GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Rec'd
5.1.01

Appeal No. 16604 of Fairview Heights Neighborhood Association, pursuant to 11 DCMR §§ 3105 and 3106, from the administrative decision of the Zoning Administrator, on July 16, 1999, to issue Building Permit No. B425220 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
Decision Date: October 3, 2000

PROCEDURAL HISTORY

The Sikh Cultural Society of Washington, D.C., an intervener in this matter, applied November 8, 1996 for a building permit to construct a temple at 3801 Massachusetts Avenue, N.W. The Department of Consumer and Regulatory Affairs ("DCRA") approved the building plans and issued Building Permit No. B425220 on July 16, 1999. On May 26, 2000, DCRA issued a stop work order for the project as preventive measure to ensure that the Intervener had complied with applicable regulations. The stop work order was subsequently rescinded.

Fairview Heights Neighborhood Association ("Appellant"), a group of residents who live in the immediate area of the proposed temple, filed the instant appeal on June 12, 2000. The appeal alleges, among other things, that issuance of the building permit resulted from an erroneous interpretation of the zoning regulations governing building height, side yard and rear setbacks, and parking. The appeal also alleges that issuance of the building permit violated provisions of the Comprehensive Plan and that certain zoning regulations are invalid under the First Amendment because they directly favor churches over all other private entities. In addition, the Appellant advances a contention made by Advisory Neighborhood Commission ("ANC") 3C that DCRA failed to give the ANC notice of the issuance of the building permit, contrary to the legal requirement under D.C. Code § 1-261(c)(3) and (d). The ANC contended that the lack of proper notice prevented the community from raising the issues now before the Board, and that, as a result, the permit was improperly issued.

A public hearing was held before the Board on September 13, 2000. Testimony was received from the Fairview Heights Neighborhood Association, the Sikh Cultural Society, DCRA, and ANC 3C.

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Board of Zoning Adjustment
District of Columbia
CASE NO.16701
EXHIBIT NO.31

FINDING OF FACT

1. The subject property is located at 3801 Massachusetts Avenue, N.W. in an R-1-B zone district at Square 1816, Lot 45.

2. The site is an irregular corner lot bounded on the east by 38th Street and on the south by Massachusetts Avenue.

3. The property is owned by the Sikh Cultural Society, which proposes to build a temple on the site. A church or other place of worship is permitted as a matter of right in an R-1-B district. 11 DCMR § 201.1(b).

4. The proposed temple would be 30 feet high, with a 10-foot side yard on the west side of the property but no setback from the property line on the east side (along 38th Street), and a 26-foot back yard. The temple would occupy approximately 48 percent of the lot.

5. The proposed temple would include as an architectural embellishment a spire extending approximately 40 feet above the building's roof.

6. Six parking spaces would be provided in the alley, with 21 additional spaces located underground.

7. The proposed temple would have a seating capacity of 270.

8. At its public meeting of August 28, 2000, ANC 3C unanimously approved a resolution expressing its concern that the issuance of the building permit for the Sikh temple "resulted from an erroneous interpretation of the zoning regulations governing height and setback limitations in an R-1 District." The resolution also stated that:

> the Zoning Administrator's application of the . . . zoning regulations will result in the construction of a building that is out of scale and character with the rest of the neighborhood immediately surrounding it, to the serious detriment of fundamental objectives of zoning policy in the District of Columbia and the Ward 3 Plan in the Comprehensive Plan (i.e. preventing the overcrowding of land and preserving light and air).

Resolution of ANC 3C, August 28, 2000. The ANC testified at the public hearing that the Zoning Regulations should not be interpreted inconsistently with the Comprehensive Plan.

CONCLUSION OF LAW AND OPINION

The Board of Zoning Adjustment has jurisdiction to hear this appeal and render a decision and order pursuant to D.C. Code § 5-424(f). The Appellant, as the proponent in this matter, has the burden of proof pursuant to 11 DCMR § 3119.2. To reverse the Zoning Administrator's decision approving the issuance of the building permit, the Appellant must show by a preponderance of

the evidence that the building permit was issued in error because the proposed building would violate the Zoning Regulations. The Appellant contends that the proposed building would violate (1) the setback requirements and height restrictions specified in 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 Board is not persuaded by the Appellant's arguments, and concludes that the Zoning Administrator properly issued Building Permit No. B425220, because the proposed temple does not exceed the applicable height or setback requirements, or otherwise violate the Zoning Regulations.

Building height. In an R-1-B district, building height is generally limited to 40 feet or three stories. 11 DCMR § 400.1. That height may be exceeded in specific instances. 11 DCMR § 400.2. A "spire . . . serving as an architectural embellishment . . . may be erected to a height in excess of that" otherwise authorized. 11 DCMR § 400.3. A church or other place of worship "may be erected to a height of sixty feet (60 ft.). . . ." 11 DCMR § 400.6.

The proposed Sikh temple would be built to a height of approximately 30 feet, with a spire extending approximately 40 above the roof line. The spire constitutes an architectural embellishment, whose height is not limited by the Zoning Regulations. The Zoning Regulations specify that "[i]n those districts in which the height of building is limited to forty feet (40 ft.), 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.*" 11 DCMR § 199 (emphasis added).

The Board concludes that the 30-foot height of the proposed temple complies with the applicable zoning requirements. Building heights of up to 40 feet are generally permitted in an R-1-B zone, and places of worship in particular may be built to a height of 60 feet. The proposed spire constitutes an architectural embellishment that does not increase building height for zoning purposes.

Setbacks. The Appellant argues that the proposed temple violates the setback requirements of 11 DCMR §§ 400.5 and 400.9. Those provisions allow construction of a building up to 90 feet in height, rather than the 40-foot limit that would otherwise apply, provided that the building is sufficiently set back from the property's lot lines. However, this provision is not applicable to this building, which as previously noted, is only 30 feet high. The setback provisions cited by the Appellant apply for buildings that exceed the otherwise applicable height limits, which is not the case here.

The rear and side yard requirements applicable to the Sikh temple project are found in 11 DCMR §§ 404 and 405, respectively. In this case, the Zoning Regulations require a rear yard of at least 25 feet and a side yard of at least eight feet on the west side of the property. 11 DCMR §§ 404.1, 405.9. No minimum side yard is required on the east (38th Street) side of the property, consistent with 11 DCMR § 405.5 (no side yard is required along a side street abutting a corner lot in a Residence district). Because the proposed temple would have a side yard of 10 feet on the west and a rear yard of 26 feet, the Board concludes that the proposed development complies with minimum rear and side yard requirements of the Zoning Regulations.

The Appellant asserts that the front steps of the proposed temple should be set back because they are within a few feet of the lot line. The setback requirements of 11 DCMR §§ 400.5 and 400.9 govern rear and side yards, and do not apply to the steps at the front of the building. As proposed, the front steps of the temple building do not violate any provision of the Zoning Regulations.

Parking. The Appellant contends that the six underground parking spaces do not meet minimum size requirements, which specify that parking spaces must be at least nine feet wide. 11DCMR § 2115.1. However, the Appellant did not offer sufficient evidence to prove this assertion, while DCRA testified at the hearing that there were no issues of non-compliance with respect to parking. Tr. at 77-78.

The proposed temple is required to provide one parking space for every 10 seats of occupancy capacity. 11 DCMR § 2101.1. As proposed, the temple would have a capacity of 270 people and a total of 27 parking spaces. The Board concludes that the off-street parking provided by the proposed temple satisfies the relevant requirements of the Zoning Regulations.

Other issues. At the public hearing, the Board ruled as a preliminary matter that it would not hear testimony on issues raised by the Appellant concerning the constitutionality of the Zoning Regulations with respect to religious uses or the effect of DCRA's alleged failure to give the ANC proper notice of the building permit, because those issues are outside the scope of the Board's jurisdiction. Noting that the sole authority for any amendment of the Zoning Regulations is in the Zoning Commission, the Board concluded that it must give effect to the Zoning Regulations that are currently in place, and this was not the proper forum to consider arguments concerning whether the regulations are unconstitutional.

With respect to the issue of ANC notice, the Board held that a delay or failure by DCRA to notify an affected ANC of a building permit was not a decision made in the administration of the Zoning Regulations such that the notice issue should be considered by the Board pursuant to its appellate jurisdiction. *See* D.C. Code § 5-424(f); 11 DCMR § 3112.2 (an appeal may be brought to the Board by any person aggrieved by any order or decision made in the administration or enforcement of the Zoning Regulations).

The Board also declined to hear the Appellant's argument that the Zoning Administrator's decision to issue the building permit was not consistent with certain provisions of the Comprehensive Plan. The Board concurs with DCRA that, when issuing a building permit, the Zoning Administrator is required to comply only with existing Zoning Regulations. The Comprehensive Plan is a statement of general policy governing planning and development in the District of Columbia. *See, e.g., Levy v. District of Columbia Board of Zoning Adjustment*, 570 A.2d 739, 744 (D.C. 1990). The Plan "is a broad framework intended to guide the future land use planning decisions for the District." *Tenley and Cleveland Park Emergency Committee et al. v. District of Columbia Board of Zoning Adjustment*, 550 A.2d 331, 337 (D.C. 1988); *cert. denied*, 489 U.S. 1082 (1989). The Plan is not self-executing but is implemented by various agencies charged with regulatory authority. *Id.* One such agency is the Zoning Commission, which is the exclusive agency vested by Congress, through the District Charter, with power to

enact zoning regulations for the District of Columbia. Home Rule Act § 492(e), D.C. Code § 5-413.

The Charter requires that "[z]oning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the National Capital . . . ." Home Rule Act, § 492(b)(1); D.C. Code § 5-414. However, the Court of Appeals has recognized that, while "the existing zoning regulations may be inconsistent in some instances with the policies outlined in the Comprehensive Plan, . . . an examination of existing zoning regulations for conformance with the Comprehensive Plan is necessarily a time-consuming process . . . ." *Tenley and Cleveland Park Emergency Committee*, 550 A.2d 331, 337 (D.C. 1988). Zoning regulations and maps already in place continue to have the full force and effect of law until such time as the Zoning Commission amends them. *Id.*, 550 A.2d 331, 336 (D.C. 1988).

The Board accorded ANC 3C the "great weight" to which it is entitled. However, the Board concludes that the ANC has not offered persuasive advice that would cause the Board to find that the building permit was issued in error or that the proposed temple would be constructed in violation of the Zoning Regulations. Specifically, the Board does not agree with the ANC's assertion that issuance of the building permit resulted from an erroneous interpretation of the Zoning Regulations governing building height and setback requirements. The Board finds that the ANC's assessment of building height improperly included an architectural embellishment, and that the proposed temple in fact does not exceed the 60-foot building height allowed as a matter of right for places of worship in an R-1 zone. As previously discussed, the Board is not persuaded by the ANC's argument regarding zoning decisions that are allegedly inconsistent with the Comprehensive Plan, but concurs with DCRA that the Zoning Administrator is bound to apply the existing zoning regulations.

CONCLUSION

This appeal concerns the proposed construction of a temple on property zoned R-1-B, where a place of worship is permitted as matter of right up to a height of 60 feet. The temple design includes a spire extending above the roofline. The spire, as an architectural embellishment, does not increase the calculation of building height for zoning purposes. The height of the proposed temple building, at approximately 30 feet, is well within the 60-foot allowable height limit for a place of worship in an R-1-B district. Moreover, the siting of the proposed temple on the subject property satisfies all applicable zoning provisions with respect to lot occupancy and to rear and side yard setbacks, and the development will provide off-street parking consistent with the requirements of the Zoning Regulation. The Board finds that the Appellant has failed to prove, by a preponderance of evidence, that the building permit for the proposed temple was issued in error, and therefore the appeal of the Fairview Heights Neighborhood Association is denied.

VOTE: **3-1-1** (Kwasi Holman, Rodney Moulden and Sheila Cross Reid to deny the appeal, Robert Sockwell abstaining and Anne Renshaw in opposition).

ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____
Jerrily R. Kress, FAIA
Director

FINAL DATE OF ORDER: NOV 22 2000

UNDER 10 DCMR § 3125.9, "NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBSECTION 3125.6" OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES.

Ord 16604 NM/SMP

BZA APPEAL NO. 16604

As Director of the Office of Zoning, I hereby certify and attest that on NOV 22 2000 a copy of the order entered on that date in this matter was mailed first class, postage prepaid, to each party who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY:
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Director