FAIRVIEW HEIGHTS NEIGHBORHOOD CORPORATION
3737 MASSACHUSETTS AVENUE, NW
WASHINGTON, D.C. 20016

September 25, 2000

Board of Zoning Adjustment
441 4th Street, NW
Second Floor, South
Washington, D.C. 20001

DISTRICT OF COLUMBIA
SEP 25 P12:49
00

Re: BZA Case Number 16604

Dear Board Members:

Enclosed please find the Fairview Heights Neighborhood Corporations's Proposed Findings of Fact and Conclusions of Law. Also enclosed is a Resolution of the Fairview Heights Neighborhood Corporation authorizing representation. Below are final comments which we ask the Board to consider in their deliberations.

When reviewing the Proposed Findings and Conclusions, we urge you to look to the goals and objectives of the Zoning Regulations and their directive to adopt the provisions that are most protective of open space and reduced heights. With this directive underlying your analysis, we ask that you adopt the explicit and broad definition of "structure" and apply that definition to the setback requirements of Sections 400.5 and 400.9 of the Zoning Regulations. By doing so, the Board has an opportunity to effect both the plain meaning and the underlying goals of the Zoning Regulations which were designed to maintain and enhance our communities not destroy their character.

Construing the Zoning Regulations to permit a "building height" of 31 feet to be applied to a structure that reaches 83 feet tall, as the Zoning Administrator did, is beyond the pale of reasonableness. Applying such an interpretation to the regulations, would allow any structure to be built up to the sidewalk on a corner lot with its wall reaching 40 feet (a church 60 feet) with architectural embellishments atop the wall reaching 100 feet or more. It is unfathomable that the regulations

BZA
Case No. 16604
Exhibit No. 35

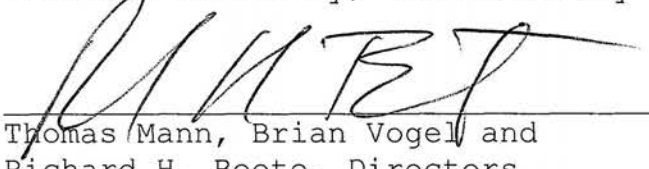
Board of Zoning Adjustment
District of Columbia
CASE NO.16604
EXHIBIT NO.35

could permit such a structure to be built in a residential neighborhood without a setback. If Sections 400.5 or 400.9 cannot protect residential communities from exactly the situation now before the Board, what is their purpose? We urge the Board to examine the purposes of Sections 400.5 and 400.9 which we believe provide the explicit power and obligation to control the adverse aesthetic impact of such tall imposing structures.

We urge each member of the Board, without reliance on Corporation Counsel, to undertake an independent and detailed review of the Zoning Regulations and the Findings and Conclusions submitted herewith.

Respectfully Submitted,

On Behalf of Fairview Heights Neighborhood Corporation; Thomas Mann; Beth Schneiderman; Brian Vogel; Charles Quatt; Mitzi Wertheim; Terrance Leonhardy; Lee Leonhardy

By: 

Thomas Mann, Brian Vogel and
Richard H. Boote, Directors
Fairview Heights Neighborhood
Corporation
3737 Massachusetts Avenue, NW
Washington, D.C. 20016

FAIRVIEW HEIGHTS NEIGHBORHOOD CORPORATION
3737 MASSACHUSETTS AVENUE
WASHINGTON, D.C. 20016

Pursuant to the Bylaws and Article of Incorporation for the Fairview Heights Neighborhood Corporation,

Be it Resolved that Brian Vogel, Richard Boote and Thomas Mann each have authority to represent and file papers on behalf of the Fairview Heights Neighborhood Corporation relating to the Appeal of Building Permit Number B425220 in any proceeding, including the Board of Zoning Adjustment, and the local and federal courts.

Brian H. Vogel — 9/25/00
Brian Vogel, Director — Date

9/25/00
Richard H. Boote, Director — Date

9/25/00
Thomas Mann, Director — Date

CERTIFICATE OF SERVICE

Re: BZA Case Number 16604

I certify that on September 25, 2000, I served on the persons listed below by first class mail, postage prepaid, the following papers: Cover letter to the BZA dated September 25, 2000, Appellants' Proposed Findings of Fact and Conclusions of Law and Certificate of Service.

Richard H. Boote

Dr. Shamsher Singh Babra
Mr. Gajinder Singh
The Sikh Cultural society
3911 Military Road
Washington, D.C. 20015

Ms. Ellen McCarthy, Deputy Director
Development Review and Coordination
D.C. Office of Planning
801 North Capitol Street, NE
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Washington, D.C. 20002

Mr. Michael Johnson
Zoning Administrator
D.C. Department of Consumer and Regulatory Affairs
941 North Capitol Street, NE
Washington, D.C. 20002

Advisory Neighborhood Commission 3C
2737 Devonshire Place, NW
Washington, D.C. 20008

Corporation Counsel
441 4th Street, NW
Washington, D.C. 20001

IN THE MATTER OF THE APPEAL OF
BUILDING PERMIT NUMBER B425220

BZA CASE NUMBER 16604

APPELLANTS: FAIRVIEW HEIGHTS NEIGHBORHOOD CORPORATION; THOMAS MANN; BETH SCHNEIDERMAN; BRIAN VOGEL; CHARLES QUATT; MITZI WERTHEIM; TERRANCE LEONHARDY; LEE LEONHARDY

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Proposed Findings of Fact

Proposed Finding of Fact ("PFF") 1

On July 16, 1999, Building Permit Number B425220 was issued to the Sikh Cultural Society ("SCS").
Citation: Building Permit Number B425220.

Proposed Finding of Fact 2

Building Permit Number B425220 allows the SCS to build a temple at 3801 Massachusetts Avenue, Northwest, Washington, D.C.
Citation: Building Permit Number B425220.

Proposed Finding of Fact 3

The SCS architectural plans in the public record set forth the design details of the proposed temple.
Citation: Architectural Plans associated with Building Permit Number B425220 in the public record.

Proposed Finding of Fact 4

3801 Massachusetts Avenue, Northwest, Washington, D.C. is in an R-1-B Residence District.
Citation: Building Permit Number B425220.

Proposed Finding of Fact 5

The appeal of Building Permit Number B425220 was filed on June 12, 2000.
Citation: BZA Public Record; Transcript ("Tr.")(Boote), p. 31, lines 15-16.

Proposed Finding of Fact 6

The excavation of the proposed temple building site took place at the end of June 2000.
Citation: Tr.(Boote), p. 31, lines 16-18.

Proposed Finding of Fact 7

The setback for all houses on 38th Street, NW is at least 25-30 feet.
Citation: Tr. (Mann) at 37, lines 4-18; Appellants' Exhibit 1 (Photographs A-1 through A-5).

Proposed Finding of Fact 8

Building Permit Number B425220 allows the proposed temple structure to be built up to the edge of its eastern lot line on 38th Street, NW, with no setback.
Citation: Architectural Plans associated with *Building Permit Number B425220, Appellants' Exhibits 5 and 6.*

Proposed Finding of Fact 9

Building Permit Number B425220 allows the proposed temple structure to be built within 10 feet of its lot line abutting 3811 Massachusetts Avenue, NW.
Citation: Architectural Plans associated with Building Permit Number B425220, Appellants' Exhibit 5 and 6; Tr. (Hosky) at 44, line 12 - 45, line 21; Appellants' Exhibit 1, Photographs A-4 and A-5.

Proposed Finding of Fact 10

Building Permit Number B425220 allows the proposed temple structure including its steps to be built within 3-4 feet of its lot line abutting City property facing Massachusetts Avenue.
Architectural Plans associated with Building Permit Number B425220, Appellants' Exhibits 5 and 6.

Proposed Finding of Fact 11

The SCS temple architectural plans show the east side of the proposed temple on 38th Street rising vertically 31 feet and extending horizontally 71 feet.
Citation: Architectural Plans associated with Building Permit Number B425220, Appellants' Exhibits 6 and 8.

Proposed Finding of Fact 12

The Sikh Cultural Society temple architectural plans show the temple cupola at its tip rising 78-83 feet above the natural grade of Massachusetts Avenue.
Citation: Architectural Plans associated with Building Permit Number B425220, Appellants' Exhibit 7 and 8; Tr. (Boote), p. 33, lines 24 through p. 34, lines1-2; Tr.(White), p. 41, lines 1-6; p. 63, lines 9-15.

Proposed Finding of Fact 13

The proposed temple fronts on Massachusetts Avenue, NW.
Citation: Architectural Plans associated with Building Permit Number B425220, Appellants' Exhibit 5 and 6.

Proposed Finding of Fact 14

The natural grade at the front of the proposed temple is the curb on Massachusetts Avenue, NW.
Citation: Appellants' Exhibit 1, Photographs A-1, A-2, A-3; Appellants' Exhibit 5 and 6;

Proposed Finding of Fact 15

There is no evidence that the Zoning Administrator evaluated the SCS temple proposal in conjunction with the applicable sections of the Comprehensive Plan and the Comprehensive Plan Maps.
Citation: No record evidence supporting such evaluation.

Proposed Finding of Fact 16

The proposed temple structure will significantly and adversely affect, and alter the character of the neighborhood, its open space, its light, its air and its property values.
Citation: Tr.(Miller) p. 109, line 5 through p. 111, line 16; Tr.(Mann) p. 38, line 6 through p. 39, line 16; Tr.(Hosky), p. 44, line 18 through p. 45, line 21; Appellants' Exhibit 1.

Proposed Finding of Fact 17

Parking spaces numbered 12, 13 & 14 on the SCS architectural plans are not each 9 feet in width.
Citation: Proposed temple underground parking plan ("Basement A-1 and S-1), Appellants' Exhibits 9 and 10.

Proposed Finding of Fact 18

Parking spaces numbered 18, 19 and 20 on the SCS architectural plans are not each 9 feet in width.
Citation: Proposed temple underground parking plan ("Basement A-1 and S-1), Appellants' Exhibits 9 and 10.

Proposed Finding of Fact 19

The parking garage of the proposed temple has 21 parking spaces.
Citation: Proposed temple underground parking plan ("Basement A-1 and S-1), Appellants' Exhibits 9 and 10.

II. Proposed Conclusions of Law

A. Purpose of Zoning Regulations

Proposed Conclusion ("PCL") of Law 1

The Zoning Regulations, among other purposes, were adopted:

- to provide adequate light and air;
- to prevent undue concentration of population;
- to prevent the overcrowding of land;
- to encourage the stability of the districts; and
- to encourage the stability of land values in the districts.

Citation: 11 DCMR 101.

Proposed Conclusion of Law 2

The Zoning Regulations, to accomplish their purposes, acknowledge the importance of open space, limits on height and reduced lot occupancy, and require that the regulation or law that most favors open space, limits on height and reduced lot occupancy, shall be imposed.
Citation: 11 DCMR Sections 101.1-101.4.[1]

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[1] Section 101.3 reads:

> The provisions of this title shall govern whenever the regulations in this title do
> the following:
> (a) Require larger yards, courts, or other open spaces;
> (b) Require a lower height or bulk of buildings or a smaller number of stories:
> (c) Require a greater percentage of lot to be unoccupied; or
> (d) Impose other higher standards than are required in or under any statute or
> by any other municipal regulations.

Section 101.4 reads:

> The provisions of any statute or other municipal regulations shall govern whenever
> the provisions of that statute or of the other municipal regulations do the following:
> (a) Require larger yards, courts, or other open spaces;

B. Definitions

Proposed Conclusion of Law 3

"Structure" means "anything constructed, including a building, the use of which requires permanent location on the ground, or anything attached to something having a permanent location on the ground and including, among other things, radio or television towers, reviewing stands, platforms, flag poles, tanks, bins, gas holders, chimneys, bridges, and retaining walls." ***
Citation: 11 DCMR 199.1

Proposed Conclusion of Law 4

"Building" means a structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel. When separated from the ground up or from the lowest floor up, each portion shall be deemed a separate building, except as provided elsewhere in this title.
Citation: 11 DCMR § 199.1.

Proposed Conclusion of Law 5

The word "shall" is mandatory and not directory;
Citation: 11 DCMR § 199.2.

Proposed Conclusion of Law 6

Words not defined in this section shall have the meanings given in *Webster' s Unabridged Dictionary.*
Citation: 11 DCMR § 199.2.

(b) Require a lower height or bulk of buildings or a smaller number of stories;
(c) Require a greater percentage of lot to be unoccupied; or
(d) Impose higher standards than are required by this title.

Proposed Conclusion of Law 7

"Institutional" means, among other things, "of or relating to the institution of a sacrament."
Definition 1a, Webster's Third New International Dictionary (Unabridged) (1981) at 1171.

Proposed Conclusion of Law 8

"Sacrament" means, among other things, "a religious act, ceremony or practice that is considered especially sacred as a sign or symbol of a deeper reality."
Citation: Definition 1, Webster's Third New International Dictionary (Unabridged) (1981) at 1996.

Proposed Conclusion of Law 9

The word "structure" under Section 400.9 includes a church or other place of worship, including a temple.
Citation: PCL 3; 11 DCMR 400.9; Tr. (Bello), p. 89, lines 2-22.

Proposed Conclusion of Law 10

The word "structure" under Section 400.5 includes a church or other place of worship, including a temple.
Citation: PCL 3; 11 DCMR 400.5; Tr. (Bello), p. 89, lines 2-22.

Proposed Conclusion of Law 11

The word "height" means "the highest part of something material."
Citation: Definition 1, Webster's Third New International Dictionary (Unabridged) (1981) at 1050.

C. Height of Buildings and Structures

Proposed Conclusion of Law 12

Except as specified in Chapter 400 of the Zoning Regulations and in chapters 20 and 25, the height of buildings or structures in Residence District R-1-B shall not exceed 40 feet.
Citation: 11 DCMR § 400.1.

Proposed Conclusion of Law 13

Except as provided in § 2510, the height of buildings or structures as specified in § 400.1 may be exceeded in the instances provided in §§ 400.3 through 400.13.
Citation: 11 DCMR § 400.2.

Proposed Conclusion of Law 14

A church may be erected to a height of sixty (60) feet in a Residence District.
Citation: 11 DCMR § 400.6.

Proposed Conclusion of Law 15

The Zoning Regulations do not fully define height of a structure or how to measure a structure's height.
Citation: 11 DCMR §§ 100 - 3300.

Proposed Conclusion of Law 16

Section 400.9, for purposes of setback refers to the height of a structure "in excess of that authorized in the district…."
Citation: 11 DCMR §§ 400.9.

Proposed Conclusion of Law 17

Section 400.5 states that a structure's height is to be measured from the natural grade.
Citation: 11 DCMR §§ 400.5.

D. Architectural Embellishments and Other Parts of a Structure

Proposed Conclusion of Law 18

"Architectural embellishments" may be erected to a height in excess of that which section 400 otherwise authorizes in the district in which it is located.
Citation: 11 DCMR § 400.3.

Proposed Conclusion of Law 19

An architectural embellishment may exceed the authorized church height limit of 60 feet.
Citation: 11 DCMR §§ 400.3 and 400.6.

Proposed Conclusion of Law 20

An architectural embellishment includes a church and temple dome, spire, and cupola.
Citation: 11 DCMR § 400.3.

Proposed Conclusion of Law 21

The architectural embellishments for the proposed temple are part of the proposed temple structure as they are something constructed that are attached to the proposed temple. *Citation: PCL 3 (11 DCMR § 199.1; definition of "structure"); Architectural Plans associated with Building Permit Number B425220; Appellants' Exhibits 7 and 8; Citizens Association of Georgetown, Inc. v. District of Columbia Board of Zoning Adjustment, 337 A. 2d 495, 496(n.1), 497 (D.C. Ct. App. 1975)(A building under the Zoning Regulations does not include a terrace, but the terrace is assumed (without deciding) to be part of a structure.).*

Proposed Conclusion of Law 22

Steps constructed at the front of the proposed temple are part of the proposed temple structure as they are something constructed that are attached to the proposed temple.
Citation: PCL 3 (11 DCMR § 199.1; definition of "structure"); Architectural Plans associated with Building Permit Number B425220; Appellants' Exhibits 5 and 6; Citizens Assoc. of G"town, n. 1.

Proposed Conclusion of Law 23

The walls of the temple are part of the proposed temple structure as they are something constructed that are attached to the proposed temple.
Citation: PCL 3 (11 DCMR § 199.1; definition of "structure"); Architectural Plans associated with Building Permit Number B425220; Appellants' Exhibits 5, 6, 7, 8; Citizens Assoc. of G"town, n. 1.

E. Setback Provisions for Institutional Buildings or Structures (Section 400.9)

Proposed Conclusion of Law 24

An institutional building or structure may be erected to a height not exceeding ninety feet (90 ft.); Provided, that the building or structure shall be removed from all lot lines of its lot a distance of not less than one foot (1 ft.) for each foot of height in excess of that authorized in the district in which it is located.
Citation: 11 DCMR §§ 400.9.

Proposed Conclusion of Law 25

The phrase "institutional building or structure" in Section 400.9 is expressed in the alternative; therefore, Section 400.9 is applicable to either a structure or building.
Citation: 11 DCMR § 400.9.

Proposed Conclusion of Law 26

An "institutional building or structure" under Section 400.9 includes a church or other place of worship, including a temple.
Citation: PCL 3 (definition of "structure"); PCL 4 (definition of "building"); PCL 7 (definition of "institutional"); *PCL 8 (definition of* "sacrament"; *11 DCMR 400.9.*

Proposed Conclusion of Law 27

Under Section 400.9, a structure includes anything constructed including a building.
11 *DCMR 400.9; PCL 3 (definition of "structure")*

Proposed Conclusion of Law 28

An institutional structure shall be removed from all lot lines of its lot one foot for each foot of height in excess of that authorized in the district in which it is located.
Citation: 11 DCMR § 400.9.

Proposed Conclusion of Law 29

The setback provision of Section 400.9 is mandatory and not discretionary.
Citation: 11 DCMR § 400.9 and PCL 5 (definition of "shall").

F. Setback Provisions for Buildings or Other Structures (Section 400.5)

Proposed Conclusion of Law 30

A building or other structure may be erected to a height not exceeding ninety feet (90 ft.); Provided, that the building or structure shall be removed from all lot lines of its lot for a distance equal to the height of the building or structure above the natural grade.
Citation: 11 DCMR § 400.5.

Proposed Conclusion of Law 31

The phrase "building or structure" in Section 400.5 is expressed in the alternative; therefore, Section 400.5 is applicable to either a structure or building.
Citation: 11 DCMR § 400.5.

Proposed Conclusion of Law 32

Under Section 400.5, a structure includes anything constructed including a building.
11 *DCMR 400.5; PCL 3 (definition of "structure")*

Proposed Conclusion of Law 33

A structure shall be removed from all lot lines of its lot for a distance equal to the height of the structure above the natural grade.
Citation: 11 DCMR § 400.5.

Proposed Conclusion of Law 34

The setback provision of Section 400.5 is mandatory and not discretionary.
Citation: 11 DCMR § 400.5 and PCL 5 (definition of "shall").

Proposed Conclusion of Law 35

Section 400.5 applies to the proposed temple if the proposed temple is not an "institutional building or structure" under Section 400.9.
11 *DCMR 400.5; PCL 3 (definition of "structure") and PCL 7 (definition of "institutional").*

G. Side Yard Setbacks on Corner Lots (Section 405.5)

Proposed Conclusion of Law 36

Section 405.5 falls within the "Side Yards" subsection of the Zoning Regulations.

Proposed Conclusion of Law 37

Under Section 405.5, a side yard shall not be required along a side street abutting a corner lot in a Residence District.
Citation: 11 DCMR § 405.5.

H. The Purposes of the "Height of Buildings or Structures" and "Side Yard" Subsections of the Zoning Regulations

Proposed Conclusion of Law 38

Sections 400.5 and 400.9, fall within the Section 400 "Height of Buildings or Structures" subsection of the Zoning Regulations.
Citation: 11 DCMR Section 400.

Proposed Conclusion of Law 39

The intent of the Section 400 provisions, including Sections 400.5 and 400.9, is to control heights of buildings and structures.
Citation: 11 DCMR Section 400.

Proposed Conclusion of Law 40

The Zoning Regulations control heights of structures exceeding authorized heights in the District by imposing strict setback requirements under Sections 400.5 and 400.9 where the height of a structure exceeds its authorized height.
Citation: 11 DCMR Section 400.5 and 400.9.

Proposed Conclusion of Law 41

The Section 405.5 "Side Yard" provision and the Section 400 "Height of Buildings or Structures" provisions have different purposes and impose separate and independent restrictions and exceptions.
Citation: 11 DCMR §§ 400.1 - 400.13 and 405.5.

Proposed Conclusion of Law 42

Sections 400.9 and 400.5 intersect with Section 405.5 only when a structure exceeds its authorized height.
Citation: 11 DCMR §§ 400.5, 400.9 and 405.5.

Proposed Conclusion of Law 43

Requiring setbacks where a structure exceeds its authorized height as do Sections 400.5 and 400.9, is consistent with the goals of the Zoning Regulations and the DC Code which stress the importance of preserving open space and reduced heights of structures.
Citation: 11 DCMR §§ 100.3 - 100.4, 400.5, 400.9; 5 DC Code § 428.

I. Conflict or Ambiguity in Regulations or Law to Be Resolved in Manner Most Protective of Open Space and Reduced Heights.

Proposed Conclusion of Law 44

If there is ambiguity or conflict in the Zoning Regulations or law applicable to zoning matters, the laws and regulations that control are those achieving the greatest protection of open space and most reduced heights.
Citation: 11 DCMR §§ 101.3 - 101.4 (fn 1, supra);

5 DC Code § 428[2]
Proposed Conclusion of Law 45

The Comprehensive Plan has full legal force and effect; zoning decisions must not be considered without reference to the Comprehensive Plan, as directed by the City's Home Rule Charter.
Citation: 5 DC Code § 414; 11 DCMR § 101.4; 10 DCMR § 112.6(c).

Proposed Conclusion of Law 46

DC Code Section 5-414 provides guidance for interpreting the zoning regulations, directing that any interpretation maintain the character, stability, and property values of the respective districts and prevent the overcrowding of land.
Citation: 11 DCMR § 5-414.

Proposed Conclusion of Law 47

"In issuing or processing any building or construction permit, or any Certificate of Occupancy, the Zoning Administrator, the Board of Adjustment, and the Zoning Commission, shall evaluate the proposal in conjunction with the applicable sections of the Comprehensive Plan and the Comprehensive Plan Maps."
Citation: 10 DCMR § 112.6(c).

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[2] Section 5-428 reads:
Wherever the regulations made under authority of §§ 5-413 to 5-432 require a greater width or size of yards, courts, or other open spaces, or require a lower height of buildings or smaller number of stories, or require a greater percentage of lot to be left unoccupied, or impose the other higher standards than are required in or under any other statute or municipal regulations, the regulations made under authority of said sections shall apply. Wherever the provisions of any other statute or municipal regulations require a greater width or size of yards, courts, or other open spaces or require a lower height of buildings or smaller number of stories, or require a greater percentage of lot to be left unoccupied, or impose the other higher standards than are required in or under any other statute or municipal regulations, the provisions of such other statute or municipal regulation shall govern.

Proposed Conclusion of Law 48

The Ward 3 Section of the Comprehensive Plan sets forth criteria to maintain an area's strong architectural and stable character:

- Setback: Avoid violating the existing setback pattern by placing new construction in front of or behind the historic façade line;
- protect existing residential neighborhoods and enhance their qualities;
- Correct or prevent inconsistencies between zoning and land uses designated in the Comprehensive Plan and between building permit issuances and the Comprehensive Plan

Citation: 10 DCMR §§ 1406.9 and 1409.2(b).

Proposed Conclusion of Law 49

No evidence was submitted demonstrating that the Zoning Administrator evaluated the proposal in conjunction with the applicable sections of the Comprehensive Plan and the Comprehensive Plan Maps.
Citation: BZA Case No. 16604, Tr. 1-128 (September 13, 2000)

J. The Parking Requirements of Section 2115 Have Not Been Complied With

Proposed Conclusion of Law 50

Any accessory parking area or accessory garage containing twenty-five (25) or more required parking spaces may designate up to up to forty percent (40%) of the parking spaces for compact cars.
Citation 11 DCMR § 2115.2.

Proposed Conclusion of Law 51

The proposed temple parking garage has 21 parking spaces; therefore, the parking garage does not qualify under Section 2115.2 to designate any parking spaces for compact cars.
Citation: PFF 19; 11 § DCMR 2115.2.

Proposed Conclusion of Law 52

The parking provisions of the Zoning Regulations require that an underground parking space have a minimum of 9 feet in width exclusive of columns. *Citation: 11 DCMR § DCMR 2115.1.*

K. Statutory Construction

Proposed Conclusion of Law 53

The first step in statutory construction is to examine the language of the statute and to interpret its words according to their plain and ordinary meaning. United States v. Bailey, 495 A. 2d 756, 760 (D.C. 1985); Peoples Drug Stores, Inc. v. District of Columbia, 470 A.2d 751, 754 (D.C.1983) (en banc).

Proposed Conclusion of Law 54

The primary goal in statutory construction is to ascertain and give effect to the intent of the legislative body that drafted the language. Rosenberg v. United States, 297 A. 2d 763, 765 (D.C. 1972)(quoting General Motors Acceptance Corp. v. One 1962 Chevrolet Sedan, 191 A.2d 140, 142 (D.C.1963)).

Proposed Conclusion of Law 55

The statutory meaning of a term must be derived from a consideration of the entire enactment against the backdrop of its policies and objectives. Tenley and Cleveland Park Emergency Committee v. District of Columbia Board of Zoning Adjustment, et al., 550 A. 2d 331, 334, fn 10; Carey v. Crane Serv. Co., 457 A. 2d 1102, 1105 (quoting Don't Tear It Down v. Pennsylvania Ave. Dev. Corp., 206 U.S.App.D.C. 122, 128, 642 F.2d 527, 533 (1980)).

III. Ultimate Conclusions of Fact and Law

Proposed Ultimate Conclusions of Fact and Law

The first step in statutory construction is to examine the language of the statute and to interpret its words according to their plain and ordinary meaning. United States v. Bailey, 495 A. 2d 756, 760 (D.C. 1985); Peoples Drug Stores, Inc. v. District of Columbia, 470

A.2d 751, 754 (D.C.1983) (en banc). The primary goal in statutory construction is to ascertain and give effect to the intent of the legislative body that drafted the language. Rosenberg v. United States, 297 A. 2d 763, 765 (D.C. 1972)(quoting General Motors Acceptance Corp. v. One 1962 Chevrolet Sedan, 191 A.2d 140, 142 (D.C.1963)). The statutory meaning of a term must be derived from a consideration of the entire enactment against the backdrop of its policies and objectives. Tenley and Cleveland Park Emergency Committee v. District of Columbia Board of Zoning Adjustment, et al., 550 A. 2d 331, 334, fn 10; Carey v. Crane Serv. Co., 457 A. 2d 1102, 1105 (quoting Don't Tear It Down v. Pennsylvania Ave. Dev. Corp., 206 U.S.App.D.C. 122, 128, 642 F.2d 527, 533 (1980)). The Ultimate Conclusions of Law and Fact are based on the these underlying principles of statutory construction.

The proposed temple is a "structure" under the definition set forth in the Zoning Regulations. PFF 3; PCL 3, 10. The proposed temple structure includes its architectural embellishments as they are constructed and attached to the proposed temple. PCL 3; 21. The top of the proposed temple structure including its architectural embellishments is 78-83 feet above the natural grade at the curb of Massachusetts Avenue, NW directly in front of the proposed temple. PFF 12, 13, 14; PCL 3, 17; Expert Testimony of Kirk White, Tr. 63, line 9 through 15. The authorized height in the R-1-B District for the proposed temple is 60 feet. PCL 14. Architectural embellishments may exceed the authorized height of the proposed temple. PCL 18, 19. The proposed temple structure including its architectural embellishments therefore exceeds its authorized height by 17-23 feet. PFF 12; PCL 11, 14. The proposed temple structure also includes its walls and front steps as they are constructed and attached to the proposed temple. PCL 22, 23; See Citizens Association of Georgetown, Inc. v. District of Columbia Board of Zoning Adjustment, 337 A. 2d 495, 496(n.1), 497 (D.C. Ct. App. 1975))(A building under the Zoning Regulations does not include a terrace, but is assumed (without deciding) to be part of a structure.).

By its specific terms, Sections 400.5 applies to all buildings and all structures except when the building or structure is "institutional" in which case, Section 400.9 applies. PCL 24, 26, 28, 30, 31, 33. If it is determined that the proposed temple is an institutional structure

under Section 400.9, all parts of the structure must be removed from its lot lines a distance equal to the temple structure's height in excess of 60 feet. PCL 24, 29. If it is determined that the proposed temple is not an institutional structure, under Section 400.5, all parts of the structure must be removed from its lot lines a distance equal to the temple structure's height. PCL 30, 35.

The proposed temple structure, based on the architectural drawings, is: (a) within 10 feet of its lot line adjacent to 3811 Massachusetts Avenue, NW (PFF 9);(b) within 3-4 feet of its lot line fronting on Massachusetts Avenue, NW (PFF 10); and (3) to be built up to its lot line adjacent to 38Th Street, NW (PFF 8). The setback requirements under Sections 400.5 and 400.9 require that the temple structure be further removed from its lot lines on all sides of the proposed temple except the back, adjacent to the alley. PCL 24, 29, 30, 35. Under Section 400.9, the setbacks must be 17-23 feet. PFF 12; PCL 14, 24, 29. Under Section 400.5, the setbacks must be 78-83 feet. PFF 12; PCL 14, 30, 35.

Section 405.5 of the Zoning Regulations states that a side yard shall not be required on a side street abutting a corner lot. PCL 37. However, both Sections 400.9 and 400.5 are very specific and require setbacks from lot lines when a structure exceeds its authorized height. PCL 24, 29, 30, 34. Which provisions take precedence is not clear from the specific language of these sections. Sections 400.9 and 400.5 only overlap with Section 405.5 occurs when a structure exceeds its authorized height (40 feet generally, or 60 feet for churches), otherwise Section 405.5 is unaffected by the setback provisions of Sections 400.5 and 400.9. PCL 11, 13, 24, 29, 30, 34, 38, 43. On the other hand, if Section 405.5 were to take precedence over Sections 400.5 and 400.9, the fundamental goals and objectives of the Zoning Regulations, the guidelines of the Comprehensive Plan, and the DC Code would be subverted. PFF 16; PCL 1, 2, 39-44, 45-49. These goals include the importance of preserving open space, maintaining setbacks, avoiding the overcrowding of land and reducing the heights of structures. PCL 1, 2, 41, 44, 45, 47, 49. To insure that the stated goals of the law and regulations are achieved, the specific and explicit language of Sections 400.5 and 400.9 must take precedence

over the Section 405.5 side yard exception. PFF 16; PCL 44.

Further, to the extent any ambiguity or conflict exists between Section 405.5 and Sections 400.5 and 400.9, the Zoning Regulations, Sections 101.3 - 101.4, as well as Title 5 of the DC Code, Section 428, and the Comprehensive Plan require that such conflicts or ambiguities be construed in the manner that achieves the greatest protection of open space, maintains setbacks, avoids overcrowding of land and reduces heights. PFF 16; PCL 1, 2, 39-44, 45-49. Additionally, to the extent any ambiguity or conflict exists in the use of the terms "building" and "structure" within the Zoning Regulations, the application of the term that achieves the greatest protection of open space, maintains setbacks, avoids overcrowding of land and reduces heights must be utilized -- Sections 101.3 - 101.4 so require as do 5 DC Code § 428 and the Comprehensive Plan. PFF 16; PCL 1, 2, 39-44, 45-49. These goals, policies, and objectives can only be met under these circumstances by adhering to the plain and explicit language of the definition of "structure" and Sections 400.5 and 400.9. The BZA must utilize the meanings and terms in the Zoning Regulations derived from the consideration of the entire enactment against the backdrop of those goals, policies, and objectives. Tenley and Cleveland Park Emergency Committee v. District of Columbia Board of Zoning Adjustment, et al., 550 A. 2d 331, 334, fn 10; Carey v. Crane Serv. Co., 457 A. 2d 1102, 1105 (D.C. 1983)(quoting Don't Tear it Down v. Pennsylvania Ave. Dev. Corp., 206 U.S. App. D.C. 122, 128, 642 F.2d 527, 533 (1980)).

Pursuant to Section 2115 of the Zoning Regulations, Building Permit B425220 violates the parking requirements of the Zoning Regulations because six of the underground parking spaces - parking spaces 12, 13, 14 18, 19 and 20 -- do not meet the minimum width zoning requirements of 11 DCMR Section 2115.1 which requires a minimum of 9 feet in width exclusive of columns in garages with less than 25 parking spaces. PFF 17, 18, 19; PCL 51, 52, and 53.

No evidence having been submitted to the contrary by the Zoning Office, the Building Permit B425220 was

issued without consideration of the Comprehensive Plan. PCL 50.

CONCLUSION

Pursuant to Sections 400.5 or 400.9 of the Zoning Regulations, Building Permit Number B425220 : (1) unlawfully allows the proposed temple structure to be built to the edge of its lot line adjacent to 38th Street; (2) unlawfully allows the proposed temple to be built within 3-4 feet of its lot line abutting Massachusetts Avenue (3) unlawfully allows the proposed temple to be built to within 10 feet of its lot line adjacent to 3811 Massachusetts Avenue, NW; (4) unlawfully violates the parking space dimension requirements; and (5) was unlawfully issued without consideration of the Comprehensive Plan.

For the reasons stated, Building Permit B245220 must be revoked.

On Behalf of Fairview Heights Neighborhood Corporation; Thomas Mann; Beth Schneiderman; Brian Vogel; Charles Quatt; Mitzi Wertheim; Terrance Leonhardy; Lee Leonhardy

By: _____

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