

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18967 of Buddhist Congregational Church of America pursuant to 11 DCMR § 3104 for a special exception under § 1553 to construct a second-story addition to an existing place of worship that exceeds the 10% limitation on expansion of a nonresidential structure in the SSH/R-1-B District at premises 5401 16th Street, N.W. (Square 2718, Lot 44).

HEARING DATES: June 9, 2015; July 21, 2015
DECISION DATE: July 21, 2015

DECISION AND ORDER

Quy V. Do submitted this application on January 25, 2015, on behalf of the Buddhist Congregational Church of America (the “Applicant”), the owner of the property that is the subject of the application. The application requests a special exception under § 1553.2 of the Zoning Regulations to allow a second-story addition to an existing place of worship that exceeds the 10% limitation on expansion of a nonresidential structure in the Sixteenth Street Heights (SSH) - 1 Overlay/R-1-B District at 5401 16th Street, N.W. (Square 2718, Lot 44) (“Subject Property”). Following two public hearings, the Board voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated March 9, 2015, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 4; Advisory Neighborhood Commission (“ANC”) 4C, the ANC in which the Subject Property is located; and the representative for ANC Single Member District 4C02. Pursuant to 11 DCMR § 3113.13, the Office of Zoning mailed letters on March 12, 2015, providing notice of the hearing to the Applicant, ANC 4C, and the owners of all property within 200 feet of the Subject Property. Notice of the hearing was published in the *D.C. Register* on March 20, 2015 (62 DCR 3286).

Party Status. The Applicant and ANC 4C were automatically parties to this proceeding. No other persons requested party status.

Applicant’s Case. The Applicant provided evidence and testimony describing the proposed project — to construct a second-story addition to the existing worship building in order to create

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a new worship hall and convert the existing worship hall into a dining room and kitchen. The Applicant asserted that the application satisfied all requirements for special exception relief. In response to the Board's direction, after the June 9, 2015, hearing on the Application, the Applicant engaged in discussions with ANC 4C and members of the community regarding their opposition to the project. Following those discussions, the Applicant submitted a letter proffering a number of conditions to any approval, which were a result of discussions with the ANC and several neighbors and were aimed at addressing their concerns. (Exhibits 39, 39A.)

OP Report. By memorandum dated June 2, 2015, OP recommended approval of the application. OP's analysis concluded that the Applicant had met all of the requirements for special exception relief. (Exhibit 30.)

DDOT Report. By memorandum dated June 1, 2015, DDOT indicated no objection to approval of the special exception. (Exhibit 31.)

ANC Report. By letter dated April 8, 2014, ANC 4C indicated that it discussed the application at its regularly scheduled, properly noticed meeting on April 8, 2015, and, with a quorum present, voted 9-0 to oppose the application. (Exhibit 26.) The ANC explained that the Applicant had not responded to attempts by the ANC to contact the Applicant and had not sought the community's feedback on the proposed project. Additionally, the ANC stated that the surrounding community had conveyed concerns in the past related to noise levels at the Applicant's events, as well as improper parking and poor behavior by congregants on worship days. In a letter dated July 8, 2015, ANC 4C Commissioner Joseph Maloney indicated that, following discussions with the Applicant and community members, ANC 4C continued to oppose the application. (Exhibit 36.)

Persons in support. No persons appeared at the hearing to testify in support of the Applicant. The owners of the adjacent properties at 5335 16th Street, N.W. and 5405 16th Street, N.W. both filed letters in support. (Exhibit 27.)

Persons in opposition. Lenore Sek, a nearby property owner, submitted a letter (Exhibit 29) and testified in opposition at the June 9, 2015, hearing on the application. Ms. Sek stated that she has had problems with congregants parking in her yard and in the alley, as well as noise levels during festivals. Pedro Rubio, president of the Sixteenth Street Heights Civic Association, also submitted a letter (Exhibit 32) and testified in opposition at the June 9, 2015, hearing. Mr. Rubio also stated concerns regarding congregants parking on neighboring properties. Two other nearby residents also submitted letters in opposition stating concerns about parking. (Exhibits 34, 35.)

FINDINGS OF FACT

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1. The Subject Property is an interior lot located on the east side of the street at 5401 16th Street, N.W., between Kennedy Street, N.W. and Colorado Avenue, N.W. (Square 2718, Lot 44).
2. The Subject Property is zoned SSH-1/R-1-B.
3. The Subject Property is improved with a one-story detached structure that consists of approximately 12,692 square feet of gross floor area and is used as a place of worship.
4. The Applicant proposes to construct a second-story addition to the existing structure in order to create a new worship hall and convert the existing worship hall into a dining room and kitchen. The proposed project would increase the building's gross floor area by 1,567 square feet to approximately 15,528.74 square feet, an increase of 11%.
5. Under § 1553 of the Zoning Regulations, an existing nonresidential use in the SSH Overlay may not be expanded by more than 10% except by special exception subject to the requirements in § 1553.2. Accordingly, the Applicant is required to obtain relief under this section to implement the proposed project.
6. Several nearby property owners submitted letters objecting to the application, stating that the Applicant's members often parked on neighboring properties on worship days and that the Applicant generated too much noise during events.
7. In response to these concerns, the Applicant has proffered several conditions to approval, discussed in detail below, in order to address noise and parking issues raised in the past.
8. The project will not increase the number of congregants at the Subject Property.
9. The Applicant will continue to provide 20 off-street parking spaces, as required by § 2101 of the Zoning Regulations.
10. No parking spaces are located on the lot between the principal building and the street right-of-way, and no spaces are located within public space.
11. The existing parking lot, which pre-dates the adoption of the SSH Overlay, is screened from contiguous residential property to the north by a wooden fence that is six feet in height, and is screened from the residential property to the south by a brick wall that is 48 feet in height and eight inches thick.
12. Lighting fixtures used to illuminate the parking spaces are aimed at the surface of the lot.
13. The R-1 District is "designed to protect quiet residential areas now developed with one-family detached dwellings and adjoining vacant areas likely to be developed for those

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purposes.” (11 DCMR § 200.1.) The provisions of the R-1 District use regulations “are intended to stabilize the residential areas and to promote a suitable environment for family life.” (11 DCMR § 200.2.) Churches and other places of worship are generally permitted as a matter of right in the R-1 District, but, like all other proposed nonresidential uses, require special exception approval on properties located within the SSH Overlay District. (11 DCMR §§ 201.1(b), 1553.2.)

14. Pursuant to § 1551.2, the purposes of the SSH Overlay District are to:

- (a) Promote the conservation, enhancement, and stability of the district’s low-density, single-family neighborhood for housing and neighborhood-related uses;
- (b) Control the expansion of nonresidential uses, and/or further conversion of residential housing to nonresidential uses in order to maintain the housing supply and minimize the external negative impacts of new nonresidential uses that are permitted in the SSH/R-1-B District in order to preserve neighborhood quality; and
- (c) Allow neighborhoods to continue to provide a range of health and social service facilities as well as private institutions that provide cultural and religious enrichment and economic vitality, but within the framework of improved public review and control over the external effects of nonresidential uses. The objective is to make more compatible the Comprehensive Plan’s goals and policies for maintaining the quality and stability of residential neighborhoods with other policies related to the reasonable provision of human services throughout the District of Columbia.

CONCLUSIONS OF LAW AND OPINION

The Applicant requests special exception relief under § 1553.2 of the Zoning Regulations to construct a second-story addition to an existing place of worship that exceeds the 10% limitation on expansion of a nonresidential structure in the SSH-1/R-1-B District. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008), to grant special exceptions, as provided in the Zoning Regulations, where it will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (See 11 DCMR § 3104.1.) Pursuant to § 1553.2, the expansion of an existing nonresidential use in excess of 10% of gross floor area may be permitted by special exception in the SSH Overlay District, subject to certain requirements, including that the expanded use be capable of being established and operated without adversely affecting the use and enjoyment of neighboring and nearby properties due to traffic, noise, design, or other objectionable conditions. Further, the site must provide adequate, appropriately located and screened off-street parking sufficient for the needs of the maximum number of persons who can use the facility at one time. Based on the findings of fact, the Board concludes that the requested special exception can be granted consistent with the requirements of § 1553.2.

The Board credits the Applicant's testimony in concluding that the place of worship will be capable of continuing to be operated without adversely affecting the use and enjoyment of neighboring and nearby properties due to traffic, noise, design, or other objectionable conditions. Although there were letters and testimony objecting to the application based on a history of noise and parking issues, the Board finds that the conditions proffered by the Applicant will address these concerns. Specifically, the Applicant will have personnel monitor and direct parking during ceremonies and events to ensure that members do not park in the alley or on neighboring property. Further, the Applicant will abide by the District's noise control regulations and will hold events mainly in the future dining hall to contain noise within the structure. Additionally, the Applicant has identified members who will act as community liaisons to be contacted should there be any problems implementing these conditions.

Consistent with the requirements of the SSH Overlay District, the Applicant will provide adequate, appropriately located and screened off-street parking. The Applicant will continue to provide 20 parking spaces at the Subject Property, as required by § 2101 of the Zoning Regulations. No parking spaces are located on the lot between the principal building and the street right-of-way, or within public space. The existing parking lot, which pre-dates the adoption of the SSH Overlay, is screened from contiguous residential property to the north by a wooden fence that is six feet in height, and is screened from the residential property to the south by a brick wall that is 48 feet in height and eight inches thick.¹ Lighting fixtures used to illuminate the parking spaces are aimed at the surface of the lot.

The Board further concludes, based on the findings of fact as discussed above, that the requested relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to adversely affect the use of neighboring property. The expanded place of worship will be consistent with the purposes of the SSH Overlay District to preserve the neighborhood quality by minimizing external negative impacts of a nonresidential use, and to allow the neighborhood to continue to provide a facility for religious enrichment within the framework of improved public review and control over any external effects.

In deciding to grant or deny applications for zoning relief, the Board is required to give "great weight" to OP's recommendation. (D.C. Official Code § 6-623.04.) Pursuant to this statutory duty, the Board must demonstrate in its findings that it considered OP's views and must provide a reasoned basis for any disagreement with it. *Glenbrook Rd. Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 605 A.2d 22, 34 (D.C. 1992) (internal citation omitted). Here, OP recommended approval of the application, concluding that the Applicant had met all of the

¹ Although the brick wall is not 12 inches thick, as required by § 1553.2(b)(3), both the parking lot and brick wall are conditions of the Subject Property that pre-date the adoption of the SSH Overlay District regulations and are, thus, "grandfathered" conditions, as the Applicant is not required to provide additional or new parking for this project. Further, the Board finds that this wall, though only eight inches thick, will fulfill the purpose and intent of this requirement by blocking noise.

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requirements for special exception relief. For the reasons discussed above, the Board agrees with this conclusion.

The Board must also give “great weight” to the issues and concerns that the affected ANC raises in its written report. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) (the “ANC Act”).) ANC 4C voted to oppose the application, stating that the Applicant had not responded to attempts to contact the Applicant and had not sought the community’s feedback on the proposed project. Additionally, the ANC stated that the surrounding community had conveyed concerns in the past related to the noise levels at events, as well as improper parking and poor behavior by congregants on worship days. In a letter dated July 8, 2015, Commissioner Maloney indicated that, following discussions with the neighborhood and the Applicant, ANC 4C continued to oppose the application.² With respect to contact between the ANC and the Applicant, the Board notes that, following the June 9, 2015, hearing on the application, the Applicant engaged the ANC and other community members regarding their concerns. The Applicant subsequently proffered a number of conditions to address these concerns, which the Board has made conditions of its approval. As discussed in more detail above, the Board finds that these conditions will ensure that the Applicant will manage noise and parking so that the use will not have an adverse effect on the community. Having discussed the ANC’s issues and concerns, and explained how the order has addressed those issues and concerns, the Board has given the ANC the great weight required by the ANC Act.

CONCLUSION

For the reasons discussed above, the Board concludes that the Applicant has met the burden of proof for the requested special exception under § 1553.

Accordingly, it is therefore **ORDERED** that the application is hereby **GRANTED SUBJECT TO THE APPROVED PLANS AT EXHIBIT 5, AND SUBJECT** to the following **CONDITIONS**:

1. Parking and Traffic. The Applicant shall have personnel monitor and direct members’ cars during ceremonies and events so that: members’ driving will pose no danger to neighbors; no cars will block the traffic in the alley and surrounding streets; and no cars will be parked in the alley or on neighbors’ properties, or block neighbors’ garage entrances.
2. Noise. The Applicant shall abide the Noise Control Regulations set forth in Chapter 27 of Title 20 of the District of Columbia Regulations. Cultural events shall be held mainly

² The letter does not indicate that these comments were adopted by any vote by the ANC at a duly noticed public meeting. Accordingly, the comments cannot be viewed as those of the ANC, but are considered to be those of Commissioner Maloney.

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in the future dining hall of the worship building in order to contain noises within the structure.

3. Community Liaison. The Applicant shall do its best to implement the above measures. However, if neighbors notice any problem(s) caused by its members, they should contact the members in charge of public relations, as stated in Exhibit 39A of the record for this application, as soon as possible. The Applicant shall notify neighborhood committees of upcoming events at its facilities and invite the community to participate in them. The Applicant shall communicate with the ANC on a biannual basis. The Church shall attend meetings with neighborhood committees as they are announced by Listserv.
4. Construction Phase. The Applicant shall store and contain construction materials and debris within the Subject Property.
5. Use of the Worship Building. The worship building, including its future dining hall, shall be used only by the Applicant's members and shall not be used by or rented to other institutions. The future dining hall at the worship building shall not generate additional occupant load beyond the existing one. Church members who attend ceremonies in the new worship hall are the same people who will use the new dining hall. Traffic generated by food delivery or trash removal shall be limited between 7:00 am and 7:00 pm, and shall not block traffic in the alley and surrounding streets.

VOTE: **3-0-2** (Lloyd J. Jordan, Robert E. Miller, and Jeffrey L. Hinkle to Approve;
Marnique Y. Heath and Frederick L. Hill not present, not voting.)

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

A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: January 15, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE

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WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.