GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

IN THE MATTER OF:	*	
	*	
FAIRVIEW HEIGHTS	*	Hearing Date: September 13, 2000
NEIGHBORHOOD ASSOCIATION	*	ANC 3C
3737 Massachusetts Avenue, N.W.	*	
Washington, D.C. 20016	*	BZA Appeal No. 16604

Appeal #16604, Fairview Heights Neighborhood Association, pursuant to 11 DCMR §§ 3105 and 3106, from the administrative decision of the Zoning Administrator in the issuance of building permit number B425220 issued on July 16, 1999 to the Sikh Cultural Society to permit the construction of a temple in an R-1-B District at premises 3801 Massachusetts Avenue, N.W., Square 1816, Lot 45.

Hearing Date: September 13, 2000

DISTRICT OF COLUMBIA'S
PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

PROCEDURAL HISTORY

The Sikh Cultural Society of Washington, D.C. (hereinafter "Sikh Society") submitted an application on November 8, 1996 for a building permit to construct a temple at 3801 Massachusetts Avenue, NW. The Department of Consumer and Regulatory Affairs (hereinafter "DCRA") approved the building plans and issued building permit number B425220 on July 16, 1999. On May 26, 2000, DCRA issued a stop work order, which was later rescinded, for the project as a preventive measure to ensure that the Sikh Society had complied with all appropriate regulations. The Fairview Heights Neighborhood Association (hereinafter "Fairview Heights" or "appellant") filed the instant appeal on June 12, 2000 in response to DCRA rescinding the stop work order and further alleging that DCRA had issued the building permit in error. A hearing was held

BZA
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on September 13, 2000 with the parties required to submit proposed findings of fact and conclusions of law by September 25, 2000.

FINDINGS OF FACT:

1. The proposed site is located at 3801 Massachusetts Avenue, N.W. in an R-1-B zoned district at square 1816, lot 45. (See, Application for Construction Permit dated November 8, 1999 ("Application") and Transcript ("Tr.") at 27).

2. The appellant, Fairview Heights, is composed of residents who live in the immediate area of the proposed temple. (Tr. at 7 and 8, See, generally, Appellant's Memorandum in Support of Appeal (hereinafter "Appellant's Memorandum") dated August 30, 2000, and Board file Exh # 2, Letter from Fairview Heights dated June 12, 2000).

3. The proposed use of the building as a church is a matter of right use in an R-1-B District. (Tr. at 27).

4. The proposed temple will occupy an irregular corner lot bordered on the east by 38th Street and on the north and northwest side by Massachusetts Avenue. (Appellant's Memorandum, Exh. 2, Sikh Society Application).

5. The proposed temple will be 30 feet high, with one 10 foot side yard located on the west side of the property, a 26 foot back yard, and will occupy approximately 48 percent of the lot. (Tr. at 72-77, and 102).

6. The proposed temple will include a "cupola or spire" also known as architectural embellishments extending approximately 40 feet beyond the building. (Tr. at 74-75).

7. Parking will include 6 parking spaces along the alley and 20 additional spaces located underground. (Tr. at 77-78 and Application).

CONCLUSIONS OF LAW AND OPINION:

The Board of Zoning Adjustment (hereinafter "the Board") has jurisdiction to hear this appeal and to render a decision and order pursuant to D.C. Code § 5-424(f). Fairview Heights as the appellant or proponent in this matter has the burden of proof pursuant to 11 DCMR § 3324.2. To reverse the Zoning Administrator's decision to approve the issuance of the building permit, the appellant must show by a preponderance of the evidence that the building permit and the proposed building will violate (1) the setback requirements and height restrictions required by 11 DCMR §§ 400.1, 400.5, 400.6, and 400.9; and (2) the number and width of parking spaces required under 11 DCMR §§ 2101 and 2115.

The Zoning Administrator properly issued building permit B425220 because the proposed temple does not exceed the height limitations or the setback requirements.

The general rule establishing the height of a building is found in § 400.1 which limits building heights to 40 feet. However, subsequent regulations allow differing heights for certain specified structures. § 400.2 states that "... the height of buildings or structures as specified in § 400.1 may be exceeded in the instances provided in §§ 400.3 through 400.13." § 400.3 provides height exemptions for architectural embellishments. § 400.6 provides that the height may be exceeded for churches.

Architectural Embellishments Are Not Subject To Height Limitations

The cupola, in contention in this matter, is an architectural embellishment and specifically excluded from height restrictions by § 400.3, and is not implicated by the setback requirements of § 400.5. The § 400.3 exemption states that,

> a spire, tower, dome, pinnacle, or minaret serving as an architectural embellishment, or an antenna may be erected to a height in excess of that which this section otherwise authorizes in the district in which it is located. (emphasis added)

Therefore, when determining the height of the temple, the height of the cupola should not be included. The cupola is a separate structure and is subject to the regulations specifically governing this type of structure. § 400.3 places no height restriction on this type of structure as shown by the plain language of the regulation cited above.

Churches Have A Different Height Limitation

§ 400.5 allows a 60 foot height limit for churches. As such, the 40 foot limit which applies to all other buildings is inapplicable. Only if the proposed building was higher than 60 feet or had more than three (3) stories, would other height restrictions of § 400.5 apply. [1]

The Setback Requirements of § 400.5 Do Not Apply To The Proposed Building Because It Does Not Exceed The Height Limitation For Buildings In An R-1-B District

11 DCMR § 400.5 states that,

> A 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 for a distance equal to the height of the building or structure above the natural grade.

The appellant believes that the above provision applies because the cupola extends an additional 40 feet above the building causing the combined height of the entire

[1] Fairview Heights also argues that the front steps should be setback because they are within a few feet of the lot line. Appellant's Memorandum at 9. Similarly, the setback requirements of §§400.5 or 400.9 do not apply to the front steps.

structure 73 feet to exceed the height limit. Tr. At 34.[2] Thus, the appellant argues that the setback requirements of § 400.5 apply and the building should be removed or "setback" from all lot lines at a distance equal to the height of the building. Appellant's Memorandum at 3-7. This interpretation is erroneous since the temple itself, at a height of 30 feet, does not exceed the 60 feet limitation for churches and the cupola is not included in the height calculation

11 DCMR §199 directs that, "[I]n those districts in which the height of the building is limited to 40 feet, the height of the building may be measured from the finished grade level at the middle of the front of the building to the ceiling of the top story." (emphasis added). Although building heights are limited to 40 feet in R-1-B Districts, architectural embellishments such as a cupola have no height limitations. Thus, the building will comply with the zoning regulations and the permit was properly issued.

§ 400.9 Does Not Apply Because The Proposed Building Is Not An Institutional Building

Appellant also argues that § 400.9 applies to this building. § 400.9 states that,

> 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 (1ft.) for each foot of height in excess of that authorized in the district in which it is located.

This provision does not apply in the instant case because churches are not considered institutional buildings. Tr. at 75 and 80. Schools and hospitals are two examples of institutional buildings. Id. Further, churches are dealt with

[2] Also note that appellant's expert witness testified that the building was 78 feet high as opposed to 73 feet. Tr. at 41.

separately under § 400.6. Thus, this section is not relevant and should not be considered in this appeal.

The Proposed Side Yard And Back Yard For The Temple Exceeds The Zoning Requirements

The regulations require a side yard of eight feet and a back yard of twenty-five feet. 11 DCMR §§ 404.1 and 405.8. The instant temple will exceed the requirements for one side yard and the backyard, with one side yard measuring ten feet and a backyard which measures twenty six feet. The proposed building is exempted from the side yard requirement on one side because it will be located on a corner lot. 11 DCMR § 405.5. Although these areas exceed the zoning requirements, these are variances which the BZA has the authority to grant pursuant to 11 DCMR § 3107.

The Parking Spaces Substantially Comply With The Regulations

Fairview Heights also argues in a footnote that the six underground parking spaces do not meet the minimum requirements of 11 DCMR § 2115.1 with respect to size. This section requires parking spaces to be a minimum of nine feet. 11 DCMR § 2115.1. DCRA testified at the hearing that there were no issues of non-compliance with respect to parking. Tr. at 77-78. However, at a minimum the combined total width for spaces number 12, 13, 14, 18, 19, and 20 of 25.17 feet is off by a mere 1.83 inches. Appellant's Memorandum at Exhibit 3.

Further, 11 DCMR § 2101.1 requires one space for every ten seats of occupancy capacity. The proposed temple has a capacity of 270 and will have twenty-seven parking spaces. Application and Tr. at 77-78. Thus, if in fact the width of the parking spaces do not meet the minimum requirement of nine feet by

1.83 inches, the violation is minimal and is insufficient to warrant revocation of the building permit.

CONCLUSION

The site of the proposed temple is in an R-1-B District where churches are permitted as a matter of right. Although building heights in an R-1-B District cannot exceed 40 feet, churches may be erected up to 60 feet. Architectural embellishments such as the cupola have no height limitations. When measuring the height of the proposed temple correctly, the building measures approximately 30 feet, well within the height allowable in an R-1-B District. Appellant is mistaken when it contends that the building exceeds the allowable height for the district in which it is located.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of September 2000, a copy of the foregoing District of Columbia's Proposed Findings of Fact and Conclusions of Law and

Order was mailed first class, postage prepaid to Richard H. Boote, Fairview Heights Neighborhood Association, 3737 Massachusetts Avenue., NW, Washington, D.C. 20016 and Mr. Gajinder Singh, The Sikh Cultural Society, Inc., 4452 Springdale Street, NW, Washington, D.C. 20016.

Charlotte W. Parker
Acting Deputy Corporation Counsel

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PROPOSED ORDER

Upon consideration of the evidence presented, the Board of Zoning Adjustment hereby finds that Fairview Heights Neighborhood Association has failed to meet its burden of proof that the Zoning Administrator's decision of July 16, 1999 to issue building permit number B425220 to the Sikh Cultural Society, Inc. should be revoked and, therefore, Appeal #16604 should be DENIED.

ATTESTED TO: _____

FINAL DATE OF ORDER: _____

Richard H. Boote
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3737 Massachusetts Avenue., NW
Washington, D.C. 20016

Mr. Gajinder Singh
The Sikh Cultural Society, Inc.
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