GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16632

As Director of the Office of Zoning, I hereby certify and attest that on MAR 2 9 2001 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Gebregiorgis Girmai, Chairman
Medhane Alem Eritrean Orthodox Church
Tewahdo Church Congregation
P.O. Box 12162
Washington, DC 20005

James F. Smith, Agent
6 Logan Circle, N.W., Suite 3
Washington, DC 20005

Willie Flowers, Chairperson
Advisory Neighborhood Commission 4C
WMATA Bus Barn
P.O. Box 6087
Washington, DC 20039

Shawn Fenty, Commissioner
Single Member District Commissioner 4C03
1213 Crittenden Street, N.W.
Washington, DC 20011

Councilmember Adrian Fenty
Ward Four
441 4th Street, N.W., Suite 702
Washington, DC 20001

Michael Johnson, Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, DC 20009

BZA
Case No.
Exhibit No. 38

Board of Zoning Adjustment
District of Columbia
CASE NO.16632
EXHIBIT NO.38

BZA APPLICATION NO. 16632

Ellen McCarthy
Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, DC 20002

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16632 of Medhane Alem Eritrean Orthodox Church, pursuant to 11 DCMR § 3103.2, for a variance from the parking requirements under subsection 2101.1 for the proposed conversion of an existing structure to be used as a church seating 120 persons in a C-1 District at premises 4700 14th Street, N.W. (Square 2706, Lot 54).

HEARING DATE: **November 28, 2000**
DECISION DATE: **December 19, 2000**

DECISION AND ORDER

Description and Purpose of the Facility: The site is located in Square 2706, on Lot 54 at premises 4700 14th Street, N.W. The site is a corner lot that is located at the northwest intersection of 14th and Crittendon Streets. The lot has a width of 23.7 feet and a depth of 90 feet, for a total lot size of 2,133 square feet. The property is improved with a one-story, plus basement, building that occupies 97 percent all of the lot area.

At the time of the public hearing, the applicant began renovation of the building. The Medhane Alem Eritrean Orthodox Church proposed to use the subject building as a place of worship. The vacant building was previously used as a convenience store. When the applicant purchased the building in December 1999, it was in a deteriorated condition. The applicant purchased the 2,000 square foot building based on discussions with the former owner and real estate agent who told the applicant that it could be used as a church. The applicant also stated that District government officials informed the engineer hired to perform the feasibility study on the site that it could be used as a church. The applicant indicated that it was not until after the church had applied for the Certificate of Occupancy (C of O), that they became aware that on-site parking would be required.

The church first began in 1991 with 15 members and has been housed in several buildings on a temporary basis since that time. The church was previously housed at the Ella Williams Lounge at Simpson-Hamline United Methodist Church, however, lost its lease on August 27, 2000. At the time of the hearing, the applicant indicated that the church had 30 members and did not have a place to hold its services. The church anticipated a growth of up to 120 people and five clergy.

The church members reside in the Washington Metropolitan Area, Virginia, Maryland and the District of Columbia. The applicant stated that the church is unique in that most of its members do not drive on Sundays. They walk or take public transportation. The applicant stated that the

priest gives permission to members of the church who live too far away to drive, and that the estimated maximum number of automobiles that would be driving to the site would be five.

The applicant provided the Board with a copy of the last issued Certificate of Occupancy (C of O) for the site. The C of O, No. B00181322, was issued to Fuentes Reyes, Inc. on July 7, 1998 for the operation of a retail grocery store and deli (Exhibit No. 8).

The church would be using the building primarily on Sundays between the hours of 7:00 a.m. and 11:00 a.m. At other times, Monday through Saturday from 9:00 a.m. to 5:00 p.m., the building would be used sparsely. The building would be used on holy days and for special holiday functions. Generally, weddings and funeral services are held away from the site.

The site is located in a low-density shopping district. The neighborhood commercial district consists of a two-block area between Buchanan and Decatur streets, N.W. The Washington Metropolitan Area Transit Authority's Northern Bus Garage (referred to as the bus barn) is located to the east of the site. The garage consists of an entire square where Metrobuses deadhead and are repaired. Residents of the neighborhood and workers at the bus barn primarily use the commercial business district. The site is located in a neighborhood that is overwhelmingly residential and developed primarily with single-family detached and semi-detached dwellings.

The applicant submitted petitions signed by 21 neighborhood residents stating that they have no objection to locating the church on the site (Exhibit No. 30). Some of the petitions state that on Sunday mornings, between 7:30 a.m. and 10:30 a.m., many parking spaces are available on 14th Street.

The applicant stated that there would be an abundance of on-street parking in the area surrounding the site when the church holds its early Sunday morning services. The parking spaces are both metered and un-metered. (The meters in the vicinity of the site have been temporarily removed.) The applicant stated that after conducting parking space counts in the area, on average, there are a significant number of parking spaces available, which are not in front of residences on Crittendon, Buchanan, Allison, Decatur, or Delafield streets. In addition, many of the dwelling units that are located close to the site have private garages.

The applicant attempted to secure off-street parking by holding informal discussions with representatives of the bus barn and the city's Department of Public Works. However, at the time of the public hearing, the applicant did not have a signed parking agreement.

Zoning: The site is zoned C-1. The C-1 District permits matter-of-right low density development to a maximum height of 40 feet/3 stories, a maximum floor area ratio (FAR) of 1.0 and a maximum lot occupancy of 60 percent. A church is a matter-of-right use in the C-1 District; however, as stipulated by § 2101 of the Zoning Regulations, on-site parking spaces must be provided as follows:

"One for each 10 seats of occupancy capacity in the main sanctuary; provided that where the seats are not fixed, each 7 feet usable for seating or each 18 inches of bench, if benches are provided, shall be considered one seat."

Office of Planning: By correspondence dated November 17, 2000, the Office of Planning (OP) recommended approval of the application with conditions (Exhibit No. 29). OP indicated that the significant issues to be considered are:

- The existing small size of the lot and the lack of front, side, and rear yards present exceptional conditions of the subject property. The building occupies almost all of the lot. This situation creates an exceptional condition of the property that requires relief from the strict application of the off-street parking requirements.

- The existing non-conforming structure was built prior to establishment of the May 12, 1958 Zoning Regulations and therefore cannot meet the lot occupancy and rear yard requirements. A conforming structure would have no more than 60 percent lot coverage and a 20-foot rear yard in the C-1 District.

- In addition to the small size of the property, demolition of a portion of the existing building to create parking spaces would not be practical. This situation creates an impediment and exceptional practical difficulty in providing off-street parking on the site.

- The church does not propose extensive use of the structure at any time other than Sunday mornings. The Applicant has stated that no other programs such as a day care center, soup kitchens, clothes distribution or other charitable programs will be undertaken at this location. The church would direct its members to park in the area that is used for commercial businesses, not in the neighborhood residential area.

- Based on the parking study provided by the applicant, substantial on-street parking is available during the church's regular meeting hours to accommodate its parking needs. If appropriate transportation management steps are taken, the church's parking demand can be minimized. If the regular meeting hours proposed by the applicant are adhered to and the church encourages it members to rideshare, use public transportation, bike or walk, there would be sufficient on-street parking in the neighborhood. The zoning relief sought can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations and Map.

- Due to the unique nature of the Medhane Alem Eritrean Orthodox Church, its members are likely to be spread throughout the metropolitan area. Therefore, parking demand would be higher than if the facility primarily served the residents of the community. The Zoning Regulations requires one space for 10 seats of occupancy; therefore if the church's membership were to grow to 120, the parking demand would likely exceed 12 spaces. To mitigate any potential parking impacts, it is recommended that the Board require a commitment to efforts to encourage ridesharing, public transit, bicycle, and other modes of transportation.

- The applicant should continue to pursue an off-street parking agreement that would meet its current and future parking demands.

The Office of Planning recommended approval of the application with that the following conditions:

1. Use of the structure for services or other large gatherings shall be limited to Sunday mornings.

2. The applicant shall establish a program to encourage ridesharing, public transit, bicycle, and pedestrian modes of transportation by church members to minimize parking demand.

3. The applicant shall diligently pursue an off-site parking agreement. Upon approval of an off-site parking agreement by the Board of Zoning Adjustment for two years from the date the variance is granted, whichever occurs sooner, this variance shall become null and void.

Advisory Neighborhood Commission 4C: By correspondence dated November 20, 2000, Advisory Neighborhood Commission (ANC) 4C informed the Board that the Commission voted to deny the application. The ANC's vote was based on opposition expressed by the neighborhood's residents who were concerned that the proposed facility would cause parking problems (Exhibit No. 27).

Opposition: Many residents of the neighborhood expressed strong opposition to the use of the site to house the church. The following summarizes the concerns of the residents:

- No fewer than five churches already are located within three blocks of the site, creating a serious parking problem in the neighborhood. When the existing churches hold services and other events, neighbors find their driveways blocked, visibility reduced by churchgoers parking illegally close to corners, and double parking. Granting the requested variance would only magnify the problem.

- Residents are forced to park a considerable distance from their homes because of the large number of churches within a three-block radius of the site. The visitors to the neighborhood quite often park illegally for church services and other activities. The addition of another 120-person congregation would exacerbate an already difficult situation.

- Residents on many of the surrounding streets (e.g., Decatur, Crittenden, and Buchanan) generally do not have garages, making available on-street parking essential in the community. Many residents have more than one vehicle. These existing conditions create parking difficulties in the neighborhood. Thus, granting the variance would reduce the already limited parking supply.

- A number of streets in the vicinity of the site do not participate in the residential parking permit program. The program allows limited parking for people who reside out of the

neighborhood. In addition, the city has parking restrictions, which allows parking only on one side of the street, on specific days.

- The bus barn is located across the street from the site. People from different parts of the city come to the bus barn to buy fare products to be used on Metrobus and Metrorail. The area is particularly busy on the weekends, at the beginning and during the middle of each month. There is a constant flow of traffic in front of the garage during peak times.

- Churchgoers would be competing with customers of the commercial establishments for the limited number of on-street parking spaces.

- Most churchgoers would arrive at the site early Sunday mornings and have access to the limited parking spaces that may be available. However, as more people arrive to attend Sunday services at other churches and the commercial businesses open, traffic congestion would be created because of insufficient on-street parking spaces.

- The property anchors a neighborhood business district. The site is at a prominent location with regards to the neighborhood's ongoing efforts to redevelop the commercial area to bring needed services and businesses to the community. The site would be better suited for a retail use.

- The neighborhood has developed specific goals and policies to bring economic revitalization back to the commercial corridor. The availability of parking and having sufficient parking spaces to serve the commercial businesses are essential components of the neighborhood's overall strategy to revitalize the area. Granting the variance would hinder the ongoing efforts of the community association to rehabilitate the business district along the 4600 and 4700 block of 14th Street, N.W.

- The corner of 14th and Crittenden is a linchpin of the local area plan, which is presently under development. What that plan envisions for the site is the kind of enterprise that would bring goods and services to the neighborhood and contribute to its economic revival.

The Applicant's Submission after the Record Closed

At the conclusion of the public hearing, the applicant was invited to submit proposed Findings of Fact and Conclusion of Law. No other information was requested from the applicant. The applicant submitted, for the Board's review, other documents and requested that the record be re-opened to allow the new information in because of the significant opposition to the application at the public hearing. The only information the Board requested was a map from Ms. Audrey Nwanze identifying the commercial establishments, and their hours of operation, in the 4600 and 4700 block of 14th Street, N.W. (Exhibit No. 36). The unsolicited information submitted by the applicant was:

- A detailed description of vacant land located to the south of the site that would be rented, on a monthly basis, and used to accommodate between 7 and 8 parking spaces. The vacant land is located behind six commercial businesses.

- A plat identifying the public space that runs parallel to the property that could accommodate five parking spaces, which is 11 feet wide by 104 feet deep. The applicant could pursue plans to rent the public space, once the C of O is obtained.

- A map identifying the site, the abutting public space to be used for parking, and the proposed vacant lot across the street.

- A letter signed by the Medhane Alem Eritrean Orthodox Church tentatively agreeing to enter into a lease arrangement with the owner of the vacant land across the street.

- A printout identifying various characteristics of the vacant parcels.

- Photographs of the vacant parcel and the abutting public space.

Since the Board did not request the above information, it was not received into the record. See 11 DCMR § 3121.9.

FINDINGS OF FACT

1. The site is located in the Northwest quadrant of the District of Columbia, in Square 2706, on Lot 54. The rectangular-shaped property is narrow and deep and is located at 4700 14th Street, N.W. The lot size is 2,133 square feet. Public space is located adjacent to the site, to the south, between the building line and sidewalk. The public space is a narrow strip of land that visually appears to be a part of the property; it contains approximately 1,144 square feet (11 feet wide by 104 feet deep). A 15-foot wide public alley abuts the site to the west.

2. A one-story, plus cellar, building is located on the site. The building contains 2,000 square feet and occupies 97 percent of the property. The building was constructed in two phases: the first part in 1922, and the second part in 1935. The building has been used as a convenience store. The last C of O for a grocery store and deli use was issued on July 7, 1998.

3. At the time of the public hearing, the church had 50 adult members and anticipated that its future growth would reach 120 people, with five church leaders.

4. By correspondence dated June 26, 2000, the Zoning Administrator's office indicated that the applicant would be required to provide 12 parking spaces and that variance relief would be required from all of the required parking spaces (Exhibit No. 6). The applicant is unable to provide any of the required on-site parking spaces.

5. Based § 2101.1 of the Zoning Regulations, the required number of parking spaces must be based on whether the seats are fixed or movable. Based on the calculation, if the seats are fixed, the number of parking spaces required would be 12; if the seats are not fixed, the number of parking spaces required would be 11.

6. The Applicant's Exhibit No. 32, entitled "Future Home of Medhane Alem Eritrean Orthodox", is a checklist of items related to use of the site as a church. Several notations on the checklist indicate that parking for the church would be required at the site. The list is dated September 1999; the applicant bought the property in December 1999. The applicant bought the property believing that parking could be accommodated in the area adjacent to the site, the area identified as public space.

7. The church cannot use the open space that is located adjacent to the site without the issuance of a public space permit by the Department of Public Works. No evidence was presented to the Board that demonstrated that such as an approval would be forthcoming.

8. After the record closed, the Board did not re-open it to accept the new information provided by the applicant that the Board had not specifically requested pursuant to 11 DCMR § 3121.5. The additional information described in detail a pending lease agreement with a property owner to provide off-street parking. In addition, the applicant provided additional details concerning pursing discussions with the Department of Public Works to use the public space for parking. The Board acknowledged that while the information was a significant new development in the case, the applicant did not discuss or share the information with the neighborhood residents, or Advisory Neighborhood Commission (a party) who expressed strong opposition to the case. Moreover, the new information would essentially have resulted in a new application to the Board, one that would not have had the benefit of public notice and hearing.

9. The applicant requested parking relief under § 2101.1 of the Zoning Regulations. Section 2101.1 regulates the number of required on-site parking spaces. The applicant's request to provide accessory parking spaces elsewhere requires zoning relief under the special exception and accessory parking space provisions of the Zoning Regulations, thereby changing the dynamics of the case. As such, the application would be required referred back to the Zoning Administrator's office for further review.

10. The Board received substantial evidence that parking in the area is limited, particularly on Sunday mornings. The testimony indicated that on-street parking is restricted because of the large number of churches that are located close to the site and in the general vicinity of 16th Street, N.W. Also, there is substantial demand by customers who patronize the bus garage across 14th street, for the limited number of on-street parking spaces.

11. The use of the building as a church is a matter-of-right use in the C-1 District. However, off-street parking must be provided based on the number of seats to be provided. Based on a congregation of 120 people, between 11 and 12 parking spaces are required. Simultaneously, commercial uses are also permitted in the C-1 District. The Zoning

Regulations require fewer off-street parking spaces for C-1 retail and office uses. (The number of off-street parking spaces for commercial establishments is based on the square footage of the building, not per seat.) The Board concurred with the assessment of the residents that a commercial establishment would require fewer off-street parking spaces, than the proposed institutional use.

12. The petitions of support submitted by the applicant did not include anyone within the 200-foot radius of the property, or in the immediate vicinity of the 4600 and 4700 block of 14th Street, N.W.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized under Section 8 of the Zoning Act of June 20, 1938 (52 Stat. 799, as amended; D.C. Code § 5-424(g)(3) (1994)), to grant variances from the strict application of the Zoning Regulations. The Medhane Alem Eritrean Orthodox Church is seeking a variance pursuant to 11 DCMR § 3103.2, for a variance from the parking requirements under § 2101.1 for the proposed conversion of an existing structure to be used as a church seating 120 persons in a C-1 District. The notice requirements of 11 DCMR § 3113 for a public hearing on the application have been met, as the Office of Zoning provided timely written notice to the applicant, the owners of all property within 200 feet of the subject property, the ANC, and by publishing the notice in the D.C. Register. In addition, the applicant timely posted notice on the property.

The application must meet the three-prong test for an area variance set out in subsection 3103.1. The applicant must demonstrate that: (1) the property is unique because of its size, shape, or topography or other extraordinary or exceptional situation or condition connected with the property; (2) the applicant would encounter practical difficulty and undue hardship if the Zoning Regulations were strictly applied; and (3) granting the variance will not result in substantial detriment to the public good or substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. Based upon the findings of fact and having given great weight to the ANC's recommendation, the Board concludes that the proposed project does not meet the three-prong test for variance relief. Specifically, the Board concludes as follows:

1. Unique, Extraordinary, and Exceptional Conditions of the Property.

   The Board acknowledges that the property is almost 100 percent developed and that on-site parking is not possible. The open area that is located adjacent to the site is public space and cannot be used by the applicant for parking without the approval of the city's Department of Public Works. Also, the building was constructed prior to enactment of the 1958 Zoning Regulations, rendering it a non-conforming structure unable to meet the current requirements of the Zoning Regulations. These factors inhibit the applicant's ability to provide on-site parking; however, they do not present a unique or exceptional condition at the site. There are other buildings in the square and in the general vicinity of the site that occupy almost all of the land area of the lots and were built prior to 1958.

2. Practical Difficulty and Undue Hardship

   The applicant was aware that parking would be required at the site, prior to purchasing the property. The applicant's Exhibit No. 32 indicates that church members were provided with a checklist identifying the zoning requirements in September 1999. Based on the applicant's testimony, it was presumed that the open space adjacent to the site was a part of the site and could be used for parking. The applicant purchased the property in December 1999, after they were informed that on-site parking would be required. The Board is of the opinion that the applicant's practical difficulty and undue hardship are self-imposed.

3. Impact on the Public Good and Zone Plan.

   The Board is of the opinion that the applicant's inability to provide parking at the proposed site would have a detrimental impact on the public good and the Zoning Regulations and Map. The Board was persuaded by the testimony of the residents who stated, emphatically, that on Sunday mornings between the hours of 8:00 a.m. and 11:00 a.m. there is limited or almost no on-street parking spaces available. The residents stated that the public uses the bus garage across the street from the site continuously, particularly during the time when the church would be holding its Sunday morning services. The residents testified that patrons visiting the commercial corridor currently have to compete for the limited number of on-street parking spaces. If the church were to locate at the site, the existing on-street parking difficulties would be exacerbated. The Board credits oral and written testimony it received from the residents about the large number of existing churches in the general vicinity of the site, and how the area is saturated on Sunday mornings when most of the churches are in session. For these reasons, the Board concludes that granting the application would cause substantial detriment to the public good and would impair the intent, purpose and integrity of the Zoning Regulations and Maps.

The Board did not agree with the recommendation of the Office of Planning to approve the application with conditions. The Board found that the suggested OP condition that the use of the structure be limited to Sunday mornings would place an unfair imposition on the church. Churches are a matter-of-right uses in the C-1 District and their religious tenets cannot be controlled by specifying the day of the week or time of day that the congregants worship. Also, the Board found it impractical to approve the application for two years, during which time the applicant would pursue arrangements to secure an off-street parking agreement. The Board had no assurance that such an arrangement would materialize.

The Board is required under D.C. Code § 1-261(d) (1999) to give "great weight" to the recommendation of the affected ANC. The Board concurred with the findings of Advisory Neighborhood Commission 4C that establishing a church at the site would create parking difficulties in the general vicinity of the site because the use of the building would be intensified to accommodate a potentially large number of people on a regular basis. The Board thus accorded the ANC the "great weight" to which it is entitled.

For the reasons stated above, the Board concluded that the applicant has not met the burden of proof. It is hereby **ORDERED** that the application to convert the existing building into a church seating 120 persons be **DENIED.**

Vote: 3-0-2 (Anthony J. Hood, Anne Mohnkern Renshaw, and Robert N. Sockwell to deny; Sheila Cross Reid and Rodney L. Moulden, not present, not voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member has approved the issuance of this order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: MAR 2 9 2001

PURSUANT TO 11 § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

BAB/3.22.01