Before the
BOARD OF ZONING ADJUSTMENT
OF
THE DISTRICT OF COLUMBIA

Appeal of
Sheridan-Kalorama Neighborhood Council

BZA Appeal No. 17086

D.C. OFFICE OF ZONING
2004 FEB 13 PM 4:20

Declaration

of
Richard C. Massey
Office of Foreign Missions
U.S. Department of State

THE DECLARANT, being fully mindful of the penalties for perjury, and fully intent on being bound by the same, does hereby depose and declare as follows:

1. I, RICHARD C. MASSEY, am an Office Director in charge of the property and travel programs in the Office of Foreign Missions, United States Department of State ("OFM"). I have served in this capacity since March, 1985, when I joined OFM from the Department's Office of Protocol.

2. The Office of Foreign Missions was established by the Foreign Missions Act of 1982, 22 U.S.C. Sections 4301, *et seq.* ("FMA"). A key function of OFM is to implement the provisions of the FMA regarding the proposed acquisition, sale or other disposition of the property of foreign missions.

3. The FMA requires all foreign missions to notify OFM prior to any proposed acquisition, sale or other disposition of real property by or on behalf of such missions.

4. As Director of OFM's property program, I am responsible for implementing this provision. As such, I am responsible for reviewing foreign mission notifications of real property transactions and ensuring that they meet the requirements for Department approval. When it is determined that such approval is warranted, I am responsible for issuing the diplomatic note conveying the Department's approval and informing the foreign mission of any additional obligations and/or procedures necessary to complete the proposed transaction, including compliance with local land use and zoning requirements.

5. When a foreign mission requests permission to acquire a chancery from another foreign mission for use as a chancery, and the property has been used continuously for

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chancery purposes on or before October 1, 1982, OFM issues diplomatic notes informing the foreign mission purchaser or lessor that the Department has no objection to the proposed transaction, subject to compliance with any applicable regulations pertaining to any construction or alteration that may be proposed. For administrative convenience (e.g. tax exemption, building permits, etc.) and as a document of record for the District of Columbia Government and the foreign mission, the mission is requested to obtain an occupancy permit from the District of Columbia Government.

6. In these "grandfathered" cases, unlike others, the foreign mission is always informed that chancery use at the proposed location is a matter of right, even if the site lies in a non-matter-of-right zone that would ordinarily require review by the Foreign Mission Board of Zoning Adjustment (FM-BZA). Such a chancery is therefore **not** instructed to seek FM-BZA approval before completing the transaction. The Department has consistently concluded that the FM-BZA is not required in this context because of the "grandfather clause" of the FMA, at 22 U.S.C. 4306(h)(2).

7. Examples of such "grandfather" transfers since 1985 include:

(1) FRANCE TO OMAN:
Chancery of France, at 2535 Belmont Avenue, transferred to Chancery of Oman. Approved by OFM per diplomatic note dated 11/29/1985. OFM letter to DC requesting Occupancy Permit 12/13/1985. Occupancy Permit Application 12/2/1985

(2) CANADA TO KOREA:
Military Mission Annex of Chancery of Canada, at 2450 Massachusetts Avenue, N.W., transferred to Korea Chancery. Approved by OFM per diplomatic note dated 1/3/1990.

(3) GERMANY TO TURKEY:
Chancery of the former German Democratic Republic (East Germany), at 1717 Massachusetts Avenue, N.W., transferred to Chancery of Turkey. Approved by OFM per diplomatic note dated 9/24/1990. OFM letter to DC requesting Occupancy Permit 10/3/1990. Occupancy Permit issued 10/15/1990.

(4) TURKEY TO ST. VINCENT AND THE GRENADINES:
Chancery of Turkey at 1717 Massachusetts Avenue, N.W., transferred to Chancery of St. Vincent and the Grenadines. Approved by OFM per diplomatic note dated 01/14/1991. OFM letter to DC requesting Occupancy Permit 1/198/1991. Occupancy Permit issued 2/12/1991. **Note: This site is one that was grandfathered twice, for a total of three different chancery users in succession. See #3 immediately preceding.*

(5) AUSTRIA TO CROATIA
Chancery of Austria, at 2343 Massachusetts Avenue, N.W., transferred to Chancery of Croatia. Approved by OFM per diplomatic note dated 10/21/1992. OFM letter to DC requesting Occupancy Permit 11/13/1992. Occupancy Permit Application 10/31/1992.

(6) FINLAND TO SIX CHANCERIES OF ORGANIZATION OF EASTERN CARIBBEAN STATES (OECS):
Chancery of Finland, 3216 New Mexico Avenue, N.W., transferred to the six separate chanceries representing the six sovereign states comprising the OECS:

a) Antigua and Barbuda;
b) Dominica;
c) Grenada;
d) St. Kitts and Nevis;
e) St. Lucia; and
f) St. Vincent and the Grenadines.

Approved by OFM per diplomatic note dated 03/05/1993. OFM letter to DC requesting Occupancy Permit 5/25/94. D.C. Occupancy Permit issued 6/9/94. **Note: The individual chancery users are separately enumerated in the relevant documents.*

(7) CANADA TO UZBEKISTAN:
Chancery of Canada, at 1746 Massachusetts Avenue, N.W., transferred to Chancery of Uzbekistan. Approved by OFM per diplomatic note dated 5/20/1996. OFM letter to DC requesting Occupancy Permit 5/21/1996.

(8) SAUDI ARABIA TO BRITISH EMBASSY (HONG KONG OFFICE):
Chancery of Saudi Arabia, 1520 18th Street, transferred to British Chancery Annex -- Hong Kong Economic and Trade Office (currently Annex of the Chancery of China). Approved by OFM per diplomatic note 8/15/1996. OFM letter to DC requesting Occupancy Permit 8/27/1996. Occupancy Permit on file but undated.

(9) SAUDI ARABIA TO BOSNIA
Defense Annex of Saudi Arabian Chancery, 2109 E Street, N.W. transferred to Chancery of Bosnia. Approved by OFM per diplomatic note dated 3/17/1997. OFM letter to DC requesting Occupancy Permit

9/23/1997. Occupancy Permit application 8/11/1997.

(10) ETHIOPIA TO YUGOSLAVIA (Serbia and Montenegro):
Chancery of Ethiopia, 2134 Kalorama Road, N.W., transferred to Chancery of Serbia and Montenegro. Approved by OFM per diplomatic note dated 12/14/01. OFM letter to DC requesting Occupancy Permit 12/28/01. Occupancy Permit Application 12/26/01.

6. To my knowledge and recollection, there has never been a case in which a foreign mission seeking to grandfather a chancery use has sought FMBZA approval.

7. To my knowledge, the Department and the District's interpretation of this provision has never before been challenged in any venue, informally or formally. I have never received any form of written or oral protest on this matter.

8. In all other non-matter-of-right cases, e.g., when a foreign mission seeks chancery use of a property that has not been used as such, the diplomatic note issued under my supervision indicates that the prospective user must first obtain approval of the FM-BZA before purchasing the property. Several examples of such notes are also appended.

9. According to our files, the property at 2319 Wyoming Avenue was purchased by the Government of Jordan for use as a chancery in December 1958. There had been no intervening non-chancery use when it was purchased for use as a chancery by the Government of Yemen in March 2002, and it continues to be used as a chancery today.

AND FURTHER the Declarant saith naught.

SIGNED This 10th day of February, 2004:

Richard C. Massey,
Office Director for Property
and Travel,
Office of Foreign Missions,
U.S. Department of State