

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

AT THE CROSS FELLOWSHIP BAPTIST CHURCH INC)	
)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
CITY OF MONROE, NORTH CAROLINA,)	
)	
)	
Defendant.)	

**VERIFIED COMPLAINT FOR DECLARATORY RELIEF,
INJUNCTIVE RELIEF, AND DAMAGES**

COMES NOW the Plaintiff, AT THE CROSS FELLOWSHIP BAPTIST CHURCH INC by counsel and pursuant to the Federal Rules of Civil Procedure, and for its causes of action against the Defendant, CITY OF MONROE, NORTH CAROLINA, alleges and states the following:

INTRODUCTION

1. At The Cross Fellowship Baptist Church Inc (“Church”) is a small church with a calling to serve the Monroe, North Carolina community. Beginning in January, 2018, the Church leased property in the City of Monroe (“City”) to use as a house of worship. The Church wanted to provide a welcoming environment for people to gather, pray, and learn about Jesus Christ in order to fulfill its religious mission. The Church began renovating its newly-leased premises upon taking possession. In March, 2018, the Church approached the City to obtain a Certificate of Occupancy. The City informed the Church that it could not grant the Church a Certificate of Occupancy because Ordinance O-2017-13 amended the City’s zoning code in 2017 to create an overlay district that prohibits churches. Ordinance O-2017-13 established the Concord Avenue

Overlay District (“CA-O”) and also created Sub-districts A, B, C, and D within the CA-O. The Church is located in Sub-district C. The CA-O prohibits churches from operating in Sub-district C, despite permitting numerous nonreligious assemblies or institutions to operate in all four sub-districts, including Sub-district C. The City has treated the Church on less than equal terms with similarly-situated nonreligious assemblies and institutions, substantially burdened the Church’s free exercise of religion, and infringed on the Church’s rights to free speech, peaceable assembly, and equal protection. The Church therefore brings this action pursuant to 42 U.S.C. § 1983 for violation of its civil rights.

JURISDICTION AND VENUE

2. This action arises under the United States Constitution, 42 U.S.C. §§ 1983 and 1988, and the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) (42 U.S.C. § 2000cc *et seq.*).

3. This Court is vested with original jurisdiction over the Church’s claims by operation of 28 U.S.C. §§ 1331 and 1343.

4. This Court is vested with authority to grant the requested declaratory judgment by operation of 28 U.S.C. § 2201.

5. This Court is authorized to issue the requested injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

6. This Court is vested with authority to grant the requested damages pursuant to 28 U.S.C. § 1343(a)(4).

7. This Court is authorized to award attorneys’ fees pursuant to 42 U.S.C. § 1988.

8. Venue is proper in United States District Court for the Western District of North Carolina under 28 U.S.C. § 1391 because the Defendant resides in the District. In addition, the events giving rise to the claim occurred in, and the subject property is situated in, the District.

PARTIES

9. The Church is a Baptist church established and existing as a non-profit religious corporation under the laws of the State of North Carolina.

10. The Church's principal place of business is units H, P, and R (comprising approximately 1,500 sq. feet) of 1617 W. Roosevelt Blvd., Monroe, North Carolina ("the property").

11. The City is a public body corporate and politically established, organized, and authorized under and pursuant to the laws of the State of North Carolina, with the authority to sue and be sued, and was at all times relevant herein, operating within the course and scope of its authority and under color of state law.

STATEMENT OF FACTS

The Church and Its Religious Mission

12. The Church is a small congregation of approximately 30 members.

13. The Church was incorporated on September 5, 2017, in the state of North Carolina. *See Exhibit 1 at 0005-06.*

14. The Church and its congregants have sincerely-held religious beliefs that they are to regularly assemble with others to pray, study the Bible, sing religious songs, share biblical insight, and fellowship with one another.

15. The Church's stated purpose is: "to carry out the Great Commission of our Lord Jesus Christ as set forth in Matthew 28:16-20, Mark 16:14-16, Luke 24:45-49, and Acts 1:4-8." *See Exhibit 2 at 0008.*

16. The Church has a statement of faith that covers topics such as the Gospel, the sinfulness of man, the atonement of Christ, the grace of God, salvation, and the Great Commission, among others. *See Exhibit 3 at 0021-24.*

17. The Church is motivated by its religious beliefs to love and serve people in Monroe, North Carolina.

18. In order to fulfill this religious mission, the Church desires to operate at its principal place of business where it has created a warm and welcoming environment to foster relationships with its community, share biblical teaching, and meet for worship services.

The Church's Search for, Leasing, Renovating, and Occupancy of the Property

19. Beginning in September, 2017, the Church began holding regular Sunday services in a funeral home.

20. As the Church's membership began to grow, the Church's leadership began looking for a more permanent and suitable house of worship.

21. In January, 2018, the Church's leadership found seemingly suitable space for the Church at the property.

22. In the course of negotiating the lease, the Church specifically asked the property owner about the possibility of having a church in the building.

23. The property owner informed the Church that another church had occupied space in the same building in the recent past.

24. The property owner also informed the Church that another religious nonprofit organization was currently located in the building.

25. Upon information and belief, that nonprofit holds monthly assemblies open to its donors and the public at large.

26. In January, 2018, the Church entered into an agreement to rent the property on the reasonable belief a church would be permitted to operate there. *See* Exhibit 4 at 0031.

27. The Church began renovating the property upon taking possession of it.

28. Upon completing the renovations, the Church inquired about obtaining a Certificate of Occupancy for the property from the City planning office.

29. City Planner, Ms. Keri Mendler, informed the Church that the City could not grant a Certificate of Occupancy for a church at the property based on Ordinance O-2017-13 and the enactment of the CA-O District.

30. The Church then inquired about obtaining a special use permit to operate its newly rented and renovated house of worship at the property.

31. Ms. Mendler subsequently emailed a member of the Church's leadership, Deacon Brian Benton, to inform him that Ordinance O-2017-13 also prohibited special use permits for prohibited uses in a sub-district. *See* Exhibit 5 at 0033.

32. Ms. Mendler specifically stated: "I also looked through the document and there are no waivers that can be applied for if a use is not allowed by right." *See* Exhibit 5 at 0033.

33. Upon information and belief, Ms. Mendler was making reference to section 2(N) of Ordinance O-2017-13. *See* Exhibit 6 at 0043.

The City's Zoning Code

34. Land and development in the City is regulated by the City's zoning code.

35. On May 2, 2017, the City enacted Ordinance O-2017-13, amending the zoning code by establishing the CA-O. *See* Exhibit 6 at 0070.

36. Section 2(C) of Ordinance O-2017-13 provides a retroactive effective date for Ordinance O-2017-13 of April 4, 2017. *See* Exhibit 6 at 0037.

37. Upon information and belief, the property was located in the General Business District (“the base zoning district”) prior to enactment of Ordinance O-2017-13.

38. Upon information and belief, churches were a permitted use at the property prior to enactment of Ordinance O-2017-13.

39. Section 2(H) of Ordinance O-2017-13 establishes the boundary of the CA-O which includes the property. *See* Exhibit 6 at 0038.

40. Figure 156.124.H of Ordinance O-2017-13 illustrates the boundary of the CA-O which includes the property. *See* Exhibit 6 at 0038.

41. Section 2(I) of Ordinance O-2017-13 enacts four sub-districts within the CA-O. *See* Exhibit 6 at 0039.

42. Figure 156.124.I of Ordinance O-2017-13 illustrates the boundaries of and describes the four sub-districts in the CA-O. *See* Exhibit 6 at 0039.

43. The Church is located in Sub-district C.

44. Sub-district C “allows larger commercial development”. *See* Exhibit 6 at 0039.

45. Section 2(M) of Ordinance O-2017-13 sets out Table 156.124.M (“Table of Allowable Uses”) which lists the range of use types allowed in the CA-O regardless of the base zoning district. *See* Exhibit 6 at 0040-43.

46. Table 156.124.M provides that uses in the Table of Allowable Uses are either “Permitted” or “Prohibited” in each of the sub-districts. *See* Exhibit 6 at 0040-43.

47. Section 2(N) of Ordinance O-2017-13 provides in part that, “In no instance shall a special use permit by [sic] used to authorize a use type that is prohibited in a sub-district.” *See* Exhibit 6 at 0043.

48. The Table of Allowable Uses permits “Churches and other religious institutions” only in Sub-district A. *See* Exhibit 6 at 0041.

49. The Table of Allowable Uses permits “Libraries, museums, and similar uses” in Sub-districts A, B, C, and D. *See* Exhibit 6 at 0041.

50. Section 2(U) of Ordinance O-2017-13 defines “Churches and other religious institutions” as, “A place in which worship, ceremonies, rituals, and education are held, together with accessory uses (including locations used for education and recreation activities), operated and maintained under the direction of the religious group. Examples include churches, mosques, synagogues, and temples. Accessory uses may include parking, caretaker’s housing, pastor’s housing, day care, and group living facilities for persons associated with the religious organization, such as convents.” *See* Exhibit 6 at 0060.

51. The Church is a “church” under section 2(U) of Ordinance O-2017-13.

52. Section 2(U) of Ordinance O-2017-13 defines “Libraries, museums, and similar uses” as, “A use that provides education, training, or resources of a public, nonprofit, or charitable nature. Examples include community centers, libraries, art galleries, and museums. Accessory uses may include offices, meeting rooms, food preparation, parking, health, and therapy areas.” *See* Exhibit 6 at 0063.

53. The Church is “A use that provides education, training, or resources of a public, nonprofit, or charitable nature.”

54. Based on the definitions provided in section 2(U) of Ordinance O-2017-13, the Church should be free to locate in Sub-district C without fear of being forced out of its newly rented and renovated house of worship.

55. The Church desires to locate and hold its services at the property.

56. Ultimately, the City's Ordinance O-2017-13 and the enactment of the CA-O has severely and negatively impacted the Church's ability to fulfill its purpose of ministering to the Monroe, North Carolina community.

ALLEGATIONS OF LAW

57. The City's Ordinance O-2017-13 constitutes a land use regulation or a system of land use regulations by law.

58. All acts of the City, its officers, agents, servants, employees, or persons acting at their behest or direction, were done and are continuing to be done, under the color and pretense of state law, including the ordinances, regulations, customs, policies and usages of the City.

59. The Church has no adequate or speedy remedy at law to correct or redress the deprivations of its constitutional and statutory rights by the City.

60. Unless and until enforcement of Ordinance O-2017-13 is enjoined, the Church will continue to suffer irreparable injury to its constitutional and statutory rights.

61. The City's unequal treatment and discrimination against the Church, through Ordinance O-2017-13 and its officers, agents, servants, employees, or persons acting at their behest or direction, has caused the Church to suffer damages.

COUNT I – VIOLATION OF RLUIPA'S "EQUAL TERMS" PROVISION, 42 U.S.C. § 2000cc(b)(1)

62. The Church hereby reiterates and adopts each and every allegation in the preceding paragraphs 1-61.

63. The City's Ordinance O-2017-13 prohibiting churches and other religious institutions from operating in Sub-district C of the CA-O, on its face and as applied, violates the equal terms provision of RLUIPA, 42 U.S.C. § 2000cc(b)(1).

64. The Church is a religious assembly or institution.

65. The Church's religious beliefs are sincerely and deeply held.

66. The City's Ordinance O-2017-13 regulates land use in Monroe, North Carolina.

67. Similarly-situated nonreligious assemblies and institutions, like community centers, libraries, art galleries, and museums, are permitted to operate in Sub-district C of the CA-O as of right.

68. Similarly-situated assemblies are in fact operating in Sub-district C of the CA-O.

69. The City's Ordinance O-2017-13 prohibiting churches and other religious institutions from operating in Sub-district C of the CA-O, on its face and as applied, treats the Church on less than equal terms with nonreligious assemblies and institutions like community centers, libraries, art galleries, and museums.

WHEREFORE, the Church respectfully requests the Court grant the equitable and legal relief and damages set forth in the prayer for relief.

**COUNT II – VIOLATION OF RLUIPA'S "NONDISCRIMINATION"
PROVISION, 42 U.S.C. § 2000cc(b)(2)**

70. The Church hereby reiterates and adopts each and every allegation in the preceding paragraphs 1-61.

71. The City's Ordinance O-2017-13 prohibiting churches and other religious institutions from operating in Sub-district C of the CA-O, on its face and as applied, violates the nondiscrimination provision of RLUIPA, 42 U.S.C. § 2000cc(b)(2).

72. The Church is a religious assembly or institution.

73. The Church's religious beliefs are sincerely and deeply held.

74. The City's Ordinance O-2017-13 regulates land use in Monroe, North Carolina.

75. Similarly-situated nonreligious assemblies and institutions, like community centers, libraries, art galleries, and museums, are permitted to operate in Sub-district C of the CA-O as of right.

76. Similarly-situated assemblies are in fact operating in Sub-district C of the CA-O.

77. The City's Ordinance O-2017-13 prohibiting churches and other religious institutions from operating in Sub-district C of the CA-O, on its face and as applied, discriminates against the Church on the basis of its religion or religious denomination.

WHEREFORE, the Church respectfully requests the Court grant the equitable and legal relief and damages set forth in the prayer for relief.

**COUNT III – VIOLATION OF THE RIGHT TO FREE EXERCISE OF
RELIGION UNDER THE UNITED STATES CONSTITUTION**

78. The Church hereby reiterates and adopts each and every allegation in the preceding paragraphs 1-61.

79. The City's Ordinance O-2017-13 prohibiting churches and other religious institutions from operating in Sub-district C of the CA-O, on its face and as applied, violates the Church's right to free exercise of religion, as guaranteed by the First Amendment to the United States Constitution.

80. The Church believes its congregants are to regularly assemble with others to pray, study the Bible, sing religious songs, and share biblical insight.

81. The Church's religious beliefs are sincerely and deeply held.

82. Under the City's Ordinance O-2017-13, churches and other religious institutions cannot even apply for a special use permit to obtain permission to operate in Sub-district C of the CA-O.

83. Similarly-situated nonreligious assemblies and institutions like community centers, libraries, art galleries, and museums are permitted to operate in Sub-district C of the CA-O as of right.

84. Other assembly uses are in fact located and operating within Sub-district C of the CA-O.

85. The City's Ordinance O-2017-13 prohibiting churches and other religious institutions from operating in Sub-district C of the CA-O, on its face and as applied, substantially burdens the Church's sincerely held religious beliefs.

86. The City's Ordinance O-2017-13 prohibiting churches and other religious institutions from operating in Sub-district C of the CA-O, on its face and as applied, is neither neutral nor generally applicable because similarly-situated nonreligious assemblies and institutions are permitted to operate in Sub-district C of the CA-O as of right.

87. The City's Ordinance O-2017-13 prohibiting churches and other religious institutions from operating in Sub-district C of the CA-O, on its face and as applied, specifically and discriminatorily targets religion and religious worship.

88. There is no compelling government interest sufficient to justify the kind of discrimination that exists when the City does not permit churches and other religious institutions to operate in Sub-district C of the CA-O when similarly-situated nonreligious assemblies and institutions are permitted to operate in Sub-district C of the CA-O as of right.

89. The City's Ordinance O-2017-13 prohibiting churches and other religious institutions from operating in Sub-district C of the CA-O is not the least restrictive means to accomplish any permissible government purpose sought to be served by the land use regulations.

90. The City's Ordinance O-2017-13 prohibiting churches and other religious institutions from operating in Sub-district C of the CA-O is not narrowly tailored as required for restrictions on the Church's free exercise of religion.

91. The City has failed or refused to accommodate the Church's sincerely held religious beliefs.

WHEREFORE, the Church respectfully requests the Court grant the equitable and legal relief and damages set forth in the prayer for relief.

**COUNT IV – VIOLATION OF THE RIGHT TO FREE SPEECH UNDER
THE UNITED STATES CONSTITUTION**

92. The Church hereby reiterates and adopts each and every allegation in the preceding paragraphs 1-61.

93. The City's Ordinance O-2017-13 prohibiting churches and other religious institutions from operating in Sub-district C of the CA-O, on its face and as applied, violates the Church's right to free speech as guaranteed by the First Amendment to the United States Constitution.

94. To determine whether a proposed use is a "Church or other religious institution" under the City's Ordinance O-2017-13, the City must analyze the content and viewpoint of speech and other expressive activity.

95. The City's Ordinance O-2017-13, on its face and as applied, restricts the Church's speech based on religious viewpoint and content.

96. The City's Ordinance O-2017-13 is under inclusive as it does not place similar restrictions on similarly-situated nonreligious assemblies or institutions which do not incorporate religious speech and viewpoints.

97. The City's Ordinance O-2017-13 is overbroad because it sweeps within its ambit protected First Amendment speech, thus violating the Church's rights and the rights of third parties not before the Court.

98. The City's Ordinance O-2017-13 operates as a prior restraint on speech because the Church and other religious assemblies and institutions cannot even apply to obtain permission before engaging in religious speech, such as prayer, Bible reading and discussion, or singing religious songs with others in a place of worship in Sub-district C of the CA-O.

99. The City's Ordinance O-2017-13 does not leave open ample alternative channels of communication.

100. The City does not have a compelling interest for its Ordinance O-2017-13.

101. The City's Ordinance O-2017-13 is not narrowly tailored to achieve a compelling government interest.

102. The City's Ordinance O-2017-13 is not the least restrictive means of achieving a compelling government interest.

WHEREFORE, the Church respectfully requests the Court grant the equitable and legal relief and damages set forth in the prayer for relief.

**COUNT V – VIOLATION OF THE RIGHT TO PEACEABLE ASSEMBLY
UNDER THE UNITED STATES CONSTITUTION**

103. The Church hereby reiterates and adopts each and every allegation in the preceding paragraphs 1-61.

104. The Church believes it must regularly assemble with others to pray, study the Bible, sing religious songs, and share biblical insight in order to express devotion to God.

105. The City's Ordinance O-2017-13 prohibits the Church from assembling for religious speech and other religious purposes in Sub-district C of the CA-O.

106. The City has no compelling interest in limiting the peaceable assembly of the Church in Sub-district C of the CA-O.

107. The City's Ordinance O-2017-13 prohibiting churches and other religious institutions from operating in Sub-district C of the CA-O, on its face and as applied, constitutes a violation of the Church's right of peaceable assembly as guaranteed by the First Amendment to the United States Constitution.

WHEREFORE, the Church respectfully requests the Court grant the equitable and legal relief set forth in the prayer for relief.

**COUNT VI – VIOLATION OF THE EQUAL PROTECTION CLAUSE
OF THE UNITED STATES CONSTITUTION**

108. The Church hereby reiterates and adopts each and every allegation in the preceding paragraphs 1-61.

109. The Church's right to equal protection under the laws is protected by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

110. The City's Ordinance O-2017-13 prohibiting churches and other religious institutions from operating in Sub-district C of the CA-O, on its face and as applied, is an unconstitutional abridgement of the Church's affirmative right to equal protection of the laws, is not facially neutral, and specifically targets the Church's religious viewpoints and speech.

111. The City's Ordinance O-2017-13 prohibiting churches and other religious institutions from operating in Sub-district C of the CA-O, on its face and as applied, is

unconstitutional because it treats religious assemblies and institutions less favorably than it treats similarly-situated nonreligious assemblies and institutions that are permitted to operate in Sub-district C of the CA-O as of right.

112. The City's Ordinance O-2017-13 prohibiting churches and other religious institutions from operating in Sub-district C of the CA-O, on its face and as applied, is an unconstitutional abridgement of the Church's right to equal protection of the law because the City treats the Church differently from similarly-situated nonreligious assemblies or institutions on the basis of the Church's religious content and expression.

113. The City's Ordinance O-2017-13 is not supported by a compelling government interest sufficient to justify its enactment or enforcement against the Church.

114. The City's Ordinance O-2017-13 is not the least restrictive means to accomplish any permissible government interest sought to be served by the regulations.

115. The City's Ordinance O-2017-13 does not serve a significant government interest.

116. The City's Ordinance O-2017-13 does not leave open ample alternative channels of communication.

117. The City's Ordinance O-2017-13 is irrational and unreasonable and imposes irrational and unjustifiable restrictions on constitutionally protected speech.

118. The City, in violation of the Equal Protection Clause, has caused, and will continue to cause, the Church to suffer undue and actual hardship and irreparable injury.

119. The Church has no adequate remedy at law to correct the continuing deprivations of the Church's most cherished constitutional liberties.

120. As a direct and proximate result of the City's continuing violations of the Church's rights, the Church has in the past, and will continue to suffer in the future, direct and consequential damages, including, but not limited to, the loss of the ability to exercise its constitutional rights.

WHEREFORE, the Church respectfully requests the Court grant the equitable and legal relief and damages set forth in the prayer for relief.

PRAYER FOR RELIEF

The Church prays for judgment as follows:

A. That this Court enjoin the City, the City's officers, agents, employees and all other persons acting in active concert with them, from enforcing the City's Ordinance O-2017-13 so that:

- (1) The City must allow the Church to operate its house of worship in Sub-district C;
- (2) The City must allow the Church to operate its house of worship at the property;
- (3) The City must treat the Church equally with similarly-situated nonreligious assemblies or institutions;
- (4) The City must not discriminatorily target the Church through the City's Ordinance O-2017-13;
- (5) The City's Ordinance O-2017-13 will not be used in any manner to infringe upon the Church's rights.

B. That this Court render a Declaratory Judgment declaring the City's Ordinance O-2017-13 regarding the Church, unconstitutional, and declaring that the City, the City's officers, agents, employees and other persons acting in active concert with them, unlawfully obstructed the Church from exercising the Church's constitutionally protected rights and further declaring that:

- (1) The City must allow the Church to operate its house of

worship in Sub-district C;

- (2) The City must allow the Church to operate its house of worship at the property;
- (3) The City must treat the Church equally with similarly-situated nonreligious assemblies or institutions;
- (4) The City must not discriminatorily target the Church through the City's Ordinance O-2017-13;
- (5) The City's Ordinance O-2017-13 will not be used in any manner to infringe upon the Church's rights; and

C. Grant to the Church damages;

D. Grant to the Church an award of its costs of litigation, including reasonable attorneys' fees and expenses.

E. Grant such other and further relief as this Court deems just and proper.

Dated this 4th day of June, 2018.

Respectfully submitted,

s/ Robert D. Potter, Jr.

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**Pro Hac Vice Motions forthcoming*

VERIFICATION OF COMPLAINT

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I have read the foregoing Verified Complaint and the factual allegations thereof and that to the best of my knowledge the facts alleged therein are true and correct.

Executed this 31st day of May, 2018.

A handwritten signature in black ink, appearing to read "Timothy Rogers, Pastor". The signature is written in a cursive style and is positioned above a horizontal line.

Timothy Rogers

Pastor

At The Cross Fellowship Baptist Church

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document will be personally served on the following individual at the address listed:

Bridgette H. Robinson, City Clerk
City of Monroe, North Carolina
300 West Crowell Street
Monroe, NC 28112

Dated: June 4, 2018

s/ Robert D. Potter, Jr.

Robert D. Potter, Jr.