IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

Case No.: 1:25-cv-00113

THE SUMMIT CHURCH-HOMESTEAD HEIGHTS BAPTIST CHURCH, INC., Plaintiff, v. CHATHAM COUNTY, NORTH CAROLINA BOARD OF COMMISSIONERS, Defendant.	)	**DEFENDANT CHATHAM COUNTY, NORTH CAROLINA BOARD OF COMMISSIONERS' OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION AND MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS**

NOW COMES Defendant Chatham County, North Carolina Board of Commissioners (hereinafter "Defendant"), by and through undersigned counsel, and responds to Plaintiff's Motion for a Preliminary Injunction and moves to dismiss Plaintiff's claims for lack of subject matter jurisdiction. For the reasons set forth below, Plaintiff's Motion should be denied, and Plaintiff's claims should be dismissed pursuant to Federal Rule 12(b)(1).

NATURE OF THE MATTER BEFORE THE COURT

This matter arises from a decision of the Chatham County Board of Commissioners to deny Plaintiff's rezoning applications for six parcels of land. (DE 1, ¶¶ 59-60, 119). Plaintiff is a religious nonprofit corporation based across the Triangle region of North Carolina. (DE 1, ¶¶ 1, 9). Plaintiff acquired an option to purchase land in Chatham County and sought to build a new facility there, which required rezoning applications. (DE 1, ¶¶ 18). Plaintiff submitted the requisite rezoning applications, and the applications were set for public hearing at the Chatham County Board of County Commissioners' meeting on August 19, 2024. (DE 1, ¶¶ 59-60, 64).

There, Commissioners expressed some concerns about the plan and referred the application to the Chatham County Planning Board. (DE 1, ¶¶ 67-70; **Attachment A to Exhibit 2 – Declaration of Jenifer Johnson**). At the September meeting of the Planning Board, public commentators and Planning Board members again expressed concerns over the applications and the matter was continued until the Planning Board's October meeting. (DE 1, ¶¶ 76-82). At the October meeting of the Planning Board, comments were heard from members of the public and the Planning Board discussed the application before ultimately voting unanimously to recommend denying the re-zoning applications. (DE 1, ¶¶ 94-103). The rezoning applications were set to be heard at the November meeting of the Board of Commissioners, but Plaintiff requested and was granted a continuance until the December meeting. (DE 1, ¶¶ 104-106). At the December meeting, following a discussion and public comments, the Board of County Commissioners voted unanimously to deny Plaintiff's rezoning applications. (DE 1, ¶¶ 110-119; **Attachment B to Exhibit 2 – Declaration of Jenifer Johnson**).

Plaintiff filed this action on February 14, 2025. (DE 1). Plaintiff claims violations of the Religious Land Use and Institutionalized Persons Act ("RLUIPA") found at 42 U.S.C. § 2000 *et seq.* (DE 1, p. 1). Specifically, Plaintiff claims that Defendant placed a substantial burden on Plaintiff's religious exercise, treated Plaintiff on less than equal terms, discriminated against Plaintiff on the basis of religion, and placed an unreasonable limitation on religious assemblies, institutions, and structures. (DE 1, pp. 38, 42, 43, 49). Plaintiff seeks preliminary and permanent injunctive relief and asks the Court to "require the County to approve Summit Church's rezoning request and its associated site plan." (DE 1, p. 51). Plaintiff further seeks a declaratory judgment that the County's denial of the rezoning applications was a violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). (DE 1, p. 52).

Plaintiff filed its Motion for a Preliminary Injunction on February 14, 2025. (DE 5). Defendant now responds to Plaintiff's Motion and requests that it be **denied** and that Plaintiff's claims be **dismissed with prejudice** because Plaintiff lacks standing to bring such a claim. Additionally, the Plaintiff is unlikely to succeed on the merits of its claims and cannot make a clear showing of irreparable harm.

STANDARD OF REVIEW

"A preliminary injunction is an extraordinary and drastic remedy." *Munaf v. Geren*, 553 U.S. 674, 689, 123 S. Ct. 2207 (2008) (quotation and citation omitted). Importantly, "the principal function of a preliminary injunction is to maintain the status quo." *Di Biase v. SPX Corp.*, 872 F.3d 224, 230 (4th Cir. 2017). A movant must make a clear showing of four elements before a preliminary injunction may issue: (1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc*., 555 U.S. 7, 20 (2008); *see also League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 236 (4th Cir. 2014). When considering whether to impose a preliminary injunction, courts must consider each factor from *Winter* separately. *Di Biase*, 872 F.3d at 230.

The Supreme Court has stated that "the basis of injunctive relief in federal courts has always been irreparable harm and inadequacy of legal remedies." *Sampson v. Murray*, 415 U.S. 61, 88 (1974) (quoting *Beacon Theatres v. Westover*, 359 U.S. 500, 506-07 (1959)). The term "irreparable" is crucial:

> Mere injuries, however, substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

Id. (citations omitted).

LEGAL ARGUMENT

In short, Plaintiff's Motion should be denied for two primary reasons. First, Plaintiff lacks standing to bring its claim for injunctive relief and thus, the Court lacks jurisdiction to hear it. Plaintiff seeks an injunction through which the Court would order the County to approve Plaintiff's rezoning application and site plans—Plaintiff seeks an order from the Court on a purely legislative matter, something that the Court may not do under Article III of the Constitution. Plaintiff's injury cannot be redressed by this Court for the relief sought, and thus, Plaintiff lacks standing. Second, Plaintiff is unlikely to succeed on the merits under RLUIPA because it cannot show that that Chatham County placed a substantial burden on Plaintiff's religious exercise, treated Plaintiff on less than equal terms with nonreligious institutions, discriminated against Plaintiff in denying its rezoning applications, or placed an unreasonable limitation on religious assemblies, institutions, and structures in Chatham County.

I. Plaintiff Lacks Standing for The Relief Requested.

"Without jurisdiction the court cannot proceed at all in any cause." *Steel Co. v. Citizens for a Better Env't.,* 523 U.S. 83, 94 (1998) (quoting *Ex Parte McCardle*, 74 U.S. 506, 514 (1868)). "The question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues. This inquiry involves both constitutional limitations on federal-court jurisdiction and prudential limitation on its exercise." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). Standing goes to the "threshold question in every federal case," namely, is this a case that the federal courts can hear under Article III? *Id.* This question addresses "concern about the proper—and properly limited—roles of the courts in a democratic society." *Id.* "If a party does not have standing to bring a claim, a court has no subject matter jurisdiction to hear

the claim." *Marriott v. Chatham Cnty*., 187 N.C. App. 491, 496, 654 S.E.2d 13, 17 (2007).

The "irreducible constitutional minimum of standing" requires a plaintiff to show that (1) they actually suffered a concrete and particularized injury in fact, (2) the injury is traceable to the challenged action of the defendant, and (3) it is "'likely' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-561 (1992) (citations omitted). Importantly, a plaintiff must demonstrate that it has standing for each specific form of relief sought. *Friends of the Earth v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000).

In Plaintiff's Complaint, Plaintiff asks this Court to "grant preliminary and permanent injunctive relief requiring the County to approve Summit Church's rezoning request and associated site plan." (DE 1, p. 51) This Court, however, lacks the authority to issue such a mandate to the Chatham County Board of Commissioners. *Godfrey v. Zoning Bd. of Adjustment of Union Cnty*., 317 N.C. 51, 58, 344 S.E.2d 272, 276 (1986) (citations omitted).

Local governments in North Carolina "have been delegated the power to rezone their territories and restrict them to specified purposes by the General Assembly." *Summers v. City of Charlotte*, 149 N.C. App. 509, 517, 562 S.E.2d 18, 24 (2002) (citing *Zopfi v. City of* Wilmington, 273 N.C. 430, 434, 160 S.E.2d 325, 330 (1968)). Section 160D-703 of the North Carolina General Statutes states, in relevant part, "A local government may divide its territorial jurisdiction into zoning districts of any number, shape, and area deemed best suited to carry out the purposes of this Article. . . Zoning districts may include . . . conditional districts, in which site plans or individualized development conditions are imposed." N.C.G.S. § 160D-703(a).

Zoning, and thus the approval of zoning applications, is a legislative act on part of the local government. *Summers*, 149 N.C. App. at 516, 562 S.E.2d at 24 (citing *Kirk v. Davidson*

Cnty., 145 N.C. App. 222, 228, 551 S.E.2d 186, 190 (2001)). Municipalities can engage in conditional zoning where "the rezoning decision is made concurrent with approval of the site plan. This combined procedure of conditional zoning is *entirely a legislative act*." *Id.* at 517, 562 S.E.2d at 24 (citing *Massey v. City of Charlotte*, 145 N.C. App. 345, 353, 355, 550 S.E.2d 838, 844-45 (2001)) (emphasis added). Crucially, as a matter of the separation of powers, "[t]he courts do not possess the power to amend the zoning regulations." *Godfrey*, 317 N.C. at 58, 344 S.E.2d at 276 (citations omitted). Courts can rule on the validity of a zoning decision, but they do not have the "power to determine the ultimate zoning classification" or "direct a legislative body to enact legislation." *Id.*; *Marriott v. Chatham Cnty*, 187 N.C. App. at 495, 654 S.E.2d at 16.

Here, the Plaintiff seeks a remedy that the Court cannot properly grant. *Godfrey*, 317 N.C. at 58, 344 S.E.2d at 276. In asking this Court to force Chatham County to approve Plaintiff's rezoning applications, Plaintiff is asking this Court to interfere with a "purely legislative act" and "determine the ultimate zoning classification." *Summers*, 149 N.C. App. at 517, 562 S.E.2d at 24; *Godfrey*, 317 N.C. at 58, 344 S.E.2d at 276. Such an action by the Court is inherently improper. *Godfrey*, 317 N.C. at 58, 344 S.E.2d at 276; *Marriott*, 187 N.C. App. at 495, 654 S.E.2d at 16 ("Although courts are authorized to interpret and declare the law, the judicial branch has no authority to direct a legislative body to enact legislation."). "To grant the relief requested by [P]laintiff[] would be to violate the doctrine of separation of powers." *Marriott*, 187 N.C. App. at 495, 654 S.E.2d at 16. For this reason, Plaintiff lacks standing and its claims should be dismissed.

Moreover, Plaintiff requests this relief through a preliminary injunction. (DE 1, p. 51). Preliminary injunctions are "extraordinary and drastic remed[ies]" that are primarily used to "maintain the status quo." *Munaf,* 553 U.S. at 689; *Di Biase*, 872 F.3d at 230. Importantly, the

land is not currently and was not previously zoned for such use. (DE 1, p. 16). Thus, Plaintiff is seeking relief that drastically changes the status quo. Such relief is inappropriate through use of a preliminary injunction. *See Di Biase*, 872 F.3d at 230.

II. Plaintiff is Unlikely to Succeed on the Merits as To Its Claims Under RLUIPA.

A. Plaintiff is Unlikely to Succeed on the Merits as to Its Claim of a Substantial Burden on Religious Practice Because It Lacked A Reasonable Expectation of Religious Land Use And The County Had a Compelling Government Interest.

Under RLUIPA, governments are prohibited from imposing or implementing a land use regulation that places "a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that the imposition of the burden . . . is in furtherance of a compelling government interest; and is the least restrictive means of furthering that compelling government interest." 42 U.S.C. § 2000cc(a)(1). Religious exercise, under RLUIPA, includes "the use, building, or conversion of real property for the purpose of religious exercise." 42 U.S.C. § 2000cc-5(7). "A substantial burden exists where a regulation 'puts substantial pressure [on the plaintiff] to modify its behavior.'" *Jesus Christ is the Answer Ministries v. Baltimore Cnty, MD*, 915 F.3d 256, 260 (4th Cir. 2019) ("*JCAM*") (quoting *Bethel World Outreach Ministries v. Montgomery Cnty. Council*, 706 F.3d 548, 556 (4th Cir. 2013)).

1. Chatham County Has Not Imposed a Substantial Burden On Plaintiff's Religious Exercise.

Land use regulations can impose a substantial burden on religious exercise where "an organization acquires property expecting to use it for a religious purpose but is prevented from doing so by the application of a zoning ordinance." *Id.* at 260-261. A restriction is substantial "where the property would serve an unmet religious need, the restriction on use is absolute rather than conditional, and the organization must acquire a different property as a result." *Id.* at 261

(citing *Bethel*, 706 F.3d at 557-58.)). If the restriction is substantial, courts then consider whether the government or the religious organization is responsible for the impediment. *Id.* To answer this question, courts consider "whether the organization had a 'reasonable expectation' of religious land use . . . and whether the burden faced by the organization is 'self-imposed.'" (citing *Bethel*, 706 F.3d at 558 and *Andon, LLC v. City of Newport News, Va.*, 813 F.3d 510, 515 (4th Cir. 2019)). Self-imposed hardships "generally will not support a substantial burden claim under RLUIPA, because the hardship was not imposed by governmental action altering a legitimate, pre-existing expectation that a property can be obtained for a particular land use." *Andon*, 813 F.3d at 515.

Here, Plaintiff does not own the property that it planned to build on and for which it submitted rezoning applications; it merely had an option to purchase the parcels. (DE 1, ¶ 53; DE 7, pp. 4, 16, 27). Thus, Plaintiff does not have to "acquire a different property" because it has not even acquired the property at issue. *See JCAM*, 915 F.3d at 261. Second, Plaintiff's hardship is self-imposed. The ruling in *Andon, LLC v. City of Newport News, Virginia* is instructive on this issue. In that case, the plaintiff entered into a lease agreement for property that it knew was not zoned for church use and violated other zoning ordinances and chose to limit its risk of an unfavorable decision regarding its request for a variance through a contingency provision. *Andon*, 813 F.3d at 515. The Fourth Circuit held that the City of Newport News' denial of the variance did not constitute a substantial burden because the plaintiff's burden was self-imposed. *Id.* Specifically, the Fourth Circuit reasoned that the "plaintiffs knowingly entered into a contingent lease agreement for a non-conforming property," and thus the decision "did not alter any pre-existing expectation that the plaintiffs would be able to use the property for a church facility." *Id.*

Plaintiff obtained an option to purchase the parcels at issue and was fully aware when it entered into that option that the property "has no conforming uses under its current zoning." (DE 1, p. 16). Thus, just as in *Andon*, Plaintiff has entered into a non-binding agreement for non-conforming property and therefore lacked a "legitimate, pre-existing expectation" that they could "use the property for a church facility." *Andon,* 813 F.3d at 515. Accordingly, Plaintiff is unlikely to succeed on the merits of its claim that the County imposed a substantial burden on its religious exercise on these grounds alone.

2. Chatham County Has a Compelling State Interest in Public Safety.

Even assuming *arguendo* that Plaintiff has suffered a substantial burden on religious exercise, which Defendant denies, the Defendant had a compelling state interest to justify the denial. Governments have a compelling interest in the "health, safety, and general welfare" of their citizens. *Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972); *Forest Hills Early Learning Ctr., Inc. v. Lukhard*, 728 F.2d 230, 241 (4th Cir. 1984). Plaintiff's proposed use of the property would have posed a threat to public safety because congestion on the public roadways could threaten the timely response of emergency responders.

Plaintiff expects their services to "bring hundreds or thousands of people to [the] commercial corridor every Sunday." (DE 7, p. 17). The most recent Traffic Impact Analysis suggested that Summit Church would "generate approximately 2,768 trips on a typical Sunday, with 912 trips expected to occur during the Sunday peak hour." (DE 1, p. 505). The government interest here is not so much with the traffic, but the impediment to timely emergency response that the traffic could cause. With so many additional vehicles on the road on Sundays, first responders may struggle to timely respond to emergencies using Highway 15-501. Thus, public safety constitutes a compelling government interest in denying the applications.

B. Plaintiff is Unlikely to Succeed on the Merits as to Its Claim of Less Than Equal Terms Because Herndon Farms Was Not Similarly Situated.

RLUIPA also prohibits discrimination against religious land use, stating "No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." 42 U.S.C. § 2000cc(b)(1). The Fourth Circuit has recognized four elements required to succeed on a claim of an equal-terms violation: "(1) the plaintiff must be a religious assembly or institution, (2) subject to a land use regulation, that (3) treats the religious assembly on less than equal terms, (4) with a nonreligious assembly or institution." *Canaan Christian Church v. Montgomery Cnty., MD*, 29 F.4th 182, 196 (4th Cir. 2022) (citing *Primera Iglesia Bautista Hispana of Boca Raton*, *Inc. v. Broward Cnty*., 450 F.3d 1295, 1307 (11th Cir. 2006)). A plaintiff must "present evidence that a *similarly situated* nonreligious comparator received differential treatment under the challenged regulation. If a plaintiff offers no similarly situated comparator, then there can be no cognizable evidence of less than equal treatment, and the plaintiff has failed to meet its initial burden of proof." *Id.* (citing *Primera*, 450 F.3d at 1311) (emphasis in original). To be considered similarly situated, "the nonreligious comparator must be an entity that has the same effect on the ordinance's purpose as a religious assembly or institution." *Alive Church of the Nazarene, Inc. v. Prince William Cnty., Va.,* 59 F.4th 92, 102 (4th Cir. 2023).

Here, Plaintiff has not offered a similarly suited nonreligious comparator that received differential treatment. Plaintiff asserts that Herndon Farms, the previously approved site plan for the parcels, is a similarly situated comparator. (DE 7, p. 18). However, Herndon Farms was not similarly situated to Plaintiff because of the different traffic impacts the two proposed plans would have. (DE 1, p. 506). Herndon Farms was projected to generate 1,616 trips on the

weekdays and 640 on Sunday, thus the traffic impact of Herndon Farms was spread relatively evenly throughout the week. *Id.* Plaintiff, however, was expected to generate 669 daily trips on the weekdays and 2,768 trips on Sunday. *Id.* Similarly, the number of trips during the Sunday peak for Plaintiff was projected to be 912, but the number of trips to Herndon Farms during peak hours, on the weekdays or Sundays, was no higher than 209. *Id.* Thus, its impact is more dramatic and pronounced on a single day, exceeding the expected trips for Herndon Farms during peak hours by more than 700. *Id.* Herndon Farms is therefore not a suitable comparator and Plaintiff is unlikely to succeed on its claim that it was treated on less than equal terms with a nonreligious assembly.

C. Plaintiff is Unlikely to Succeed on the Merits as to Its Claim of Discrimination Because Most Public Comment Centered on Non-Religious Considerations and Normal Procedure was Followed in Reviewing the Applications.

RLUIPA provides "No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination." 42 U.S.C. § 4200cc(b)(2). Courts have applied equal protection precedent in applying this provision and thus have required a plaintiff to "demonstrate that the government decision was motivated at least in part by discriminatory intent, which is evaluated using the 'sensitive inquiry." *JCAM*, 915 F.3d at 262-63 (citing *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-68 (1977)). In conducting a sensitive inquiry, courts can consider things like the historical background of a decision, the sequence of events leading to a challenged decision, and the legislative or administrative history, "especially when there are contemporary statements by members of the decisionmaking body, minutes of its meetings, or reports." *Arlington Heights*, 429 U.S. at 267-68. "[A] government decision influenced by community members' religious bias is unlawful, even if the government decisionmakers display no bias

themselves . . . Such impermissible influence may be inferred where expressions of community bias as followed by irregularities in government decision-making." *JCAM*, 915 F.3d at 263.

Plaintiff attempts to paint a picture of the public hearing process and the ultimate decision to deny the rezoning applications as one filled with vitriol directed at Plaintiff's religious views. (DE 1, ¶¶ 93-96, 170-171, 175; DE 7, pp. 23, 25-26). This, however, is a dramatic mischaracterization of both the public comments received and comments made by members of the Planning Board and Board of County Commissioners. In reality, there was no impermissible influence of community bias, and the typical procedure was followed in reviewing Plaintiff's rezoning applications.

1. **Public Comment Regarding Plaintiff's Religious Views Was Exceptionally Limited.**

As required by ordinance, Chatham County opened the proposed rezoning applications up for public comment. Chatham Cnty. Zoning Ordinance, §5.7 (2023). The County received 213 pages of comments in total, comprised of hundreds of individual written comments, and many more comments were made at the Planning Board and Board of Commissioners' meetings. **(Attachments Q and V to Exhibit 1 - Declaration of Jason Sullivan; Attachment B to Exhibit 2 - Declaration of Jenifer Johnson;** DE 1, pp. 457-480, 688-705). As can be seen in the exhibit attached hereto, the vast majority of these comments focused on the traffic, tax, and aesthetic impact that the proposed plan would have on the local area. (**Attachments Q and V to Exhibit 1 - Declaration of Jason Sullivan**). For example, one Chatham County resident left a comment that read, in part, as follows:

> Mine, and I'm sure most of the objections, have absolutely nothing to do with the fact that it is a church proposing to go in. The actual use of the land is irrelevant, My objections have to do with the 1) scale of the project – size of buildings and parking lots and the subsequent 500-1000 number of people coming into the area at 1 time[;] 2) traffic – massive number of cars during services, which the proposal team admitted themselves in their presentation would increase car trips

> into the 1000's [*sic*][;] 3) increased accidents, especially at all of the U-turns 4) lack of wastewater plans[;] 5) noise[;] 6)lack of revenue for Chatham County – no jobs provided, little revenue going into local businesses[;] 7) lack of property taxes being paid[;] 8) environmental impact[;] 9) maintaining rural character[;] 9) effect on residential property values.

(**Attachment Q to Exhibit 1 – Declaration of Jason Sullivan**, p. 10-11). Another commentor, after listing concerns with rural character, traffic, noise pollution, and other issues, said, "While I understand the importance of religious institutions, I believe this particular proposal does not address the needs of our community and could have detrimental consequences." *Id.*, p. 18.

Plaintiff cites three comments that accuse Plaintiff of being anti-LGBTQ as evidence of the alleged public animus against Plaintiff. (DE 1, pp. 568, 592-93, 613; DE 7, p. 25). However, these are just three of the hundreds of written comments received. (**Attachments Q and V to Exhibit 1 -Declaration of Jason Sullivan).** To say that this was the predominant attitude and concern of commentors attempts to make the exception the rule.

Further, the discussion held by Planning Board members at both the September and October meetings lacked any comments whatsoever on part of the members related to the religious beliefs or practices of the Plaintiff. (DE 1, pp. 457-480, 688-705). Instead, members of the Planning Board focused on the same concerns raised by the public: tax impact, traffic concerns, and rural character. *See generally id.* Plaintiff attempts to paint then-Planning Board Amanda Robertson as explicitly recognizing and endorsing comments that were critical of Plaintiff's religion by citing those comments and immediately noting that "Amanda Robertson assured these commentors that she heard them 'loud and clear.'" (DE 7, p. 25). This is, again, a gross mischaracterization of the reality of the exchange. Ms. Robertson, like the rest of the Planning Board Members, at the September meeting spoke after hearing many public comments and after written comments had been received. (DE 1, pp. 474-77). At the time, she was speaking

following a motion to table the rezoning applications discussion until the October meeting. *Id.,* pp.476-77. In full, the meeting minutes state as follows: "Ms. Roberton [*sic*] said she heard loud and clear what a lot of the residents in the area had to share and their concerns, this Board does listen and we do care what is said and thanked the public for coming out to the meeting tonight." *Id.,* pp. 477-78. Ms. Robertson was clearly attempting to convey that she and the rest of the Planning Board heard the concerns of all community members. She was not recognizing or endorsing the few comments received that criticized Plaintiff's religious beliefs, as Plaintiff would have the Court believe through out-of-context excerpts.

2. The County's Review of Plaintiff's Rezoning Applications Followed Normal Procedure.

In addition to the lack of evidence to indicate any impermissible bias influencing the decision to deny the zoning applications, there is no evidence that Chatham County departed from procedure in reviewing the applications. The Chatham County Zoning Ordinance provides the procedure for rezoning and conditional use permits. Chatham Cnty. Zoning Ordinance, §5.7 (2023). Applicants must first contact the Planning Department for an initial consultation with staff about the proposed plan. *Id.* The next steps include holding a Community Meeting and meeting with the Chatahm County Appearance Commission to review the application prior to submittal to the Planning Department. *Id.* From there, the applicant is instructed to submit the application to the Planning Department, and staff is available to review the application prior to the submission date. *Id.* If the application is complete, the request is scheduled for the joint meeting of the County Commissioners and Planning Board. *Id.* Staff, at the direction of the Commissioners, prepares Planning Board Agenda notes on the application for the next Planning Board Meeting. *Id.* § 19.6. Then, the Planning Board reviews the application and makes a recommendation to the Board of Commissioners. *Id.* The Planning Board must make a

recommendation within three meetings. *Id.* Following the recommendation of the Planning Board, the issue is heard by the Board of County Commissioners where the application can be approved, approved with changes or denied. *Id.*

Plaintiff admits that it met with review staff and the Chatham County Appearance Commission and held a Community Meeting. (DE 1, ¶¶ 54-58). Plaintiff further admits that the Planning Department set the applications for public hearing on August 19, 2024, and that, after discussion, the Board of County Commissioners referred the application to the Planning Board. (DE 1, ¶ 64, 71). In accordance with the Zoning Ordinances, Plaintiff's applications were then heard by the Planning Board on September 3, 2024, and the Planning Board ultimately chose to continue the matter until the October meeting (DE 1, ¶ 73-74, 82). Plaintiff's applications were heard again at the October meeting of the Planning Board, and after public comment and discussion of the Board members, the Planning Board recommended denying Summit Church's applications. (DE 1, ¶¶ 96, 98, 100-101, 103). Plaintiff's applications were scheduled to be heard at the Board of County Commissioners' November meeting, but Plaintiff requested a continuance until the December meeting, which was granted. (DE 1, ¶¶ 104, 106). Plaintiff requested a second continuance which was denied, and the applications were heard at the December meeting of the Board of the County Commissioners. (DE 1, ¶¶ 107, 109-110). Following public comment and a discussion by the Board of County Commissioners, the Commissioners voted unanimously to deny Plaintiff's applications. (DE 1, ¶¶ 109-110, 119).

Plaintiff's own pleadings are devoid of any allegations that Chatham County departed from the usual procedure for reviewing rezoning applications. Plaintiff instead takes issue with the content of the discussions at the Planning Board and Board of County Commissioners meetings and their ultimate decisions on the rezoning applications. (DE 1, ¶¶ 78-82, 99-103,

110-121). However, the law is clear that RLUIPA is not a tool for undermining the "legitimate role of local governments in enacting and implementing land use regulations." *Andon*, 813 F.3d at 516. Plaintiff has failed to show that there was impermissible community bias that influenced the decisions of the Planning Board or Board of Commissioners and, further, that there were any irregularities in procedure for review of the applications. As such, Plaintiff is unlikely to succeed on its claim of discrimination under RLUIPA.

D. Plaintiff is Unlikely to Succeed on the Merits as to Its Claim That Chatham County's Board of Commissioners Placed an Unreasonable Limitation on Religious Assemblies, Institutions, and Structures.

Under RLUIPA, governments cannot use land use regulations to "totally exclude[] religious assemblies from a jurisdiction; or unreasonably limit[] religious assemblies, institutions, or structures within a jurisdiction." 42 U.S.C. § 2000cc(b)(3). Effectively, this provision "prevents government from adopting policies that make it difficult for religious institutions to *locate anywhere within the jurisdiction*." *Bethel*, 706 F.3d at 560 (emphasis added). To succeed on this claim, a plaintiff must produce evidence showing that "religious institutions are left without a reasonable opportunity to build elsewhere in the County." *Id.*

Plaintiff has failed to produce evidence that religious institutions are not permitted to build in Chatham County. To the contrary, as Plaintiff points out, Chatham County's current comprehensive land use plan "specifically notes that 'churches remain central gathering places in towns and rural townships in the County'" and envisioned their placement in segments designated as "Compact Residential." (DE 1, ¶¶ 22, 35). The Board of County Commissioners merely denied Plaintiffs rezoning application based on its specific plan for those specific plots of land. (DE 1, p. 707). The denial of these rezoning applications is a far cry from impeding the ability of religious institutions to build elsewhere in the County. *See Bethel,* 706 F.3d at 560. As

such, Plaintiff is unlikely to succeed on the merits of this claim.

III. Plaintiff Cannot Make a Clear Showing It Will Suffer Irreparable Harm Absent an Injunction.

In making a Motion for a Preliminary Injunction, a plaintiff must demonstrate "a clear showing of irreparable harm as a condition for the grant of a preliminary injunction." *Direx Israel, Ltd. v. Breakthrough Med. Corp*., 952 F.2d 804, 812 (4th Cir. 1991). In *Winter v. National Resources Defense Council, Inc*., the Supreme Court made clear that the mere possibility of irreparable harm is not sufficient. 555 U.S. 7, 21, (2008). Rather, a plaintiff must establish that an irreparable injury is likely to occur in the absence of an injunction. *Id.* The Court found that "[i]ssuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Id.* at 22, 376 (citing *Mazurek v. Armstrong*, 520 U.S. 968, 972, 117 S. Ct. 1865, (1997)).

Plaintiff claims that it has already suffered irreparable harm through its loss of "its ability to freely exercise religion under the First Amendment as a result of the County's action in violation of RLUIPA." (DE 7, p. 26). As discussed at length above, Plaintiff has suffered no violation of its Constitutional rights, nor has the County violated RLUIPA.

Plaintiff further alleges that it "risks losing the property due to the pending expiration of its option to purchase." (DE 7, p. 28). This is precisely the type of mere "possibility" argument that the Supreme Court rejected and deemed "too lenient" in *Winter*. 555 U.S. at 22. Plaintiff must "demonstrate that the irreparable injury is *likely* in the absence of an injunction." *Id.* (citations omitted). Plaintiff contends that it could lose the opportunity to purchase the property, it has not alleged any facts that indicate there are other buyers actively pursuing purchase of this property or that it could not extend its purchase option. It has failed to show that it is "likely to

suffer irreparable harm before a decision on the merits can be rendered." *Winter*, 555 U.S. at 22. Accordingly, "a preliminary injunction [should not] be issued simply to prevent the possibility of some remote future injury." *Id.* (citations omitted).

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that Plaintiff's Motion for Preliminary Injunction be **DENIED** and that Plaintiff's claims be **DISMISSED** under Federal Rule 12(b)(1).

This the 27th day of March, 2025.

CRANFILL SUMNER LLP

BY: /s/ *Patrick H. Flanagan*

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CERTIFICATE OF WORD COUNT

I hereby certify that the foregoing document complies with the word limitation requirement of Local Rule 7.3. This Response and Memorandum contains 5,513 words, excluding the categories of words excluded under Local Rule 7.3, as measured by Microsoft Word.

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CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2025, I electronically filed the foregoing **OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION AND MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record:

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