

Assistant Town Attorney (collectively, the “Town Officials”), has unreasonably delayed the review and approval of LifeChurch’s zoning requests in violation of federal and state law. LifeChurch’s zoning requests have been lost in a bureaucratic maze as the Town and Town Officials have routinely made conflicting requests and continued to unnecessarily delay in requesting and reviewing materials prior to the Planning Board’s consideration of LifeChurch’s zoning requests. LifeChurch has reasonably responded to the Town's requests. However, it is clear based upon the Town’s and Town Officials’ actions and unreasonable delays that any additional attempts to accommodate the Town’s and Town Officials’ requests would be futile and LifeChurch's zoning requests have been and will continue to be improperly delayed so as to effectively be denied.

2. The Town’s and Town Officials’ unreasonable delays, obstruction, and hostility towards LifeChurch have inflicted immediate injuries and have placed an unjustified substantial burden on LifeChurch’s practice of religion and have applied this burden in a manner that has discriminated against LifeChurch as a religious organization. Moreover, this suit seeks relief from the clear and purposeful deprivation of LifeChurch’s rights to freedom of religion, assembly, speech, and association. In this action, LifeChurch alleges that the Town’s and Town Officials’ actions violate the United States and New York Constitutions and the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc *et seq.* (“RLUIPA”). As a result of the Town’s and Town Officials’ unlawful actions, LifeChurch has suffered and continues to suffer damages.

3. LifeChurch also files this action for injunctive and declaratory relief to, *inter alia*, compel the issuance of all approvals and permits to allow it to construct its new church facility

on its property. LifeChurch also seeks compensatory damages and the recovery of its reasonable and necessary attorney's fees.

II.

JURISDICTION AND VENUE

4. Pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4), and under 42 U.S.C. § 2000cc *et seq.*, this Court has jurisdiction over LifeChurch's claims arising under federal law. This Court has jurisdiction over the requests for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202. This Court also has pendant jurisdiction and supplemental jurisdiction over all state law claims under 28 U.S.C. § 1367(a).

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391, as the events or omissions giving rise to this action occurred in this District and the property that is the subject of the action is located in this District.

III.

PARTIES

6. LifeChurch is a non-profit corporation organized under the laws of the State of Oklahoma and duly authorized to do business in New York.

7. The Town is a municipal corporation organized under the laws of the State of New York. The Town may be served with service of process by serving its clerk, Elizabeth A. DelTorto at Memorial Town Hall 534 Loudon Road, Newtonville, NY 12128, or wherever she may be found.

8. Town of Colonie Planning Board is municipal land use review board authorized and created by NYS Town Law § 271. The Town of Colonie Planning Board may be served with service of process by serving its Chairman, Peter Stuto, at 347 Old Niskayuna Road, Latham, New York 12110 or wherever he may be found.

9. Upon information and belief, Peter Stuto resides at 19 Newell Ct., Albany, NY 12204-1227. Peter Stuto is a member of the Town of Colonie Planning Board. Mr. Stuto may be served with service of process at his residence or wherever he may be found.

10. Upon information and belief, Timothy Lane resides at 7 Sage Ct., Albany, NY 12204-1404. Timothy Lane is a member of the Town of Colonie Planning Board. Mr. Lane may be served with service of process at his residence or wherever he may be found.

11. Upon information and belief, Louis Mion resides at 1 Altamont Ave, Albany, NY 12205-3605. Louis Mion is a member of the Town of Colonie Planning Board. Mr. Mion may be served with service of process at his residence or wherever he may be found.

12. Upon information and belief, Susan Milstein resides at 6 Sage Hill Ln, Albany, NY 12204-1334. Susan Milstein is a member of the Town of Colonie Planning Board. Ms. Milstein may be served with service of process at her residence or wherever she may be found.

13. Upon information and belief, Brian Austin resides at 14 Starboard Way, Latham, NY 12110-1306. Brian Austin is a member of the Town of Colonie Planning Board. Mr. Austin may be served with service of process at his residence or wherever he may be found.

14. Upon information and belief, Craig Shamlian resides at 25 Carriage Hill Drive, Latham NY 12110-4946. Craig Shamlian is a member of the Town of Colonie Planning Board. Mr. Shamlian may be served with service of process at his residence or wherever he may be found.

15. Upon information and belief, Kathleen Dalton resides at 54 Laura Drive, Latham, NY 12110-2308. Kathleen Dalton is a member of the Town of Colonie Planning Board. Ms. Dalton may be served with service of process at her residence or wherever she may be found.

16. Upon information and belief, Joseph LaCivita resides at 9 Belleauwood Cir, Watervliet, NY 12189-1229. Joseph LaCivita is the Director of Planning and Economic Development with the Town. Mr. LaCivita may be served with service of process at his residence or wherever he may be found.

17. Upon information and belief, Michael C. Magguilli resides at 23 Newell Ct., Albany NY 12204-1226. Michael C. Magguilli is the Town Attorney. Mr. Magguilli may be served with service of process at his residence or wherever he may be found.

18. Upon information and belief, Rebekah Nellis Kennedy resides at 4 Marriner Ave., Albany NY 12205-2906. Rebekah Nellis Kennedy is the Assistant Town Attorney. Ms. Kennedy may be served with service of process at her residence or wherever she may be found.

19. Each of the individual defendants is named herein in his or her official capacity only.

IV.

STATEMENT OF FACTS

20. LifeChurch is a religious organization that provides Christian American Evangelical faith services and faith oriented instruction classes to members of the Capital District community-at-large. LifeChurch presently provides faith worship services for church members in their 10,000 square foot facility, which is located at 560 Sand Creek Road, Village of Colonie, New York. This facility contains approximately 180 seats for its worship services. The current facility also contains four classrooms for children to attend Sunday school classes during worship services. The facility also has an associated parking lot that contains only 82 parking spaces.

21. LifeChurch's membership has been rapidly growing, more than doubling in the past five years, and its attendance requirements exceed the capacity of its current facility. The

inadequacies of the current facility have prevented LifeChurch from performing tasks that it believes are mandated by God, including expanding LifeChurch's membership and discipling to more members about the Christian faith. Additionally, the lack of adequate parking has prevented some current members from attending regularly scheduled religious services. LifeChurch thus requires the construction of a new facility to accommodate its existing and new members and to exercise its religious rights. The new facility would also enable LifeChurch to provide additional faith services and instruction not available at its present facility.

22. Worship sites (*e.g.*, churches, temples, cathedrals) are essential to most religious groups, including to LifeChurch and its members. Beyond serving as a meeting place for group worship and religious services, the sites themselves are sacrosanct, and they serve as symbols of the tenets and beliefs which are observed, practiced and taught by religious groups such as LifeChurch. Preventing a religious group such as LifeChurch from building a necessary worship site fundamentally and substantially chills and inhibits its ability to practice its religion.

23. In order to further fulfill LifeChurch's Christian purposes, LifeChurch purchased property located in the Town of Colonie (the "Property"), to construct a new church facility with appurtenant religious education and training rooms and associated parking (the "Project"). The Project would contain a 36,601 square foot facility for worship services, 8 religious education and training rooms, and 457 parking spaces, which would allow LifeChurch to accommodate its growing membership.

24. LifeChurch's Project, and its eventual operation of religious facilities upon the Property, will substantially affect interstate commerce.

25. In order to develop the Project, LifeChurch commenced the site plan review and subdivision process. Pursuant to the Town's Zoning Code, the first step in the site plan review

and subdivision process is the submission of a Zoning Verification request to the Town's Building Department. The purpose of the Zoning Verification is for the Town's Building Inspector to determine if a proposed project complies with applicable zoning and to determine what type of approvals are required.

26. On March 21, 2013, LifeChurch submitted a Zoning Verification for its Project to the Town's Building Department.

27. Upon review of the application, the Town's Building Inspector informed LifeChurch's project engineer, Sipperly and Associates (Brian Sipperly), that he had a concern regarding access to the Property. Access to the Property on the submitted plans showed access by utilizing an existing easement along a private road known as Moffat Lane. Moffat Lane is physically located upon the parcel adjacent to LifeChurch which is owned by the United States Postal Service. Moffat Lane is a paved private road utilized by the United States Postal Service for ingress/egress to its facility located on the United States Postal Service's property. The Property is adjacent to Moffat Lane and is benefited by a filed and recorded access easement over Moffat Lane.

28. The Town's Building Inspector informed Mr. Sipperly that the Town would accept Moffat Lane as LifeChurch's means of access provided that its plans were revised to show a cul-de-sac being constructed at the end of Moffat Lane.

29. Upon submission of plans incorporating the revisions demanded by the Town showing Moffat Lane as the means of access with a terminal cul-de-sac to be constructed by LifeChurch, the Zoning Verification was approved for the subdivision portion of the application. However, the Zoning Verification for the site plan was denied because LifeChurch's proposed building exceeded the allowable square footage in the Office-Residential District, which is the

zoning district where the Property is located. As a result, application for an area variance was required.

30. On April 8, 2013, LifeChurch filed an application for an area variance for allowable building square footage with the Town's Zoning Board of Appeals ("ZBA"). The matter was scheduled to be on the ZBA's agenda for its regularly scheduled June 6, 2013 meeting. Approximately one week prior to the meeting, the Town informed Mr. Sipperly that the matter was being removed from the June 6, 2013 agenda based upon a paperwork mix-up in the Town Attorney's office pertaining to the State Environmental Quality Review Act. The matter was rescheduled for the August 15, 2013 ZBA meeting.

31. On June 12, 2013, less than one week after the LifeChurch matter was removed from the ZBA agenda, one or more Town Officials informed Mr. Sipperly that the Town would not accept the plans showing access to the Property by means of the access easement across Moffat Lane. The Town took the position that the Property was landlocked and, in order to utilize the easement across Moffat Lane, application must be made for an Open Development Area ("ODA") approval pursuant to NYS Town Law 280-a.

32. In response, on August 15, 2013, LifeChurch submitted a request for an ODA. On August 8, 2013, LifeChurch also filed a complete application for site plan and subdivision approval with the Town.

33. Shortly after this submittal, the Town Attorney questioned whether an ODA would be required because the Property had frontage on a public street, Watervliet-Shaker Road. The matter was then placed upon the September 10, 2013 Planning Board agenda for sketch review.

34. Soon thereafter, the Town Attorney informed LifeChurch that the Town Planning Board would not consider an ODA for the Property. On October 13, 2013, a meeting was held with NYS DOT to discuss access from the parcel directly to Watervliet-Shaker Road. A revised site plan was submitted showing access directly from Watervliet-Shaker Road. The request for a two lot subdivision was withdrawn.

35. At the ZBA's December 19, 2013 meeting, the ZBA granted the area variance to allow for a 36,601 square foot building. Mr. Sipperly immediately requested that the site plan application be placed upon the Town Planning Board's January 21, 2014 agenda. However, on January 3, 2014, Mr. Sipperly was informed that the resubmitted site plan application, previously filed back on November 6, 2013, was incomplete. The Town's Planning staff also requested a meeting to discuss the proposed access via Watervliet-Shaker Road.

36. At a meeting held on January 8, 2014, Town Planning staff informed LifeChurch that they preferred access from Moffat Lane rather than access from Watervliet-Shaker Road. LifeChurch requested that the matter be placed upon the January 21, 2014 Planning Board agenda and that it would submit a revised plan showing Moffat Lane access for discussion at that meeting. On January 13, 2014, Mr. Sipperly submitted revised plans showing Moffat Lane as the access point.

37. On January 17, 2014, in response to LifeChurch's email to the Town confirming that the Project was on the January 21, 2014 Planning Board agenda, the Town's Planning Director, Joseph LaCivita, informed LifeChurch that the Town Attorney pulled the matter from the agenda. In response, LifeChurch contacted the Town Attorney who stated that he had questions as to whether the proposed use constituted a church because, to him, it appeared to be a

“commercial television broadcast studio.” LifeChurch provided documentation to the Town Attorney proving that the proposed use was a place of worship.

38. On March 10, 2014, upon completion of additional traffic analysis, an updated complete application package was submitted to the Town. Mr. Sipperly requested the matter be placed on the next Town Planning Board agenda. However, Mr. Sipperly was informed that the application was rejected because the title block on the plan merely stated a wrong location for the Project.

39. On March 31, 2014, Mr. Sipperly received correspondence from the Town Planner, Mike Lyons, that the application was complete and being placed upon the Town Planning Board’s meeting agenda for May 6, 2014.

40. On May 1, 2014, Mr. Sipperly was informed that the matter was being rescheduled to the May 20, 2014 agenda because the Town had insufficient time to review recently submitted traffic data. However, on May 15, 2014, LifeChurch was again informed that the matter was being pulled from the May 20th agenda and not being rescheduled based upon Town discussions with DOT personnel who preferred access from Moffat Lane instead of the proposed new curb cut. At approximately this same time, the Town Designated Engineer issued a memo stating their recommendation that the Project be accessed via Moffat Lane. As a result, LifeChurch requested an immediate meeting with all parties to resolve the conflicting messages being received from the Town’s officials.

41. On May 22, 2014, LifeChurch attended a meeting along with the Project engineers Lynn and Brian Sipperly. In attendance was the Assistant Town Attorney, the Planning Director, and Mike Lyons, the Town Planner. At this meeting, Mr. Lyons and the Assistant Town Attorney advised LifeChurch to submit another request for an ODA to utilize Moffat

Lane. One or more Town Officials agreed to make the request for the ODA. The Town had in effect backtracked back to where the Project had been in August 2013 wherein they made the same recommendation (which was ignored by the Town). LifeChurch requested that, in the event that the ODA was again refused, then the matter would be placed upon the next available Town Planning Board agenda for review showing direct access to the public street. Town Officials present at the meeting agreed to this alternative course of action in the event the ODA was again refused.

42. On June 19, 2014, the Assistant Town Attorney informed the project engineers by email that the Town Planning Board would not hear the ODA request. As a result, LifeChurch sought clarification as to the reason and received no response. LifeChurch informed the Town's Planning Director that it was being forced to resort to litigation to compel the Town to place the matter on an agenda to be heard. LifeChurch sent a chronology of the above referenced events to the Planning Director to demonstrate how egregiously it had been treated. On July 23, 2014, LifeChurch contacted the Town's Planning Department and was informed that the matter was being placed on the August 12, 2014 Town Planning Board agenda.

43. On August 12, 2014, LifeChurch was before the Town's Planning Board for a sketch review – for the second time, the first of which took place nearly one year before. At this meeting, LifeChurch's engineers demonstrated that LifeChurch's proposed driveway location fully complied with New York State Department of Transportation regulations and standards pertaining to separation distances between driveways and intersections. At this meeting, the Town's Planning Board raised three items *for the first time* in again delaying the process in denying the sketch plan submitted on behalf of LifeChurch. Each of these three *new* items could have and should have been raised well before now, if they should have been raised at all.

44. The Town then advised LifeChurch that it would be on the Town Planning Board's agenda on September 23, 2014. However, on September 17, 2014, the Planning Director advised LifeChurch that its matter could be placed on the Town Planning Board's October 7, 2014 agenda but not the September 23, 2014. In response, on September 22, 2014, LifeChurch sent a demand letter to the Town advising the Town and Town Officials that their continual, unjustifiable delays were violating LifeChurch's constitutional rights and substantially burdening its religious exercise. Additionally, LifeChurch advised the Town that if it was not placed on the October 7, 2014 agenda and if all of its requests were not approved at that time, then it would consider any further efforts as futile and it would proceed accordingly. Moreover, LifeChurch stated that any further delays or requests for additional information would further illustrate that the Town was merely seeking to delay LifeChurch's approvals indefinitely and that LifeChurch would treat such action as a denial of its requests.

45. Even after LifeChurch provided the Town with notice of its unconstitutional deprivations and violations of RLUIPA, the Town did not place LifeChurch on the Town Planning Board's agenda for October 7, 2014.

46. Subsequent to the Town's receipt of the letter setting forth the Town's and Town Officials' RLUIPA violations, LifeChurch's application was placed upon the Planning Board's October 21, 2014 agenda for continued sketch review. At this meeting, LifeChurch's attorneys and engineers presented its application. Numerous attendees of LifeChurch also addressed the Planning Board explaining the role of LifeChurch in their lives as well as its role in the local community.

47. As a result of the testimony provided to the Planning Board at this meeting, Planning Board members requested that Town staff and the Town's outside engineer meet with

LifeChurch's representatives so that any outstanding issues could be addressed and the matter brought back to the Planning Board for concept acceptance of the site plan.

48. On October 23, 2014, a meeting was held between LifeChurch's representatives and the Planning Director along with representatives from the Town's outside engineering firm. LifeChurch was informed by the Town's outside engineers that the purpose of the meeting was to gather information because the outside engineers were meeting that evening with members of the Town Planning Board.

49. LifeChurch received no word on the discussion held or outcome of the meeting held with the elected officials.

50. When LifeChurch's representatives inquired as to the status of being placed upon the Planning Board's agenda, they were informed that the Town's outside engineers had not been working on the Project because the escrow account that LifeChurch had provided to the Town to pay for the costs of the outside engineer needed to be replenished. LifeChurch immediately rectified this situation but was told by the Town that it was too late to be placed upon the December 2, 2014 Planning Board agenda. LifeChurch was informed by the Town that it could possibly be on the December 16, 2014 meeting agenda provided that the Planning Board's comments had been addressed.

51. LifeChurch's attorneys then contacted the Town's engineer and inquired if anything further was required from LifeChurch in order for the outside engineer to complete their review in time for the December 16, 2014 agenda. They were informed that only an environmental assessment form needed to be submitted, however, the requested document had already been provided to the Town by LifeChurch a week before the request from the Town's outside engineer.

52. On November 20, 2014, LifeChurch's attorneys received a memo from the Town's outside engineer stating that approval of the project will "hinge" on ODA approval by the Town Planning Board; a concept recommended and supported by the outside engineers. This is the same type of approval that LifeChurch had twice sought from the Town Planning Board to no avail.

53. When seeking clarification on the memo, the Town's outside engineer offered to meet to explain their position. This meeting occurred on November 25, 2014.

54. At this meeting, LifeChurch was given a list of approval conditions that the outside engineer stated he was going to recommend to the Town be conditions of any ODA approval. These conditions attempted to regulate critical aspects of LifeChurch's worship services and religious activities, including the number of worship services and the time for those worship services. A true and correct copy of the memo setting forth the conditions is attached hereto as Exhibit "A." LifeChurch informed the outside engineer that a number of the conditions appeared to be unacceptable and would likely be rejected by LifeChurch leadership.

55. When Town Officials were informed that the proposed conditions were not acceptable to LifeChurch, LifeChurch was told that it would not be placed upon the December 16, 2014 agenda without accepting the conditions set out by the Town's outside engineer. *See* Exhibit "B." On December 15, 2014, LifeChurch confirmed from the Town's website that LifeChurch's application was not on the Town Planning Board's December 16, 2014 meeting agenda. On December 16, 2014, one or more of LifeChurch's attorneys or representatives attended the Town Planning Board meeting and LifeChurch's zoning request was not on the agenda.

56. As a result of the Town's continual delay tactics, LifeChurch had no other option but to seek the Court's intervention.

57. LifeChurch has no plain, adequate or complete remedy at law to redress these violations of its constitutional rights, and this suit for injunction, declaratory judgment and damages is its only means of securing complete and adequate relief. No other remedy would offer LifeChurch substantial and complete protection from the continuation of the Town's and Town Officials' unlawful and unconstitutional acts, policies, and practices. By their longstanding hostility and bias against LifeChurch and its pending application, the Town and Town Officials have demonstrated that, without the imposition of preliminary injunctive relief, the continuation of proceedings before the Town Planning Board will be interminable and futile.

58. LifeChurch has sustained an immediate, irreparable injury because of the Town's and Town Officials' delays and unlawful burden they have placed on LifeChurch's exercise of religion. The Town's and Town Officials' continual delay, hostility, and obstruction has caused LifeChurch to incur damages including unnecessary engineering and attorney's fees and expenses caused by the Town and Town Officials. LifeChurch will also continue to incur significant expenses for repairs and maintenance to its current facility that would not be necessary if it was allowed to timely begin the Project. As such, in addition to the substantial burden being placed on LifeChurch's religious exercise, it has and will continue to incur damages as the result of the Town's and Town Officials' actions.

V.

CAUSES OF ACTION

COUNT I

**Violation of RLUIPA
“Substantial Burden”
(42. U.S.C. § 2000cc(a))**

59. LifeChurch incorporates herein by reference as if fully set forth below the allegations contained in paragraphs 1 through 58.

60. The Town and Town Officials have deprived and continue to deprive LifeChurch of its right to the free exercise of religion, as secured by RLUIPA, by imposing and implementing land use regulations that place a substantial burden on LifeChurch’s religious exercise without a compelling governmental interest. This substantial burden affects, or removal of that substantial burden would affect, interstate commerce.

COUNT II

**Violation of RLUIPA
“Nondiscrimination”
(42. U.S.C. § 2000cc(b)(2))**

61. LifeChurch incorporates herein by reference as if fully set forth below the allegations contained in paragraphs 1 through 60.

62. The Town and Town Officials have deprived and continue to deprive LifeChurch of its right to the free exercise of religion, as secured by RLUIPA, by imposing and implementing land use regulations that discriminate against LifeChurch on the basis of religion or religious denomination.

COUNT III

**Violation of RLUIPA
“Equal Terms”
(42 U.S.C. § 2000cc(b)(1))**

63. LifeChurch incorporates herein by reference as if fully set forth below the allegations contained in paragraphs 1 through 62.

64. The Town and Town Officials have deprived and continue to deprive LifeChurch of its right to the free exercise of religion, as secured by RLUIPA, by imposing and implementing land use regulations that treat a religious assembly and institution on less than equal terms with a nonreligious assembly and institution.

COUNT IV

**Violation of RLUIPA
“Unreasonable Limitation”
(42 U.S.C. § 2000cc(b)(3)(b))**

65. LifeChurch incorporates herein by reference as if fully set forth below the allegations contained in paragraphs 1 through 64.

66. The Town and Town Officials have deprived and continue to deprive LifeChurch of its right to the free exercise of religion, as secured by RLUIPA, by imposing and implementing land use regulations that unreasonably limit religious assemblies, institutions, or structures within a jurisdiction.

COUNT V

**Violation of the United States Constitution
Free Exercise of Religion: First and Fourteenth Amendments
(42 U.S.C. § 1983)**

67. LifeChurch incorporates herein by reference as if fully set forth below the allegations contained in paragraphs 1 through 66.

68. The Town and Town Officials have deprived and continue to deprive LifeChurch of its free exercise of religion, as secured by the First Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment, by substantially burdening LifeChurch's religious exercise without a compelling governmental interest, by discriminating against LifeChurch, and by intentionally and unreasonably inhibiting its right to construct a place of worship on its Property.

COUNT VI

**Violation of the United States Constitution
Freedom of Association: First and Fourteenth Amendments
(42 U.S.C. § 1983)**

69. LifeChurch incorporates herein by reference as if fully set forth below the allegations contained in paragraphs 1 through 68.

70. The Town and Town Officials have deprived and continue to deprive LifeChurch of its right to freely associate for the purposes of religious exercise and for intimate association as secured by the First Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment, by prohibiting LifeChurch from associating on its Property.

COUNT VII

**Violation of the United States Constitution
Freedom of Speech: First and Fourteenth Amendment
(42 U.S.C. § 1983)**

71. LifeChurch incorporates herein by reference as if fully set forth below the allegations contained in paragraphs 1 through 70.

72. By intent and design, churches are expressive in nature. Among other things, they are architectural statements to the surrounding community of the church's belief in God and in

the necessity of looking to God for inspiration, guidance and salvation. The interior of a church is used for the expression of religious messages to church members, guests and casual visitors alike.

73. The Town and Town Officials have deprived and continue to deprive LifeChurch of its right, secured by the Free Speech Clause of the First Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment, to express itself on matters of religion by, *inter alia*, discriminating against LifeChurch based on the religious nature of its expression, by unreasonably inhibiting its right to freely express its faith to its worshipers and the community, and by applying various land use regulations so as to delay, obstruct and unreasonably deny LifeChurch the ability to use its Property for expressive purposes.

COUNT VIII

Violation of the United States Constitution Freedom of Assembly: First and Fourteenth Amendments (42 U.S.C. § 1983)

74. LifeChurch incorporates herein by reference as if fully set forth below the allegations contained in paragraphs 1 through 73.

75. The Town and Town Officials have deprived and continue to deprive LifeChurch of its right to free assembly for the purpose of worship, as secured by the First Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment, by prohibiting LifeChurch from peaceably worshiping in a location where similar groups would be (and are) permitted to peaceably assemble.

COUNT IX

**Violation of the United States Constitution
Equal Protection: Fourteenth Amendments
(42 U.S.C. § 1983)**

76. LifeChurch incorporates herein by reference as if fully set forth below the allegations contained in paragraphs 1 through 74.

77. The Town and Town Officials have deprived and continue to deprive LifeChurch of its right to equal protection of the laws, as secured by the Fourteenth Amendment to the United States Constitution, by discriminating against LifeChurch and treating it differently from other similarly situated individuals or entities without a rational basis for the distinction.

COUNT X

**Violation of the United States Constitution
Due Process: Fourteenth Amendment
(42 U.S.C. § 1983)**

78. LifeChurch incorporates herein by reference as if fully set forth below the allegations contained in paragraphs 1 through 77.

79. LifeChurch has the right, secured by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, to a fair decision-making process and an impartial decision-maker before being deprived of the right to use its property for religious purposes. Specifically, LifeChurch has a procedural due process right to a land use review process that is non-discriminatory, unbiased, not unduly burdensome, and proceeds in a reasonably expeditious and fair fashion.

80. By intentionally manipulating the land use approval process to create patently unreasonable delays, and by the other conduct alleged above, the Town and Town Officials have deprived and continue to deprive LifeChurch of its right to procedural due process.

81. Additionally, LifeChurch has a substantive due process right, secured by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, not to be deprived of the use of its property except by laws, regulations, or government actions that are rationally related to a legitimate governmental interest. LifeChurch also has a substantive due process right not to be subjected to arbitrary and capricious zoning decisions.

82. By conducting the land use review process in a discriminatory, unauthorized and illegal manner, and by the other conduct alleged above, including conditioning LifeChurch's inclusion on the Town Planning Board's agenda on its acceptance of arbitrary and capricious conditions that regulate and restrict critical aspects of LifeChurch's worship services and religious activities, including the number of worship services and the time for those worship services, the Town and Town Officials have violated LifeChurch's substantive due process rights.

COUNT XI

Violation of New York State Constitution Free Exercise of Religion: Article I, Section 3

83. LifeChurch incorporates herein by reference as if fully set forth below the allegations contained in paragraphs 1 through 82.

84. The Town and Town Officials have deprived and continue to deprive LifeChurch of the right to free exercise of religion as secured by Article I, Section 3 of the New York State Constitution, by *inter alia*, discriminating against LifeChurch on the basis of religion by intentionally and unreasonably inhibiting its right to construct a place of worship on its Property.

COUNT XII

**Violation of New York State Constitution
Freedom of Speech: Article I, Section 8**

85. LifeChurch incorporates herein by reference as if fully set forth below the allegations contained in paragraphs 1 through 84.

86. The Town and Town Officials have deprived and continue to deprive LifeChurch of its right, secured by Article I, Section 8 of the New York State Constitution, to express itself on matter of religion by, *inter alia*, discriminating against LifeChurch based on the religious nature of its expression, by unreasonably inhibiting its right to freely express its faith and to its worshipers and the community, and by applying various land use regulations so as to delay, obstruct and unreasonably deny LifeChurch the ability to use its Property for expressive purposes.

COUNT XIII

**Violation of the New York State Constitution
Freedom of Assembly: Article I, Section 9**

87. LifeChurch incorporates herein by reference as if fully set forth below the allegations contained in paragraphs 1 through 86.

88. The Town and Town Officials have deprived and continue to deprive LifeChurch of its right to free assembly for the purpose of worship, as secured by Article I, Section 9 of the New York State Constitution, by prohibiting LifeChurch from peaceably worshiping in a location where similar groups would be (and are) permitted to peaceably assemble.

COUNT XIV

**Violation of the New York State Constitution
Equal Protection: Article I, Section 11**

89. LifeChurch incorporates herein by reference as if fully set forth below the allegations contained in paragraphs 1 through 88.

90. The Town and Town Officials have deprived and continue to deprive LifeChurch of its right to equal protection of laws, as secured by Article I, Section 11 of the New York State Constitution, by purposefully and systematically discriminating against LifeChurch on the basis of religion in the Town's and Town Officials' application of various land use regulations, which discrimination has resulted in the abridgement of LifeChurch's rights to freedom of religion, freedom of speech, freedom of association, freedom of assembly, and due process.

91. The Town and Town Officials have subjected LifeChurch to a degree and duration of scrutiny which far exceeds that to which they have subjected similarly situated institutions. By imposing, implementing, and manipulating land use regulations in the manner described above, and by the conduct described above, the Town and Town Officials have deprived and continue to deprive LifeChurch of its right to equal protection of laws through their irrational and wholly arbitrary conduct.

COUNT XV

**Violation of the New York State Constitution
Due Process: Article I, Section 6**

92. LifeChurch incorporates herein by reference as if fully set forth below the allegations contained in paragraphs 1 through 91.

93. LifeChurch, as a religious institution, is entitled under law to the benefit of a presumption that its religious use is beneficial to the community at large and that any approvals, permits and/or variances it seeks in connection with its development of its Property will be

granted, subject only to reasonable conditions imposed to protect the public health, safety, and welfare.

94. LifeChurch is further entitled to a land use review process that is non-discriminatory, is unbiased, is not unduly burdensome, and proceeds in a reasonably expeditious and fair fashion.

95. The Town and Town Officials have deprived and continue to deprive LifeChurch of due process of law, as secured by Article I, Section 6 of the New York State Constitution, by intentionally delaying and manipulating the land use approval process to deny LifeChurch the use of its Property, and by conducting the land use approval process in an arbitrary, biased, unauthorized, and illegal manner which is discriminatory, unduly burdensome, and anything but expeditious and fair.

96. Furthermore, the Town and Town Officials have deprived and continue to deprive LifeChurch of due process of law, as secured by Article I, Section 6 of the New York State Constitution, by intentionally delaying and denying to LifeChurch a fundamental liberty interest by conducting the land use approval process in an arbitrary, unauthorized and illegal manner which is discriminatory, unduly burdensome, and anything but expeditious and fair.

COUNT XVI

Petition for Writ of Mandamus

97. LifeChurch incorporates herein by reference as if fully set forth below the allegations contained in paragraphs 1 through 96.

98. LifeChurch has been adversely affected by the Town's and Town Officials' unreasonable delays. The Town and Town Officials have failed to perform duties enjoined upon them by law. The Town and Town Officials, rather, seek to impose conditions on LifeChurch's

zoning request that regulate critical aspects of LifeChurch's worship services and religious activities, including the number of worship services and the time for those worship services. *See* Exhibit "A." The Town has communicated that those conditions, as more fully set forth in Exhibit "A," must be satisfied before the Town will consider LifeChurch's site plan application.

99. LifeChurch has satisfied all of the Town's and Town Officials' reasonable requests. The conditions set forth in Exhibit "A," however, are arbitrary and capricious.

100. There is no discretion available to the Town and Town Officials not to place and keep LifeChurch on the Planning Board's agenda, and all that is left for the Town and Town Officials to perform is a ministerial act. The Town and Town Officials have refused to perform this ministerial act. In the alternative, in the event that the Town and Town Officials have discretion to place LifeChurch on the Planning Board's agenda, their failure to place and keep LifeChurch on the Planning Board's agenda is an arbitrary abuse of their power.

101. LifeChurch requests that the Town's conditions set forth in Exhibit "A" be annulled and LifeChurch's site plan application be approved. In the alternative, LifeChurch requests that this Court issue a writ of mandamus directing the Town and Town Officials to place and keep LifeChurch's site plan application on the Planning Board's agenda and the Court further order the Town Planning Board vote as to whether LifeChurch's site plan application be approved or denied.

COUNT XVII

Declaratory Relief

102. LifeChurch incorporates herein by reference as if fully set forth below the allegations contained in paragraphs 1 through 101.

103. For more than twenty (20) months, the Town and Town Officials have unlawfully delayed and frustrated LifeChurch's efforts to gain the requisite approvals to develop its Property and begin its Project.

104. An actual controversy exists between the parties involving substantial constitutional and statutory issues, in that the Town and Town Officials' actions, both on their face and as applied, violate LifeChurch's rights under, *inter alia*, RLUIPA, the United States Constitution, and the Constitution of the State of New York.

105. The foregoing dispute presents a real controversy which is now ripe for adjudication. Accordingly, LifeChurch seeks a declaratory judgment against the Town and Town Officials as follows:

(a) A declaration that the Town's and Town Officials' actions related to LifeChurch violate RLUIPA; violate LifeChurch's freedom of religion, freedom of association, freedom of speech, freedom of assembly, equal protection and due process rights under the United States Constitution; and violate LifeChurch's freedom of religion, freedom of speech, freedom of assembly, equal protection and due process rights under the New York State Constitution.

(b) A declaration that the Town's and Town Officials' actions related to LifeChurch have unjustifiably substantially burdened LifeChurch's Christian practices in violation of 42 U.S.C. § 2000cc(a)(1).

(c) A declaration that the Town's arbitrary and capricious conditions set forth in Exhibit "A" shall be annulled and LifeChurch's site plan application be approved.

106. No prior application for the relief being sought herein has been made to this Court or to any other court.

COUNT XVIII

Preliminary and Permanent Injunction

107. LifeChurch incorporates herein by reference as if fully set forth below the allegations contained in paragraphs 1 through 108.

108. The Town and Town Officials have deprived LifeChurch of the constitutional and statutory rights mentioned above by intentionally delaying, manipulating and thwarting the municipal approval process and by such other actions and inactions as alleged above.

109. LifeChurch has been irreparably injured as a result of the deprivation of its constitutional rights.

110. By reason of the foregoing, LifeChurch is entitled to preliminary and permanent injunctive relief, as set forth in its request for relief herein.

VI.

REQUEST FOR RELIEF

WHEREFORE, for the foregoing reasons, LifeChurch requests that this Court grant the following relief:

1. A declaration that the Town's and Town Officials' actions related to LifeChurch violate RLUIPA; violate LifeChurch's freedom of religion, freedom of association, freedom of speech, freedom of assembly, equal protection and due process rights under the United States Constitution; and violate LifeChurch's freedom of religion, freedom of speech, freedom of assembly, equal protection and due process rights under the New York Constitution.

2. A declaration that the Town's and Town Officials' actions related to LifeChurch have unjustifiably substantially burdened LifeChurch's Christian practices in violation of 42 U.S.C. § 2000cc(a)(1).

3. A declaration that the Town's arbitrary and capricious conditions set forth in Exhibit "A" shall be annulled and LifeChurch's site plan application be approved.

4. Preliminarily and permanently enjoining and restraining the Town and Town Officials and ordering prohibitory and mandatory relief as follows:

(a) enjoining the Town and Town Officials from applying their laws in a manner that substantially burden LifeChurch's religious exercise;

(b) enjoining the Town and Town Officials from imposing or implementing State and local land use regulations in a manner which treats LifeChurch on less than equal terms with other similarly situated assemblies, institutions, or entities;

(c) enjoining the Town and Town Officials from applying State and local land use laws in a manner that prevent LifeChurch from associating for purposes of expressive religious activity;

(d) enjoining the Town and Town Officials from applying State and local land use laws in a discriminatory manner, and otherwise enjoin the Town and Town Officials from preventing LifeChurch's exercise of its constitutional rights;

(e) compelling and directing the Town's Planning Board to issue all necessary approvals and permits to allow LifeChurch to develop the Project;

(f) prohibiting the Town and Town Officials from impeding or interfering in any way with LifeChurch's actual development and construction of the Project; and

(g) annulling the conditions set forth in Exhibit "A" that the Town seeks to impose on LifeChurch, or in the alternative, issuance of a writ of mandamus directing the Town and Town Officials to place and keep LifeChurch's site plan application on the Planning Board's agenda and to vote on LifeChurch's site plan application.

5. Awarding compensatory damages in favor of LifeChurch and against the Town and Town Officials in such amount as the Court deems just and proper to compensate LifeChurch for the deprivation of its constitutional and statutory rights, and to compensate LifeChurch for its expenditures and fees caused by the Town's and Town Officials' intentional and wrongful course of conduct which has delayed, obstructed and unreasonably denied LifeChurch the ability to develop its Property in an efficient and expeditious manner.

6. Awarding LifeChurch the recovery its reasonable and necessary attorney's fees, expert fees, costs, and expenses from the Town and Town Officials pursuant to 42 U.S.C. § 1988.

7. Awarding LifeChurch the recovery of pre-judgment and post-judgment interest at the maximum applicable legal rates from the Town and Town Officials.

8. Awarding LifeChurch the recovery of such other and further relief, both at law and in equity, to which it may show itself to be justly entitled.

VII.

DEMAND FOR JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, LifeChurch hereby demands a trial by jury of this action of all issues that may be tried by a jury.

LifeChurch respectfully submitted this 17th day of December, 2014.

Respectfully submitted,

/s/ Christopher A. Priore

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