

STATE OF NEW HAMPSHIRE

STRAFFORD, SS.

SUPERIOR COURT

The Prayer Room at Dover
503 Central Avenue
Dover, NH 03820

v.

City of Dover, New Hampshire
288 Central Avenue
Dover, NH 03820

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

JURY TRIAL DEMANDED ON ALL ISSUES SO TRIABLE

NOW COMES Plaintiff, The Prayer Room at Dover, and states as follows:

PARTIES

1. Plaintiff The Prayer Room at Dover (“Plaintiff”) is a New Hampshire nonprofit corporation and place of worship. It operates a storefront location in downtown Dover for Christians from a variety of denominations and church backgrounds to gather for prayer.

2. Defendant City of Dover (“Dover” or “the City”) is a New Hampshire municipal corporation with its principal offices at 288 Central Avenue, Dover, New Hampshire.

JURISDICTION AND VENUE

3. Jurisdiction is properly with the Superior Court pursuant to RSA 491:7 and RSA 491:22.

4. Venue is properly with Strafford County pursuant to RSA 507:9.

STATEMENT OF FACTS

- a. In 2022, the General Court enacted RSA 674:76 to stop New Hampshire municipalities from requiring houses of worship to obtain permits not required of comparable secular uses.**

5. For many years, New Hampshire municipalities have subjected houses of worship to discretionary permitting requirements that they do not impose upon comparable secular uses of land. Congregations seeking to gather and pray are subject to special exception and conditional use permit processes from which theaters, event venues, clubs, and schools are exempt.

6. In 2022, Governor Sununu signed RSA 674:76, a law protecting places of worship from discrimination in zoning.

7. As introduced and passed by the New Hampshire House of Representatives, House Bill 1021 contained a Statement of Findings and Purpose. Plaintiff cites these findings only as evidence of the history underlying this dispute.

8. The bill creating RSA 674:76 was introduced because, in the New Hampshire House's words, "many zoning ordinance[s] and other land use regulations regulate land use based on the religious nature of the assembly or speech by requiring 'churches' or 'houses of worship' to obtain special exception or conditional use permits not required of non-religious uses such as movie theaters, event venues or schools." H.B. 1021, 167th Gen. Ct., Reg. Sess. § 1 (N.H. 2022).

9. The House findings asserted that "[t]here is never a compelling governmental interest in treating religious land use differently than similarly situated uses for non-religious purposes." *Id.* The findings observed that houses of worship "have been substantially burdened by the delay, uncertainty and expense" of such processes, that "[s]mall congregations and

minority religious groups may not have the resources” to endure them, and that they impose “delays of months or even years and additional costs of tens of thousands of dollars.” *Id.*

10. House Bill 1021 took effect on July 1, 2022. 2022, 291:1, eff. July 1, 2022. The final statute, RSA 674:76, “Religious Use of Land and Structures,” provides in full:

No zoning ordinance or site plan review regulation shall prohibit, regulate, or restrict the use of land or structures primarily used for religious purposes; provided, however, that such land or structures may be subject to objective and definite regulations concerning the height of structures, yard sizes, lot area, setbacks, open space, and building coverage requirements as long as said requirements are applicable regardless of the religious or non-religious nature of the use of the property and do not substantially burden religious exercise.

11. Notwithstanding RSA 674:76, many New Hampshire municipalities have taken a maximalist view of their own authority and continued to behave as if this statute does not exist. New Hampshire municipalities continue to subject religious uses of land to discretionary permitting requirements that they do not impose upon comparable secular uses and have continued to defend those requirements as lawful.

b. The Prayer Room leases a storefront location in downtown Dover, which it leases for prayer and worship and nothing else.

12. The Prayer Room is a place of worship. It exists for the sole purpose of organizing and hosting prayer and worship during regularly scheduled periods.

13. On April 21, 2026, The Prayer Room entered into a written lease with 3L Holdings LLC for approximately 1,200 square feet of ground-floor space at 503 Central Avenue, Dover, New Hampshire (the “Premises”).

14. The Premises are leased for religious purposes and for nothing else. The Prayer Room conducts no commercial activity at the Premises, sells nothing there, and holds no events there other than prayer and worship.

15. The larger building at 503 Central Avenue also houses a veterinary clinic, restaurants, and upstairs residences and apartments. The Prayer Room neither occupies nor controls the space in which those uses are conducted.

16. The Premises lie within Dover's Central Business District, in the CBD General sub-district.

c. Dover determined that The Prayer Room must obtain a conditional use permit—and the only reason Dover has given is that the use consists of religious worship.

17. Dover's relevant zoning ordinance establishes a table of permitted uses. Residential uses are permitted above the ground floor. Lodging, professional services and offices, eating and drinking establishments, retail and personal services, and civic uses are generally permitted. A use falling within the residual category of "Other," however, may be permitted only "[v]ia conditional use permit."

18. In April 2026, Dover's Zoning Administrator, Paul Crouser, asked The Prayer Room for information about its proposed hours of operation, expected attendance, parking, and any planned build-out.

19. On April 9, 2026, The Prayer Room answered Mr. Crouser's questions in full. It disclosed its proposed hours, its expected attendance, the absence of assigned parking, and the absence of any build-out.

20. On or about July 8, 2026, Mr. Crouser wrote to The Prayer Room advising that, notwithstanding The Prayer Room having satisfied all other lawful requirements, it would need to seek a conditional use permit. He stated: “It was determined that one was needed *because of the uniqueness of the use you proposed*, and that we could not align it reasonably to any of the already-approved uses within the Central Business District” (emphasis added).

21. Mr. Crouser directed The Prayer Room to the City’s online permitting portal to file a conditional use permit application.

22. The only reason Dover has ever given for requiring a conditional use permit is the character of The Prayer Room’s use of the Premises—that is, that the use consists of religious worship.

23. Dover Code § 170-19B(2) conditions approval upon findings that, *inter alia*, “[t]he requested use shall be compatible with abutting uses and the surrounding neighborhood.” The conditional use permit process Dover demands entails an application, fees, public notice to abutters, a public hearing, and, upon approval, “a formal agreement between the Planning Board and the applicant” recorded at the Strafford County Registry of Deeds. Dover Code § 170-19.

d. Dover has refused to withdraw the requirement, and will not issue a certificate of occupancy until The Prayer Room submits to it.

24. On August 3, 2026, undersigned counsel wrote to the City on behalf of The Prayer Room. Counsel explained that subjecting The Prayer Room to any requirement because of the religious nature of its use is a violation of RSA 674:76. Counsel asked the City either to confirm in writing that it would not require a conditional use permit or, in the alternative, to schedule a consultation.

25. On August 11, 2026, Dover City Attorney Joshua M. Wyatt responded on behalf of the City. Attorney Wyatt argued that “[t]he time for appealing or contesting Mr. Crouser’s interpretation of the pertinent zoning ordinance provisions has expired” under RSA 676:5, I-II and that RSA 674:76 “is not applicable here” because The Prayer Room is “only one of several varied uses within this multi-use building,” so that the “structure is not ‘primarily’ used for religious purposes.”

26. The City proposed a meeting, and the parties met on September 14, 2026. The Prayer Room offered—at that meeting and in subsequent communications—to cooperate with any resolution which did not subject it to a procedural requirement on the basis of its religious activities. Dover did not, at or following that meeting, withdraw or waive the conditional use permit requirement.

27. As of the filing of this Complaint, Dover maintains that The Prayer Room may not lawfully use the Premises for worship unless it first obtains a conditional use permit.

28. The Premises have passed all necessary inspection by the City’s building department. Dover has nonetheless not issued a certificate of occupancy for the Premises—and it has taken the position that it will not issue one unless The Prayer Room first obtains a conditional use permit.

29. The Prayer Room has not applied for a conditional use permit. Although The Prayer Room will comply in good faith with neutral and reasonable zoning requirements, Plaintiff takes the position—in part because it wishes to help protect other religious communities in New Hampshire—that municipalities must stop flouting RSA 674:76. The Prayer Room will not accept a conditional use permit requirement imposed on the basis of its religious activities in violation of state statute and the New Hampshire Bill of Rights.

COUNT I: VIOLATION OF ENUMERATED LIMITATIONS IN RSA 674:76

30. The facts and information contained in the preceding paragraphs are incorporated as if fully set forth herein.

a. RSA 674:76 permits only narrow, objective regulation of land used for religious purposes.

31. RSA 674:76 provides that no zoning ordinance or site plan review regulation shall “prohibit, regulate, or restrict” the use of land or structures “primarily used for religious purposes”—subject only to certain enumerated exceptions for objective and definite regulations concerning the height of structures, yard sizes, lot area, setbacks, open space, and building coverage.

32. Additionally, even regulations which fall within these enumerated exceptions may not “substantially burden religious exercise.”

33. The protections in RSA 674:76 apply to any prohibition, regulation, “or” restriction. Given the breadth of these categories—particularly the broad term “regulation”—a plain reading of the statute requires that any zoning requirement must pass two filters in order to be legally applicable to places of worship.

34. First, the requirement must be a neutral regulation falling within one of the enumerated exceptions. Secondly, even if it passes the first filter, it must not “substantially burden religious exercise.”

35. The enumerated exceptions in the first filter do not include any conditional use permit process. Dover has not asserted that The Prayer Room’s use of the Premises offends any

regulation concerning the height of structures, yard sizes, lot area, setbacks, open space, or building coverage.

b. The Premises are what Dover seeks to regulate.

36. The Premises are used for religious purposes. The Prayer Room’s use of the Premises consists of religious worship and nothing else.

37. The determination Mr. Crouser made was a determination about the Premises. The classification at issue did not concern the veterinary clinic, the restaurant, or the residences located elsewhere at 503 Central Avenue.

38. The conditional use permit Dover demands would attach to The Prayer Room’s use of the Premises, and any enforcement would be directed at The Prayer Room’s uses. The Premises—not the entire 503 Central Avenue building—are therefore the area at issue.

39. The Prayer Room does not contend that its tenancy exempts other tenants, or the building as a whole, from Dover’s zoning ordinance. Rather, it contends that Dover may not impose an additional permitting requirement upon The Prayer Room itself on account of its religious use.

40. RSA 674:76 protects “the use of land or structures primarily used for religious purposes.” Massachusetts’ analogous zoning-protection statute, G. L. c. 40A, § 3—commonly called the “Dover Amendment”—protects both religious and educational uses.

41. Massachusetts courts apply a “primary or dominant” purpose requirement to ensure that religious uses are not used as “window dressing” to protect nonexempt uses from ordinary zoning requirements. *Hume Lake Christian Camps, Inc. v. Planning Board of Monterey*, 492 Mass. 188, 195 (2023) (“The primary or dominant purpose requirement ensures that an

ostensibly religious purpose is not ‘mere window dressing’ for a nonexempt use.” (quotation omitted)).

42. That inquiry considers the premises as a whole, without artificially subdividing a religious facility into individual rooms or uses. *Id.* at 196–97. Here, the whole of the Premises is the area leased by The Prayer Room—not the entirety of 503 Central Avenue.

43. The dominant or primary religious purpose test is meant to ensure that, for example, The Prayer Room’s landlord cannot invoke The Prayer Room as a shield to protect its entire 503 Central Avenue building under RSA 674:76. If that were the case here, Massachusetts cases would support the City’s position that RSA 674:76 does not apply.

44. That is not this case. The question here is whether RSA 674:76 protects The Prayer Room’s own Premises, not whether the existence of The Prayer Room protects all of 503 Central Avenue. The dominant or primary use test is not meant to exclude The Prayer Room itself from the protections of the statute.

45. In *Watros v. Greater Lynn Mental Health & Retardation Association, Inc.*, 421 Mass. 106, 112–114 (1995), the Massachusetts Supreme Judicial Court interpreted the educational-use provisions within that same Dover Amendment. It rejected an equivalent argument that an educational organization must lease its landlord’s entire parcel in order to obtain protection.

46. *Watros* reasoned that such a restriction would penalize an organization for “leasing a suite of rooms for an educational purpose within a larger building” and reasoned that an entity should not need to lease the entire multi-tenant building to obtain the protections of the Dover Amendment. *Id.* at 114. The same reasoning applies here: The Prayer Room need not lease all of 503 Central Avenue to obtain 674:76 protection for its own religious premises.

c. Dover’s conditional use permit requirement regulates that use because the use is religious.

47. Dover maintains that The Prayer Room may not lawfully use the Premises for worship unless Dover first grants it a permit. The requirement subjects The Prayer Room to a procedure specifically on the grounds that The Prayer Room is primarily a place of religious exercise.

48. Even if a conditional use permit requirement somehow qualified as one of the “objective and definite” regulations listed in RSA 674:76, the statute requires that any such regulation be “applicable regardless of the religious or non-religious nature of the use of the property.” Dover’s conditional use permit requirement, by contrast, effectively differentiates between religious worship—*i.e.*, “the uniqueness of the use you proposed”—and non-religious businesses.

49. Even under the most conservative reading of RSA 674:76, requiring The Prayer Room to apply for a conditional use permit is illegal under that provision.

d. Dover’s argument that the time to contest Mr. Crouser’s determination has expired does not bar this action.

50. Dover contends that the time to contest Mr. Crouser’s determination has expired under RSA 676:5, I-II—and that The Prayer Room’s not having appealed to the Dover Zoning Board of Adjustment forecloses this action. It does not.

51. RSA 676:5, I supplies a mechanism for correcting “error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance.” RSA 674:33, I(a).

52. The Prayer Room does not allege that Mr. Crouser erred in reading Dover’s zoning ordinance. It does not ask this Court to reclassify its use under that ordinance, and it does not seek review of any zoning decision.

53. The question presented is whether RSA 674:76 permits a New Hampshire municipality to condition a religious use of land upon a conditional use permit in the first place. That is a question about the meaning and reach of a state statute, not about the application of a local ordinance.

54. A zoning board of adjustment possesses “only those powers that are expressly conferred upon [it] by statute.” *Dembiec v. Town of Holderness*, 167 N.H. 130, 134 (2014).¹ Nothing in RSA 674:33 confers upon a zoning board of adjustment the power to hold that a state statute preempts the municipality’s ordinance—nor that an ordinance offends the New Hampshire Constitution.

55. Exhaustion of administrative remedies is accordingly not required. Exhaustion is excused, and a plaintiff may seek declaratory judgment, where the issue is “peculiarly suited to judicial rather than administrative treatment and no other adequate remedy is available.” *Dembiec*, 167 N.H. at 133. In fact, “[j]udicial treatment may be particularly suitable when the constitutionality or validity of an ordinance is in question.” *Id.* at 133. This condition is satisfied here.

56. A party may bring a declaratory judgment action without first exhausting administrative remedies in matters where “specialized administrative understanding plays little role.” *Bosonetto v. Town of Richmond*, 163 N.H. 736, 744 (2012). The construction of RSA

¹ See also *id.* at 135 (“The plain language of the pertinent statutes does not confer general equitable jurisdiction upon a zoning board.”).

674:76 and the New Hampshire Constitution’s protections for religious liberty are matters of this kind. They turn on the text of a statute and the text and history of a constitutional provision, not on facts about which a local board holds any special competence.

57. A party may appeal an adverse zoning action by way of a statutory appeal, declaratory judgment, or an equitable proceeding. *Caspersen v. Town of Lyme*, 139 N.H. 637, 640 (1995). And “[a] plaintiff who chooses to initiate a declaratory judgment action to challenge the validity of a zoning ordinance may do so after the expiration of the appeal period in RSA 677:4.” *Morgenstern v. Town of Rye*, 147 N.H. 558, 561 (2002).² *Morgenstern* concerned a different but analogous statute.

58. The Prayer Room brings this action under RSA 491:22 to determine the meaning and effect of RSA 674:76 and of Part I, Article 5 of the New Hampshire Constitution. RSA 491:22, I further provides that “[t]he existence of an adequate remedy at law or in equity shall not preclude any person from obtaining... declaratory relief.”

COUNT II: SUBSTANTIAL BURDEN UNDER RSA 674:76

59. The facts and information contained in the preceding paragraphs are incorporated as if fully set forth herein.

60. RSA 674:76 prohibits regulations that substantially burden religious exercise—even if they otherwise fall within the statute’s enumerated exceptions.

61. Dover’s conditional use permit requirement substantially burdens The Prayer Room’s religious exercise. The requirement conditions worship at the Premises upon an

² Even *McNamara v. Hersh*, which states constitutional challenges to zoning ordinances may sometimes require a party to exhaust its administrative remedies before bringing a declaratory judgment petition, says that this is required “in some limited circumstances.” *McNamara v. Hersh*, 157 N.H. 72, 75 (2008).

application, fees, public notice to abutters, a public hearing, and an agreement with a municipal board—all because it is a place of worship.

62. The absence of a certificate of occupancy places The Prayer Room in continuing legal jeopardy.

63. Dover's conditional use permit requirement, as applied to The Prayer Room's use of the Premises, violates RSA 674:76 because it substantially burdens religious exercise and is therefore unenforceable.

COUNT III: VIOLATION OF PART I, ARTICLE 5 OF THE NEW HAMPSHIRE CONSTITUTION

64. The facts and information contained in the preceding paragraphs are incorporated as if fully set forth herein.

65. Part I, Article 5 of the New Hampshire Constitution provides:

Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience, and reason; and no subject shall be hurt, molested, or restrained, in his person, liberty or estate for worshipping God, in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession, sentiments or persuasion; provided he doth not disturb the public peace, or disturb others, in their religious worship.

66. The New Hampshire Constitution provides stronger substantive protection for religious exercise than the federal Constitution. In *State v. Mack*, 173 N.H. 793, 249 A.3d 423 (2020), the Supreme Court held that Part I, Article 5 requires strict scrutiny when government action substantially burdens sincere religious practice, even when the burden arises under a generally applicable law.

67. Once a substantial burden on sincere religious practice is established, the government must demonstrate that its action is necessary to achieve a compelling governmental interest and narrowly tailored to that end. The inquiry concerns the application of the challenged requirement to the particular claimant or persons in similar circumstances: a general regulatory objective is insufficient. *Mack*, 173 N.H. at 815. Dover must therefore justify the burden imposed on The Prayer Room’s worship at these Premises. It may not merely invoke its authority to administer a zoning ordinance.

68. The Free Exercise Clause “forbids subtle departures from neutrality” towards religion. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993) (quoting *Gillette v. United States*, 401 U.S. 437, 452 (1971)). A facially neutral characterization of the City’s actions cannot insulate an official action that effectively singles out religious conduct for distinctive treatment. *Id.* Simply describing worship as a “unique” use does not cure the religious distinction.

69. A substantial burden need not amount to an outright prohibition of religious practice. Government may substantially burden religious exercise through indirect coercion. *See, e.g., Thomas v. Review Board of Indiana Employment Security Division*, 450 U.S. 707, 718 (1981). The possibility that a congregation could overcome an obstacle does not establish that the obstacle is insubstantial.

70. The Prayer Room leases the Premises as a space for sincere religious exercise. It conducts no commercial activity there. Its use of the space is religious practice and falls within Article 5’s protection of worship.

71. Dover substantially burdens that exercise by maintaining that The Prayer Room may not lawfully use the Premises for worship unless it obtains a discretionary conditional use

permit. Required municipal approval can itself burden religious exercise. *Cf. First Covenant Church v. City of Seattle*, 120 Wn.2d 203, 219, 222 (1992) (finding an administrative burden on religious exercise in required municipal approval of church alterations).³

72. Dover cannot establish a compelling governmental interest in imposing this burden. A general interest in neighborhood compatibility does not establish why this congregation's use of these Premises requires a discretionary permit. Dover has identified no disturbance of the public peace or interference with others' religious worship as the basis for its demand. Its stated basis remains the character of the use itself.

73. The requirement is not narrowly tailored. The City has already obtained information about hours, attendance, parking, and the absence of any planned build-out, and the Premises have passed the building department's necessary inspection and approval. Any concrete concern must be addressed through lawful requirements directed to that concern. Dover instead conditions The Prayer Room's use of the Premises for worship on Planning Board approval under criteria that include compatibility with abutting uses and the surrounding neighborhood. Dover Code §§ 170-19B(2)(a), 170-20B(2)(a).

74. Indeed, Dover's requirement fails *a fortiori* because the burden is imposed on account of the religious character of the use. Article 5 requires the justification described above even for a neutral and generally applicable law. Here, as alleged above, the law is not neutral and generally applicable. The Prayer Room's religious character supplies no compelling governmental interest in subjecting the congregation to additional municipal approval.

³ First Covenant expressly applied a *Sherbert* framework: "Applying the *Sherbert* 'compelling interest' test, we address the church's contention that subjecting it to the controls of the Landmarks Preservation Ordinance burdens its right to freely exercise religion." *First Covenant Church v. City of Seattle*, 120 Wn.2d 203, 218 (1992). The court assessed administrative and financial burdens and whether a compelling governmental interest justified them. *Id.* at 219–23. Its reasoning thus included burden-and-compelling-interest analysis.

75. Dover's conditional use permit requirement, as applied to The Prayer Room's use of the Premises, therefore substantially burdens sincere religious exercise without a compelling governmental interest or narrow tailoring and violates Part I, Article 5 of the New Hampshire Constitution.

WHEREFORE, Plaintiff, The Prayer Room at Dover, seeks judgment against Defendant City of Dover, New Hampshire, and respectfully requests that the Court grant the following relief:

- A. Declare that RSA 674:76 prohibits the City of Dover from requiring The Prayer Room to obtain a conditional use permit as a condition of using the Premises for religious purposes;
- B. Declare that the City of Dover's conditional use permit requirement, as applied to The Prayer Room's use of the Premises, substantially burdens religious exercise in violation of RSA 674:76;
- C. Declare that the City of Dover's conditional use permit requirement, as applied to The Prayer Room's use of the Premises, violates Part I, Article 5 of the New Hampshire Constitution;
- D. Permanently enjoin the City of Dover, its officers, employees, and agents from requiring The Prayer Room to obtain a conditional use permit for its religious use of the Premises, and from prohibiting or restricting that use, imposing penalties, or commencing enforcement proceedings based on the absence of that permit;
- E. Enjoin the City of Dover from conditioning the issuance of a certificate of occupancy for the Premises upon The Prayer Room's obtaining a conditional use permit;
- F. Award The Prayer Room nominal damages; and
- G. Grant such other and further relief as the Court deems just and proper.

Respectfully Submitted,

October 14, 2026

A handwritten signature in black ink, reading "Ian B. Huyett". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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