BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Appeal by Friends of the Babcock-Macomb House of Zoning Administrator's Determination Regarding Lot 42 in Square 1939

BZA Appeal No. 16982
ANC 3C

2007 SEP 13 PM 4:28
DC OFFICE OF ZONING

STATEMENT IN OPPOSITION TO APPEAL

I. Introduction

Soka Gakkai International – USA ("SGI") opposes the appeal filed by the Friends of the Babcock-Macomb House ("Friends") and files this statement in support of its position. SGI owns a site located along Massachusetts Avenue adjacent to the Embassy of the Republic of Cape Verde also known as Square 1939, Lot 42 ("Property"). The Property is located in the R-1-B Zone District which allows a "church or other place of worship" as a matter-of-right use. SGI is well underway in constructing a Buddhist Culture Center ("Center") on the Property and received the necessary excavation permits on November 30, 2006 and construction permits on April 10, 2007.

Friends objected to the Center but its legitimacy was underscored with a ruling from the Zoning Administrator ("ZA") on March 2, 2007. The ZA found that "after careful consideration and reliance upon the attached information provided by SGI, it is clear to me that the principal use of the proposed building will be as a place of worship… Having determined the use as a matter of right, I have directed my staff to complete the zoning review of the submitted plans and provide approval or comments to you by close of business Monday, March, 5, 2007." A copy of the ZA's findings is attached as Exhibit A. Shortly thereafter, the Department of Consumer and Regulatory Affairs ("DCRA") approved the application to permit construction of the Center. Three weeks later, the Friends appealed the ZA's findings to the Board. SGI now files its statement in opposition to the appeal.

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Board of Zoning Adjustment
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II. THE APPELLEE

SGI, the appellee in this matter, is the second oldest Buddhist community in the Washington metropolitan area. SGI's mission is the study and practice of the teachings of the Nichiren School of Mahayana Buddhism, which dates back to 13th century Japan. The SGI Washington, DC congregation of approximately 200 people currently gathers for worship on the first Sunday of each month in Mount Rainier, Maryland. Smaller congregations of 10-40 people meet regularly to discuss and study Buddhist teachings. Each worship service is centered around a Buddhist altar and begins with the recitation of the Lotus Sutra and other Buddhist prayers.

SGI purchased the Property for its Center from the Embassy of Cape Verde in 2003 and began designing the Center shortly thereafter. The design was approved by the Historic Preservation Review Board in January 2005, and SGI met with the community in connection with that process.

The Center will include a main sanctuary seating up to 200 people; a small sanctuary seating 50 people; classroom and worship space; one meditation room; a library/study, conference room, office and a fellowship lounge. SGI's congregation currently worships in Mount Rainier, MD and SGI would like to establish a worship center in the District.

III. JURISDICTION

The Board is authorized by the Zoning Act, D.C. Official Code Section 6-641.07 (2001), "to hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal made by the Inspector Buildings or the Mayor of the District of Columbia or any other administrative officer or body in the carrying out or enforcement of any regulations adopted pursuant to this subchapter." See also Section 3100.2 ("The Board, pursuant to the Zoning Act, shall also hear and decide appeals where it is alleged

by the appellant that there is error in any order, requirement, decision, determination, or refusal made by any administrative officer or body, including the Mayor, in the administration or enforcement of the Zoning Regulations.") In hearing an appeal, the *only* issue before the Board is whether the appellant has proven beyond a preponderance of the evidence that there was an error on the part of the named officials, in this case, the ZA. (Appeal No. 15599 of Harry L. Thomas (1991); BZA Appeal No. 15602 of Milton A. Fisher (1991); Appeal No. 16716A of Nebraska Avenue Neighborhood Association (2001); Appeal No. 16879 of Nebraska Avenue Neighborhood Association (2002)). So long as the facts before the ZA reasonably led him to believe the proposed use was permitted, the decision to issue the permits cannot be considered erroneous. (Appeal No. 17439 of Advisory Neighborhood Commission 6A).

IV. ANALYSIS

The Appellant challenges the issuance of construction permits for the Center, a covered pedestrian walkway, and a fence, as well as the issuance of the excavation permits issued on November 30, 2006. The Appellant blanketly asserts that the ZA acted erroneously in issuing each permit, but does not offer any substantive evidence supporting the assertion.

A. The Center is a Place of Worship thus the Issuance of Construction Permits was Reasonable

The Board is obligated to uphold the Zoning Administrator's issuance of the permit if he "reasonably believed" that the Center qualified as a place of worship under the Zoning Regulations. Id. The Appellant's argument that the permits for the construction of the religious center should not have been issued rests on its bald assertion that the Center is not a place of worship as contemplated under the Zoning Regulations. Ignoring all of the evidence to the contrary, the Appellant suggests that the proposed religious center will in fact be used as a

community center and that the only potential worship to take place in the center will be "chanting." (Appeal, p. 2).

In the Appeal of Advisory Neighborhood Commission 6A (Appeal No. 17439), the ANC challenged the ZA's issuance of a restaurant certificate of occupancy for an establishment it believed qualified as fast-food. The Board held that

> [t]he issue before this Board is whether the facts known to the Acting Zoning Administrator at the time the Certificate of Occupancy was issued could have reasonably led him to believe that the proposed use was to be a restaurant, and not a fast food restaurant. The Appellant has not offered persuasive evidence that the decision to issue the certificate of occupancy was erroneous based upon the facts known at the time of the application...Appellant's contention that the business is actually being operated as a fast food restaurant does not prove that the issuance of the certificate of occupancy was in error.

Similarly, the Appellant in the instant case has not produced any meaningful evidence undermining the ZA's finding that the Center is a place of worship. In fact, the Appellant's argument relies largely on the fact that followers of the Soka Gakkai sect of Buddhism refer to their worship places as "centers" (either activity center, community center, or culture center) and not "churches", leading the Appellant to believe the Center will not be used for worship. (Appeal, p. 2.)

The crux of the issue is whether the Center is considered a place of worship so as to allow its construction as a matter of right. The Property is located in the R-1-B Zone District. Section 201.1 states that a "[c]hurch or other place of worship, but not including rescue mission or temporary revival tents" is permitted as a matter of right in R-1 Zone Districts. Church is not a defined term in the Zoning Regulations, but the Merriam-Webster Dictionary indicates that the

term "church" typically refers to Christian houses of worship, which the Center does not claim to be. The Center is, however, a permitted place of worship.

The term, "place of worship" is also not defined under the Zoning Regulations. The Merriam-Webster Dictionary, however, defines worship as 1) (*chiefly British*) a person of importance —used as a title for various officials (as magistrates and some mayors); 2) reverence offered a divine being or supernatural power; *also* an act of expressing such reverence; 3) a form of religious practice with its creed and ritual; and 4) extravagant respect or admiration for or devotion to an object of esteem. The Center that SGI is constructing is unequivocally a place for congregants to practice the religion of Buddhism, including its creed and ritual. Just like any form of Christian or Jewish worship, congregants will gather at the Center on a regular basis and worship according to the tenets of their faith. To undermine the SGI Buddhism by suggesting it is not a legitimate religion is ignorant at best and to categorize its only worship as "ritual chanting" is offensive. As the Motion to Dismiss filed herewith indicates, 82% of the Center will be completely devoted to the worship and practice of SGI Buddhism.

Further, to imply that the Center does not qualify as a place of worship because it does not refer to itself as a "church" is more than narrow-minded. Many religions do not involve worship in a church. For example, religions such as Judaism; Islam; The Religious Society of Friends (whose followers are known as Quakers); The United Society of Believers (whose followers are known as Shakers); the Old Order Amish; Buddhism; or Hinduism do not involve worship in a church. Yet, this doesn't diminish their standing as religions.

SGI's standing as a religion is further supported by its tax exempt status with both the District and the federal governments. Attached as Exhibit B is a letter from the Supervisory Tax Auditor of the District of Columbia Office of the Chief Financial Officer Office of Tax and

Revenue. The letter indicates that SGI is "exempt from the District of Columbia Income and Franchise Tax as an organization described in Section 47-1802.1 of the District of Columbia Code (2001 ed.). Section 47-1802.1 exempts those corporations that are organized and operated for, *inter alia*, religious purposes. Similarly, the Internal Revenue Service exempts SGI from paying income taxes as a Section 501(c)(3) organization. A letter from the IRS is attached as Exhibit C. All donations made to SGI are deductible by the donors, just like donations made to any church are deductible. These findings are only logical given that SGI was organized under the Nonprofit Religious Corporation Law for religious purposes. The Articles of Incorporation of the SGI are attached as Exhibit D.

The foregoing evidence is very persuasive that the Center will be a place of worship once constructed. Arguably, the ZA would be estopped from denying the religious nature of the Center given the District's previous finding that the Center qualifies for a tax exemption. Armed with the foregoing and detailed information about the use of every square foot of the building, the ZA concluded that the Center was undoubtedly a place of worship and that the Center itself was akin to churches and other places of worship. See Exhibit A. Accordingly, his decision was neither erroneous nor unreasonable in light of the evidence.

B. The Appellant's Other Objections are Untimely

It is well established that the "timely filing of an appeal with the Board is mandatory and jurisdictional." Mendelson v. District of Columbia Board of Zoning Adjustment, 645 A.2d 1090, 1093 (D.C. 1994); BZA Appeal No. 17430 of Rodut Associates of DC, LP. Section 3112.2 states that "an appeal shall be filed within sixty (60) days from the date the person appealing the administrative decision had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge o the decision complained of, whichever is earlier." 11

DCMR Section 3112.2(a). The Appellant is objecting to the issuance of excavation permits issued on November 30, 2006, and construction permits for a covered pedestrian walkway and construction fence on December 11, 2006. The Appellant's own submission acknowledges that they had knowledge of the issuance of these permits as early as December 19, nearly five months earlier; however, they did not file an appeal until May 1, 2007. (Appeal, Exhibit 7). Accordingly, the Board does not have jurisdiction to hear the appeal of these permits. See Appeal No. 17430 of Rodut Associates of DC, LP (an appeal filed three days late is untimely and the Board does not have jurisdiction to hear it).

V. WITNESSES

SGI will be represented by Allison C. Prince at the hearing on October 9, 2007. William Aiken will testify in opposition to the appeal on SGI's behalf.

VI. CONCLUSION

The Zoning Administrator reasonably concluded that the Center is a place of worship and did not err in issuing the building permits. Accordingly, SGI respectfully requests that the Board dismiss this appeal and authorize the Department of Consumer and Regulatory Affairs to uphold the building permits for the Property.

Sincerely,

Allison C. Prince

Christine A. Roddy

10/2/07

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR

March 2, 2007

Mr. Bill Aiken, Associate Director
Office of Public Affairs
Soka Gakkai International – USA
2233 Wisconsin Avenue, NW Suite 306
Washington, DC 20007

Ms. Allison Prince
Pillsbury Winthrop Shaw Pittman
2300 N St. NW
Washington, DC 20037.1122

Re: 3417 Massachusetts Ave. NW (Square 1939 Lot 42)
Building Permit Applications #4877-A-6 & #5263-A-6

Dear Mr. Aiken and Ms. Prince:

Soka Gakkai International – USA (SGI) has proposed a new building at 3417 Massachusetts Ave. NW, for use as a 'place of worship.' This property is within an R-1-B (Residential) District and the D (Mixed Use Diplomatic Overlay District) and the NO (Naval Observatory Precinct Overlay District).

Use as a 'place of worship' is a matter of right use within the R-1-B District and is not prohibited by either Overlay District.

It is the responsibility of the Zoning Administrator to determine whether all uses of property, structures, or buildings comply with the Zoning Regulations of the District of Columbia, Title 11 of the DC Municipal Regulations. Without an objective, fact-based consideration of every use, the residents of the District of Columbia could be subject to spurious claims contrary to the purpose and intent of the Zoning Regulations.

In order to confirm SGI's claims that the building will be used predominately as a 'place of worship' this office requested, and you have submitted, additional information with respect to the intended use of the building. After careful consideration and reliance upon the attached information provided by SGI, it is clear to me that the principal use of the proposed building will

be as a place of worship. You have explained how the space is used for the practice of your faith. The layout of the building with a large main room and smaller room for worship activities as well as classrooms, fellowship hall and a small amount of office space is very typical of churches and other places of worship. You have provided a typical schedule of activities which again mirrors other faiths' regular activities taking place in their churches or places of worship.

The issuance of a certificate of occupancy for use as a 'place of worship' requires maintaining worship as the principal use of the building.

Having determined the use as a matter of right, I have directed my staff to complete the zoning review of the submitted plans and provide approval or comments to you by close of business Monday, March 5, 2007.

I appreciate your willingness to detail the uses of the building in assisting my determination of the applicability of the zoning regulations.

Best regards,

Bill Crews

Bill Crews
Zoning Administrator for the District of Columbia



GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Chief Financial Officer
Office of Tax and Revenue

MAY 07 2004

Reply to:
Exempt Organizations

Effective Date: MAR 15 2004

E-04-8620
SOKA GAKKAI INTERANTIONAL - USA

601 PENNSYLVANIA AVE NW #900 SB
WASHINGTON, DC 20004

Dear Sir or Madame:

Based on information supplied, and assuming your operations will be as indicated in your income and franchise tax and personal property tax exemption application, we have determined that you are exempt from the District of Columbia Income and Franchise Tax as an organization described in Section 47-1802.1(3) of the District of Columbia Code. In addition, we have determined that you are exempt from the District of Columbia Personal Property Tax as an organization described in Section 47-1508(a)(1), of the District of Columbia Code.

Contributions made to you **are** deductible by donors.

If your purposes, character, or method of operation change, please report the changes to us for consideration of their effect, if any, upon your exempt status. You should also report any change in your name including the amendment to your organizational document and address.

You are not required to file District of Columbia income or franchise tax returns unless your organization has unrelated business income from engaging in a trade or business in the District or from District sources and such income is subject to tax under Section 511 of the Internal Revenue Code and/or you are subject to tax under Section 527 of the Internal Revenue Code. Personal property used in the generation of unrelated business income is subject to tax under Section 47-1508(a)(1)(B) of the District of Columbia Code.

You will be required to submit each year on or before the fifteenth day of the fifth month following the close of your accounting period a copy of Form 990 or 990PF filed with the Internal Revenue Service.

In addition, you are required to submit promptly a copy of any correspondence which is received from the Internal Revenue Service which changes your exempt status for Federal income tax purposes.

Sincerely yours,

Supervisory Tax Auditor
Review and Conference Section

C

US Treasury Department

Internal Revenue Service
Washington, DC 20224

Date JAN 30 1968

In reply refer to
T:IS:EO:R:2-JGD
FIN:95-226-5667

Soka Gakkai International - USA
AKA: Nichiren Shoshu of America
~~2102 East First Street~~
~~Los Angeles, California 90033~~
525 Wilshire Bl.
Santa Monica, CA 90401

Gentlemen:

We have considered your application for a group ruling holding you and your subordinate units exempt from Federal income tax as organizations described in section 501(c)(3) of the Internal Revenue Code of 1954.

Based upon the evidence presented, it is held that you and your subordinate units, whose names appear on the list you recently submitted, are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code because it is shown that you and your subordinate units are organized and operated exclusively for religious purposes.

Any questions concerning excise, employment, or other Federal taxes should be submitted to the appropriate District Director.

You and your exempt subordinate units are not required to file Federal income tax returns while a tax exempt status is retained, unless you or your exempt subordinate units are subject to the unrelated business income tax imposed by section 511 of the Code and are required to file Form 990-T to report unrelated business taxable income.

You and your exempt subordinate units are not required to file the annual returns of information, Form 990-A, because the specific exceptions contained in section 6033(a) of the Code are applicable.

Contributions made to you and to your exempt subordinate units are deductible by the donors as provided in section 170 of the Code. Bequests, legacies, devises, transfers or gifts of property to or for the use of you or any of your exempt subordinate units are deductible for Federal estate and gift tax purposes as provided in sections 2055, 2106 and 2522 of the Code.

You and your exempt subordinate units are not liable for the taxes imposed under the Federal Insurance Contributions Act (social security taxes) unless waiver of exemption certificates are, or have been filed as provided in that Act. Inquiries about the waiver of exemption certificates should be addressed to the appropriate District Director.

You and your exempt subordinate units are not liable for the tax imposed under the Federal Unemployment Tax Act.

You should advise each of your exempt subordinate units of the pertinent provisions of this ruling, including the requirements for filing information or other returns.

This ruling does not extend to any subordinate unit which has previously received an individual ruling or determination letter holding that it is not exempt. Its qualifications to be included in this group ruling must be separately established.

For next year, and for each succeeding year thereafter, please send us the following information not later than 45 days after the close of your annual accounting period:

1. Lists, arranged in alphabetical or numerical order, showing the names and mailing addresses of (a) your new subordinate units and (b) those which have ceased to exist or have changed their names or mailing addresses. One copy of the list should be furnished for this office and one additional copy for each District Director in whose district one or more of your exempt subordinate units are located. Directories may be furnished in lieu of lists if a directory is published.

2. A statement signed by one of your principal officers showing:

(a) whether the information upon which your original group ruling is based is applicable in all respects to the new subordinate units.

(b) whether the Internal Revenue Service has issued an outstanding ruling or determination letter to any pre-existing or new subordinate unit holding that the unit does not qualify for exemption from Federal income tax. A list showing the names and mailing addresses of units to which such rulings or determination letters have been issued should be included in, or attached to, the statement.

3. A statement telling us if, at the close of your annual accounting period, there were no changes in your roster.

4. A statement of any changes in your charter, purposes, or method of operation or those of any of your exempt subordinate units.

5. Duplicate copies not previously submitted of any amendments to your charter or bylaws or those of any of your exempt subordinate units.

Every exempt organization is required to have an Employer Identification Number regardless of whether it has any employees. If an organization does not have such a number, its District Director will take steps to see that one is issued to it at an early date.

This ruling is not applicable to any of your subordinate units organized and operated in a foreign country.

Our letter of October 10, 1967, which held you subject to the requirements for filing Federal income tax returns should be disregarded.

The appropriate District Directors are being advised of this action.

Very truly yours,

John R. Burke

Chief, Rulings Section
Exempt Organizations Branch



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FILED
In the office of the Secretary of State
of the State of California

NOV 26 1991

MARCH FONG EU, Secretary of State

RESTATEMENT OF
ARTICLES OF INCORPORATION OF
SOKA GAKKAI INTERNATIONAL - USA

1. The articles of incorporation of Soka Gakkai International - USA are amended and restated as follows:

FIRST: The name of this corporation is: SOKA GAKKAI INTERNATIONAL - USA.

SECOND: In accordance with the provisions of Section 9913 of the California Corporations Code Section, this corporation elects to be governed by all of the provisions of the California Nonprofit Religious Corporation Law not otherwise applicable to this corporation under Sections 9910 - 9927 of the Corporations Code.

THIRD: This corporation is a religious corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Religious Corporation Law primarily for religious purposes.

FOURTH: This corporation shall have all the powers of a natural person, subject only to any limitations imposed by these articles of incorporation, the bylaws of this corporation and applicable law. Notwithstanding the preceding statement of powers, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purposes of this corporation.

FIFTH: The corporation is subject to the following restrictions:

A. This corporation is organized and operated exclusively for religious and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). Any other provision of these articles of incorporation notwithstanding, this corporation shall not carry on any activities not permitted to be carried on (i) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code, or (ii) by a corporation contributions to which are deductible under Section 170(c)(2) of the Code. If this corporation is determined to be a private foundation, as defined in Section 509 of the Code, then the provisions of Section 5260 of the California Corporations Code shall be applicable to this corporation.

B. No part of the net earnings or assets of this corporation shall ever inure to the benefit of any director,

private individual whatsoever (except that reasonable compensation may be paid for services rendered to or for the corporation affecting one or more of its purposes). No substantial part of the activities of this corporation shall consist of carrying on propaganda or otherwise attempting to influence legislation, and this corporation shall not participate or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

SIXTH: The property of this corporation is irrevocably dedicated to religious and charitable purposes. Upon the dissolution or winding up of this corporation, after paying or adequately providing for the debts and obligations thereof, any remaining assets shall be distributed, for use in furtherance of the purposes of this corporation as set forth in these articles of incorporation, to one or more nonprofit funds, foundations or corporations, which are then in existence, which are organized and operated exclusively for religious or charitable purposes and which are exempt from taxation under Section 501(c)(3) of the Code.

SEVENTH: The corporation shall have no members.

EIGHTH: The number of directors of this corporation shall be established by the bylaws of this corporation.

2. The foregoing amendment and restatement of articles of incorporation has been duly approved by the board of directors.

3. The board of directors alone was entitled to adopt the foregoing amendment and restatement for the reason that the corporation has no members.

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

GEORGE M. WILLIAMS and MICHIHIRO KIKUMURA, being sworn, state:

That they are the President and Secretary, respectively, of Soka Gakkai International - USA (formerly Nichiren Shoshu Soka Gakkai of America), a California corporation, and they declare under penalty of perjury that the facts set forth in the foregoing Restated Articles are true and correct of their own knowledge under the laws of the State of California.

Executed at Santa Monica, California on November 22, 1991.

George M. Williams
GEORGE M. WILLIAMS, PRESIDENT

Michihiro Kikumura
MICHIHIRO KIKUMURA, SECRETARY

Subscribed and sworn to before me on November 22, 1991.

George M. Odano
George M. Odano, Notary Public

OFFICIAL SEAL
GEORGE M. ODANO
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My comm. expires DEC 28, 1993