
**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

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In Re: Application of Emory United Methodist Church for variances from: (i) the height requirements of Section 770.1, (ii) the Floor Area Ratio requirements of Section 771.2, (iii) the lot occupancy requirements of Section 772.1, (iv) the loading facility requirements of Section 2201.1 and a special exception for multiple roof structures and required setbacks under Sections 770.6(a) and 411.11 in a C-2-A Zoning District

Subject Property:

**Lots 801, 802, 808 and 813, Square 2940
6100-6120 Georgia Avenue, N.W..**

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Dated: April 22, 2009

BZA Application No. 17964

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17964

EXHIBIT NO. 4

Board of Zoning Adjustment
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TABLE OF CONTENTS

A.	Board of Zoning Adjustment Application Form 120	i
B	Zoning Self-Certification Form 135	ii-iii
C.	Authorization of Agent	iv
D.	Application for Variance and Special Exception Relief	1
1.	Statement of Existing and Proposed Use	1
2.	Site and Surrounding Area Description	5
3.	Bases for Special Exception and Variance Relief	6
	a. Special Exception Relief - Roof Structures	
	b. Application of Facts to Variance Standards	7
	i. Exceptional Situation or Condition	8
	ii. Practical Difficulty (height, FAR, lot occupancy, loading)	12
	iii. Compatibility with Zoning Scheme	13
E.	Community Contacts	15
F.	Conclusion	16
G.	Exhibits	
	1. Plat of Survey showing Site Plan*	
	2. Zoning Location Map	
	3. Listing of Property Owners within 200-ft of Site	
	4. Site Plan, Floor Plans, Building Elevations, Photographs*	

* Exhibits 1 and 4 appended hereto in separate submission from PGN Architects

D. Application for Variance Relief

Emory United Methodist Church (the "Applicant" or "Emory"), the fee owner of Lots 801, 802, 808 and 813, Square 2940, known as 6100-6120 Georgia Avenue, N.W. (the "subject property"), hereby makes application to the District of Columbia Board of Zoning Adjustment (the "Board") for variances from: (1) the height requirements of § 770.1 of the District of Columbia Zoning Regulations, 11 DCMR Zoning (February 2003)(the "Zoning Regulations") , (2) the Floor Area Ratio requirements of § 771.2, (3) the lot occupancy requirements of § 772.1, (4) the loading facility requirements of § 2201.1 and a special exception for multiple roof structures and required setbacks under §§ 777.1 and 411.11 in order to construct a mixed use project in the C-2-A Zoning District.

1. Statement of Existing and Proposed Use

The subject property consists of four (4) lots comprising 48,318 square feet of land area, presently improved by the sanctuary building of the Emory United Methodist Church (the "Church building"), a surface parking lot adjacent to the Church building and a residential building formerly used as the parsonage and later as offices for Emory Beacon of Light, Inc. ("EBOL"), which is a nonprofit corporation formed by Emory United Methodist Church.¹

¹ EBOL was organized by the Applicant in 1996, as a community development organization. EBOL is an outgrowth of the ministries of the Applicant in the Brightwood community and the surrounding area. EBOL has worked with the Brightwood community in providing transitional and permanent housing to homeless families, education and social services to immigrants, adult education, crime and drug prevention programs and business revitalization along the Georgia Avenue corridor.

Emory has been an institution in the Brightwood area since 1832 when it was founded. During the years preceding the Civil War, the Methodist denomination, like many Protestant denominations in the United States, split over the issue of slavery. Emory aligned itself with the Methodist Episcopal South Church which accepted the compatibility of Christianity and slavery. Ironically, a majority of the subject property was acquired by Emory in 1855 from Dorothy Williams, a black woman, living on land known as “Vinegar Hill”. There have been at least three prior edifices on the subject property; the current Church building was erected in 1922.

Though not a historical landmark and not located within a historic district, the Church occupying a prominent position along Georgia Avenue with a distinctive profile and a stone facade, has attributes which the Historic Preservation Office of the D.C. Office of Planning (“HPO”) would like to see maintained. As a consequence, the Church has worked intensively with the HPO staff to reconfigure the Applicant’s initial approach to redevelopment of the subject property in order to preserve a significant portion of the Church building. The outcome of this collaboration has had a major impact on the site plan which will be discussed more fully in connection with the discussion of the required variance relief.

Emory remained a segregated church until the 1960's when the Brightwood community rapidly integrated and church membership plummeted. On several occasions Emory was on the verge of dissolution and endured a series of part-time pastors. The current pastor, Rev. Joseph W. Daniels, Jr., arrived in a part-time capacity in 1992 and became the permanent pastor in 1994. An upsurge in membership and a dynamic ministry

have pushed Emory into local and national prominence as an engaged urban church meeting congregational and community needs. Emory has been an active participant in the Washington Interfaith Network (“WIN”) since 1994, a church-based organization advocating social justice in areas of affordable housing, neighborhood safety, public schools, “living wage” jobs and services for youth and immigrants. Rev. Daniels is currently a co-Chair of WIN.

The subject property is presently improved with three structures: the Church building, a detached residence which was formerly the parsonage and later the offices of EBOL and a storage building. The subject property contains a 20-space paved parking lot. The Church has an active membership of 415 and conducts a variety of programs in the Church building, in addition to three worship services on Sundays. The Church finds that its current facilities are inadequate for the purposes of its missions of worship and community engagement. The instant application is aimed at resolving these problems and enabling Emory to remain at its present location in the Brightwood community and to make a major contribution to community revitalization.

The Applicant intends to construct a mixed use building (the “Project”) which will contain: (1) the Church building (enlarged by 33% to seat 500 worshipers) and associated offices and support facilities, such as a fellowship hall, a commercial-style kitchen and food pantry; (2) offices for EBOL and two retail spaces fronting on Georgia Avenue, NW; (3) a 67 unit housing facility with 51 senior and 16 affordable rental apartment units; (4) a 24-unit facility containing transitional housing for families and permanent supportive housing

for adults; and (5) a regulation-size gymnasium.² The Project will be known as the “Beacon Center”, containing the Joseph Wayne Daniels Senior & Family Living (senior and affordable housing component) and the Betty Thomas Pavilion (transitional and permanent supportive housing component). The Project will be served by a two-level, below grade parking garage which will contain approximately 97 parking spaces (up to 107 parking spaces using tandem parking opportunities) with bicycle spaces being provided on each level. Parking for automobiles and bicycles will be in excess of what is required under the Zoning Regulations. The parking garages will be accessed from a curb-cut and driveway on Quackenbos Street, N.W. (lower level of parking) and from a curb-cut and driveway on Old Piney Branch Road, N.W. (upper level of parking). The parking garage will also contain two 30-foot loading berths servicing the retail and residential components of the Project.

The assembled buildings will constitute a single building for zoning purposes with below grade and at grade connections between all components of the Project. The Applicant will retain ownership of all of the land comprising the subject property and the Church building; EBOL will enter into a ground lease of the land from the Applicant and will develop the Project which may have other entities as eventual owners of the several components of the residential portions of the building.

² The Applicant also proposes to offer the National Park Service the use of a 360-square foot space within the building along Old Piney Branch Road, N.W. which currently lacks a gift shop or facility to welcome visitors to the Fort Stevens site. The Applicant initiated this discussion with the National Park Service in 2008, but there is as yet no definitive agreement on this offer.

2. Site and Surrounding Area Description

The subject property is located on the west side of the 6100-block of Georgia Avenue, N.W., occupying the eastern two-thirds of the land between Quackenbos Street, N.W. to the south and Rittenhouse Street, N.W. to the north. The subject property is in a C-2-A Zoning District. Directly across Georgia Avenue, N.W. from the subject property are both low-scale commercial buildings. To the north of the subject property are three residential buildings facing Rittenhouse Street, N.W. with ground floor commercial and retail space (where EBOL currently has its offices). The property is bounded on the west by Old Piney Branch Road, N.W. and across this public street is Fort Stevens, a Civil War-era fortification and one of the Fort Circle Parks which is owned and operated by the National Park Service. The subject property occupies the southern tip of the C-2-A Zoning District which runs along both sides of Georgia Avenue, N.W. for six (6) blocks to Van Buren Street, N.W. The nearest single-family housing to the subject property is located on the opposite side of Fort Stevens along 13th Street N.W. and along 12th Street, north of Rittenhouse, Street, N.W.

The subject property is distinctive for its topography with the existing buildings sitting atop a 14-foot high berm along both Georgia Avenue and Quackenbos Street frontages. The berm is evidently a remnant of the historic plan of fortification of the site during the Civil War. For example, we know that then extant church building served as a barracks, hospital and jail in conjunction with the operation of Fort Stevens.³ At the rear

³ As part of the redevelopment of the subject property, the Applicant has consulted with an archeologist and a survey of the subject property will be conducted.

of the subject property, Old Piney Branch Road, N.W. rises 14-feet from its intersection Quackenbos Street, N.W. to its terminus at the entrance of the existing parking lot on the subject property. This exceptional feature of the subject property – the topography – forms one of the bases for the variance relief requested in this application.

4. Bases for Special Exception and Variance Relief

a. Special Exception Relief – Roof Structures

The Applicant is requesting special exception relief under § 411.11 to allow multiple roof structures and a setback for one penthouse containing an elevator core that does not meet the minimum setback requirements of § 770.6. Section 411.11 of the Zoning Regulations provides that:

“[w]here impractical because of operating difficulties . . . or other conditions relating to the building . . . that would tend to make full compliance unduly restrictive . . . or unreasonable, the Board . . . shall be empowered to approve, as a special exception under § 3104, the location, design, number, and all other aspects of such structure regulated under §§ 411.3 through 411.6, even if such structures do not meet the setback requirements of . . . § 770.6 . . . ; provided, that the intent and purpose of this chapter and title shall not be materially impaired by the structure and the light and air of adjacent building shall not be affected adversely.

The Project, which will constitute a single building for zoning purposes, has four penthouse structures: three enclosing the separate elevator cores of the three major components: the Church building, the senior housing facility and the transitional housing facility and one enclosing the fire-rated stairway reaching the roof from the Church building. With the exception of the two penthouse structures servicing the roof of the Church building, all of the other penthouse structures satisfy the setback requirements.

In this instance, the two penthouse enclosures are situated at the northern edge of the roof, a placement which is necessitated by the retention of the existing Church building, which has a different and lower roof level. Also the penthouse enclosing the elevator core for the Church building is located only 4'7" from the roof edge rather than 6'6" based upon the height of the penthouse structure.⁴ Based upon sightlines from the western side of Georgia Avenue, N.W., neither penthouse structure is visible from sidewalk level.

b. Application of Facts to Variance Standards

The nature of the variances requested --- the height, floor area ratio, the lot occupancy coverage and the loading --- are all area variances.⁵ In pertinent part, § 3107.2 of the Zoning Regulations states that the Board has the power:

Where, by reason of . . . [an] exceptional situation or condition on a specific piece of property, the strict application of any regulation adopted under D.C. Code sections 5-413 to 5-432 would result in peculiar and exceptional practical difficulties to . . . the owner of the property, to authorize . . . a variance from the strict application so as to relieve the . . . hardship; Provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. (emphasis added)

The test for an area variance then is threefold: (1) whether some condition of the subject property is exceptional or unique; (2) creating a practical difficulty under the

⁴ In fact, the eastern edge of the roof of the five story building is above the roof of the one-story lobby connector between the church offices and the church sanctuary.

⁵ Ass'n for Preservation of 1700 Block of N Street v. D.C. Board of Zoning Adjustment, 384 A.2d 674, 676 (D.C. 1978).

Zoning Regulations; and (3) relief from which would not occasion substantial detriment to the public good or impair the intent, purpose, and integrity of the zone plan. Roumel v. D.C. Board of Zoning Adjustment, 417 A.2d 405, 408 (1980); Capitol Hill Restoration Society, Inc. v. D.C. Board of Zoning Adjustment, 398 A.2d 13, 15 (1979). It is clear that, like the circumstances of unusual shape or topography, "existing structures on the land are part of the property and may be exceptional conditions for variance purposes". Draude v. D.C. Board of Zoning Adjustment, 527 A.2d 1242, 1255 (D.C. App. 1987) citing Clerics of Saint Viator, Inc. v. D.C. Board of Zoning Adjustment, 320 A.2d 291, 293-94 (D.C. App. 1974). The manner in which the Applicant's circumstances and the circumstances of the subject property satisfy these three distinct elements for area variance relief are discussed below.

i. Exceptional Situation or Condition

The unique condition inherent in the subject property which necessitates the variance portion of this application derives from the unusual and unique topography of the land (previously described) and the desire of HPO and the Applicant to enable the retention of the significant stone facade of the Church building and the views of the Church building from the street level of Georgia Avenue, N.W. which requires the Applicant to work with and around portions of the existing structure while making additions to it.

The unusual topography is the decisive feature of the subject property which causes the building to depart from the matter-of-right characteristics of the C-2-A Zoning District. In combination with the necessity of preserving the existing Church building, the Applicant

As the District of Columbia Court of Appeals has said:

“Moreover, we have held that the need to expand an existing building may constitute the kind of exceptional condition of the property that justifies a variance.” Draude v. D.C. Board of Zoning Adjustment, 527 A.2d 1242, 1255 (1987).

The Applicant contends that, in essence, it is proposing to erect a building conforming with the requirements of the C-2-A Zoning District sitting on the 14-foot pedestal and that it is this anomalous circumstance which creates the need for each of the requested variances. Each requested variance is briefly described and discussed in this context below; however, the Applicant intends to have its expert witnesses address these circumstances in greater detail at the public hearing.

Height Variance (§ 770.1)

In the C-2-A Zoning District, the height of a building is limited to fifty feet (50'). Pursuant to § 199, the measuring point for the Project is level of the curb opposite the middle of the front of the building.⁶ In this instance, the measuring point is the elevation of the curb at Georgia Avenue, N.W., approximately 303' 7" above datum.⁷ The roof parapet is 367' above datum, so the vertical distance from measuring point to the roof parapet is 63'5".⁸ However, the ground floor level of the Church, which as a practical matter, determines the ground floor level of the senior housing facility, the transitional

⁶ The definition of “building, height of” at 11 DCMR *Zoning* (February 2003), at p. 1-13.

⁷ See Sheet C-1 Existing Conditions Plan, prepared by Vika Capitol LLC, Engineers, dated February 20, 2009

⁸ See Sheet A2-1 Elevation Georgia Avenue, prepared by PGN Architects, PLLC, dated February 27, 2009.

housing and the offices of Emory is 323' above datum. In effect, the new buildings are less than 40' in height.

Floor Area Ratio (§ 771.2)

The floor area ratio in the C-2-A Zoning District cannot exceed 2.5. The Applicant's site plan situated on 48,312 square feet of land displays a floor area ratio of 3.0. The difference between the allowed and the measured floor area ratio is, therefore, 0.5 , or 24,156 square feet. In the view of the Applicant, this difference can be accounted for entirely with the observation that the Intermediate Parking Garage (which comprises 28,515 square feet) is because of the topography of the subject property technically "above grade" and is included within the measured floor area ratio of Applicant's plans. If this floor area is deducted from the total, then the subject property is within the FAR tolerances for the C-2-A Zoning District.

Lot Occupancy (§ 772.1)

The maximum percentage of lot occupancy in the C-2-A Zoning District is 60%, but the applicable regulations provide that no portion of a building devoted to a residential use shall exceed the lot occupancy limits. The Zoning Administrator and the Board have consistently interpreted this provision as meaning that in a mixed use building, the examination of lot occupancy is made on every floor in which a residential use is located.⁹ In this instance, the Project has four (4) floors containing residential uses. The top two floors --Third and Fourth Floors -- each have 54% lot occupancy; the lower two floors --

⁹ See Board of Zoning Adjustment Decision and Order in Application No. 17850 (January 6 and February 3, 2009) and Application No. 17571 (February 27, 2006), both of which analyze mixed use buildings.

First and Second Floors – have a 68.81% and a 67.88% lot occupancy, respectively.¹⁰ The two floors of the Project which exceed the lot occupancy limits are also the levels of the Project occupied, in part, by the retained Church building, the area of which accounts for the entire excess occupancy. The practical function of the lot occupancy limits for residential uses is to limit density in order to improve light and air available to the residents. In the proposed site plan, the Applicant believes that this objective is achieved for the residents of the first and second floors of the senior housing facility with the provision of a central courtyard that is over 40' in width and comprising an area of almost 3,500 square feet. In addition to the openness created by the central courtyard, a majority of the apartment units on these two floors look out over the courtyard or the open greenspace along Old Piney Branch Road, NW and further to Fort Stevens.

Loading Berths and Platforms (§ 2201.1)

Based upon the residential use with more than 50 units and the retail use (between 5,000 and 20,000 square feet), the Applicant is required to provide for the Project a total of one 55-foot loading berth, one 30-foot loading berth, one 20-foot loading berth and two loading platforms (one of 200 square feet and one of 100-square feet, respectively). The Applicant provides two 30-foot loading docks on the lower level of the parking garage accessed from Old Piney Branch Road, N.W. The topography and width of that roadway determine where large trucks can enter the building to reach a loading dock. For this reason, it was the Applicant's judgment that the roadway and lower parking level could not

¹⁰ See A0-6A Zoning Analysis Diagram, prepared by PGN Architects, PLLC, dated February 27, 2009, for a floor plan and computations for each floor within the Project.

accommodate a 55' foot loading dock. Further, the Applicant notes that the relatively small size of the senior and transitional housing units in comparison with those in other large apartment buildings do not require the larger trucks. Similarly, the limited size of the two retail spaces (3,069 and 2,646 square feet) make it unlikely that routine deliveries would utilize the larger trucks. Furthermore, the fact that the building is mixed use with interconnections among the uses at the level of the Ground Floor will allow for substantial chances for dual use of the loading facilities for retail and residential purposes. The proposed 250 square foot loading platform is so located as to easily service both of the loading berths.

ii. Practical Difficulty

In order to comply with the Zoning Regulations, the Applicant would have to alter the Project in significant ways that would eliminate at least two floors of senior and affordable housing that would render the Project financially unfeasible and severely reduce the scope of the program offered by the Project.

As a public service organization, the Applicant, is not, like other applicants before the Board, required to make a showing that no other economic use can be made of the proposed site. Draude, 527 A.2d, at 1256. There is a line of decisions confirming that the Board should apply a more flexible standard for determining hardship and difficulty when a “public service” or nonprofit entity is the applicant. Monaco v. District of Columbia Board of Zoning Adjustment, 407 A.2d 1091 (D.C. 1979); National Black Child Development Institute, Inc. v. District of Columbia Board of Zoning Adjustment, 483 A.2d 687, 690 (D.C. 1984).

iii. Compatibility with the Zoning Scheme

The final prerequisite for variance relief is to demonstrate that the requested relief can be granted without adverse impact on the intent, purpose and integrity of the zone plan. The Project is a moderate density mixed-use development consistent with the character and purposes of the C-2-A Zoning District. The Project also fits within the framework of Chapter 22 of the Revised Comprehensive Plan for the National Capital, 10 DCMR Comprehensive Plan Part 1 (October 2007) (the “Plan”) which identifies Georgia Avenue as the commercial heart of the Rock Creek East planning area, including the Brightwood neighborhood in which the subject property is located. In reviewing the Plan, the Applicant took note of these land use elements, which are paraphrased below:

- Like the Zoning Regulations, the Plan identifies the area in which the subject property is located as being intended for mixed use development. In the terms of the Plan, this includes the combination of low density commercial with moderate density residential.¹¹
- The principal planning goals for the area are the stabilization of the commercial district, the provision of affordable housing for working families and the large population of low and moderate income seniors.¹² The integration of such housing into established neighborhoods of single family detached and semi-detached homes is a community priority under the Plan.

¹¹ The Plan objectives for types of use as depicted on the Comprehensive Plan Future Land Use (Map 2), dated June 2007, for both sides of Georgia Avenue between Quackenbos Street, N.W. and Van Buren Street, N.W.

¹² Revised Comprehensive Plan, Chapter 22, at 22-2 and Policy RCE-1.1.6, at 22-14.

- The Plan endorses the creation of pedestrian-oriented commercial centers rather than long commercial strips.¹³
- In such nodal commercial development there should be a emphasis on neighborhood serving commercial uses with some attention given to excellence in urban design. Physical elements of the streetscape should reinforce local identity and a sense of place.¹⁴
- The Rock Creek East Plan recognizes the significant historical resources of the area and requires their recognition and protection.
- Affordable senior housing is particular need for Brightwood given its large senior population.¹⁵

The Project is clearly consistent with the Zoning Regulations, as discussed previously, and responds directly and meaningfully to the planning objectives for Upper Georgia Avenue. The Project will be located at an obvious “commercial node” at the southern end of the C-2-A corridor in Brightwood. The Project has been carefully conceived as a unified structure containing many uses at street level and at the plaza level which encourage pedestrian movement into and across the plaza. The Project recognizes the historical asset represented by the Church building and has adjusted its design to preserve the major architectural elements pointed out to the Applicant by HPO, as well as opening up the building locations in the Project in order to frame views of the Church building. In addition to allowing for the continued presence of Emory on the subject

¹³ Revised Comprehensive Plan, Chapter 22, at 22-9.

¹⁴ Revised Comprehensive Plan, Chapter 22, Policy RCE -2.3 and 2.3.1, at 22-24 and 22-25.

¹⁵ Revised Comprehensive Plan, Chapter 22, Policy RCE2.4, at 22-26

property, the Project provides critical housing in the areas the Plan stresses the need for: affordable housing for working families and senior citizens.

To implement the program to revitalize neighborhoods, the Office of the Deputy Mayor for Planning and Economic Development has developed and published Brightwood/Upper Georgia Avenue Investment Plan as a part of the Neighborhood Investment Fund established by the City and the D.C. Council (“NIF/BUGA”).¹⁶ This particular effort was a collaboration of the City with community stakeholders to define local priorities. The Applicant, EBOL and WIN were active participants in the development of NIF/BUGA. Among the several priorities identified by the Brightwood stakeholders, the very first was the redevelopment of underdeveloped lots on the commercial corridor of Georgia Avenue NW into mixed use projects that would include new affordable housing and ground floor retail.¹⁷ The second objective for Brightwood was the development near or on the commercial corridors of “senior and special needs housing facilities.”

In summary, the Applicant believes that the Project as a mixed use development clearly and materially advances the goals of the Zoning Regulations and the Plan and furthers the objectives of NIF/BUGA.

E. Community Contacts

The Applicant has acted to ensure that the local community is informed of the Project. On March 3, 2009, the Applicant and its development team representatives met with Advisory

¹⁶ Neighborhood Investment Fund *Brightwood/Upper Georgia Avenue Investment Plan*, D.C. Office of Planning, February 2008.

¹⁷ *Id.*, at p. 25.

Neighborhood Commissions 4A at its regular monthly meeting.¹⁸ The Project was well received at this assembly. The Applicant has also reached out to the Brightwood Community Association, attending a monthly meeting on March 10, 2009. The Project was the subject of a front page story in *The Northwest Current* issued published on April 15, 2009, so the community at large is well aware of the scope and significance of the Project and the contribution it will make to neighborhood revitalization in Brightwood.

F. Conclusion

Based upon the foregoing discussion, the Applicant requests that the Board grant a special exception under § 777.1 to allow multiple penthouse structures and less than the required setback for one penthouse and four area variances: (i) under § 770.1 of the Zoning Regulations to permit a building height of 63'5"; (ii) under § 771.2 to permit a floor area ratio of 3.0; (iii) under § 772.1 to permit lot occupancy to exceed 60.0% on the first and second floors of the building and (iv) under § 2201.1 to permit two (2) thirty foot (30') loading berths and a single 250 square foot platform to meet the loading facilities requirement, all in the C-2-A Zoning District.

Respectfully submitted,

JORDAN & KEYS, PLLC

By: 
George R. Keys, Jr.

¹⁸ Although the Project is located within the boundaries of ANC 4A, the boundary of ANC 4B is close enough that the Applicant believed it will be advisable to engage that body as well and is pursuing a discussion with the ANC Chairperson about making a presentation to that ANC.

Exhibit 2 - Zoning Location Map

