

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19557-A of Government of the Commonwealth of Australia, pursuant to 11 DCMR Subtitle Y § 703, for a modification of consequence to the plans approved by Order No. 19557 to refine several components of the architectural elements and open spaces of the Australian chancery building in MU-15 zone at 1601 Massachusetts Avenue, N.W. (Square 181, Lot 162).

HEARING DATE (19557):	September 13, 2017
DECISION DATE (19557):	September 13, 2017
ORDER ISSUANCE DATE (19557):	December 4, 2017
MODIFICATION DECISION:	March 18, 2020 and May 6, 2020

NOTICE OF FINAL RULEMAKING

and

DETERMINATION AND ORDER

The Board of Zoning Adjustment (“Board”), pursuant to the authority set forth in § 306 of the Foreign Missions Act, approved August 24, 1982 (96 Stat. 283; D.C. Official Code § 6-1306 (2012 Repl.)) and Subtitle X of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016 [the “Zoning Regulations”] to which all references herein are made unless otherwise specified) hereby gives notice that it took final action not to disapprove the application of The Commonwealth of Australia (“Applicant”) for a modification of consequence to the plans approved in BZA Order No. 19557 to replace an existing chancery use by demolishing the existing chancery building and replacing it with a new chancery building in the MU-15 zone at premises 1601 Massachusetts Avenue, N.W. (Square 181, Lot 162) (the “Property”). A notice of proposed rulemaking was published in the February 28, 2020 edition of the *D.C. Register*. (67 DCR 2387.) The public meeting on this case was postponed from March 18, 2020 to May 6, 2020.

Background

In Application No. 19557 (the “Original Application”), the Board determined not to disapprove the Applicant’s request to replace an existing chancery use by demolishing the existing Australian chancery building and replacing it with a new chancery building. Order No. 19557 (the “Original Order”) was issued on December 4, 2017 and was subject to the approved plans in Exhibits 41B1-41B2 of the case record for Application No. 19557 (the “Approved Plans”).

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Modification of Consequence

On January 22, 2020, the Applicant filed a request for a modification of consequence to refine several components of the architectural elements and open spaces shown in the Approved Plans. (Exhibits 1-6.) Specifically, the Applicant proposed the following four modifications: (i) refinements to the final detailing of the building façade materials; (ii) an increased height for one of the three approved public art “zones” in public space adjacent to the building on 16th Street to accommodate the final artwork selected for that location; (iii) removal of one street tree in public space on Massachusetts Avenue to achieve compliance with the District’s tree spacing requirements; and (iv) the addition of exterior “Embassy of Australia” signage with up-lighting on the knee wall adjacent to the building’s main entrance.

The Applicant’s requested modification of the Original Order complies with 11 DCMR Subtitle Y § 703.4, which defines a modification of consequence as a “proposed change to a condition cited by the Board in the final order, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Board.”

Pursuant to Subtitle Y §§ 703.8-703.9, the request for modification of consequence shall be served on all other parties to the original application and those parties shall be allowed at least ten days to submit a response to the request. Although there were no parties to the Original Application as it was a rulemaking proceeding,¹ the Applicant provided notice of the request for modification of consequence to Advisory Neighborhood Commission (“ANC”) 2B, the affected ANC, on January 22, 2020. (Exhibit 4.) The ANC submitted a report dated February 21, 2020 (the “ANC Report”) indicating that at a regularly scheduled, properly noticed public meeting on February 12, 2020, at which a quorum was present, the ANC voted to support the modification. (Exhibit 13.)

The Applicant also served its request on the Office of Planning (“OP”). (Exhibit 4.) OP submitted a report dated March 6, 2020 (the “OP Report”) recommending that the Board not disapprove the requested modification of consequence. (Exhibit 15.)

The District Department of Transportation (“DDOT”) also submitted a report dated March 5, 2020, (the “DDOT Report”) indicating that it had no objection to the proposed modification. (Exhibit 14.) The DDOT Report noted, however, that some elements of the Applicant’s proposal will require Public Space Committee approval and a covenant of maintenance.

A notice of proposed rulemaking was published in the February 28, 2020 edition of the *D.C. Register*. No comments were received in response.

¹ Pursuant to Subtitle X § 203.2, an application to locate, replace, or expand a chancery use not otherwise permitted as a matter-of-right, to implement the Foreign Missions Act, approved August 24, 1982 (96 Stat. 282, as amended; D.C. Official Code §§ 6-1301 to 6-1315 (2012 Repl.) shall be considered a rulemaking proceeding. Under Subtitle Z § 506.2, there are no parties to a rulemaking proceeding.

Foreign Missions Act Criteria

When determining whether to not disapprove a modification of consequence, the Board applies the standards applicable to the original application. Pursuant to § 406(d) of the Foreign Missions Act, D.C. Official Code § 6-1306(d), the Board must consider six enumerated criteria when reviewing a chancery application. The provision further dictates who is to make the relevant finding for certain factors. The factors and relevant findings are as follows:

1. The international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation's Capital.

In a letter dated July 20, 2017, the Department of State determined that favorable action on the Original Application would fulfill the international obligation of the United States to facilitate the Commonwealth of Australia in acquiring adequate and secure premises to carry out their diplomatic mission. (Exhibit 32 for Application No. 19557.) The Board concludes that the proposed modifications would not affect this determination.

2. Historic preservation, as determined by the Board of Zoning Adjustment in carrying out this section; and in order to ensure compatibility with historic landmarks and districts, substantial compliance with District of Columbia and federal regulations governing historic preservation shall be required with respect to new construction and to demolition of or alteration to historic landmarks.

The existing structure is a non-contributing to the Massachusetts Avenue and 16th Street Historic Districts. Pursuant to 11-X DCMR § 203.6, the Original Application was referred to the chair of the Historic Preservation Review Board on July 7, 2017 to report as to whether the substantive criteria of this factor were met. (Exhibit 19 for Application No. 19557). No report was received.

The Office of Planning (“OP”), which includes the Historic Preservation Office, concluded that the Approved Plans in the Original Application were generally compatible with the neighborhood and that the public space design related well to the surrounding context. (Exhibit 44 in Application No. 19557.) After reviewing the proposed modifications, OP found that the Applicant has “essentially satisfied and maintained the initial requests expressed by Historic Preservation, Public Space, and DDOT staff” and the proposed modifications are “within approved guidelines, including the placement of security measures, street trees, street furniture and other public space design elements within the historical context of the public space along Massachusetts Avenue and 16th Street, to ensure the provision of active street fronts.” (Exhibit 15.) Based on the record, the Board concludes that this criterion is met.

3. The adequacy of off-street or other parking and the extent to which the area will be served by public transportation to reduce parking requirements, subject to such special security requirements as may be determined by the Secretary of State, after consultation with federal agencies authorized to perform protective services.

The Board concurs with the findings reached by the DDOT in the Original Application that the impacts of the replacement of the chancery building to the surrounding vehicle network will be minimal. (Exhibit 45 for Application No. 19557.) In addition, the Board credits OP's findings for the Original Application that the Applicant will provide adequate vehicle parking spaces in a below-ground garage. (Exhibit 44 for Application No. 19557.) Further, parking access and loading functions would take place off the alley, in conjunction with security screening, and long-term bicycle parking for 27 spaces would be provided north of the site under a canopy cover. The Board also credits OP's finding in the Original Application that this site is adequately served by public transportation and is within one mile of three Metrorail stations: Farragut West, Farragut North, and Dupont Circle. (Exhibit 44 in Application No. 19557.)

The Department of State, after consulting with the Federal agencies authorized to perform protective services, determined that there exist no special security requirements relating to parking in the Original Application. (Exhibit 32 in Application No. 19557.) These aspects of the project will not be affected by the modification requested; therefore, the Board determines that this criterion is met.

4. The extent to which the area is capable of being adequately protected, as determined by the Secretary of State, after consultation with federal agencies authorized to perform protective services.

After consulting with Federal agencies authorized to perform protective services, the Department of State determined that the subject site and area are capable of being adequately protected. (Exhibit 32 in Application No. 19557.) This aspect of the project will not be affected by the modification of the approved plans; therefore, the Board concludes that this criterion is met.

5. The municipal interest, as determined by the Mayor.

OP, on behalf of the Mayor of the District of Columbia, determined that approving the Original Application was in the municipal interest and is generally consistent with the Comprehensive Plan for the Nation's Capital and the Zoning Regulations. (Exhibit 44 for Application No. 19557.) The OP Report noted that the height, bulk, setback, loading, parking, penthouse, and other zoning requirements approved in Original Order are not being altered in the proposed modification of consequence application, and no additional zoning relief is proposed. (Exhibit 15.) OP was also supportive of the modifications proposed in the current Application; therefore, the Board finds that this criterion is met.

6. The federal interest, as determined by the Secretary of State.

The Department of State determined that there is federal interest in this project. Specifically, the Department of State acknowledged the Government of the Commonwealth of Australia's assistance in addressing the United States' land use needs in Canberra. Such cooperation was

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essential for successfully achieving the Federal Government’s mission for providing safe, secure, and functional facilities for the conduct of U.S. diplomacy and the promotion of U.S. interests worldwide. (Exhibit 32 for Application No. 19557.) This aspect of the project will not be affected by the modification of consequence requested; therefore, the Board concludes that this criterion is met.

“Great Weight” to the Written Report of the ANC

The Board must give “great weight” to the issues and concerns of the affected ANC expressed in a written report of an affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Y § 406.2. To satisfy this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978).)

The ANC Report raised no issues or concerns to which the Board could afford great weight.

DECISION

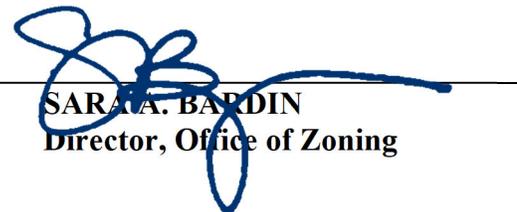
Based upon its consideration of the six criteria discussed above, and having given great weight to the ANC, the Board has decided not to disapprove the application. Accordingly, it is hereby **ORDERED** that the application is **NOT DISAPPROVED**, and that the Property shall be developed subject to the Approved Plans at Exhibit 41B1-41B2 in the record of Application No. 19557, as modified by the revised plans at Exhibit 3 in the record of Application No. 19557A.

VOTE: 4-0-1 (Frederick L. Hill, Peter G. May, Lorna L. John, and Marcel C. Acosta to Not Disapprove; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

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FINAL DATE OF ORDER: May 18, 2020

PURSUANT TO SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.