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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CHRISTIAN COMMUNITY CHAPEL
WESLEYAN CHURCH, INC., a New Jersey
nonprofit corporation,

Plaintiff,

v.

TOWNSHIP OF HILLSBOROUGH, NEW
JERSEY, and THE ZONING BOARD OF
ADJUSTMENT OF THE TOWNSHIP OF
HILLSBOROUGH, NEW JERSEY,

Defendants.

**AMENDED COMPLAINT AND
COMPLAINT IN LIEU OF
PREROGATIVE WRIT**

Case No. 3:16-CV-00214-PGS-DEA

JURY TRIAL DEMANDED

Plaintiff CHRISTIAN COMMUNITY CHAPEL WESLEYAN CHURCH, INC., by its undersigned attorneys, complains of Defendants TOWNSHIP OF HILLSBOROUGH, NEW JERSEY, and THE ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF HILLSBOROUGH, NEW JERSEY as follows:

NATURE OF ACTION

1. Plaintiff files this action to redress violations of its civil rights caused by the Defendants' burdensome, discriminatory, and unreasonable land use regulations and intentional conduct that have prohibited and continue to prohibit Christian Community Chapel Wesleyan Church, Inc. (the "Chapel") from building and operating a place of worship on its property in Hillsborough, New Jersey, in violation of the First and Fourteenth Amendments to the United States Constitution and the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc *et seq.* ("RLUIPA").

2. The Chapel's land use as a church with a parsonage are both permitted on the property; however, the Township has determined that such uses cannot exist on the same parcel without a use variance.

3. After the Chapel applied for a use variance and other dimensional variances related to existing conditions on the property, a majority (4-3) of the Zoning Board of Adjustment voted in favor of the application; however, a supermajority (5-2) was required and thus the application was denied.

4. The Chapel is now left without a home in which it can worship and engage in other ministry activities.

5. The land use regulations of the Township of Hillsborough ("Hillsborough" or the "Township") restricting religious institutions and the Zoning Board of Adjustment of the Township of Hillsborough's (the "Board" or "ZBA") denial of the Chapel's application for a use variance (the "Application") substantially burdens the Chapel's religious exercise without being the least restrictive means of achieving any compelling governmental interest.

6. The Defendants have also treated other religious organizations more favorably than the Chapel

7. Hillsborough's land use regulations restricting religious institutions and the Board's denial of the Application also discriminate against the Chapel and in favor of similarly situated religious and secular assembly and institutional uses.

THE PARTIES

8. Plaintiff CHRISTIAN COMMUNITY CHAPEL WESLEYAN CHURCH, INC. is a religious organization incorporated under the laws of the State of New Jersey in 2000.

9. Defendant THE ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF HILLSBOROUGH, NEW JERSEY is a zoning board of adjustment organized pursuant to New Jersey law.

10. Defendants THE TOWNSHIP OF HILLSBOROUGH, NEW JERSEY is a municipality located in Somerset County, New Jersey.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction) because this action is brought under 42 U.S.C. § 2000cc *et seq.*, and 42 U.S.C. § 1983. The Court also has supplemental jurisdiction of Count VII under 28 U.S.C. § 1367(a) for the claims brought under New Jersey Law.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because all of the events giving rise to the claims herein occurred in this District and the Defendants are subject to personal jurisdiction in this District as of the commencement of this action.

FACTUAL ALLEGATIONS

Christian Community Chapel

13. The Christian Community Chapel Wesleyan Church is a Christian religious organization that serves approximately 100 congregants (the “Members”).

14. Pastor Stephan P. Nash, along with his wife and seven other couples, founded the Chapel in 2000 in Hillsborough.

15. The Chapel belongs to the Wesleyan Denomination and has been named “the most diverse Wesleyan church in North America.”

16. The Wesleyan Denomination is a Bible-based worldwide Protestant movement. It is monotheistic, focused on Jesus Christ and His teachings.

17. Wesleyans believe that evangelism--spreading the teachings of Jesus Christ--is a religious mandate. By doing so, Wesleyans can “engage a world desperate for hope and life.”

18. The Wesleyan Denomination views local congregations such as the Chapel as “the most fundamental and strategic points of evangelism and discipleship.”

19. The Chapel engages in a number of ministries that are central to its evangelism and discipleship.

20. The Chapel also engages in international missions as part of its religious exercise.

21. The Chapel currently has no permanent location at which it can engage in worship services, engage in other ministries, and provide a parsonage for its minister.

22. The Chapel grew exponentially in its early years. In 2001, it purchased a large property located in Hillsborough at 211 Route 206, which included a worship space with 33,000 square feet and seating for 600 people.

23. The Chapel's membership peaked in 2006 with approximately 125 members. This fell far short of the Chapel's growth targets and created significant financial hardship for the Chapel.

24. The Chapel's financial problems worsened when its Pastor was away from 2006 to 2009. The Chapel's membership declined from 125 to 35 people.

25. Upon Pastor Nash's return, the Chapel's membership grew, but has plateaued at around 100 people.

26. The Chapel eventually became financially unable to maintain the Route 206 church facility. The Chapel carried a \$12,500 per month mortgage on the property, and an additional approximately \$2,000 per month for utilities and additional costs for insurance and inspections.

27. The Chapel believes that it has a Biblical obligation to engage in responsible stewardship of the church's resources. "As each one has received a gift, use it to serve one another as good stewards of God's varied grace." 1 Peter 4:10.

28. The Route 206 facility no longer met the religious needs of the Chapel.

29. The Route 206 property could not accommodate all of the Chapel's intended ministries, including a summer Bible camp and other youth programming.

30. The Route 206 property did not have the appropriate facilities for day retreats, for a community garden or to hold weddings.

31. The Chapel's ability to engage in these activities would serve as potential outreach opportunities for the Chapel, which would further allow the Chapel to fulfill its evangelical mission.

32. Additionally, the larger property included a 4,700 square foot parsonage, which was far too large for the Chapel's needs.

33. For the reasons described above, the Chapel ultimately sold the Route 206 facility in June 2015 and began a search for a new location.

34. Since the sale of its former property, the Chapel's religious activities have been severely burdened.

35. In order to conduct its services, the Chapel has been leasing space at St. Mary's Byzantine Catholic Church ("St. Mary's").

36. The Chapel pays \$1,400 per month for space in a small fellowship hall at St. Mary's. The Chapel's lease does not permit it to use the larger hall in St. Mary's.

37. The St. Mary's fellowship hall is not large enough for the Chapel's members, and services are often overcrowded.

38. The Chapel cannot grow in the current space, which further inhibits the Chapel's evangelism.

39. The Chapel also does not have enough space for youth and other programs.

40. Additionally, the Chapel's lease with St. Mary's expires on July 1, 2016.

41. After the lease expires, the Chapel will not have any location at which to conduct religious services.

42. The Chapel has not had a space to use a base for its international missionaries.

43. The Chapel has been unable to engage in other ministries. For example, it has been unable to conduct its 12-step program, "Celebrate Recovery," as frequently as before, renting rooms from a local Jewish Temple in order to conduct the program on a severely reduced schedule, instead of weekly as it had done previously.

The Subject Property

44. In early 2015, faced with increasing financial difficulty, the Chapel began looking for a new property, which would need to include a space for a parsonage, worship hall, youth activities, and other space for the Chapel to conduct its ministry.

45. The Chapel requires its parsonage to be located on the same site as its worship hall.

46. The parsonage can function as an extension of the worship space so that the pastor can have his office within the home and can hold many different ministry meetings per month within the home.

47. The Chapel entered into a contract to purchase the 14.3-acre property located at 121 South Branch Road in Hillsborough (the "Property") on or about February 20, 2015.

48. The Property is currently vacant, and has previously been used as a residence, artist's studio and farm.

49. The Property is uniquely suited for the Chapel's religious exercise.

50. The Property has a number of existing structures, including a residence, detached garages, meeting room, studio, two-story barn with silo, and two single-story storage structures (pole barns). The property also includes a tennis court, dog run and pond.

51. The Chapel would be able to use the residence as its parsonage.

52. The Chapel would use the large barn structure as its sanctuary. The main floor of the barn would be converted to a 150-seat worship space with a fellowship hall below.

53. The remaining structures on the Property would be used to support the Chapel's various ministries, including classrooms, offices, meetings spaces and storage.

54. Activities at the Property will include: Sunday services, Sunday school, meetings of the Board of Trustees, meetings of other church leaders, support groups, choir practice, fellowship gatherings, weddings, funerals, holiday services, and youth activities.

55. The Chapel also intends to serve the community. In furtherance of this goal, the Chapel has obtained approval to “adopt” approximately 1.4 miles of road along South Branch Road.

56. Many other sites in Hillsborough have retrofitted barns into commercial structures, including a local Walgreens Pharmacy.

The Applicable Land Use Regulations and Existing Land Uses

57. The Subject Property is located within the RS zoning district.

58. The Township’s land use regulations require that “[a]ll zoning requirements shall be met at the time of any erection, enlargement, moving or change in use.”

59. Churches are permitted as a Conditional Use within the RS Zoning District, subject to meeting the following conditions described in the Township’s zoning code: (a) Minimum lot area: two acres; (b) Minimum lot width: 200 feet; (c) Minimum lot depth: 200 feet; (d) Minimum front yard: 100 feet; (e) Minimum side yard: 50 feet; (f) Minimum rear yard: 75 feet; (g) Maximum building height: 35 feet, except for religious symbols affixed to the roof, including steeples, which shall not exceed 20 feet above the highest point on the roof; (h) Maximum impervious coverage: not to exceed the amount permitted in the Schedule of Requirements for the zone district in which facility is located.

60. Various nonreligious assembly and institutional uses are permitted as a “Permitted principal use” within the RS zoning district, including “libraries,” “community centers

(noncommercial),” “neighborhood convenience centers,” parks and playgrounds, and home occupations.

61. “[U]ses customarily associated with” principal permitted uses in the RS zoning district are permitted as “accessory uses,” “provided that such accessory uses are subordinate to the principal use, do not change the character of the principal use and serve only the principal use.”

62. An “accessory building, structure or use” is defined as “[s]ubordinate to the principal building, structure or use and located on the same lot” under the Township’s land use regulations.

63. The maximum impervious surface for the RS zoning district is 10%.

64. The Property and its improvements meet all of the conditions for a church use, except for the height of the existing agricultural silo, which is greater than 35 feet.

65. Church are not permitted anywhere in Hillsborough by right.

66. The Township’s land use regulations are silent on the issue of parsonages and whether a parsonage is a separate use from a church.

67. The Defendants have implemented their land use regulations against the Chapel in a manner that treats a “parsonage” as a separate principal use from a “church.”

68. The Chapel’s proposed parsonage is an accessory, not principal, use.

69. The parsonage is subordinate to the Chapel’s principal “church” use.

70. The parsonage would not change the character of the “church” use.

71. The parsonage would serve only the “church” use.

72. Under New Jersey law, a parsonage or rectory is a recognized accessory use to a church.

73. Additionally, the Township explicitly permits accessory residential uses such as “accessory housing facilities for farm workers” and “LIVE/WORK DWELLING UNITS: Buildings or spaces within buildings that are used jointly for commercial and residential purposes, where residential use of the space is secondary or accessory to the primary use as a place of work,” but does not make such provision for parsonages and religious institutions.

74. A member of the Board of Adjustment stated during a hearing on the Chapel’s application: “Bob, since you brought it up, since you've been around a long time, do you have any idea of why zoning didn't allow for parsonage on the same property house of worship? Is that an oversight or was that intentional or --.”

75. The Township’s zoning ordinance is silent on the specific issue of parsonages.

76. The Defendants’ determination that a parsonage is a second principal use on a church lot is unreasonable, contrary to state law and discriminates against religious institutions.

77. The Zoning Board of Adjustment is empowered by state and local law to grant variances from the conditional requirements of a church use.

78. In order to grant a variance, a supermajority of five votes out of seven are necessary for the Board to approve such relief.

79. The Board may impose conditions upon the grant of a variance “as are necessary to assure that the general purposes and intent of [the] chapter are met.”

80. The Board may approve a variance subject to the separate approval of an application for site plan, which establishes the specific details of development.

The Use Variance Application to Use the Subject Property as a Place of Worship
and the Board’s Denial

81. On May 26, 2015, the Chapel filed its Variance Application with the Board seeking variances necessary to locate on the Subject Property.

82. The Application sought variances from three requirements: (1) the pre-existing silo was 45 feet in height, taller than the permitted 35-foot threshold for churches in an RS district; (2) the impervious surface proposed by the applicant was 14.2% (but ultimately reduced to 11.09%), greater than the 10% permitted; and (3) an existing barn on the property exceeded the 75-foot minimum rear yard setback requirement by 6 feet.

83. After the application was filed, David Kois, Professional Planner and PP Deputy Planning Director / Zoning Officer of Hillsborough Township advised that he interpreted the application as requiring a use variance to allow the parsonage on the same property as the church because the ordinance was silent on whether a parsonage is an accessory use to a church.

84. Upon information and belief, the property of Mary, Mother of God Roman Catholic Church in Hillsborough includes a rectory where its priest lives.

85. Upon information and belief, Mary, Mother of God Roman Catholic Church was granted site plan approval by the Township Planning Board to significantly enlarge its use in 2009 without being required to obtain a use variance for having both a rectory and church being located on its property.

86. The Township's land use regulations do not permit enlargement of existing nonconforming uses without being in conformity with its zoning code, with certain exceptions that do not apply to a church expansion.

87. Upon information and belief, Mary, Mother of God Roman Catholic Church was not required to obtain the same use variance that the Chapel was required to obtain.

88. Concerning the Application, the Township's Deputy Planning Director/Zoning Official wrote "an additional d(1) use variance is required to allow multiple principle [sic] uses (house of worship and rectory) on the same lot."

89. Given the Defendants' position regarding the parsonage use, the Chapel amended its application to request an interpretation that a parsonage was a permitted accessory use or, in the alternative, to seek a use variance pursuant to N.J.S.A. 40:55D-70d(1) in order to have a parsonage on the same property as its house of worship.

90. Upon information and belief, the Board has granted similar variances in the past.

91. Upon information and belief, the Board has approved parsonages on the same lot as a church without requiring a use variance.

92. The Board held hearings on the Chapel's Application on September 2, 2015 and November 4, 2014.

93. As part of the Board review process, the Chapel's Application was reviewed by the Hillsborough Township Board of Fire Commissioners Bureau of Fire Safety.

94. Township staff stated that it "defer[s] to . . . the Township's Fire Marshal on fire-safety matters."

95. On October 5, 2015, following a meeting with the Chapel's representatives, Christopher C. Weniger, Hillsborough's Chief Fire Marshal, wrote a memorandum to the Board concerning the Application. In that memorandum, Chief Weniger expressed concerns related to efficient and safe fire protection on the Subject Property before setting forth a number of fire protection improvements that had been discussed with representatives from the Chapel. The proposed fire protection improvements included the installation of an on-site underground water tank, the installation of a fire sprinkler system, widening of the driveway to the proposed church site, and marking a fire lane on that driveway.

96. The Fire Marshal's memorandum did not state any concern about the location of worship services in the barn.

97. The Chapel agreed to implement each of the proposed fire protection improvements, including the installation of a 30,000 gallon underground water tank.

98. Representatives of the Chapel also met with the Township's Construction Official, Building Subcode Official and Fire Subcode Official concerning the conceptual plans and code review for the church project. These officials did not voice any concerns with the proposed conversion and appreciated the preliminary design and code review.

99. The Chapel amended its application on October 13, 2015 in response to feedback it received from the Board members and the Board professionals at the September 2, 2015 meeting and subsequent meetings with the Township professionals ("Amended Application"). In its Amended Application, the Chapel submitted the following materials:

- a. Statement of Property Use, dated October 13, 2015;
- b. Use Variance and Conceptual Site Plan for Christian Community Chapel, dated August 31, 2015, revised October 13, 2015, by Van Cleef Engineering Associates;
- c. Fire Truck Turning Radius for Christian Community Chapel, dated October 13, 2015, by Van Cleef Engineering Associates;
- d. Sight Distance Exhibit for Christian Community Chapel, dated August 31, 2015, by Van Cleef Engineering Associates;
- e. Conceptual Plans and Conceptual Elevations, dated October 2015, by Eclectic Architecture, LLC and Memo from Eclectic Architecture, LLC dated October 13, 2015;
- f. Traffic Impact Study Christian Community Chapel, dated October 5, 2015 by McDonough & Rea Associates; and

- g. Freshwater Wetlands Location Plan and Survey, dated August 19, 2015, by Bruce R. Blair, LS.

100. In the Amended Application, the Chapel eliminated a proposed building from its site plan, thereby eliminating one of the variances, it also reduced the impervious surface coverage variance that it was seeking to 11.09%.

101. During the ZBA's hearings, members of the Board expressed cynicism with regard to the proposed religious land use and suggested that the Chapel was likely to attempt to engage in commercial uses on the Property. It is unclear what basis, if any, the Board members had for making such statements. The Chapel does not intend to engage in any commercial activity on the Property.

102. Chief Fire Marshal Christopher C. Weniger testified at the final November 4, 2015 hearing, stating that his concerns were (1) water supply for firefighting; and (2) driveway access.

103. Weniger did not state any concern with the Chapel's sanctuary being located on the second floor of the barn structure.

104. Regarding the fact that the sanctuary would be on the second floor, Weniger stated that it was a "building code" issue and that he's "certain that our Building Department will make sure that that's addressed."

105. Any use of the barn structure as a place of worship would be compliant with the building code.

106. Weniger stated that he met with the Chapel to discuss his concerns and recommendations including widening the driveway, installation of fire lanes, design of the parking area, installation of sprinklers in the buildings, the installation of a separate underground storage tank of water, and a second emergency access point.

107. Weniger stated that the Chapel was “very receptive” to his recommendations.

108. The Chapel was and remains willing to adopt every single one of Weniger’s recommendations.

109. With his recommendations adopted, Weniger stated that the measures would be adequate from a fire safety perspective.

110. There is no traffic capacity or access problem with the Chapel’s proposed use.

111. One Board member stated: “It is a new use. It’s an adaptive use and the property will look as good today as many years ago. You’re really saving this property.”

112. The Chapel agreed to numerous conditions throughout the application process in order to satisfy the concerns of Board members. These include:

- a. A maximum limit of 153 people;
- b. Provision of 51 parking spaces;
- c. No banners, lights or other protrusions from the silo;
- d. A limit of 14 weddings per year, with 2 per month;
- e. All weddings would be held in the sanctuary;
- f. No activity before 7:00 a.m. or past 10:00 p.m.;
- g. No outdoor amplified sound or music;
- h. Summer camp, vacation Bible school will be limited to 150 people and would be permitted between 8:00 a.m. and 2:00 p.m.;
- i. Limit use of pool to Pastor’s family;
- j. No overnight guests other than guests of the pastor’s family;
- k. No parking on grass;
- l. No alcohol use at the property;

- m. No parking within the fire lane;
- n. Installation of a sprinkler system;
- o. Secondary driveway that is satisfactory to the fire marshal would be provided;
- p. Lighting in compliance with the Township ordinances; and
- q. No commercial uses, only uses related to church activity.

113. On November 4, 2014, the Board voted 4-3 in favor of the Chapel's application.

114. Although the Chapel received a majority of Board member votes, it needed a supermajority in order to obtain the necessary variances, and so its Application was denied.

115. No residents objected to the Chapel's use.

116. The Board did not make any statements during its deliberations.

117. The Board failed to grant the application subject to conditions that would preserve the general purposes and intent of the Township's land use regulations.

118. The Board failed to grant the application for variance subject to site plan approval.

119. Following the denial, Chairwoman Helen Haines was quoted in a local newspaper as stating, "[w]hile the applicant was very accommodating in the end, agreeing to the fire marshal's requirements and limits on what was compared to a 'banquet facility' for 150 people, the applicant still couldn't change the fact that the second floor loft in this old, wooden barn could be a potential death trap."

120. Pursuant to New Jersey law, the Board has 45 days to issue its Resolution memorializing the denial of the Chapel's application. That 45-day period expired on December 19.

121. The Board did not adopt a Resolution concerning the Chapel's application at its January 6, 2016 meeting.

122. The Board adopted its “Resolution of the Zoning Board of Adjustment” regarding “Christian Community Chapel, Application: BA-15-09” (the “Resolution”) at its February 3, 2016 meeting.

123. The Resolution memorialized the action of the Board of Adjustment at its November 4, 2015 hearing date with the following members voting “yes” on the Chapel’s application: Valcheck, Herbert, Stamler and Hesthag; and the following members voting “no”: Suraci, Gladstone and Haines.

124. The Board’s Resolution stated in part:

The house of worship is a conditional use. The applicable ordinance does not establish accessory uses for conditional uses. Thus, under the HDRO, the single family dwelling is not accessory to the house of worship. Conversely, the house of worship cannot be considered accessory to the single family dwelling either. The single family dwelling is a principal permitted use and a house of worship is not one of the enumerated accessory uses, cannot be considered subordinate to the principal use, and will not serve only the principal use. Thus, the Application requires a use variance in accordance with N.J.S.A. 40:55D-70d(1) in order to allow the Property to contain two principal uses on one lot.

125. This conclusion, which effectively states that a permitted conditional use cannot include any accessory uses, is unreasonable and contrary to law.

126. Upon information and belief, the Defendants have not adopted such a position concerning accessory uses with respect to other houses of worship.

127. The Resolution stated that the Chapel’s proposed use “is in contravention of the HDRO Section 199-74 which prohibits two principal uses on one property.”

128. This conclusion is unreasonable and contrary to law, as the parsonage is accessory to the house of worship use, and not a “principal” use.

129. Upon information and belief, the Defendants have not adopted such a position concerning parsonages as a “principal” use with respect to other houses of worship.

130. There is no basis in the record for the Board's statement that the parsonage "will not serve only the principal use."

131. The Resolution stated that a use variance was necessary for the Chapel's proposed use.

132. With respect to the use variance application, the Board agreed that "houses of worship are generally considered inherently beneficial uses and, as such, are deemed to satisfy the positive criteria required to enable the Board to grant a use variance."

133. The Resolution further states that "[t]he Board was also satisfied that the Applicant was not proposing any uses on the Property that would be incongruous with its use as a residence and a house of worship and with its religious mission and ministry."

134. However, the Resolution states that the "overriding negative impact identified by the Board" was a purported concern about "fire safety" related to public gatherings occurring in a "barn constructed entirely of wood" and that such gatherings would occur "on the second floor"

135. Upon information and belief, the Board has not denied other use variance applications based on the fact that public gatherings would occur in wood structures.

136. Upon information and belief, the Board has not denied other use variance applications based on the fact that public gatherings would occur on the second floor of structures.

137. It is undisputed that the Church agreed to comply with all requests made by the Township's Chief Fire Marshal.

138. Based on the Church's agreement to incorporate all requests made by the Township's Chief Fire Marshal, the Board could have granted the Church conditional approval

contingent upon the Church submitting the design of a “safety area” within the worship space as well as an evacuation plan.

139. Instead, the Board elected to substitute its own judgment for the Chief Fire Marshal’s. The Resolution states that “[t]he testimony . . . did not adequately address all of the Board members’ concern with regard to the safety of a large group of people potentially having to escape a fire from the second floor of the sanctuary.”

140. The Resolution further states that the Chapel’s architect “did not yet have a plan for the evacuation of people or the establishment of a ‘safe area.’”

141. Upon information and belief, the Board has not required proof of an “evacuation plan” for other use variance applicants.

142. Upon information and belief, the Board has not required establishment of a “safe area” for other use variance applicants.

143. Such building code compliance concerns are normally addressed by the construction official at the architectural plan approval phase of development after any variance and site plan approval relief has been granted, and not at the variance stage.

144. The denial of the Chapel’s Application based on issues normally addressed at the architectural plan approval phase of development constitutes discriminatory treatment of the Chapel as compared with other land use applicants.

145. The Board had an obligation to mitigate any perceived negative impacts of the Application by imposing reasonable conditions. Various conditions were suggested by the Fire Marshal, which were agreed to by the Chapel. However, the Board failed to impose such reasonable conditions and instead denied the Application in its entirety.

146. The Resolution states that “[r]easonable conditions could not realistically have been fashioned” with respect to fire safety in the proposed use.

147. Upon information and belief, the Board has not denied other use variance applications on the basis that “reasonable conditions” could not be fashioned with respect to fire safety.

148. Despite the Fire Marshal’s testimony, and despite the Chapel agreeing to all suggested conditions, the Resolution states that “three Board members remained concerned that the fire safety impact had not been adequately addressed. Specifically, those Board members remained concerned that members of the public attending the church . . . would be left on the second floor or at the top of a staircase, potentially overcome by smoke and/or fire, to wait for help during the chaos that would surely ensue during a fire.”

149. There is no basis in the record for such concern of three members of the Board.

150. The notice of decision was published in the February 12, 2016 edition of The Hillsborough Beacon.

151. If the tennis court on the Property were to have been removed, which the Chapel would have agreed to if necessary, the impervious surface would have been reduced to approximately 9.9%, thus eliminating the need for that variance.

152. There is no rational basis to deny the Chapel’s Application.

153. There is no rational basis to prohibit the Chapel from operating on the Property.

154. Upon information and belief, the Defendants have nearly always encouraged development that retains existing agricultural silos.

155. The Applicant’s representative stated during the November 4, 2015 hearing that “[p]ush came to shove I will tell you my Applicant would take [the silo] down.”

156. Therefore, the only incurable condition is the proposed parsonage on the Chapel's property, based on the Defendants' position that it constitutes a second "principal" use.

157. Upon information and belief, the Defendants have permitted other religious institutions to operate a parsonage, rectory or substantially similar accessory use on the same lot as a house of worship within the Township.

158. Upon information and belief, the Board has granted use variances to other religious institutions.

159. Upon information and belief, the Board has granted use variances to other non-religious assembly and institutional uses.

160. Upon information and belief, the Board has granted variances from the Township's impervious surface requirements to other applicants.

161. Upon information and belief, the Board has granted variances from the Township's setback requirements to other applicants.

162. Upon information and belief, the Board has granted variances from the Township's maximum building height requirements to other applicants.

163. The Township's ordinance permits a church to have a structure such as a steeple or cupola that exceeds the height limitation by twenty feet.

164. The Board's denial of the Chapel's use variance severely impedes and prevents the Chapel's exercise of its religion.

165. The denial of the Application was an individualized assessment of the proposed uses of the Property.

166. The renovation of the Chapel's proposed church, at an estimated cost of \$1,200,000, would affect interstate commerce. The construction's effect on interstate commerce

would result from, amongst other things, the Chapel's fundraising activities related to the renovation; the transfer of funds to those it engages to renovate the church; the engagement of construction companies to renovate the church; the employment of and payments to construction workers either by the Chapel or by companies engaged by it; the purchase of necessary materials to renovate the church; the engagement of a landscaping company; the use of interstate highways for the transportation of persons and materials used to renovate the church; the use of interstate communication related to the renovation of the church; and other activities related to the renovation of the church.

167. The operation subsequent to the church's renovation would affect interstate commerce. The Chapel's operation would affect interstate commerce by or through, amongst other things, serving as a site for ongoing fundraising; its receipt of charitable donations from persons working or living outside of the State of New Jersey; the use of means of interstate communication to facilitate the church's ongoing operations; the use of interstate travel related to the church's ongoing operations; the employment of any part-time or full-time employees; and the purchase of goods and services related to the church's ongoing operations and maintenance.

168. The Defendants' actions described above all took place under color of state law.

169. The harm to the Chapel caused by the Defendants' laws and actions, which prevent it from using the Property as a parsonage and church to accommodate its religious needs, is immediate and severe.

170. The Chapel had a reasonable expectation that its religious land use would be permitted by the Board.

171. The lack of a physical home for the Chapel severely burdens its religious exercise.

172. Defendants' laws and actions imminently threaten to substantially burden the Chapel's free exercise of religion.

173. There are no quick, reliable and viable alternative options for the Chapel's operations.

174. The Chapel has no adequate remedy at law for the harm and damage caused by Defendants' wrongful laws and actions.

175. The Chapel has also suffered significant financial damages as a result of the Defendants' laws and their application to the Chapel, such as costs related to the use variance application (including extraordinary expenditures not required of similarly situated applicants), preventing the Chapel from receiving revenues, required additional expenditures to operate at an alternative location, and increases in construction costs resulting from delay.

COUNT I

**Violation of Religious Land Use and Institutionalized
Persons Act of 2000 – “Substantial Burdens”
42 U.S.C. § 2000cc(a)**

176. Paragraphs 1 through 147 are incorporated by reference as if set forth fully herein.

177. Defendants have deprived and continue to deprive the Chapel of its right to the free exercise of religion, as secured by RLUIPA, by imposing and implementing land use regulations in a manner that places substantial burden on the Chapel's religious exercise without using the least restrictive means of achieving a compelling governmental interest.

COUNT II

**Violation of Religious Land Use and Institutionalized
Persons Act of 2000 – “Nondiscrimination”
42 U.S.C. § 2000cc(b)(2)**

178. Paragraphs 1 through 177 are incorporated by reference as if set forth fully herein.

179. Defendants have deprived and continue to deprive the Chapel of its right to the free exercise of religion, as secured by RLUIPA, by imposing and implementing land use regulations in a manner that discriminates against the Chapel on the basis of religion and religious denomination.

COUNT III

**Violation of Religious Land Use and Institutionalized
Persons Act of 2000 — “Exclusion and Limits”: Unreasonable Limitation
42 U.S.C. § 2000cc(b)(3)(B)**

180. Paragraphs 1 through 179 are incorporated by reference as if set forth fully herein.

181. Defendants have deprived and continue to deprive the Chapel of its right to the free exercise of religion, as secured by RLUIPA, by imposing and implementing land use regulations in a manner that unreasonably limits religious assemblies, institutions, and structures within their jurisdiction.

COUNT IV

**Violation of Religious Land Use and Institutionalized
Persons Act of 2000 — “Equal terms”
42 U.S.C. § 2000cc(b)(1)**

182. Paragraphs 1 through 181 are incorporated by reference as if fully set forth herein.

183. Defendants have deprived and continue to deprive the Chapel of its right to the free exercise of religion, as secured by RLUIPA, by treating the Chapel on terms that are less than equal to nonreligious assembly and institutional land uses.

COUNT V

**United States Constitution
42 U.S.C. § 1983: First Amendment
Free Exercise of Religion**

184. Paragraphs 1 through 183 are incorporated by reference as if set forth fully herein.

185. Defendants have deprived and continue to deprive the Chapel of its right to 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 the Chapel's religious exercise without using the least restrictive means of achieving a compelling governmental interest, and by discriminating against the Chapel on the basis of religion in a manner that is not the least restrictive means of achieving a compelling governmental interest.

COUNT VI
United States Constitution
42 U.S.C. § 1983: Fourteenth Amendment
Equal Protection

186. Paragraphs 1 through 185 are incorporated by reference as if set forth fully herein.

187. Defendants have deprived and continue to deprive the Chapel of its right to equal protection of the laws, as secured by the Fourteenth Amendment to the United States Constitution, by discriminating against it in the imposition and implementation of their land use regulations.

COUNT VII
Action in lieu of prerogative writ
New Jersey Municipal Land Use Law
N.J.S.A. § 40:55D-1 *et seq.*

188. Paragraphs 1 through 187 are incorporated by reference as if set forth fully herein.

189. The actions of the Board were arbitrary, capricious, unreasonable and contrary to law. The Board of Adjustment abused its discretionary authority in its determinations of the Chapel's land use applications.

190. The applied-for uses of the Subject Property as a church and as a parsonage house were inherently beneficial uses of the property. As such, the Chapel established the positive criteria for the grant of the Use Variance for the use of the property as church with a parsonage

house and for the conditional use variance for exceeding the impervious coverage ratio and the height variance for the pre-existing silo.

191. The Chapel should not have been required to apply for a use variance to have the church and the parsonage house on the same lot because a parsonage house is an accessory use to a church.

192. The Board of Adjustment failed to comply with the requirements in *Sica v. Board of Adjustment of the Twp. of Wall*, 127 N.J. 152 (1992), in that the Board failed to impose conditions to alleviate any perceived detriments which would flow from the grant of the requested use variance, including the conditions agreed to by the Chapel during the course of the two public hearings.

193. The decisions of Board were based on conclusions contrary to the weight of the evidence adduced at public hearings and the Board failed to place its reasons for the denial on the record.

194. The Plaintiff's interests have been adversely affected and manifest injustice created by the Board of Adjustment's arbitrary, capricious and unreasonable application of their planning, zoning and land use powers.

PRAYER FOR RELIEF

WHEREFORE, the CHRISTIAN COMMUNITY CHAPEL WESLEYAN CHURCH, INC. respectfully requests that this Court grant the following relief:

1. A declaration that the Township of Hillsborough's land use ordinances, to the extent that they substantially burden, unreasonably regulate, and discriminate against the Chapel's land use, are void, invalid and unconstitutional on their face and as applied to the Chapel on the ground that they violate the Free Exercise Clause of the First Amendment to the United States Constitution, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and the Religious Land Use and Institutionalized Persons Act;

2. A declaration that the denial of the Chapel's land use application is void, invalid and unconstitutional on the ground that it violates the Free Exercise Clause of the First Amendment to the United States Constitution, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and the Religious Land Use and Institutionalized Persons Act;
3. An order reversing the decision of the Zoning Board of Adjustment of the Township of Hillsborough and an order declaring that the Chapel's application to use the subject property as a church and parsonage is hereby approved;
4. An order directing the Zoning Board of Adjustment of the Township of Hillsborough to reverse its denial of the use variance and grant the Chapel such use variance necessary to construct its church on the Property as applied for;
5. An order preliminarily and permanently enjoining the Defendants, their officers, employees, agents, successors and all others acting in concert with them from applying their laws in a manner that violates the Free Exercise Clause of the First Amendment to the United States Constitution, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and the Religious Land Use and Institutionalized Persons Act, or undertaking any and all action in furtherance of these acts, and specifically enjoining the Defendants to approve all plans and applications submitted by the Chapel in furtherance of its development of the Property without delay or unreasonable condition;
6. An award of compensatory damages against Defendants in favor of the Chapel as the Court deems just for the loss of its rights under the First and Fourteenth Amendments to the United States Constitution, and the Religious Land Use and Institutionalized Persons Act incurred by the Chapel and caused by the Defendants' laws and actions;
7. An award to the Chapel of full costs and attorneys' fees arising out of Defendants' actions and land use decisions and out of this litigation; and
8. Such other and further relief as this Court may deem just and appropriate.

DEMAND FOR JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury in this action of all issues so triable.

Respectfully submitted by the Plaintiff this 3rd day of March, 2016.

KENNY CHASE & COSTA

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