

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Appeal No. 17663 of Friends of Babcock-Macomb House, pursuant to 11 DCMR §§ 3100 and 3101, from the decision of the Zoning Administrator to approve the construction of a place of worship (Buddhist Center) in the D/NO/R-1-B district at premises 3417 Massachusetts Avenue, N.W. (Square 1939, Lot 42).

HEARING DATES: October 9 and October 16, 2007
DECISION DATE: December 4, 2007

DECISION AND ORDER

This appeal was submitted May 2, 2007 by the Friends of the Babcock-Macomb House (“Appellant”), who challenge the Zoning Administrator’s determination and related permits that allowed Soka Gakkai International-USA (“SGI”) to construct a new building for use as a “place of worship” on property zoned R-1-B and located within the Mixed Use Diplomatic (D) and Naval Observatory Precinct (NO) overlay districts at 3417 Massachusetts Avenue, N.W. (Square 1939, Lot 42). Appellant alleges that the Zoning Administrator erred in determining that the principal use of the building would be for worship. Following a public hearing, the Board voted at its public meeting on December 4, 2007 to deny the appeal.

PRELIMINARY MATTERS

Notice of Appeal and Notice of Hearing. By memoranda dated May 3, 2007, the Office of Zoning provided notice of the appeal to the Office of Planning; the Zoning Administrator, at the Department of Consumer and Regulatory Affairs (“DCRA”); the Councilmember for Ward 3; Advisory Neighborhood Commission (“ANC”) 3C, the ANC in which the subject property is located; and Single Member District/ANC 3C08. Pursuant to 11 DCMR § 3112.14, on July 13, 2007, the Office of Zoning mailed letters or memoranda providing notice of the hearing to the Appellant, SGI, the Acting Zoning Administrator, and ANC 3C. Notice was also published in the D.C. Register on July 20, 2007 (54 DCR 6932) and August 17, 2007 (54 DCR 8064).

Parties. The parties in this proceeding were Friends of the Babcock-Macomb House (“Appellant”); DCRA or Acting Zoning Administrator (Zoning Administrator), (Appellee); and

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SGI, the owner of the property that is the subject of the appeal (Intervenor). ANC 3C, the ANC for the area within which the subject property is located, did not participate in the appeal.

Appellant's Case. The appeal challenges: (1) the March 2, 2007 determination by the Zoning Administrator that the proposed building qualified as a "church or other place of worship" that may be constructed as a matter of right on a site zoned R-1-B; (2) approval by DCRA of Application No. 5263-A-6, on April 10, 2007 permitting construction; and (3) the issuance by DCRA of permits on November 30, 2006 and December 11, 2006 that allowed excavation, sheeting, and shoring on the site and the construction of a covered pedestrian walkway and construction fence, respectively. According to the Appellant, these decisions were erroneous because matter-of-right status under 11 DCMR § 201.1(b) applies only to a "church or other place of worship," and Appellant alleges that the primary use of the proposed building on the subject property will be as a conference facility and community center.

In essence, Appellant does not challenge that SGI is a religious organization, but that most of the activities that will be conducted in the building will not constitute worship. According to the Appellant, SGI is an organization comprised exclusively of lay Buddhist practitioners whose "roughly 80 facilities across the United States are all designated as 'community centers' or 'cultural centers.'" Appellant alleges that the activities that will take place will be in the nature of assembly for world peace, education and culture and that therefore, the building should be considered a community center, for which special exception relief is required, and not a place of worship, which is allowed as a matter of right. Appellant argues that only a small percentage of the building will be used for worship in the form of chanting. The Appellant presented newspaper articles and information from SGI's website to support its contention that the proposed building would not be used as a "church or other place of worship.

Zoning Administrator. The Zoning Administrator described his review of the permit applications, plans, and other materials submitted by SGI. He noted that a previous Zoning Administrator had approved the permits, that he did an independent review and agreed with the previous Zoning Administrator's findings. Noting that SGI was an entity organized for religious purposes, the Zoning Administrator concluded that the proposed building would be a church or other place of worship, a matter-of-right use at the subject property, because the majority of program space in the building would be devoted to assembly for religious purposes. In addition, the Zoning Administrator stated that in reaching his independent conclusion, he looked at the totality of the circumstances, including how SGI centers were treated in other municipalities, the schedule of services and other activities taking place in specific rooms, its Articles of Incorporation and tax exempt status, how this building compared to other places of worship he had evaluated, and materials from SGI regarding the history of the religion.

Intervenor. The Board of Zoning Adjustment ("the Board"), received testimony and evidence from William Aiken, the public affairs director of SGI. The Intervenor explained that SGI, "a school of Buddhism," uses the term "community center" for some of its places of worship but the building on the subject property would be used to serve the religious needs of the members of

SGI's Washington area, or congregation. SGI testified that the building would be "dedicated to the religious practices of its faith community and to functions related to the spiritual support of that community." In arguing that the Zoning Administrator's decision should be upheld, SGI noted that the majority of program space in the building would be devoted to religious purposes, even excluding spaces, such as the classrooms, that the Zoning Administrator had not counted toward worship space. SGI asserted that the use of the building would be consistent with Soka Gokkai Buddhist worship.

Motion to dismiss. By motion filed October 2, 2007, SGI asserted that the Board should dismiss the appeal because the Appellant had failed to state a claim of zoning error related to the Zoning Administrator's ruling of March 2, 2007 or any of the permits at issue, and because the construction of a place of worship was explicitly permitted by right under the relevant zoning regulations. SGI argued that sufficient proffers had been made to the Zoning Administrator to demonstrate that the proposed building would be used as a place of worship under the Zoning Regulations, and that the Zoning Administrator did not err in issuing permits to SGI. According to SGI, the "Appellant's general assertions that the Project is not a 'church' must fail because Appellant shows absolutely nothing that would have permitted a different finding under the relevant law. For that reason, Appellant has failed to meet its burden of alleging a zoning error, and the appeal should be dismissed for failure to state such an error."¹ In its motion to dismiss, SGI also asserted that the appeal of the permits for excavation, sheeting, and shoring and for construction of a covered walkway and fence were untimely because the appeal was filed more than 60 days after issuance of the permits.

In its opposition to the motion to dismiss, the Appellant argued that the Zoning Administrator had erred "by applying an impermissible interpretation of the statutory terms 'church or other place of worship,' and ... by reaching a conclusion wholly without support in the evidentiary record ... in determining that the primary use of SGI's proposed building is worship." The Appellant asserted that "not all buildings owned by religious organizations are places of worship," and argued that the Zoning Administrator "relied on misleading information about the allocation of and intensity of use of space within the building and unlawfully conflated (in his 'primary use' analysis) worship with other religious activity."

At the public hearing, the Board granted the motion in part and denied it in part. As discussed below, the Board agreed with SGI that the appeal was untimely with respect to the permits

¹ In its motion to dismiss, SGI also argued that the Zoning Administrator "was prohibited by both the Constitution and federal law from questioning SGI's assertion that the Project is a church" and that "any [other] finding" by the Zoning Administrator would have been "a direct violation" of SGI's constitutional rights protecting the free exercise of religion as well as the Religious Freedom Restoration Act of 1993. The Board is of the view that the Zoning Administrator's attempt to gather sufficient information to make a determination, that the principal use of the proposed building, would be a "place of worship," a use permitted as a matter of right, but sometimes referred to as a "culture center" or a "community center," a use requiring a special exception was within the authority of the Zoning Administrator to ensure compliance with the Zoning Regulations. The Board concurs with the Zoning Administrator's determination that the principal use of the proposed building will be as a "place of worship" and therefore finds no need to address SGI's additional arguments concerning constitutional and federal law.

allowing excavation and construction of a walkway and fence, but found that the Appellant had alleged an error by the Zoning Administrator.

FINDINGS OF FACT

1. The subject property is located at 3417 Massachusetts Avenue, N.W. (Square 1939, Lot 42) in the Massachusetts Avenue Heights neighborhood of Northwest Washington.
2. The subject property was previously part of a larger parcel, known as the Babcock Macomb House, at 3415 Massachusetts Avenue, N.W. (Square 1939, Lot 40), which is currently used as the Embassy of Cape Verde. On February 5, 2004, the Mayor's Agent for historic preservation approved a subdivision of the parcel that created the subject property. The subject property is owned by Soka Gakkai International-USA, which entered into a contract to purchase the property from the Embassy of Cape Verde in 2003.
3. SGI was organized under the Nonprofit Religious Corporation Law for religious purposes and is exempt from taxes as a religious organization, recognized by both the District and the federal governments. SGI has a lay leadership that currently operates Buddhist centers locally in several suburban locations. The Washington D.C. Area (or "congregation") of SGI has approximately 369 members.
4. Building Permit No. 98193 was issued on November 30, 2006 to SGI granting permission for excavation, sheeting, and shoring for the foundation of a new building at the subject property.
5. Building Permit No. 100009 was issued on December 11, 2006 to SGI granting permission for installation of a covered pedestrian walkway and temporary construction fence at the subject property.
6. By letter dated March 2, 2007 and addressed to SGI, the Zoning Administrator stated his finding, after consideration of information submitted by SGI, that "the principal use of the proposed building will be as a place of worship." The Zoning Administrator noted SGI's explanation of "how the space is used for the practice of [SGI's] 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. [SGI] provided a typical schedule of activities which again mirrors other faiths' regular activities taking place in their churches or places of worship." Permit No. 96928 (Building Application No. 5263-A-6) was approved on April 10, 2007, permitting construction of the building.
7. Previously, on February 8, 2007, the Zoning Administrator had submitted questions to SGI seeking information about the planned uses of the building to assist the Zoning Administrator in making a determination of the applicability of the Zoning Regulations.

SGI responded by letter dated February 12, 2007 (the “February 12 letter”), indicating that the “culture center” would operate with three full-time and one part-time staff person and that the director and associate director were both senior leaders and teachers in the Nichiren Buddhist tradition, were commissioned as Ministers of Ceremonies, and would hold “organizational responsibilities positions that center on providing both spiritual and organizational direction in the Soka Gakkai community” as well as conducting pastoral duties, providing spiritual counseling, and conducting study lectures.

8. The February 12 letter included a plan drawing showing the allocation of space within the building. One level would contain: (a) an office, with four workstations for staff and work area for volunteers (550 square feet, or 11 percent of total room space in the building); (b) a fellowship lounge, used for informal dialogue and refreshments after a meeting (434 square feet, or nine percent); (c) a classroom for study groups (375 square feet, or eight percent); (d) a chanting room, a place for members to use any time during open hours (286 square feet, or six percent); (e) a bookstore selling books on Buddhism, prayer books, prayer beads, candles, incense, and altar supplies (195 square feet, or four percent); and (f) a pantry providing an area for staff lunches but not meal preparation (158 square feet, or three percent). The second level would contain: (a) the main sanctuary, which would house the center’s object of worship and would be used for all large gatherings of the congregation, study lectures, meetings, and events (1,513 square feet, or 31 percent); (b) the small sanctuary, which would house smaller gatherings (501 square feet, or 10 percent); (c) a dialogue room, for ceremonial use and reception, personal and small-group guidance (355 square feet, or seven percent); (d) a library and reading room (188 square feet, or four percent); (e) an audio-visual room and study, which would be used for audio-visual control in the main sanctuary during large functions and for small meetings, planning, and dialogues (175 square feet, or four percent); and (f) a baby room, where parents could sit with young children during services (91 square feet, or two percent). The total activity space would have an area of 4,821 square feet.
9. The February 12 letter included a sample schedule of events for the various rooms in the building. As projected, the building would be open seven days per week, from 9:00 a.m. until 5:00 p.m. and again from 7:00 p.m. to 9:00 p.m. on weekdays and from 9:00 a.m. until 3:00 p.m. on weekends.
10. The February 12 letter stated that most of the religious activities held at the building would be open to members and any interested guests; some activities would be open only to designated leaders of the Soka Gakkai community. No fees would be charged, and facilities would not be rented out to the public.
11. The information provided to the Zoning Administrator by SGI indicated that most of the uses of the building would fall into one of the following categories, which were derived from and centered on “the observance and transmission of Buddhist faith, practice and

- study”: (a) chanting sessions, for devotional recitations of liturgy as a group or individually; (b) study sessions, conducted in various formats according to language, age group, or interests; (c) discussion and dialogue sessions, conducted in groups or one-on-one to enable practitioners to share experiences in applying Buddhist practice to their daily lives, ask questions of senior leaders, and seek spiritual counseling; (d) planning meetings, conducted to prepare for effective worship and study events; and (e) performance groups, including musical performances at congregational services and general meetings.
12. In testimony at the public hearing, the Zoning Administrator calculated that the gross floor area of the building would be 11,247 square feet, excluding the cellar, which would be used for parking. He then determined that the four largest rooms (that is, the two sanctuaries, the chanting room, and the fellowship room) would comprise 56 percent of the program space available in the planned building. Based on his determination that a majority of the program space would be used for activities related to worship, the Zoning Administrator concluded that the principal use of the proposed building would be assembly for religious purposes and therefore that the building would be a “church or other place of worship.”
 13. The Board credits the testimony of SGI that other parts of the building, in addition to the four largest rooms identified by the Zoning Administrator, might also be used for worship. SGI indicated that an altar would be placed in a classroom, and that the dialogue room would be used for religious ceremonies and other functions.
 14. The subject property is zoned R-1-B and is located within both the Mixed Use Diplomatic (D) overlay district and the Naval Observatory Precinct (NO) overlay district. Use as a “church or other place of worship” is permitted as a matter of right in the R-1-B district and is not prohibited by either overlay district.
 15. The Zoning Regulations do not define “church or other place of worship.” Words not defined in § 199 of the Zoning Regulations “shall have the meanings given in *Webster’s Unabridged Dictionary*.” 11 DCMR § 199.2(g). The dictionary defines “worship” as (a) a person of importance, used as a title of various officials; (b) reverence offered a divine being or supernatural power, also an act of expressing such reference; (c) a form of religious practice with its creed and ritual; and (d) extravagant respect or admiration for or devotion to an object of self-esteem.
 16. Pursuant to the Zoning Regulations, “use as a community center building” is operated by local community organization or association,” and must not be “organized for profit” but must be “organized exclusively for the promotion of the social welfare of the neighborhood in which it is proposed to be located.” A community center must not offer “articles of commerce for sale in the center,” and use of a community center must be

“reasonably necessary or convenient to the neighborhood in which it is proposed to be located.” 11 DCMR § 209.

17. In a resolution approved January 24, 2005, by a vote of 7-0-1 at a public meeting with a quorum present, ANC 3C expressed its opposition to an application pending before HPRB for “the construction of the proposed SGI-USA building on the subdivided lot adjacent to the Embassy of Cape Verde” and also recommended therein that “the Zoning Administrator review the proposed building to ascertain its conformation to that which is ‘a matter of right’ in an R-1 District.” The ANC’s resolution noted, in relevant part, that “little of the total building will be devoted to ‘sanctuary’ use” and that “all the SGI facilities across the country are identified as community, activity or culture centers but none are identified as churches.”

CONCLUSIONS OF LAW

The Board is authorized by the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001), to hear and decide appeals where it is alleged by the appellant that there is error in any decision made by any administrative officer in the administration the Zoning Regulations. 11 DCMR §§ 3100.2, 3200.2. In an appeal, the Board may reverse or affirm, in whole or in part, or modify the decision appealed from. 11 DCMR § 3100.4.

An appeal must be filed within 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 of the decision complained of, whichever is earlier. 11 DCMR § 3112.2(a). The Board may extend the 60-day deadline in case of exceptional circumstances outside the appellant’s control. 11 DCMR § 3112.2(d). In this case, the Appellant filed the appeal more than 60 days after the issuance of two permits challenged in the appeal, without alleging any exceptional circumstances. The Board concurs with SGI that Appellant’s appeal, submitted May 2, 2007, was not timely with respect to Permit No. 98193, issued November 30, 2006 to allow excavation, sheeting, and shoring, or Permit No. 100009, issued December 11, 2006 to allow the installation of a covered pedestrian walkway and temporary construction fence. Accordingly, the Board granted SGI’s motion in part by dismissing the appeal with respect to those permits. However, the Board does not agree with SGI that the Appellant failed to state a claim of zoning error, and therefore declined to dismiss the appeal. The Appellant claimed that the Zoning Administrator erred in determining that SGI’s proposed building would be used as a place of worship, and thus could be constructed as a matter of right.

Based on the findings of fact, the Board was not persuaded by the Appellant that the Zoning Administrator erred in determining that the proposed building at the subject property would be “a church or other place of worship.” The Zoning Administrator reasonably concluded that “the principal use of the proposed building will be as a place of worship” based on abundant information, including SGI’s description of the planned use of the various rooms in the building for the practice of its faith, its status as a recognized religious entity, the Zoning Administrator’s

finding that the layout of the proposed building would be consistent with buildings typically used as churches or other places of worship, and his calculation that the majority of program space in the building would be devoted to assembly for religious purposes.

The Board was not persuaded by the Appellant that SGI, as an organization in which the laity plays a predominant role, would not use the building as a place of worship, or that the activities that would take place in the building would not constitute “worship.” The Zoning Administrator’s finding that the principal use of the building would be as “a church or place of worship” was consistent with the meaning of “worship” contained in *Webster’s Unabridged Dictionary*,” particularly with respect to worship as “a form of religious practice with its creed and ritual.”

The Board credits SGI’s testimony that the organization uses the terms “community center,” “cultural center,” or “activity center” for its places of worship, depending on the size of the facility. The intended use of the building at the subject property is not as a “community center” as that term is used in the Zoning Regulations, in that the intended use by SGI will not be “organized exclusively for the promotion of the social welfare of the neighborhood” or be “reasonably necessary” to the neighborhood. *See* 11 DCMR 209.2.²

The Board is required to give “great weight” to the issues and concerns of the affected Advisory Neighborhood Commission as set forth in a report on the appeal approved by a majority of the Commissioners at a publicly noticed meeting at which a quorum is present. ANC 3C did not submit a report to the Board addressing the appeal or otherwise participate in this proceeding. The Appellant submitted into the record a resolution passed by the ANC in 2005, primarily directed at the then pending application before the HPRB. Based on the findings of fact and the reasons discussed above, the Board does not concur with the ANC’s finding, stated in its 2005 resolution, that “little of the total building will be devoted to ‘sanctuary’ use,” and concludes that the Zoning Administrator did, in fact, properly review “the proposed building to ascertain its conformation to that which is ‘a matter of right’ in an R-1 District.”

For the reasons stated above, the Board concludes that the Appellant has not satisfied the burden of proof with respect to its claim of error in the administrative decision of the Zoning Administrator, made in a ruling issued March 2, 2007, that the principal use of the proposed building at the subject property would be as a “church or other place of worship” that could be constructed as a matter of right on a site zoned D/NO/R-1-B at 3417 Massachusetts Avenue, N.W. (Square 1939, Lot 42). Accordingly, it is therefore **ORDERED** that the appeal is **DENIED**.

VOTE: **4-0-1** (Ruthanne G. Miller, Marc D. Loud, Shane L. Dettman, and Curtis L. Etherly, Jr. voting to deny the appeal; no other Board member participating or voting)

² The Zoning Regulations do not designate any use as a “culture center,” “cultural center,” or “activity center.”

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BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member approved the issuance of this order.

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: AUG 18 2008

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



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As Director of the Office of Zoning, I hereby certify and attest that on **AUGUST 18, 2008**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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