "customarily incident" to a related primary use.[147] In addition, the subsidiary use typically must be on the same lot as the principal use.[148] The chief benefit of accessory status is that once a use has been defined as accessory to an already established religious primary use, no additional approval or permit is necessary.[149] Therefore, to determine whether a given use is accessory, the primary use of the property must be identified first.[150] Because of the special status given to religious entities in our society,[151] there must be flexibility in defining what constitutes an accessory use for religious institutions. A majority of jurisdictions permit a wide range of accessory uses

144. *See* Annot., 62 A.L.R.3D 197 (1975). Walker wishes to eliminate precisely this approach because it fails to recognize that nontraditional religious beliefs are also protected under the first amendment. He suggests that courts look first to the sincerity of the religious belief and then balance the use against any valid objections. If necessary, regulating the use to lessen its adverse impact would ensue. *See* Walker, *supra* note 78, at 183.

145. Accessory uses are known also as incidental uses. For a general discussion of what constitutes an accessory use of religious property, see Annot., 11 A.L.R. 4th 1084 (1982).

Although some ordinances explicitly delineate what is to be considered an acceptable accessory, other boards are content to allow the courts to define the term. Note, *Zoning: Accessory Uses and the Meaning of the Customary Requirement*, 56 B.U. L. REV. 542 (19760.

146. 3 N. WILLIAMS, AMERICAN PLANNING LAW, § 74.15, at 416-17 (1975); Annot., 11 A.L.R. 4th 1084, 1086 (1982).

147. 1 R. ANDERSON *supra* note 79, § 12.26, at 148 (2d ed. 1976). *See* 3 N. WILLIAMS, *supra* note 146, § 74.08, at 405; 11 A.L.R. 4th 1084, 1086.

148. 1 R. ANDERSON, *supra* note 79, § 12.26, at 148.

149. *Id.*

150. Beit Havurah v. Zoning Bd. of Appeals, 177 Conn. 440, 447, 418 A.2d 82, 86 (1979).

151. City of Minneapolis v. Church Universal and Triumphant, 339 N.W.2d 880, 889 (Minn. 1983).

for established churches.[152]

A primary difficulty in determining what is a valid accessory use centers on defining "customary" incidental use.[153] The problem is compounded because, under the first amendment, secular entities should not be able to determine what uses are "customary," and therefore acceptable, for religious entities.[154] To avoid this problem, courts often have considered future trends in determining whether a given use is accessory.[155] Activities accepted by courts as valid accessory uses of ecclesiastical property have included residential uses,[156] educational uses,[157] recreational uses[158] and parking facilities.[159]

1. Residential Use

Typical cases concerning residential use of buildings by religious en-

152. *Id.*

153. For a detailed discussion on defining "customary use" in zoning cases see Note, *supra* note 145. *See also* 11 A.L.R. 4th 1084, 1086-87.

154. *Beit Havurah*, 177 Conn. at 445, 418 A.2d at 87; *See also* U.S. CONST. amend. X.

155. 11 A.L.R. 4th 1084, 1087.

156. *Beit Havurah*, 177 Conn. 440, 418 A.2d 82; Jewish Reconstructionist Synagogue, Inc. v. Roslyn Harbor, 38 N.Y. 2d 283, 342 N.E.2d 534, 379 N.Y.S.2d 747, *cert. denied*, 426 U.S. 950 (1975) (holding guest house on synagogue grounds occupied by rabbi was a valid accessory use). The court said that a setback requirement could have been imposed if it had been the result of a balancing of interests, but because no balancing had taken place the setback requirement was invalid.

157. Twin-City Bible Church v. Zoning Bd. of Appeals, 50 Ill. App. 3d 924, 365 N.E.2d 1381 (1977) (lot across the street from established church to be used for Sunday school classes, fellowship meetings and other activities was acceptable within area zoned for churches and accessory buildings).

The seminal case concerning religious and accessory use of property is Diocese of Rochester v. Planning Bd., 1 N.Y.2d 508, 136 N.E.2d 827, 154 N.Y.S.2d 849 (1956) (holding a school to be a valid accessory use). *But see* Damascus Community Church v. Clackamas County, 45 Or. App. 1065, 610 P.2d 273 (1980) (ordinance evidenced legislative intent to keep separate the criteria for granting conditional use permits for churches and parochial schools). Because California and Oregon view the application of zoning laws to religious uses so differently from the majority of states, accessory uses usually are construed strictly in these states. *See, e.g., id.*

158. Corporation of Presiding Bishop v. Ashton, 92 Idaho 571, 448 P.2d 185 (1968). *But see* Christian Retreat Center v. Board of County Comm'rs, 28 Or. App. 673, 560 P.2d 1100 (1977) (church retreat and day camp held to be not accessory uses).

159. Mahrt v. First Church of Christ Scientist, 75 Ohio L. Abs. 5, 142 N.E.2d 567, *aff'd*, 75 Ohio L. Abs. 24, 142 N.E.2d 678 (1955). *But see* East Baptist Church of Denver, Inc. v. Klein, 175 Colo. 168, 487 P.2d 549 (1971) (parking buses on property is not an incidental, customary use establishing a valid accessory use).

tities involve monasteries[160] and housing for religious devotees and leaders.[161] The court, in *City of Minneapolis v. Church Universal and Triumphant*,[162] held that a monastery was an accessory use, in part because the monastery's purpose was to aid in the teaching and ministry of the church.[163]

In *Beit Havurah v. Zoning Board of Appeals*,[164] the Supreme Court of Connecticut struck down restrictions on overnight use of a synagogue's property, reasoning that sleeping accommodations were a necessary accessory to the religious fellowship of the faith.[165] In determining that the use was accessory, the court noted that "nontraditional synagogue[s] had nontraditional needs."[166]

2. Educational and Recreational Use

One court has determined a coffee house to be a valid accessory use. In *Synod of Chesapeake, Inc. v. City of Newark*,[167] a campus ministry provided services, religious fellowship meetings and a coffeehouse that served, on a nonprofit basis, coffee and snacks. The ministry also sponsored both religious and secular films.[168] The court noted that church-sponsored coffeehouses were becoming prevalent throughout the country, and that all worthy contemporary church groups perform nonreligious functions.[169] The court accepted as accessory those activities specifically tailored to the needs of that particular community but not typical in the sense of being comprised solely of traditional worship.

In *Corporation of Presiding Bishop v. Ashton*,[170] a lighted recreational field was found to be an acceptable accessory use. The court cited *Dio-*

160. City of Minneapolis v. Church Universal and Triumphant, 339 N.W.2d 880 (Minn. 1983).

161. *Id. See also* 1 R. ANDERSON, *supra* note 147, § 12.26, at 148.

162. *Church Universal and Triumphant*, 339 N.W.2d 880.

163. *Id.* at 888-89.

164. 177 Conn. 440, 418 A.2d 82 (1979).

165. *Id.* at 448-49, 418 A.2d at 87.

166. *Id.* The court did examine other synagogues' practices with regard to overnight accommodations. It was not dissuaded by the fact that few synagogues used facilities overnight, and even those that did use overnight accommodations used them solely on the weekends. *Id.*

167. 254 A.2d 611 (Del. Ch. 1969).

168. *Id.*

169. *Id.* at 613-14.

170. 92 Idaho 571, 448 P.2d 185 (1968).

cese of Rochester[171] for the principle that churches encompass more than just the traditional church building where religious services are conducted.[172] The court stated that recreational uses were "an integral part of the church program and [were] sufficiently connected with the church itself that the use of this property for recreational purposes was permissible."[173] Although these activities were "an official part of [the church's] program of worship," the court stated that it was not implying that a church would have absolute free reign in its use of property merely because there existed some relationship between the activities and a church purpose.[174]

The criteria courts use to determine whether an activity is a valid accessory to church use thus includes the nature of the use, its relation to primary church purposes, and the frequency of similar uses at other religious institutions. None of these factors alone is determinative. The court will instead look to the individual circumstances of each case in determining whether a valid accessory use exists.[175]

V. CONSTITUTIONAL STANDARDS

Under the view held by a majority of states, zoning provisions affecting the free exercise of religion should receive stricter scrutiny in order to prevent infringement upon constitutionally protected activities.[176] In fact, some states require a compelling state interest coupled with the least restrictive means of regulation, if restrictions are to be placed on the church.[177] Courts, however, have varied in their determination of what is required to trigger this heightened scrutiny. Some courts have

171. *Diocese of Rochester*, 1 N.Y.2d 508, 136 N.E.2d 827, 154 N.Y.S.2d 849 (1956).

172. *Corporation of Presiding Bishop*, 92 Idaho at 574, 448 P.2d at 188.

173. *Id.* at 575, 448 P.2d at 189.

174. *Id.* The court went on to discuss whether night baseball games constituted a nuisance. *Id.* at 576, 448 P.2d at 190. Using principles of accommodation, the court limited the hours when games could be played, and thereby harmonized the conflicting needs of the church and community. *Id.* at 578, 448 P.2d at 192.

175. Community Synagogue v. Bates, 1 N.Y.2d 445, 136 N.E.2d 488, 154 N.Y.S.2d 15 (1956).

176. *See* Walker, *supra* note 78; Note, *supra* note 78, at 294; Slevin v. Long Island Jewish Medical Center, 66 Misc. 2d 312, 319 N.Y.S.2d 937 (Sup. Ct. 1971); City of Sumner v. First Baptist Church of Sumner, 97 Wash. 2d 1, 639 P.2d 1358 (1982) (citing Sherbert v. Verner, 374 U.S. 398, 403 (1963), for the holding that "any incidental burden on the free exercise of appellant's religion may be justified [only] by a 'compelling state interest in the regulation of a subject within the state's constitutional power . . .' ")

177. *See Slevin*, 66 Misc. 2d 312, 319 N.Y.S.2d (Sup. Ct. 1971).

required only a showing of "religious purpose,"[178] while others demand that an essential or "fundamental religious tenet"[179] be implicated before strict scrutiny will be applied. These courts also require a compelling state interest to justify governmental restrictions on the exercise of religion.

Regardless of which standard they apply, courts recognize that the "power of regulation hasn't been altogether obliterated," it has just been "severely curtailed."[180] Even under the strictest standard, religious uses are permitted to exist unless there is a "convincing showing of a direct and immediate adverse effect upon the health, safety or welfare of the community."[181] Many courts are moving toward a balancing of interests, requiring accommodation when there is a clash of fundamental interests.[182] If, after assessing the religious belief,[183] ex-

178. *See, e.g., Diocese of Rochester*, 1 N.Y.2d 508, 136 N.E.2d 827, 154 N.Y.S.2d 849; Community Synagogue v. Bates, 1 N.Y.2d 445, 136 N.E.2d 488, 154 N.Y.S.2d 15 (1956).

179. Lakewood, Ohio Congregation of Jehovah's Witnesses, Inc. v. City of Lakewood, 699 F.2d 303 (6th Cir. 1983), *cert. denied*, 104 S. Ct. 72 (1985). In *Lakewood* the court stated that if a fundamental tenet was found to be implicated then the state would have to show a compelling interest, and use the least restrictive means available to achieve the desired end. *Id.* at 305. To determine whether the standard had been met, the court examined the "centrality of the burdened religious observance to the believer's faith," the "nature of the religious observance" and the "nature of the burden placed on the religious observance." *Id.* at 306. The court found no infringement in a zoning ordinance which prohibited the construction of churches in residential districts. *Id.* at 309.

The *Lakewood* analysis is inapplicable to that being discussed in this article. The significant difference is that this article permits religious entities an accessory use of *already validly established* religious organizations. This author believes that the use of already established property changes the analysis. One commentator believes the *Lakewood* decision is not reflective of Supreme Court doctrine on the free exercise clause. *See* Comment, *Zoning Ordinances Affecting Churches: A Proposal for Expanded Free Exercise Protection*, 132 U. PA. L. REV. 1131 (1984). The author calls for protection of "religiously motivated" conduct under a least restrictive means analysis. *Id.* at 1135. Under that test, the court would first be required to determine whether a protected right has been infringed. *Id.* at 1155. Next, the court would examine the governmental interest and decide whether the least restrictive means had been utilized to achieve the goals. *Id.* at 1158-59.

180. Westchester Reform Temple v. Brown, 22 N.Y.2d 488, 496, 239 N.E.2d 891, 896, 293 N.Y.S.2d 297, 303 (1968).

181. *See* Trinity United Methodist Church v. City of Kingston Zoning Bd. of Appeals (Sup. Ct. Ulster City Spec. Term. Cal. No. 90, May 27, 1983) (citing *Westchester Reform Temple*, 22 N.Y.2d at 494, 239 N.E.2d at 896, 293 N.Y.S.2d at 303).

182. Islamic Society v. Foley, 96 A.D.2d 536, 464 N.Y.S.2d 844 (App. Div. 1983). In *Foley*, the court acknowledged the need for flexibility and noted that churches were

amining the community's objections[184] and ensuring that the community's reasons for restrictive zoning provisions are not pretextual,[185] there is still a conflict between free exercise of religion and substantial governmental interests, the court can order regulations minimizing the effects on the religious practice.[186] In one view, the local zoning board has an affirmative duty to suggest measures that accommodate the planned religious use and do not excessively increase the religious institution's costs, while concurrently mitigating the detrimental effects the proposed use would have on the health, safety and welfare of the surrounding community.[187]

VI. SHELTERING THE HOMELESS: VALID RELIGIOUS OR ACCESSORY USE OF CHURCH FACILITIES

The question whether shelters for the homeless constitute a permissible religious or accessory use under zoning ordinances has not yet been widely addressed. The few state courts that have tackled the problem have answered the question affirmatively.[188] These courts have recog-

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not to be judged by the same standards as commercial establishments. *Id.* at 537, 464 N.Y.S.2d at 845.

183. *See* Walker, *supra* note 78, at 183. Walker would implement a two part test, questioning only the sincerity of the belief and then balancing the merits of objections to determine whether regulations to lessen the impact of the use are appropriate. *Id.* Some courts reject inquiring into the "particular tenets" of religious beliefs because of the principles of separation of church and state. *See Beit Havurah*, 177 Conn. 440, 418 A.2d 82. *See also* Comment, *supra* note 94, at 600. According to one commentator, the Supreme Court apparently only requires "some threshold assessment of the religious significance to the believer of the burdened practice." *See* Comment, *supra* note 179, at 1147.

184. American Friends of the Soc'y of St. Pious v. Schwab, 68 A.D. 2d 646, 417 N.Y.S.2d 991 (1979).

185. *Id.* at 651, 417 N.Y.S.2d at 994. *See* Walker, *supra* note 78, at 181. Careful examination of reasons will prevent infringement of religious practices. *Id.* Walker notes that the court was concerned about public officials "mask[ing] the real grounds of their decisions by citing concerns of increased traffic or fire hazards." *Id.* The court in *Schwab* remanded and directed that a reasonable compromise be developed if irreconcilable conflicts existed. *Id.*

186. *See* Walker, *supra* note 78, at 183; *Beit Havurah*, 177 Conn. at 437, 418 A.2d at 79.

187. *Islamic Soc'y*, 96 A.D.2d at 537, 464 N.Y.S.2d at 845.

188. *See* Trinity United Methodist Church (Sup. Ct. Ulster City Special Term, Cal. No. 90, May 27, 1983); City of Rapid City v. Kahler, 334 N.W.2d 510 (S.D. 1983); St. John's Evangelical Lutheran Church v. Hoboken, 195 N.J. Super. 414, 479 A.2d 935 (1983).

nized the problem of defining "religious use," and have noted that such use embraces far more than merely religious worship.[189] These courts also have stated that the issue's complexity necessitates an ad hoc determination, based on individual facts and circumstances.[190] If "religious use" of property is defined as activity motivated by religious purposes, sheltering the homeless should qualify, given the close relationship between the activity, providing shelter, and the religious doctrines mandating this conduct.[191]

It is suggested that in determining whether a religious purpose is involved, the courts should look to the purpose of the activity in light of the rules and practices of that particular religious organization.[192] The court, in *St. John's Evangelical Lutheran Church v. Hoboken*, stated that "plaintiffs have persuasively argued that housing the homeless in a church is a religious use sanctioned by centuries of scriptures and practice. The zoning power may not be constitutionally used to preclude a church from exercising its religious function of providing a

189. *Kahler*, 334 N.W.2d 510, 512. The court then recognized that religious use often had been construed to mean religious purpose. *Id.*

190. *See* Trinity United Methodist Church (Sup. Ct. Ulster City Special Term, Cal. No. 90, May 27, 1983). *See also Kahler*, 334 N.W.2d at 512. In *Kahler*, the court remanded for further findings of fact to determine whether a mission constituted a religious use. The court was unable to determine "whether the mission is directly affiliated or supported by an organized religion, whether the religious leaders referred to are actually ordained ministers of recognized denominations, and [could not] determine from the record the nature, frequency and content of religious services said to be held in the mission." *Id.* at 512. It appears that the court felt that either some or all of these factors would help determine whether the provision of shelter by the mission constituted a religious use. In other jurisdictions, the courts might not even be inclined to do more than a cursory examination of the religious belief, fearing unconstitutional infringement on first amendment rights.

191. *See St. John's Evangelical Lutheran Church*, 195 N.J. Super. at 418, 479 A.2d at 939; *Slevin*, 66 Misc. 2d at 319, 319 N.Y.S.2d at 844. In discussing the *Slevin* case, one commentator explained that by finding the church to be concerned intimately with the human spirit and morals, the "court did not merely find that the counseling of drug users falls within the parameters of religious use as defined in *Bates*, but that this is a religious purpose directly related to all doctrines. *Any activity so directly related to this religious purpose must be classified as a religious use.*" (emphasis added). Note, *supra* note 78, at 298. It follows that sheltering the homeless also is directly related to religious doctrine. In sheltering the homeless, churches are providing basic human necessities, essential for human survival. Unless these fundamental needs are met, spiritual and moral needs can not begin to be addressed.

192. *Slevin*, 66 Misc. 2d at 317, 319 N.Y.S.2d at 944. *See* Note, *supra* note 78, at 297.

sanctuary for the homeless."[193] The court acknowledged that the church was "fulfilling [its] religious obligations and exercising a traditional religious function in utilizing the basement of St. John's to shelter the homeless poor."[194] Because sheltering the homeless is a central tenet of Judeo-Christian faith,[195] any refusal to allow the use of religious facilities for sheltering the homeless results in the violation of an "essential requirement" of the faiths.[196]

Most courts are reluctant to probe too deeply into the nature of the religious belief,[197] preferring a threshold assessment of the burdened practice's significance to the individual believer.[198] Following the *Slevin* approach, recipients of aid need not be of the same faith to benefit from a religious use of property. Therefore, the religious affiliation of shelter beneficiaries is not important in determining whether the use is religious in nature.[199]

Whether providing shelter for the homeless is central to the religion is especially important in determining what constitutes a valid accessory use of religious property. In *Beit Havurah v. Zoning Board of*

193. *St. John's Evangelical Lutheran Church*, 195 N.J. Super. at 418, 479 A.2d at 939.

194. *Id.* at 416, 479 A.2d at 937. As will be discussed later in this section, the *St. John's* court ultimately found that the shelter was a valid accessory use of the church.

195. See *supra* notes 58-77 and accompanying text (tracing the history of sanctuary and protection provided by the church). "Sheltering the homeless and caring for the poor has consistently been a church function carried out for centuries by religious persons. It is among one of the basic mandates in the Judeo-Christian heritage." *St. John's Evangelical Lutheran Church*, 195 N.J. Super. at 416, 479 A.2d at 937.

196. This appears to be the standard required in the *Lakewood* case. Lakewood Ohio Congregation of Jehovah's Witnesses, Inc. v. City of Lakewood, 699 F.2d 303 (6th Cir.), *cert. denied*, 104 S. Ct. 82 (1983). One can argue, as was done in *Lakewood*, that the zoning ordinance does not infringe on the free exercise of religion, it merely affects economic factors and the location of worship. This article, however, focuses on already established religious edifices. Therefore, because of the extreme burden placed on the free exercise clause, if the use were to be denied, the impact on these organizations would be far more than incidental. Unlike choosing another location to build, denying the religious use here would force the church to make an unacceptable choice—to give up the religiously mandated activity or to relocate an already validly established church. It should be noted that most courts do not read the free exercise requirement as restrictively as did the *Lakewood* court. *See generally* Comment, *supra* note 179, at 1131; Walker, *supra* note 78, at 129.

197. *See Slevin*, 66 Misc. 2d at 319, 319 N.Y.S.2d at 944.

198. *See* Thomas v. Review Bd. of the Indiana Employment Sec. Div., 450 U.S. 707 (1981); Comment, *supra* note 179, at 1147.

199. Comment, *supra* note 179, at 1147.

Appeals,[200] the court held that once a use has been designated as permissible in a given zone. the immunity extended to churches will be extended to accessory uses. The court reasoned that after a site has been designated suitable for religious use, decisions as to what constitutes such a use more appropriately should be left to the congregation rather than zoning boards or courts.[201]

Logically, providing shelter for the homeless should be a valid accessory use of an already established religious structure because shelters meet the traditional indicia required of an accessory use.[202] Generally, to qualify as an accessory use, the use must be on the same lot and in furtherance of the primary purpose, with the nature of the additional use customarily incident to the primary function.[203] Because churches have established shelters for the homeless by converting the basements of their existing houses of worship,[204] the traditional zoning requirement that the accessory use be on the same lot clearly has been met.[205] Similarly, because most church space typically is devoted to worship, and regular services presumably will continue to be held, the basement's use as a shelter meets the requirement that the accessory use be subordinate to the primary use.[206]

A more difficult question concerns the nature of the alleged accessory use. In particular, questions arise regarding whether the use is customarily incident to religious facilities; the shelter's relation to the primary use; and the frequency of similar uses among other faiths.[207] The courts in both *Trinity Methodist* and *St. John's* recognized the longstanding duty to provide for the homeless.[208] The *St. John's* court

200. 177 Conn. 440, 418 A.2d 82 (1979). *See also* Comment, *supra* note 94, at 602.

201. *Id.*

202. See *Trinity United Methodist Church* (Sup. Ct. Ulster City Special Term, Cal. No. 90, May 27, 1983); *St. John's Evangelical Lutheran Church*, 195 N.J. Super. 414, 479 A.2d 935 (1983). For a more detailed explanation of accessory uses, see *supra* notes 145-75 and accompanying text.

203. *See supra* notes 145-52 and accompanying text.

204. *Trinity United Methodist Church* (Sup. Ct. Ulster City Special Term, Cal. No. 90, May 27, 1983). *See also supra* notes 43-67 and accompanying text.

205. An interesting issue is posed with regard to accessory uses and same lot requirements. A few cases have said that facilities across the street fall within the ambit of accessory lot requirements. The question becomes how far away a use can be while still claiming to be accessory. A wholly different issue, of course,is the question of why the accessory use must be on the same lot at all.

206. *See supra* notes 145-52 and accompanying text.

207. *See supra* note 175 and accompanying text.

208. *Trinity United Methodist Church* (Sup. Ct. Ulster City Special Term, Cal. No.

recognized the "centuries old church tradition of sanctuary for those in need of shelter and aid," and found that St. John's and its parishioners were engaging in the free exercise of their religion by providing shelter to the homeless.[209] The court held that the City of Hoboken could not "constitutionally use its zoning authority to prohibit that free exercise."[210]

In addition to recognizing the church's historical role in building shelter, courts have acknowledged a growing trend among religious organizations to make similar use of existing religious structures in an effort to alleviate the growing problem of homelessness.[211] The *St. John's* court found this to satisfy the requirement that the use be customarily incident to other religious entities.[212] In light of the nature of the use, its historical and religious basis, and the growing trend toward utilizing extra space in religious buildings for sheltering the homeless, such shelters would constitute a valid accessory use of religious property already permitted in a given zone.

Even if sheltering the homeless is considered to be a valid religious or accessory use of church property, it is not immune from all governmental inquiry or regulation.[213] The religion's interest in sheltering

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90, May 27, 1983) (recognizing the "historic role of the church in providing for the poor and needy"); *St. John's Evangelical Lutheran Church*, 195 N.J. Super. 414, 418, 479 A.2d 935, 937 (1983) ("The concept of sanctuary has been a strong element of religious tradition from Moses to the New Testament.") (citing affidavit of Rev. Felske).

209. *St. John's Evangelical Lutheran Church*, 195 N.J. Super. at 420, 479 A.2d at 938.

210. *Id.*

211. *Id.* at 418, 479 A.2d at 937. "Throughout history the churches have carried out [the] Biblical mandate to aid the poor and the helpless. Sanctuary became such a strong religious tradition it was recognized in Roman, medieval and English common law. During the Middle Ages every church was a potential sanctuary." *Id.* (citing affidavit of Rev. Felske).

212. As the court noted:

> More recently churches and synagogues throughout this country have opened their doors to the homeless and the oppressed. Although precise statistics are not available on the number of homeless shelters, these include hundreds from coast to coast. Over 50 churches and synagogues in New York City sheltered the homeless this past winter. Congregations in San Francisco, Atlanta, Minneapolis-St. Paul, Hartford, Jersey City, and Chicago opened their doors to the poor.

195 N.J. Super. at 418, 479 A.2d at 937 (quoting affidavit of Rev. Felske).

213. *See* City of Rapid City v. Kahler, 334 N.W.2d 510 (S.D. 1983). The court recognized the "wide latitude of expression" given to religious conduct, but cautioned that the public did have an interest in maintenance of health and safety, along with "traffic and parking problems, noise, litter and related problems." *Id.* at 513. It then remanded for further factual inquiry into the nature of the use. Apparently, South

the homeless must be weighed against the state's interest in denying the use.[214] In determining whether the state's interest outweighs the right to free exercise of religion, most courts have found annoyances or financial detriment to the community insufficient to override the religious interest.[215] If real dangers to the community are posed by the religious use, and cannot be mitigated, however, the least restrictive restraint may be justified.[216] When determining whether danger to the community exists in a particular case, the reasons advanced by the state must be examined carefully to ensure that the arguments are not advanced merely as a pretext for preventing the use.[217] In addition, mere speculation or fears are not acceptable reasons for excluding the use. Zoning powers cannot be used to chill free exercise rights.[218]

Applying rigid legal analysis to the homelessness problem is difficult because realities often are distorted by the fears of the community. Neighbors often fear a shelter will cause a drop in property values,[219] and will encourage loitering and "other unsavory activities" in the community.[220] It is unclear, however, whether the "not in my neigh-

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Dakota allows traffic and community inconvenience to be factored into the balancing equation.

214. *See supra* notes 121-44 and accompanying text.

215. *See, e.g., Slevin*, 66 Misc. 2d at 320, 319 N.Y.S.2d at 947. Connecticut, however, does include factors such as traffic, noise and inconvenience in the balancing equation. This is done with the provision that religious uses are to be protected, and the state interests must meet a more severe test than mere rationality review in order to justify abridging the church's free exercise rights.

216. *Id.* at 320, 319 N.Y.S.2d at 948. The court stated:

> Where the religious use may be so fraught with danger or peril to the community because of the particular use sought, the detriment to the community can outweigh the religious consideration. For instance, dynamite or contagion carry different weights than nuisance or financial loss . . . the matter turns on a substantial relation to the public health, safety, morals, peace or general welfare of the community.

Id. at 320, 319 N.Y.S.2d at 947. It should again be emphasized that these determinations must be made on a case by case basis.

217. American Friends of the Soc'y of St. Pious v. Schwab, 68 A.D. 2d 646, 649, 417 N.Y.S. 2d 991, 993 (1979). The court in *Schwab* alluded to the possibility that the stated concerns of traffic increases and other problems were advanced to mask community fears about potential annoyance. *Id.* at 650, 417 N.Y.S.2d at 994. *See also* Walker, *supra* note 78, at 180-82. Walker notes that *Schwab* represents "one of the more decisive applications of the free exercise clause within the zoning context." *Id.* at 181-82.

218. *Schwab*, 68 A.D. 2d at 651, 417 N.Y.S.2d at 994.

219. *See Homelessness in America*, *supra* note 2.

220. *Kahler*, 334 N.W.2d 510, 511. The trial court concluded that "loitering, littering, panhandling and other unsavory activities" had increased in the neighborhood surrounding the Mission since it opened its doors. *Id* at 511. The South Dakota Supreme

borhood" attitude is based on real or imagined dangers to the community. Newsweek magazine reports that most of the homeless pose no danger to others.[221] According to literature on homelessness, most homeless are seen as victims, not victimizers, and pose no real physical danger to others in the neighborhood.[222] As more individuals, children and families become unable to make ends meet, this will become increasingly true.

Despite the many economic casualties, it seems clear that some portion of homeless individuals do suffer from mental illness. If these individuals pose a threat to the community, then they will do so whether they are on the streets all the time or only part of the time. Vagrancy laws can combat the danger these people present, as can laws prohibiting antisocial conduct. For these individuals, the solution, of course, is not only shelter, but treatment. Conversely, if the homeless pose no direct threat to the community, then, under the most stringent standard, shelters cannot be excluded merely because of inconveniences to the community. A "direct and immediate" adverse impact must be present.[223] Although a factual determination by a judge or jury would be involved here, it is unlikely that loitering or littering would rise to the level of seriousness the courts require.[224]

Another approach to the competing interests involves a balancing test to determine whether the religious use of facilities for shelters should outweigh legitimate governmental zoning interests, as opposed to community safety interests.[225] Jurisdictions applying this approach often require attempts at accommodation prior to any ordering of interests.[226] Even under a standard that calls for balancing governmen-

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Court remanded, however, for a determination of, among other things, whether the mission constituted a religious use. *Id.* at 512-13.

221. Newsweek claims "[f]ew are dangerous to anyone but themselves." *Homeless in America*, *supra* note 2, at 22.

222. *See supra* notes 14-42 and accompanying text.

223. *See Trinity United Methodist Church* (Sup. Ct. Ulster City Special Term, Cal. No. 90, May 27, 1983).

224. This, however, would not mean an action for nuisance is barred. Residents could seek to enjoin the use as a nuisance. If the court determined the use a nuisance, it would then inquire whether the nuisance could be abated. If abatement was not possible, the court would issue an injunction against the use.

225. City of Sumner v. First Baptist Church, 97 Wash. 2d 1, 7-8, 639 P.2d 1358, 1362 (1982).

226. *Id.* at 9, 639 P.2d at 1363. *See also* Islamic Soc'y v. Foley, 96 A.D.2d 536, 464 N.Y.S.2d 844, 845. The court gave the local zoning board an affirmative duty to devise measures accommodating the planned religious use.

tal zoning and religious objectives, shelters should be allowed to operate as either a religious or an accessory use. Although residents near a church probably have expectations that the church will be used for services, festivals and bingo, but not for shelters for the homeless, any weighing of the gravity of harms likely would result in allowing the shelter. Any inconvenience residents might face is trivial when contrasted with the perils shelter occupants would have to face if forced back into city streets.[227]

Though shelters may pose legitimate dangers to the surrounding community, these adverse effects could be mitigated by the implementation of reasonable regulations.[228] Such regulations may include valid health and safety laws,[229] as well as reasonable occupancy requirements.[230] The regulations, however, should not be so stringent that the church would be defeated in its mission to assist the homeless.[231]

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227. *St. John's Evangelical Lutheran Church*, 195 N.J. Super. 414, 421, 479 A.2d 935, 939 (1983). The court balanced interests to determine whether a preliminary injunction should be issued. It appears that the same result would be obtained when interests are balanced to determine whether a religious use should prevail.

Another argument advanced favoring shelters is that they actually could remove the homeless from the streets, thereby alleviating perceived problems in the community. A counterargument is that shelters bring an influx of homeless to a particular neighborhood, thus increasing the actual number of homeless on those streets. The residents' fears may be unfounded. First, because church shelters tend to be small, the number of homeless in the neighborhood would not drastically increase. Additionally, reasonable regulations may be implemented to mitigate deleterious effects on the community. Because the interests of the homeless, the government and the community are all best served by providing shelter and removing the homeless from city streets, any balancing test must include all three interests.

228. *See, e.g.*, Beit Havurah v. Zoning Bd. of Appeals, 177 Conn. 440, 418 A.2d 82 (1979); *St. John's Evangelical Lutheran Church*, 195 N.J. Super. 414, 479 A.2d 935 (1983); Slevin v. Long Island Jewish Medical Center, 66 Misc. 2d 312, 319-20, 319 N.Y.S.2d 937, 947-48 (1971).

229. *St. John's Evangelical Lutheran Church*, 195 N.J. Super. at 421, 479 A.2d at 939.

230. *Id.* The church conceded that a reasonable occupancy limit for the basement would be 20 persons and the court ordered that the maximum number of occupants be reduced to that limit. *Id.*

231. As the court in *St. John's* stated:

> The requirements should be appropriate to a shelter for the homeless. The church should not have to meet health and safety requirements imposed upon a commercial establishment such as a motel. Moreover, the laws and regulations should be interpreted in a reasonable and common sense manner bearing in mind that overly strict enforcement might force the shelter to close, leaving its occupants in a far worse state than remaining in a crowded shelter.

195 N.J. Super. at 421, 479 A.2d at 939.

VII. A MODEST PROPOSAL

Because churches partially fill a void by providing shelters, the state should not erect obstacles preventing this use of religious property. The current method of case by case adjudication is expensive and creates disincentives to provide shelter. Because providing shelter for the homeless is mandated by fundamental religious tenets, it should qualify as a valid religious or accessory use and be protected under the free exercise clause of the first amendment. In addition, broadly drafted zoning ordinances may chill charitable organizations in the exercise of their first amendment rights. Therefore, a compelling state interest should be required in order to restrict the use of church property for sheltering the homeless. A presumption of valid religious or accessory use should exist until danger to the community is proven by clear and convincing evidence.[232] This standard would ensure that a community's pretextual objections do not form the basis of zoning decisions, and it would shift to the city the burden of showing a legitimate danger to the community. Shifting the burden would alleviate the shelter providers of the burdensome task of showing that the shelter would *not* present a danger to the community. This new standard would both adequately protect community safety concerns and ensure that religious providers of shelters are not chilled in their free exercise of religion by prior restraints on that exercise.

In recognition of some of the inconveniences to the community that may be attendant to sheltering the homeless, providers may impose regulations on those who use the shelters.[233] To minimize potential problems, shelters could establish rules regarding check-in times and loitering outside the shelter. Because of limited funding, small staffs and a variety of other reasons, some shelters are open only at night.[234] Residents may fear loitering and congregation of homeless individuals when they leave the shelter for the day.[235] Some communities have

232. A clear and convincing evidence standard is appropriate given the fact that a compelling interest is necessary in order to restrict this religious activity.

233. *See generally* THE HOMELESS MENTALLY ILL (H.R. Lamb ed. 1984). *See also Slevin*, 66 Misc. 2d at 320, 319 N.Y.S.2d at 948 (recognizing neighborhood concern over drug treatment center in the community, church implemented security measures, supervision and urine tests for program participants).

234. Levine, *Service Programs for the Homeless Mentally Ill, reprinted in* THE HOMELESS MENTALLY ILL 175 (H.R. Lamb ed. 1984). Levine also believes the work ethic and community resistance are factors contributing to an "evening only" policy at some shelters.

235. *See* City of Rapid City v. Kahler, 334 N.W.2d 510 (S.D. 1983).

established drop-in centers to provide a place for the homeless to go during the time shelters are closed.[236] Shelter providers and the community, working in unison rather than in opposition, could develop regulations that would alleviate community concerns while providing desperately needed shelter for the homeless.

The homeless crisis has grown to such proportions that religious organizations attempting to address the problem should not be deterred by the erection of zoning barriers restricting the establishment of shelters for the homeless. Government entities experiencing funding cutbacks are unable, or unwilling, to provide the necessities to those in need of shelter. Municipalities must recognize that by providing shelter for the homeless, religious organizations also are fulfilling a desperately needed public service. Municipalities should sanction this vital service by recognizing that establishing a shelter for the homeless is a valid religious or accessory use, needing no additional approval, and subject only to reasonable regulation for health, safety or a compelling state interest.

VIII. CONCLUSION

Churches are motivated by the tenets of their faiths to provide shelters. Provision of shelter by churches has existed since Biblical times. Because this duty is central to the religious beliefs of the Judeo-Christian tradition, it should qualify as a religious use of property. The first amendment usually guarantees governmental deference to religious organizations with respect to regulating the uses of property already designated as ecclesiastical within the community. Under the majority view, religious use is defined broadly to include activities that are motivated by a religious purpose. Accessory use is related, but subordinate to the primary religious use. Some courts look to how customary the accessory use is when determining whether the activity is a valid incidental use of a religious edifice. Other courts, however, are willing to accept even nontraditional uses if they are central to that organization's religious tenets. Therefore, it follows that the provision of shelter for the homeless within religious buildings already so designated

236. HOMBS & SNYDER, *supra* note 2. In addition, traditional legal resources would still be available as a last resort. Although arresting the homeless for loitering or harassment is obviously a less than ideal remedy, and is not a long term solution to the problem, it does provide a method for ensuring that disruption to the community is minimized. Of course, this avenue only should be utilized *after* regulations, drop in centers and other attempts at accommodation have failed.

under the local ordinance is valid either as a religious or accessory use of the property.

Emergency shelters can provide only temporary, stop-gap measures to alleviate complex structural problems. Although churches are effective providers of shelter, they cannot be the only providers. Churches have limited resources available to provide for those in need of shelter. If the crisis of homelessness is to be eradicated, coordination between religious organizations and local and federal governmental agencies is imperative. Only when a concerted effort is made to understand the underlying causes of homelessness will there be progress in sheltering those for whom the last address was a street grate.

NOTES