

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

KINGDOM FIRST MINISTRIES,)
)
 Plaintiff,)
)
 v.) CASE NO. 08-3100-MHS
)
 CITY OF ATLANTA, GEORGIA,)
)
 Defendant.)
)

CONSENT ORDER AND PARTIAL DISMISSAL

It is hereby consented and otherwise stipulated by and between Kingdom First Ministries (“Plaintiff”) and the City of Atlanta, Georgia (“Defendant”), through their respective counsel as indicated by their signatures below, that:

WHEREAS, Plaintiff instituted this suit by filing a Verified Complaint (Doc. 1) on October 2, 2008, alleging that the Defendant’s zoning ordinance, both on its face and as-applied, inhibits Plaintiff’s religious mission and keeps it from using its desired property at 535 Joseph E. Lowery Boulevard, SW, in Atlanta, Georgia (the “Lowery Property”), for church ministry; and

WHEREAS, the Parties hereto, recognizing the expense, time, and risk associated with further litigation have agreed to seek dismissal of the Complaint and settle all disputes between them in accordance with and subject to the terms of the Settlement Agreement entered into by the parties on April 6, 2009 (the "Settlement Agreement"); and

WHEREAS, the Defendant agrees to refrain from enforcing any existing requirement of a special use permit found within the SPI-21 Historic West End/Adair Park Special Public Interest zoning district ("SPI-21") challenged in the Complaint by Kingdom First for use of property it owns or leases for use as a church in any sub-area that does not currently require a special use permit for non-religious places of assembly but rather permits such use as of right. Such non-religious places of assembly expressly and exclusively are clubs and lodges, museums, art galleries, libraries, childcare centers, and kindergartens; and

WHEREAS, Plaintiff agrees that it will remain subject to the Defendant's fire, life-safety, and building code provisions, as well as the other applicable chapters of the Atlanta Code of Ordinances; and

WHEREAS, the Defendant agrees that its Bureau of Planning will propose and recommend to the Atlanta City Council an amendment to the Atlanta Zoning Ordinance to allow all churches and synagogues on equal terms with non-religious

places of assembly, as defined above, within the SPI-21 district consistent with the Religious Land Use & Institutionalized Persons Act (RLUIPA). Such proposed amendment by the Bureau of Planning shall be in substantial form as Exhibit "A", attached to the Settlement Agreement and incorporated herein by reference; and

WHEREAS, Plaintiff hereby acknowledges that the undersigned counsel for Defendant does not and cannot hereby bind the City of Atlanta, specifically the Atlanta City Council, to said amendment to the Atlanta Zoning Ordinance; and

WHEREAS, the Parties agree that the temporary injunction ordered herein shall terminate upon the zoning code amendment described herein becoming law. In the event said amendment does not become law within 128 days of the entry of this Consent Order, the parties agree that this Court will retain jurisdiction over the zoning matter, including further injunctive relief to Plaintiff; and

WHEREAS, Defendant has made payment to Plaintiff pursuant to the terms of the Settlement Agreement; therefore Plaintiff agrees to voluntarily dismiss its claim for damages and attorneys' fees alleged in the Complaint ("the partial dismissal"); and

WHEREAS, upon adoption of the amendment, within the time prescribed by this Order, to the Atlanta Zoning Ordinance under the terms of the Settlement

Agreement and this Order, Plaintiff agrees that it will voluntarily dismiss the balance of the Complaint; and

WHEREAS, the Parties agree that in the event Defendant does not amend the Atlanta Zoning Ordinance within the time prescribed by the Settlement Agreement and this Order, Plaintiff shall be free to amend its Complaint for any additional damages and attorneys' fees incurred subsequent to the ending of the 128 days from the entry of this Consent Order; and

WHEREAS, the Parties agree that this Order is not to be construed as a consent by Plaintiff that any subsequent changes to the Atlanta Zoning Ordinance can retroactively diminish its property rights; and

WHEREAS, the Parties agree to continue to confer in good faith and work toward a complete and full settlement of this case pursuant to the Settlement Agreement and further agree to the Orders of the Court set out herein.

It is hereby ORDERED, ADJUDGED, AND DECREED as follows:

- (1) This Court has jurisdiction over the subject matter of this case and has jurisdiction over all Parties to this Consent Order;
- (2) Venue properly lies with this Court;
- (3) Defendant is temporarily enjoined from enforcing any existing requirement of a special use permit found within the SPI-21 Historic West

End/Adair Park Special Public Interest zoning district ("SPI-21") challenged in the Complaint by Plaintiff for use of property it owns or leases for use as a church in any sub-area that does not currently require a special use permit for non-religious places of assembly but rather permits such use as of right;

(4) This temporary injunction shall remain in effect until and unless the Defendant's zoning ordinance amendment described above becomes law;

(5) Plaintiff's claim for damages and attorneys fees alleged in its Verified Complaint is hereby dismissed;

(6) Upon adoption of the zoning ordinance amendment within the time prescribed herein, Plaintiff shall voluntarily dismiss the balance of the Complaint.

(7) This Order is not to be construed as a consent by Plaintiff that any subsequent changes to the Atlanta Zoning Ordinance can retroactively diminish its property rights.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

IT IS SO ORDERED THIS 7 DAY OF May,
2009.

[signature on next page]



Hon. Marvin H. Shoob
Senior Judge, United States District Court

Respectfully submitted this 5th day of May, 2009.

s/ Peter J. Andrews
PETER J. ANDREWS
GA Bar No. 019529
City of Atlanta Department of Law
68 Mitchell Street
Suite 4100
Atlanta, GA 30303
Telephone: (404) 330-6400
Facsimile: (404) 658-6894
pjandrews@atlantaga.gov

Attorney for Defendant

s/ David A. Cortman
DAVID A. CORTMAN
GA Bar No. 188810
BENJAMIN W. BULL*
AZ Bar No. 009940
JOSHUA B. BOLINGER
GA Bar No. 316403
ALLIANCE DEFENSE FUND
1000 Hurricane Shoals Road, NE
Building D, Suite 600
Lawrenceville, GA 30043
Telephone: (770) 339-0774
Facsimile: (770) 339-6744
dcortman@telladf.org
jbolinger@telladf.org

JOHN W. MAUCK*
IL Bar No. 1797328
MAUCK & BAKER, LLC
One North LaSalle Street, Suite 600
Chicago, Illinois 60602
Telephone: (312) 726-1243
Facsimile: (312) 726-1039
jmauck@mauckbaker.com

*Admitted *Pro Hac Vice*

Attorneys for Plaintiff