IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

COVENANT CHRISTIAN MINISTRIES, INC. and PASTOR FREDERICK T. ANDERSON, Plaintiffs, vs. CITY OF MARIETTA, GEORGIA, Defendant.	CIVIL ACTION NO. 1:06-CV-1994-CC

ORDER

This matter is presently before the Court on Defendant's Motion for Partial Summary Judgment as to Plaintiff Covenant Christian Ministries, Inc. [Doc. No. 96], Defendant's Motion for Summary Judgment as to Plaintiff Pastor Frederick T. Anderson [Doc. No. 97], Plaintiffs' Motion for Final Judgment Pursuant to F.R.C.P. 54(b) and for Permanent, Mandatory Injunctive Relief [Doc. No. 104], and Defendant's Supplemental Motion for Partial Summary Judgment [Doc. No. 106]. Because Defendant's supplemental motion takes the position that some claims in this case are moot and this Court lacks subject matter jurisdiction over those claims, the Court will first consider the supplemental motion.

I. DEFENDANT'S SUPPLEMENTAL MOTION FOR PARTIAL SUMMARY JUDGMENT

A. FACTS

On May 12, 2008, Defendant City of Marietta, Georgia (the "City") enacted an amended zoning ordinance, changing certain provisions relating to permitted and special uses in residential zoning districts. (Defendant's Statement of Material Facts as to Which There Is No Genuine Issue to Be Tried in Support of Supplemental Motion for Summary Judgment [Doc. No. 106-3] ("DSSMF") ¶1.) The amended ordinance modifies the permitted and special uses in residential zoning districts.

(DSSMF ¶2.) In residential districts, the amended ordinance makes places of assembly, private parks and playgrounds, and neighborhood recreation centers or swimming pools special uses permitted upon approval by the City Council. (DSSMF ¶3.) Under the previous ordinance, private parks and playgrounds and neighborhood recreation centers or swimming pools were permitted uses in residential districts while places of assembly were not allowed. (DSSMF ¶4.) Cemeteries and funeral homes were classified as special uses in the previous ordinance and remain so classified under the amended ordinance. (Id.; Plaintiffs' Response to Defendant's Statement of Material Facts as to Which There Is No Genuine Issue to Be Tried in Support of Supplemental Motion for Summary Judgment [Doc. No. 115] ("Pl.'s Resp. DSSMF") ¶4.)

In spring 2006, Plaintiffs submitted plans for their proposed church and accessory uses as part of their application for a development permit for the subject property, located at 838 Powder Springs Street, within the municipal bounds of the City. (DSSMF ¶5; Mar. 31, 2008 Order [Doc. No. 92], p. 11.)[1] At the time Plaintiffs submitted their plans and application, the ordinance required that the amount of impervious surface on a parcel of land in a R-2 classification be no greater than fifty percent. (DSSMF ¶6; 2005 Zoning Ordinance [Doc. No. 96-11] §708.02(H).)[2] The zoning ordinance defines "impervious surface" as "[a] surface that has been compacted or covered with a layer of material so that it is highly resistant to

[1] For additional information regarding the subject property and the underlying facts relevant to this action, see this Court's March 31, 2008 Order [Doc. No. 92].

[2] As Plaintiffs correctly point out, Defendant cites to the provision of the 2005 Zoning Ordinance that addresses property located in R-3 classifications while the subject property at issue here is located in an R-2 classification (as Defendant has admitted in various documents throughout this litigation); however, the requirements referenced by Defendant also apply to property located in R-2 classifications.

infiltration by water including streets, roofs, sidewalks, parking lots and other similar structures." (DSSMF ¶7.) The maximum allowed building height for structures in an R-2 classification was thirty-five feet. (DSSMF ¶8; 2005 Zoning Ordinance [Doc. No. 96-11] §708.02(H).) The application and site plans submitted by Plaintiffs show that the amount of impervious surface planned for the proposed church complex was greater than fifty percent, and the proposed sanctuary was to be over thirty-five feet tall. (DSSMF ¶¶9-10.)

Although Plaintiffs admit Defendant's statement of fact number 5 which states that Plaintiffs submitted plans for their proposed church as part of their application for a development permit for the subject property, Plaintiffs additionally and somewhat inconsistently take the position that Covenant was not allowed to submit a permit application in March 2006 and that Covenant was told by the City that it would not accept the permit application.[3] (Pl.'s Resp. to Def.'s Statement of Material Fact as to Which There Is No Genuine Issue to be Tried in Support of Supplemental Motion for Summary Judgment [Doc. No. 115], ¶5.) Plaintiffs submit that Pastor Anderson was told that churches are not permitted in residential districts pursuant to the November 10, 2004 ordinance. Plaintiffs assert that Covenant decided to request a rezoning of the property from the residential R-2 classification to Community Retail Commercial ("CRC") and that the site plans filed were designed to comply with the requirements of the CRC classification, rather than the R-2 classification. The rezoning request was denied, however, and the subject property remained in an R-2 classification. The site plans submitted do not comply with the impervious land surface and building height requirements of the R-2 classification,

[3] Regardless, Plaintiffs do not take the position that the proposed plans that they attempted to submit demonstrated an impervious surface of less than fifty percent or a proposed sanctuary of less than thirty-five feet.

as stated above. There is additional evidence in the record indicating that the site plans did not comply with the CRC classification requirements. (See Rezoning Application Analysis [Doc. No. 62-7].) More specifically, the site plan did not include a 40-foot landscape buffer and did not comply with setbacks required under the CRC zoning classification. (Id., p. 6.)[4] Moreover, the site plan did not provide information regarding the proposed dormitory, including the height, architectural features or number of rooms. (Id.) The site plan additionally failed to meet mixed-use criteria, failed to locate parking to the side or rear yards, and exceeded the allowable setback. (Id.) For the rezoning to have been approved subject to the submitted site plan, variances would have to be granted. (Id., p. 7.)[5]

B. STANDARD OF REVIEW

Summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). While the movant carries the initial burden of showing the absence of a genuine issue as to any material fact, the movant is not required to negate his opponent's claim, but rather, may discharge his burden merely by "'showing' – that is, pointing out to the district court – that there is an absence of evidence to support the nonmoving party's case." Celotex Corp. v.

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[4] Although there is some discussion in the minutes of the City Council meeting that Covenant planned to include a 40 foot buffer, a variance to meet the setback requirements was apparently still necessary to approve the site plans, as was a variance to allow a dormitory on the property. (City of Marietta, Meeting Minutes, City Council [Doc. No. 62-7].)

[5] Although there is a letter in the record indicating that revised site plans complying with the buffer and setback requirements were being submitted, the Court has not located a copy of the revised site plans in the record and has found no evidence that revised site plans were reviewed or received by the City.

Catrett, 477 U.S. 317, 325 (1986). When this burden is met, the non-movant is then required "to go beyond the pleadings and by her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate 'specific facts showing that there is a genuine issue for trial.'" Id. at 324.

A court evaluating a summary judgment motion must view the evidence in the light most favorable to the non-movant. Samples v. City of Atlanta, 846 F.2d 1328, 1330 (11th Cir. 1988); Tippens v. Celotex Corp., 805 F.2d 949, 953 (11th Cir. 1986), *reh'g denied*, 815 F.2d 66 (11th Cir. 1987). However, Rule 56, "[b]y its very terms, . . . provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment, the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986) (emphasis in original). The non-moving party must come forward with specific facts showing that there is a genuine issue for trial. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). An issue is not genuine if it is created by evidence that is "merely colorable" or is "not significantly probative." Anderson, 477 U.S. at 249-50. Substantive law will identify which facts are material. Id. at 248.

C. ANALYSIS

The City contends that the amendments to the zoning ordinance that were enacted on May 12, 2008 moot Plaintiffs' facial challenges to the ordinance. This Court agrees. Plaintiffs' facial challenges to the ordinance include: (1) violation of the First Amendment's free exercise, free speech, and freedom of assembly clauses; (2) violation of the equal protection clause of the Fourteenth Amendment; (3) violation of due process under the Fourteenth Amendment; and (4) violations of state constitutional law.

This Court is of limited jurisdiction. Article III of the United States

Constitution "provides that the judicial power of the United States federal courts shall extend only to 'cases' and 'controversies.'" Nat'l Adver. Co. v. City of Miami, 402 F.3d 1329, 1332 (11th Cir. 2005) (citations omitted). This limitation is strictly observed. Id.

"Mootness is among the important limitations placed on the power of the federal judiciary and serves long-established notions about the role of unelected courts in our democratic system. By its very nature, a moot suit cannot present an Article III case or controversy and the federal courts lack subject matter jurisdiction to entertain it." Id. (citation and marks omitted). There must be a live case or controversy throughout the litigation. Tanner Adver. Group, L.L.C. v. Fayette County, 451 F.3d 777, 785 (11th Cir. 2006) (citation omitted).

"A change in the law, such as amending a zoning ordinance . . . or a change in other circumstances can give rise to mootness." Nat'l Adver., 402 F.3d at 1332. The Eleventh Circuit and the United States Supreme Court "have repeatedly held that the repeal or amendment of an allegedly unconstitutional statute moots legal challenges to the legitimacy of the repealed legislation." Id. A constitutional challenge is not moot where "the law is reasonably likely to be reenacted or when it is replaced by another constitutionally suspect law." Seay Outdoor Adver., Inc. v. City of Mary Esther, 397 F.3d 943, 947 (11th Cir. 2005). "[A] superseding statute or regulation moots a case only to the extent that it removes the challenged features of the prior law. To the extent that those features remain in place, and changes in the law have not so fundamentally altered the statutory framework as to render the original controversy a mere abstraction, the case is not moot." Id. at 949 (citation and marks omitted). Moreover, "when a plaintiff requests damages, as opposed to only declaratory or injunctive relief, changes to or repeal of the challenged ordinance may not necessarily moot the plaintiff's constitutional challenge to that ordinance."

Crown Media, LLC v. Gwinnett County, 380 F.3d 1317, 1325 (11th Cir. 2004) (citation omitted). The Eleventh Circuit has held that "once the repeal of an ordinance has caused our jurisdiction to be questioned, [the plaintiff] bears the burden of presenting affirmative evidence that its challenge is no longer moot." Nat'l Adver., 402 F.3d at 1334.

1. Likelihood of Reenactment

Plaintiffs argue that their claims are not moot because the City is likely to continue the conduct challenged in this case and because the City amended the ordinance simply to deprive this Court of jurisdiction. "[W]hen a defendant has voluntarily ceased its offending conduct we are reluctant to dismiss the case as being moot, particularly if there is affirmative evidence that the defendant is likely to return to its prior ways following out dismissal of the litigation. However, governmental entities and officials have been given considerably more leeway than private parties in the presumption that they are unlikely to resume illegal activities." Nat'l Adver., 402 F.3d at 1333 (citation and marks omitted). In the instant case, there is no affirmative evidence that the City is likely to return to its prior ways. Plaintiffs' argument on this point is based on speculation and conjecture. Plaintiffs fault the City for waiting until after this Court decided that the November 10, 2004 ordinance violated the Religious Land Use and Institutionalized Persons Act ("RLUIPA") to amend the ordinance. Plaintiffs additionally submit that the City "has offered no evidence that their actions were not motivated by the desire to attempt to divest this Court of jurisdiction, nor have they offered any evidence that they will not reenact the November 10, 2004 [o]rdinance, or some other variation thereof." (Pls.' Resp. to Def.'s Motion for Partial Summary Judgment [Doc. No. 114], p. 20.) As previously noted, however, Plaintiffs bear the burden here. Plaintiffs submit that the City has undertaken extensive efforts to prevent Plaintiffs from building a church on the

subject property. The record reflects, however, that the November 10, 2004 ordinance was an attempt to ensure that the City's zoning ordinances complied with RLUIPA in response to another dispute. After this Court found that the November 10, 2004 ordinance violated RLUIPA, the City again amended the ordinance with the purpose of complying with RLUIPA. There is simply no evidence indicating that the City will likely reenact the November 10, 2004 ordinance after this lawsuit is resolved. The Court has not been presented with evidence of a "substantial likelihood" that the portions of the 2005 zoning ordinance that were altered in the 2008 amendment will be reenacted, and the Court is "sufficiently convinced" that the prior zoning ordinance will not be reenacted. Id. at 1334.

2. Constitutionality of Amendment

Plaintiffs take the position that the amendment did not remove all challenged features of the prior zoning ordinance and, therefore, the case is not moot. Plaintiffs submit that they are still disadvantaged in the same fundamental way under the amended ordinance. More specifically, Plaintiffs contend that the amended ordinance allows the following to locate in residential zoning classifications without a special use permit: (1) golf courses and driving ranges; (2) fraternity and sorority houses and residence halls; (3) retirement centers; and (4) retail uses.[6] Plaintiffs' First Amended Complaint alleges that such uses are allowed in residential classifications **other than** R-2, which is the classification of the subject property. The non-residential uses that were alleged to be permitted in the R-2 classification were public buildings, utilities, private parks and playgrounds, and neighborhood recreation centers and swimming pools. Plaintiffs object to the City's failure to make

[6] Plaintiffs also reference the location of the Marietta Conference Center & Resort in a residential classification; however, the undisputed evidence in this case establishes that the City's property is not subject to the same zoning requirements as privately-held property.

religious institutions a permitted use and emphasize that the amendment continues to allow the City to have complete discretion in allowing or denying permits to religious institutions.

The Court, having thoroughly reviewed the amended ordinance and Plaintiffs' First Amended Complaint, concludes that the amendment changed Plaintiffs' claims in a fundamental way. In residential districts, the amended ordinance makes places of assembly (including religious institutions), private parks and playgrounds, and neighborhood recreation centers or swimming pools special uses permitted upon approval by the City Council. Under the previous ordinance, private parks and playgrounds and neighborhood recreation centers or swimming pools were permitted uses in residential districts while places of assembly were not allowed. The gravamen of Plaintiffs' First Amended Complaint is not only that religious uses were no longer permitted uses in residential districts but that religious institutions were treated differently from other similar uses, including private parks and playgrounds, and neighborhood recreation centers and swimming pools. Under the amended ordinance, however, religious institutions in R-2 classifications are no longer treated differently than the uses that Plaintiffs have identified as similar in their First Amended Complaint.[7] While Plaintiffs' First Amended Complaint additionally references the fact that certain other uses are allowed in residential classifications other than the R-2 classification to which they are subject and those uses are still allowed under the amended ordinance, the subject property is located in an R-2 classification. The treatment of religious institutions and other uses in the other residential classifications is not and cannot be central to Plaintiffs' claims in this case. In sum, the Court concludes that the relevant portions of the

[7] The Court additionally does not consider government buildings or utilities to be similar to places of assembly, including religious institutions.

ordinance have been sufficiently altered such that a new and different controversy is presented. See Coalition for the Abolition of Marijuana Prohibition v. City of Atlanta, 219 F.3d 1301, 1311 (11th Cir. 2000) (citation omitted).

3. Plaintiffs' Damages Claims

The City argues that Plaintiffs' damages claim does not justify allowing this suit to proceed. The City contends that Plaintiffs have no vested rights and that Plaintiffs cannot demonstrate a redressible injury for standing purposes. The factual basis for the City's arguments is that Plaintiffs' 2006 application for a permit did not comply with the unchallenged portions of the ordinance then in effect.

"To satisfy the [Article] III case-or-controversy requirement, a litigant must have suffered some actual injury that can be redressed by a favorable judicial decision." Iron Arrow Honor Society v. Heckler, 464 U.S. 67, 70-71, 104 S. Ct. 373, 78 L. Ed. 2d 58 (1983). Plaintiffs argue extensively that they have been harmed because they have been unable to build a church on the subject property; however, winning this case will not alter that circumstance. Covenant's 2006 proposal did not comply with the unchallenged portions of the 2004 ordinance as to the R-2 classification. Covenant's request for rezoning was denied. Plaintiffs do not establish that any permit application submitted in 2006 complied with the relevant ordinance requirements for the zoning classification to which Covenant was subject. Plaintiffs have not raised a claim regarding the May 2008 permit application in this action and have not sought leave to file an amended complaint, and the Court accordingly does not address Plaintiffs' May 2008 permit application here.

The Court additionally agrees with the City's position that Covenant lacks vested rights in connection with any permit application.[8] "[A] party's vested

[8] Covenant focuses in its brief on the denial of a May 2008 permit application. The Court agrees with the City's position that the May 2008 application is not at issue in this

property rights constitute an enforceable entitlement to a permit . . . unaffected by subsequent changes in . . . ordinances and may keep a constitutional challenge . . . from becoming moot." Crown Media, 380 F.3d at 1325 (citation omitted). A vested right is "[a] right that so completely and definitely belongs to a person that it cannot be impaired or taken away without the person's consent." Coral Springs St. Sys., Inc. v. City of Sunrise, 371 F.3d 1320, 1333 (11th Cir. 2004). "Whether a plaintiff has obtained vested property rights in a sign or permit is a question of state law." Crown Media, 380 F.3d at 1325. The Georgia Supreme Court has held that "vested rights to development arise when any of four conditions is shown to exist: (a) Right to [r]ely upon [b]uilding and other [p]ermits [o]nce [i]ssued . . . (b) Right to [i]ssuance of a [b]uilding [p]ermit . . . (c) Right to [r]ely upon [a]pproved [d]evelopment [p]lan . . . (d) Right to [r]ely upon [o]fficial [a]ssurances that a [b]uilding [p]ermit [w]ill [p]robably [i]ssue." Union County v. CGP, Inc., 277 Ga. 349, 351, 589 S.E. 2d 240, 242 (2003) (citation and marks omitted). As Plaintiffs themselves note, a landowner's right to the issuance of a building permit must be determined by referencing the zoning regulations "as such regulations exist at the time a proper application for building permit is submitted to the proper authority." (Pls.' Resp. to Def.'s Motion for Partial Summary Judgment [Doc. No. 114], p. 7.)

It is undisputed that no permits were issued in this case, so the Court turns to whether Covenant had a right to the issuance of a building permit when its application was submitted (or attempted to have been submitted) in 2006 or when its rezoning request was denied. The Court concludes that Covenant did not have the right to issuance of a permit because the application failed to comply with the

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case. The operative complaint in this action was filed in March 2007. Plaintiffs have not sought to amend their complaint to seek damages relating to the denial of the May 2008 application and obviously no damages associated with that application are sought in the March 2007 complaint.

unchallenged portions of the R-2, and the request for rezoning was denied. As to the R-2 requirements, Covenant's proposed plans contained excessive impervious surface and the proposed sanctuary exceeded the ordinance's height limitations. See Tanner, 451 F.3d at 788.[9] As to the CRC requirements, Covenant's proposed plans failed to comply with buffer and setback requirements, even if a permit application had been submitted. The parties have not identified any information in the record regarding approved development plans or official assurances that a building permit will probably issue. Pastor Anderson testified during his deposition that he discussed his plans to build a church with a member of the City Council and the City Manager, but he did not testify that the official made any promises or assurances that Covenant would be able to construct a church on the subject property. Plaintiffs did not have vested rights in the issuance of a permit.

For these reasons, Plaintiffs' damages claim does not save this case from a finding of mootness because Plaintiffs have failed to show that their harm will be redressed by a favorable decision from this Court. Defendant's supplemental motion for partial summary judgment is due to be granted, and Plaintiffs' facial constitutional challenges to the November 10, 2004 zoning ordinance are **DISMISSED as moot**.

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[9] Plaintiffs contend that the entire November 10, 2004 ordinance was invalid because the Court has found that certain provisions violated RLUIPA. Plaintiffs argue that because there was no valid restrictions on their ability to develop the property in spring 2006, they had a vested property right in an application to build the proposed church on the subject property. This Court disagrees and finds that the ordinance was severable, for the reasons stated by the City in connection with its motion for partial summary judgment as to Covenant.

II. MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO PLAINTIFF COVENANT CHRISTIAN MINISTRIES, INC.

Because the Court has already found that the November 10, 2004 ordinance violates RLUIPA, the Court need not consider whether Plaintiffs' constitutional claims can succeed. This Court has an obligation to avoid the resolution of constitutional questions to the extent possible. Communist Party of Ind. v. Whitcomb, 414 U.S. 441, 452, 38 L. Ed. 2d 635, 94 S. Ct. 656 (1974) ("[T]he appropriate exercise of judicial power requires that important constitutional issues not be decided unnecessarily where narrower grounds exist for according relief."). Accordingly, the Court will not consider whether the November 10, 2004 ordinance violates Covenant's constitutional rights. The Court therefore **DENIES as moot** the motion for partial summary judgment as to Covenant.

III. MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO PLAINTIFF PASTOR FREDERICK T. ANDERSON

This Court has previously held that Pastor Anderson has standing only to pursue the claims asserted in Counts I (violation of the Free Exercise Clause of the First Amendment), II (violation of the right to freely assemble for the purpose of worship protected by the First Amendment), and X (state law violations) of the First Amended Complaint.[10] The Court concludes, for the reasons stated in connection with its other rulings in this case, that Pastor Anderson's facial challenges to the November 10, 2004 ordinance are moot. The Court additionally concludes that

[10] Although this Court's March 31, 2008 Order did not specifically analyze Pastor Anderson's standing to assert the claims in Count XI of the First Amended Complaint, the claims asserted in Count XI relate solely to the subject property, and for the reasons stated in the March 31, 2008 Order, because Pastor Anderson does not assert an ownership interest in the subject property, he lacks standing to pursue the claims asserted in Count XI. Similarly, Pastor Anderson lacks standing to assert the claims appearing in Count V, insofar as Pastor Anderson is not himself a religious institution, did not apply for rezoning or for a permit to build a church on the subject property, and does not own the subject property.

Pastor Anderson lacks standing to pursue the additional constitutional claims that he raises. Pastor Anderson lacks a redressible injury insofar as Covenant was not entitled to the issuance of a building permit for the subject property for the reasons stated in connection with the Court's other rulings. Pastor Anderson is not currently prohibited from conducting worship service on the subject property or assembling there. Instead, the November 10, 2004 ordinance that he challenges is a land use regulation that prohibits **Covenant** from building a church there. The permit applications and proposed site plans submitted by Covenant, however, fail to comply with the unchallenged portions of the ordinance. Moreover, even if the Court's conclusions that Pastor Anderson lacks standing or that his claims are partial moot are incorrect, the Court agrees with the City's position that Pastor Anderson's claims cannot succeed as a substantive matter, for the reasons stated by the City. Accordingly, the Court **GRANTS** the motion for partial summary judgment as to Pastor Anderson.

IV. MOTION FOR PARTIAL JUDGMENT UNDER RULE 54(B)

Insofar as the instant order resolves all pending claims, there is no reason for the Court to enter a partial judgment in this case, and the Court **DENIES as moot** Plaintiff's motion for partial judgment.

V. RELIEF FOR RLUIPA VIOLATION

On March 31, 2008, this Court entered an Order granting in part Plaintiff's motion for partial summary judgment. The Court found that the November 10, 2004 ordinance (which has since been amended) violated the equal terms provision of RLUIPA. The Court did not determine the relief that should be granted in connection with this decision.

In its motion for judgment under Rule 54(b), Covenant seeks a mandatory, permanent injunction requiring the City to process Covenant's building permit

application. As previously noted, however, the proposed site plans that Covenant filed in spring 2006 did not comply with the unchallenged portions of the zoning ordinance, and Covenant has not amended its complaint to include any claims or requests for relief regarding the permit application filed in May 2008.[11] The Court therefore concludes that injunctive relief is not appropriate in this case, for these reasons and for the other reasons stated by the City in response to Plaintiff's motion for judgment under Rule 54(b).

The Court next considers whether Covenant is entitled to damages for the violation of RLUIPA found in this Court's March 2008 Order. The City takes the position, in connection with the partial motion for summary judgment as to Covenant, that monetary damages are not available under RLUIPA. This Court disagrees.

42 U.S.C. § 2000cc-2(a) provides that "[a] person may assert a violation of this Act as a claim or defense in a judicial proceeding and obtain appropriate relief against a government." The Eleventh Circuit considered whether this language encompasses a claim of monetary damages in Smith v. Allen, 502 F.3d 1255 (11th Cir. 2007). Although Smith involved the violation of a different provision of RLUIPA than the present case, the remedies provision set forth above applies to any violation of RLUIPA. The Court therefore considers Smith to be instructive as to the availability of monetary damages in this case. Smith recognized that there is a division of authority on the issue of whether monetary damages are to be considered appropriate relief in RLUIPA cases and concluded that the phrase 'appropriate

[11] As previously stated, the Court additionally agrees with the City's position that the offending portions of the November 10, 2004 ordinance should be severed such that the Court's decision that the November 10, 2004 ordinance violated RLUIPA did not result in the invalidation of the City's entire zoning ordinance whereby Covenant would be entitled to build whatever structure it desired on the subject property.

relief' "is broad enough to encompass the right to monetary damages in the event a plaintiff establishes a violation of the statute." Smith, 502 F.3d at 1270. Under the authority of Smith, the Court concludes that monetary damages are available in this case.

At oral argument, the parties agreed that if the Court concluded that damages were available under RLUIPA, a jury trial would be required to determine appropriate damages in this case. The Court has scheduled this jury trial for **September 8, 2009, at 9:30 am as second out on the trial calendar**. The Court **DIRECTS** the parties to file a proposed joint consolidated pretrial order as contemplated by the Local Rules of this Court within the next 30 days.

VI. CONCLUSION

In sum, Defendant's Motion for Partial Summary Judgment as to Plaintiff Covenant Christian Ministries, Inc. [Doc. No. 96] is **DENIED as moot**, Defendant's Motion for Summary Judgment as to Plaintiff Pastor Frederick T. Anderson [Doc. No. 97] is **GRANTED**, Plaintiffs' Motion for Final Judgment Pursuant to F.R.C.P. 54(b) and for Permanent, Mandatory Injunctive Relief [Doc. No. 104] is **DENIED as moot**, and Defendant's Supplemental Motion for Partial Summary Judgment [Doc. No. 106] is **GRANTED**.

The Court will hold a jury trial on the issue of damages in this case on September 8, 2009, at 9:30 am as second out on the trial calendar.

SO ORDERED this 28th day of April, 2009.

s/ CLARENCE COOPER

CLARENCE COOPER
UNITED STATES DISTRICT JUDGE