# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN 

NEW LIFE CHURCH OF ANN ARBOR, a Domestic Nonprofit Corporation

Plaintiff,<br>Case No. 04-CV-75014<br>v.<br>THE CITY OF ANN ARBOR, a Municipal Corporation

## Defendant.

Miller, Canfield, Paddock and Stone, P.l.c.
David A. French (P31944)
David D. O'Brien (P65532)
Attorneys for Plaintiff
101 North Main, Seventh Floor
Ann Arbor, MI 48104-1400
(734) 663-2445


Office of the City Attorney
Stephen K. Postema (P38871)
Attorneys for Defendant
P.O. Box 8647

Ann Arbor, MI 48107-8647
(734) 994-2670

## CONSENT JUDGMENT

This Consent Judgment is presented to the Court pursuant to the stipulation of the parties under the terms of a Settlement Agreement and Release ("Agreement"). This Court has determined that this proposed Consent Judgment is reasonable and just and is fully advised in the premises. Therefore, the Court makes the following findings and order.

## FINDINGS

1. Plaintiff New Life Church of Ann Arbor ("New Life Church") is a nonprofit ecclesiastical corporation organized and existing under the laws of the State of Michigan and operating its ministry in the City of Ann Arbor.
2. Defendant the City of Ann Arbor (the "City") is a municipal corporation operating and existing under the laws of the State of Michigan.
3. On or about August 1, 2002, Great Commission Ministries acquired and leased to New Life Church a parcel of land located at 1541 Washtenaw Avenue consisting of approximately .96 acres and containing an 11,460 square foot structure previously used as a sorority house (the "Property").
4. The Property is located in an R2B zoning district under the City's zoning ordinance. Churches are permitted as a special exception use in an R2B district applying R1C standards, provided that they meet the requirements set forth in Chapter 55, Section 5:104 of the Ann Arbor City Code. During the planning process, the City's Planning Department applied R1C standards.
5. On or about November 10, 2003, New Life Church filed an application with the City seeking a special exception use permit and site plan approval to construct a 12,835 square foot addition to the existing structure with a seating capacity of 670 seats. Through its application, New Life Church sought to use the Property as a place of worship. The application brought by New Life Church sought to preserve the existing building.
6. The application stated the fact that as a campus ministry a substantial majority of the congregation were students and would be walking to the church (or using

University of Michigan or City transportation), rather than using cars, and that anticipated church services would be at 12:00 noon and 5:00 p.m. on Sunday. The application also stated that any required off-site parking could be accommodated by the Forest Avenue Parking Structure which is within $1,250 \mathrm{ft}$ from the Property and has 870 total parking spaces which are available for public use on Sundays at no cost.
7. In anticipation of filing for the special exception use, Great Commission Ministries had petitioned the Zoning Board of Appeals on January 30, 2003 seeking a variance to allow for the Forest Street Parking Structure be used to count toward parking requirements. (Parking within 1000 feet is allowed for this purpose, so a variance of 250 feet was required.)
8. In April, 2003, the Zoning Board of Appeals granted this variance, finding: 1) The majority of the congregation consists of students and non-drivers, 2) The request is mainly for the parking requirements on Sundays when the Forest Street public parking is open to the public, where it is first come, first serve, 3) It has been noted that there is a front setback, 4) This request is in harmony with the general purpose and the intent of the ordinance.
9. The Planning Commission for the City of Ann Arbor ("Planning Commission") held a public hearing on New Life Church's application on January 22, 2004 and expressed concern about the scale and intensity of the proposed use.
10. The Church subsequently submitted a revised application which, among other things, reduced the square footage of the proposed addition to 9,490 square feet and reduced the seating capacity to 550 seats.
11. The City's Planning Commission held public hearings on August 3, 2004, September 8,2004 , and November 16, 2004. There was extensive public commentary on all issues.
12. At its meeting on November 16, 2004, the Planning Commission denied New Life Church's application for a special exception use permit and for site plan approval.
13. On or about December 27, 2004, the Church commenced this lawsuit alleging 1) violation of free exercise of religion, 2) violation of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 3) violation of constitutional due process, and 4) violation of constitutional equal protection; the lawsuit sought injunctive, declaratory, and compensatory relief.
14. The City filed an answer to this lawsuit denying all of the allegations.
15. The parties now wish to settle this lawsuit in accordance with the terms and conditions set forth in their Agreement and as set forth below. The parties have agreed to set aside all disagreements about the denial by the Planning Commission and, instead, focus on a modification of the New Life Church's site plan in an effort to address concerns raised during the planning process. The modifications of the site plan, among other things, reduced the length, width, height, seating capacity, and other related dimensions of the site plan.

## ORDER

THEREFORE, IT IS HEREBY ORDERED:

1. New Life Church is granted a special exception use permit pursuant to Chapter 55, Section 5:104 of the Ann Arbor City Code to construct, maintain, and use a
church on the Property in accordance with the terms of this Consent Judgment and the Agreement.
2. The plans and specifications attached as Exhibit B and made a part of this Consent Judgment (collectively the "Revised Site Plan") are hereby granted final site plan approval. The Revised Site Plan consists of:

| A-000 | Cover Sheet |
| :--- | :--- |
| A-050 | Architectural Site Plan |
| A-060 | Additional Site Info |
| A-400 | Exterior Elevations |
| COV | Civil Cover Sheet |
| EX | Existing Conditions |
| GR1 | Grading Plan |
| UT1 | Utility and Grading Plan |
| UT2 | Storm Calculations |
| LA1 | Tree Protection Plan |
| LA2 | Proposed Landscape Plan |
| SE | Soil Erosion Control Plan, Notes \& Details |
| DT1 | Site Details |
| DT2 | Storm Sewer Notes and Details |
| AL1 | Alternate Analysis No. 1 |
| EP-1 | Photometric Plan |

3. Any necessary variance required by the Revised Site Plan is deemed granted under any provision of the Ann Arbor City Zoning Code. (However, the sign which New Life Church intends to erect on the property, as illustrated on Sheet A-50 of the Revised Site Plan, shall be designed in materials consistent with the building and to meet requirements of all City ordinances.) The City shall not unreasonably withhold approval for the erection of any such sign. For equitable and legal reasons, R1C zoning standards apply to this church on this Property.
4. The City acknowledges that it has reviewed and approved the Revised Site Plan and that it complies with the requirements of the Agreement and this Consent Judgment. Except as otherwise provided in paragraph 9 below, no further review or
approval by the City will be required as to any matters covered by the Revised Site Plan or this Consent Judgment.
5. New Life Church acknowledges that it has modified the site plan which was denied by the Planning Commission in the following significant ways:
a. The height of the back portion of the roof shall be lowered a minimum of four feet as illustrated on Sheet A-400 of the Revised Site Plan.
b. The length and width of the building shall be reduced to the dimensions set forth on Sheet A-50 of the Revised Site Plan.
c. Additional brick work shall be used to simulate windows as illustrated on Sheet A-400 of the Revised Site Plan.
d. The fixed seating capacity shall be limited to 496 fixed seats as set forth on sheet A-50 of the Revised Site Plan.
e. The main entrance to the addition shall be located on the north side of the building as set forth on sheet A-400 of the Revised Site Plan.
f. Other dimensions shall be reduced to the dimensions set forth on sheet A-50 of the Revised Site Plan.
6. The interior of the addition shall contain the elements specified in the Program Statement which is attached as Exhibit $C$ and made a part of this Consent Judgment.
7. Landscaping shall be conducted in accordance with sheet LA-2 of the Revised Plan, which has already been submitted to and approved by the City Planning Department.
8. Exterior lighting shall be provided in accordance with sheet EP-1 of the Revised Site Plan, which has already been submitted to and approved by the City Planning Department.
9. New Life Church shall submit construction drawings for permit review and obtain all necessary building and trade permits and approvals prior to construction. New Life Church agrees to pay any fees associated with these permits and all other approvals. The City agrees to review all submissions and requests by New Life Church in good faith and within a reasonable time, and shall apply and consider only those requirements that are set forth in the City's zoning and regulatory ordinances which are in effect and applicable as of the date of this Consent Judgment. According to the Revised Site Plan, New Life Church will also submit the Revised Site Plan for review to the Michigan Office of Fire Safety for School Review. New Life Church shall make reasonable efforts to comply with any reasonable and timely requirements of that office.

Despite the specifications in the approved Revised Site Plan referring to water pipe diameter on sheets UT1 and UT2, the City retains the ability to require the oversizing of any water main diameter on this Project at the City's expense.

Despite the specifications in the approved Revised Site Plan concerning the placement of water pipes, the City retains the ability to require an alteration of the placement of those pipes in the following situation: If the Ann Arbor Public Schools ("AAPS") consents and provides an easement across the Angell School property, and there is no increase in costs or material delay in time to New Life Church, New Life Church shall amend Sheet UT1 of the Revised Site Plan to provide an eight inch water main connecting from the water main in Washtenaw Avenue, proceeding in a
northeasterly direction through the New Life Church property, through the Angell School driveway on the north side of the New Life Church Property, and ending approximately at the rear of the New Life Church property. For the purposes of determining material delay for this possible alternative water main route, the parties recognize that New Life Church seeks to begin water pipe installation by August 1,2005 to the extent feasible. New Life Church shall have no obligation to seek or obtain the AAPS's consent to such an easement, but will cooperate to the extent the City can arrange for such consent. If the City is to require this altemative water main route, it shall obtain the requisite easement from the AAPS no later than May 30, 2005.
10. Irrespective of the current or any future zoning designation of the Property, the Property may be used in accordance with the terms of this Agreement and Consent Judgment, and Chapter 55, Section 5:104 of the Ann Arbor City Code, and the Property and the structure thereon may continue to be used in perpetuity as a church in accordance with the terms of the Agreement and this Consent Judgment, and Chapter 55, Section 5:104 of the Ann Arbor City Code. In the event of conflict between the terms of the Agreement or this Consent Judgment and the terms contained in the City's zoning or other regulatory ordinances, the terms of the Agreement and this Consent Judgment shall control. However, modifications of the special exception use granted herein shall be in accordance with Chapter 55, Section 5:104(7) of the Ann Arbor City Code, and any discontinuance of the special exception use shall be in accordance with Chapter 5:104(8) of the Ann Arbor City Code.
11. New Life Church shall offer to pay the full cost of snow removal and maintenance with respect to the portion of the driveway located on the south side of the

Property over which the owners of the neighboring parcel at 1547 Washtenaw Avenue currently hold an easement.
12. New Life Church shall offer to erect (at the cost of the New Life Church) a more attractive fence to be paid by New Life Church along the existing fence line located between its property and the neighboring parcel at 1547 Washtenaw Avenue.
13. New Life Church shall offer the use of its auditorium to the Ann Arbor Public Schools ("AAPS") in a manner agreed to by New Life Church and the AAPS, but with a minimum of access for ten (10) events per year for assemblies, plays, recitals, etc. New Life Church shall not be required to provide access for more than seven (7) of these events between August $15^{\text {th }}$ and May $15^{\text {th }}$ of each calendar year. Moreover, these events shall not be on Sundays, and shall be arranged by New Life Church and the AAPS on mutually acceptable terms. New Life Church shall be obliged to offer the use of its auditorium to the AAPS only so long as the Angell School parking lot is open to the general public on Sundays.
14. New Life Church shall grant, for no monetary remuneration, a permanent easement to the AAPS for the use of the sidewalk on the north side of the property depicted on the Revised Site Plan. This grant shall be on terms and conditions acceptable to both New Life Church and the AAPS.
15. To minimize on-street parking in the surrounding neighborhood, the New Life Church shall instruct its members and visitors to park in the Forest Street parking lot and in the Angell School parking lot (but only if that parking lot is open to the public for parking.) In any event, New Life Church shall specifically instruct its members and
visitors to refrain from parking in the Angell School parking lot between 7:00 a.m. and 5:00 p.m. during weekdays, and at any other times prohibited by the AAPS.
16. New Life Church with the City shall schedule a meeting, which shall be held within thirty (30) days after entry of the Consent Judgment, to present the Revised Site Plan to any interested neighbors for comment. However, New Life Church shall have no obligation to incorporate any comments or suggestions received at this meeting.
17. New Life Church (and its respective successors, and related entities including Great Commission Ministries, successors and assigns) hereby has released and forever discharged the City (and its other and its respective affiliates, including boards and commissions, council members, successors, predecessors, assigns, officers, directors, trustees, transferees, employees, agents, and attorneys) of and from any and all claims, demands, actions, causes of action, suits, debts, judgments, executions, damages, statutory or other attorney fees, and rights of whatever nature in law, equity or otherwise which now exist or which may subsequently accrue by reason of any acts, events or facts existing on the date of this Consent Judgment, whether known or unknown on that date, including by way of illustration but without limitation any matter arising out of or relating to this lawsuit, the Church's application for special exception use, the denial of the Church's application, and/or any claims or causes of action arising under the Federal and State Constitutions or any federal or state statutes, rules or regulations (collectively, the "Released Claims").

All claims asserted in this case and/or related to this release are dismissed with prejudice. However, nothing in this paragraph seventeen shall bar claims brought to enforce, interpret or otherwise obtain legal or equitable relief under or pursuant to the

Agreement or this Consent Judgment. New Life Church agrees to indemnify the City from and against any and all costs and expenses incurred as a result of any effort by Great Commission Ministries to bring or assert any of the Released Claims against the City.
18. The Agreement and the Consent Judgment is binding upon and shall inure to the benefit of the parties hereto and their heirs, personal representatives, successors, assigns, and transferees. New Life Church may assign its rights or delegate its obligations under the Agreement and this Consent Judgment at its discretion.
19. The parties shall execute any and all documents and/or enter into such agreements and/or take other actions as are necessary or convenient to carry out the intent of this Consent Judgment.
20. This Consent Judgment is declared to be in recordable form, and the covenants contained herein are declared to be covenants running with the Property and all portions or division thereof.
21. This Consent Judgment shall not be taken or construed as an admission on the part of either the City or New Life Church that they, or either of them, have at any time breached any duty or committed any act which gave rise to liability as alleged in the pleadings or otherwise. Similarly, this Consent Judgment shall not be taken or construed as an admission on the part of either the City or New Life Church of the strength or weakness of any parties' claims or defenses.
22. This Court retains jurisdiction to assure compliance with the terms of this Consent Judgment and the Agreement and to grant whatever legal and/or equitable relief or remedies which the Court deems appropriate.

## VICTORIA A. ROBERTS

## APR 252005

Honorable Victoria A. Roberts

## New Life Church of Ann Arbor

## $\frac{\text { Ster Hayes }}{\text { By: Steven Hayes }}$



David A. French (P31944)
Attorney for New Life Church


## The City of Ann Arbor

By: John Hieffje
Its: Mayor

Approved as to substance:


Approved as to form:



Exhibit B


|  |  |
| :---: | :---: |















## 1. Partial Basement

A. Storage
B. Christian Education Classrooms
C. Toilet rooms as may be required
D. Stairs as may be required.

## II. Main Level

A. Auditorium and stage ( 339 maximum fixed seats)
B. Wall and doors separating Auditorium and Gathering/Multi Purpose Space (running north/south; located east of entry doors on north side of addition)
C. Gathering/multipurpose space (no fixed seats)
D. Stairs as may be required
E. Toilet rooms as may be required
F. Storage

## 1II. Balcony Level

A. Auditorium Balcony Seating ( 157 maximum fixed seats)
B. Wall separating Auditorium and Gathering/Multi Purpose Space (running north/south; located approx. above wall on main level)
C. Gathering/multipurpose space (no fixed seats)
D. Stairs as may be required
E. Toilet rooms as may be required

