

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17972 of the Kingdom of Sweden by the National Property Board Sweden, on behalf of the Embassy of Iceland, pursuant to 11 DCMR § 1002, and § 206 of the Foreign Missions Act, 22 U.S.C. § 4306, to locate a chancery in excess of the permitted non-residential 2.0 floor area ratio limitation of § 931.3, in the W-2 District at premises 2900 K Street, N.W. (Square 1171, Part of Lot 82, including Lots 814, 7001 and 7002).

NOTICE OF FINAL RULEMAKING

and

DETERMINATION AND ORDER

The Board of Zoning Adjustment, pursuant to the authority set forth in § 206 of the Foreign Missions Act, approved August 24, 1982 (96 Stat. 283; D.C. Official Code, § 6-1306) (2001), and Chapter 10 of the Zoning Regulations of the District of Columbia, 11 DCMR, hereby gives notice of the adoption of its determination not to disapprove the application of the Kingdom of Sweden by the National Property Board of Sweden, on behalf of the Embassy of Iceland, to locate a chancery in excess of the permitted 2.0 floor area ratio limitation on non-residential uses at premises 2900 K Street, N.W. (Square 1171, Part of Lot 82, including Lots 814, 7001 and 7002).

Procedural Background

On May 15, 2009, the Applicant filed a chancery application with the Board requesting that the Board not disapprove the application. Pursuant to 11 DCMR § 3134.7, the application was accompanied by a letter from the United States Department of State, dated May 13, 2009, certifying that the Applicant had complied with Section 205 of the Foreign Missions Act (22 USC § 4305)(D.C. Official Code § 6-1305) and that the application could be submitted to the Board.

On May 18, 2009, the Office of Zoning provided notice of the filing of the application to the Department of State. On May 19, 2009, the Office of Zoning provided notice of the filing of the application to the District of Columbia Office of Planning; Advisory Neighborhood Commission (ANC) 2E, the ANC for the area within which the subject property is located; the ANC Commissioner for the affected Single Member District; the Ward 2 Councilmember; the District

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of Columbia Department of Transportation; the U.S. Commission of Fine Arts; and the District of Columbia Historic Preservation Office.

Notice of the filing of the application and notice of the proposed rulemaking were published in the D.C. Register on May 29, 2009 and June 5, 2009 (56 DCR 252 and 56 DCR 4412, respectively). In accordance with the Zoning Regulations, the Board provided written notice to the public more than 40 days in advance of the public hearing. 11 DCMR §§ 3113.13 and 3149.9(c). Therefore, in compliance with the D.C. Administrative Procedure Act (D.C. Official Code Sections 2-501, *et. seq*), the Board also provided more than thirty days' written notice to the public.

The Office of Zoning subsequently scheduled a public hearing on the application for September 1, 2009, and provided notice of the hearing by mailing a copy of the notice of hearing on June 3, 2009 to the Applicant, to ANC 2E, and to all owners of property within 200 feet of the subject property. Notice of the hearing was also published in the D.C. Register on June 5, 2009 (56 DCR 4337), and posted in the Office of Zoning. In addition, on August 10, 2009, the Applicant posted notice on the property in plain view of the public in accordance with 11 DCMR § 3113. The notice given to the public complied with the requirements of 11 DCMR § 3134.9.

The Subject Property

The property that is the subject of the application is located at 2900 K Street, N.W. and is known as Square 1171, Part of Lot 82, including Lots 814, 7001 and 7002. The property is in the W-2 zone district, as well as the Old Georgetown Historic District. The property is bounded by Rock Creek on the east, 30th Street on the west, National Park Service property and the Potomac River on the south, and the Whitehurst Freeway on the north.

The building on the site was constructed in 2005 as a matter of right, in compliance with all applicable DC Zoning Regulations. The building has two separate "towers", both of which have an address of 2900 K Street, N.W. The south "tower," known as House of Sweden, and located on Tax Lot 814, is a four-story building, with one below-grade level. House of Sweden is occupied by the chancery of the Kingdom of Sweden on a portion of the first and all of the second floors, (Air Rights Lot 7001) with commercial conference, meeting, function and exhibit space on the lower level and first floor. The top two floors (Air Rights Lot 7002) contain a mix of office and residential uses. The north "tower" (Condominium Lots 2001 through 2012) is a five-story building. The lower level and floors one through four are devoted to office use. The fifth floor contains primarily residential use, and also includes the chancery of the Embassy of Liechtenstein. There is a one-level parking garage for the building, located beneath both towers, which is accessed at grade from the north tower.

The property contains 61,260 square feet of land area. The W-2 zone permits a maximum FAR of 4.0, of which up to 2.0 FAR may be devoted to non-residential uses. The two towers together

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currently contain 122,219 square feet of gross floor area devoted to office use (2.0 FAR), and 54,243 square feet of gross floor area devoted to residential use (0.88 FAR).

The Applicant's Proposal

The Chancery Office of the Embassy of Iceland will occupy Unit 509 in House of Sweden. The adjacent Unit 508 will be occupied as the residence of the Deputy Chief of Mission. That residential use does not require review by the BZA. Unit 509 contains 2,742 square feet of gross floor area (the total is 3,225 square feet including common space allocated to Unit 509 in the hallway and lobby). With this occupancy, the total non-residential FAR will be 2.05, which is 0.05 FAR greater than the maximum non-residential use permitted in a W-2 District pursuant to 11 DCMR § 931.3. A chancery is permitted as a matter of right in a W-2 Zone, and in other mixed-use commercial zones, subject to compliance with all matter of right area limitations. When an otherwise matter of right chancery will not comply with such area requirements, its location or expansion becomes subject to BZA review. See Application No. 16206 (Embassy of the Kyrgyz Republic); Application No. 15494 (Royal Embassy of Thailand), and Application No. 14794 (Embassy of Spain). However, the BZA does not undertake the analysis set forth in the Zoning Act and Regulations for granting area relief, but instead applies only the six factors stated in FMA § 406(d); D.C. Official Code § 6-1306(d). See e.g. *Embassy of the People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 310, 318 (D.C.,1987) (FMA is the exclusive procedure available to a matter of right chancery to obtain a special exception for construction of a radio tower and antenna).

The Hearing

The Embassy of Iceland's Deputy Chief of Mission testified that the chancery currently includes a staff of four diplomats and three non-diplomatic staff. There is an average of five to seven visitors to the Embassy on a daily basis, including deliveries, but this number could vary widely in any given month. He explained that most business is conducted by telephone, e-mail and other correspondence. He stated that parking for one diplomatic vehicle will be provided in the parking garage beneath the building, and that the Embassy intends to rent spaces for up to four vehicles (depending upon the needs of the Chancery) in the public parking garage at the corner of 30th and K Streets, N.W., adjacent to the north tower. The Circulator Bus, and seven Metrobus routes, run along M Street, N.W. The site is also well served by taxi cabs, and is within a short walking distance from the Foggy Bottom/GWU Metrorail Station. The meeting facilities and function space in the lower level of House of Sweden will be available to the Embassy of Iceland for meetings and functions, if desired. The Embassy will place its official seal on the north façade of the building, adjacent to the official seal of the Embassy of Sweden.

The Department of State submitted a favorable report on the application, dated July 17, 2009. The Office of Planning submitted a report on August 25, 2009, recommending that the Board of Zoning Adjustment not disapprove the application. The Office of Planning report also noted that the location of the official seal on the north façade of the south tower is subject to review by the

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Commission of Fine Arts and the D.C. Historic Preservation Review Board. By letter dated July 8, 2009, Advisory Neighborhood Commission 2E reported to the Board that it voted to recommend approval of the application. No reports were received from the District of Columbia Department of Transportation, the U.S. Commission of Fine Arts, or the District of Columbia Historic Preservation Office.

Evaluation of the Application

Subsection 406(d) of the Foreign Missions Act, D.C. Official Code § 6-1306(d) directs the Board to consider six factors when analyzing a chancery application. For certain of these factors, the provision also indicates who is to make the relevant finding. These six factors are:

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

As recommended by the Secretary of State and the Office of Planning, the Board finds that favorable action on the application will fulfill the international obligation of the United States to facilitate the acquisition of adequate and secure premises by the Government of Iceland for its diplomatic mission in the Nation's Capital.

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 location of the chancery will include the alteration of a building that is located in the Old Georgetown Historic District, but is not a landmark. Indeed, the building was constructed just a few years ago. Subsection 406 (d)(2) of the Foreign Missions Act, D.C. Official Code §6-1306 (d)(2) only requires substantial compliance with District and federal regulations governing historic preservation laws “with respect to *new construction and to demolition of or alteration to historic landmarks.*” The Applicant will not be undertaking new construction, nor will it be alternating a landmark. Therefore, this portion of the factor is not relevant to the Board’s decision.

Even though the alteration of a non-landmarked building in a historic district is not specifically mentioned in the factor, the Board believes that the compatibility of such alterations should be considered. The Board finds no incompatibility with the Old Georgetown Historic District will result from the alteration. The exterior of the existing building already includes the official seal of the Embassy of Sweden. The proposed alteration would only add another similarly sized seal on the building’s north face.

The Board will not address the Office of Planning's view that the proposed alteration is subject to further review by the Commission of Fine Arts and the Mayor's Agent. The Board is only required to rule upon the scope of its jurisdiction and not the jurisdiction of others.

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 finds that the Embassy of Iceland's proposal to provide parking for one diplomatic vehicle will be sufficient for the Embassy's use. Additionally, there is a public parking garage immediately north of the north tower, where the National Property Board has an option to lease up to 24 parking space. The Embassy also intends to rent spaces for up to four vehicles (depending upon the needs of the Chancery) in that public parking garage. The building is a short walking distance from the Foggy Bottom/GWU Metrorail Station, and is in close proximity to the Circulator Bus and Metrobus Routes along M Street in Georgetown. In addition, there is a taxi stand at Washington Harbour, located across 30th Street from the building. There is metered parking along K Street, as well as along 30th Street to the north of K Street, plus a metered parking lot across Rock Creek from the site, and a number of privately-owned parking facilities within two blocks of the site.

Furthermore, the Secretary of State has not recommended any special security requirements related to parking, as indicated in the letter from the Department of State (Exhibit 30) and the testimony of Richard Massey, Office Director in the Office of Foreign Missions at the Department of State. (T., p. 23).

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 consultation with Federal agencies authorized to perform protective services, the Secretary of State has determined that the subject property and area are capable of being adequately protected. (Letter from the Department of State, Exhibit 30).

5. The municipal interest, as determined by the Mayor

The Director of the Office of Planning, on behalf of the Mayor of the District of Columbia, has determined that favorable action on this application is in the municipal interest and is consistent with the Comprehensive Plan. (OP Report, Exhibit 33).

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

The Secretary of State has determined that a favorable decision on this application would serve

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the Federal interest. Both the national and municipal governments of Iceland have assisted with the zoning and land use needs of the U.S. Embassy in Reykjavik. (Letter from the Department of State, Exhibit 30).

Having considered the above factors, it is hereby **ORDERED** that this application is **NOT DISAPPROVED**.

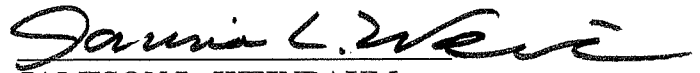
Vote of the Board of Zoning Adjustment taken at its public meeting on September 1, 2009, not to disapprove the application.

VOTE: **4-0-1** (Marc D. Loud, Meridith H. Moldenhauer, Peter G. May, and Marcel A. Acosta to not disapprove; no other Board members participating)

BY THE DC BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

ATTESTED BY:


JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: NOV 13 2009

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION,

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HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
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As Director of the Office of Zoning, I hereby certify and attest that on **NOVEMBER 13, 2009**, 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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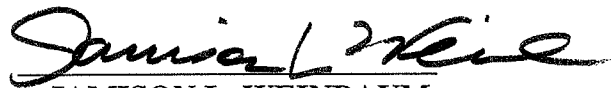
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ATTESTED BY:

A handwritten signature in dark ink, appearing to read "Jamison L. Weinbaum", written over a horizontal line.

JAMISON L. WEINBAUM
Director, Office of Zoning