

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18131 of the Embassy of the People's Republic of China, pursuant to 11 DCMR § 1002, to permit the construction of a new chancery and embassy staff residential building, as a replacement for an existing chancery and embassy staff residential building in the R-1-B and R-5-D Districts at premises 2300-2310 Connecticut Avenue, N.W. (Square 2526, Lot 197).

NOTICE OF FINAL RULEMAKING

and

DETERMINATION AND ORDER

The Board of Zoning Adjustment ("Board"), 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) (2008 Repl.) ("FMA"), and Chapter 10 of the Zoning Regulations of the District of Columbia, (11 DCMR), and after having held a public hearing, hereby gives notice of the adoption of its determination to not disapprove the application of the Embassy of the People's Republic of China ("Applicant") to permit the construction of a new chancery and embassy staff residential building, as a replacement for an existing chancery and embassy staff residential building, in the R-1-B and R-5-D Districts at premises 2300-2310 Connecticut Avenue, N.W. (Square 2526, Lot 197).

Specifically, as a result of this determination, the Applicant will be permitted to demolish the building at 2300 Connecticut Avenue, which is a non-contributing resource to the Sheridan-Kalorama Historic District. The building at 2310 Connecticut Avenue is a contributing resource to the Historic District, and the Applicant will be permitted to remove all its interior structural elements while retaining the north and east façades and a portion of the south façade, and incorporating them into a new building on the site. The new building will incorporate both residential and chancery office uses.

A notice of proposed rulemaking was published in the August 20, 2010 edition of the *D.C. Register* (57 DCR 7807). No comments were received in response.

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

Board of Zoning Adjustment
District of Columbia
CASE NO.18131
EXHIBIT NO.2

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Pursuant to § 206(d) of the Foreign Missions Act, D.C. Official Code § 6-1306(d), the Board's consideration of chancery applications is based exclusively upon the six factors delineated in that provision. For certain of these factors, the provision also indicates who is to make the relevant finding. Those factors and the 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.

As recommended by the Secretary of State, 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 the People's Republic of China for its diplomatic mission in the Nation's Capital. (Exhibit 38, Letter from U.S. Department of State.)

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 Board must first determine whether there has been substantial compliance with applicable historic preservation regulations. While "substantial compliance" is not defined in the FMA or the Zoning Regulations, in *Sheridan-Kalorama Historical Ass'n. v. Christopher*, 49 F.3d 750, 311 U.S. App. D.C. 16 (D.C. Cir. 1995), the United States Court of Appeals for the District of Columbia Circuit noted that "'compliance' with these laws is not as much a matter of meeting any specific standard as it is of submitting the proposal to the appropriate regulatory body or bodies for review and comment," 49 F.3d at 759, 311 U.S. App. D.C. at 25. In that case, the court found substantial compliance through the referral of the application to the Mayor's Agent for Historic Preservation. At present, the Mayor has made the Director of the Office of Planning his agent for carrying out his historic preservation responsibilities and, as noted, notice of this application was provided to the Office of Planning ("OP"), which stated that the State Historic Preservation Officer, located within OP, had no concerns with the Applicant's proposal. (Exhibit 35, OP Report.)

Further, the United States Commission of Fine Arts, which has authority to review this application pursuant to the Shipstead-Luce Act, approved May 16, 1930 (46 Stat. 366; D.C. Official Code § 6-611.01), has reviewed and approved the concept design for the Applicant's proposed new embassy and chancery residential building. (Exhibit 52.)

Therefore, substantial compliance has occurred.

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 Applicant's proposed new building will provide 154 below-ground parking spaces when 58 are required by the Zoning Regulations. The building will also provide 69 bicycle parking spaces, and is well-served by public transit. Several Metrobus lines service Connecticut Avenue and Calvert Street, within a five minute walk to the site. The site is also 0.4 miles south of the Woodley Park Metrorail station and 0.6 miles north of the Dupont Circle Metrorail station. Therefore, the Board finds that adequate parking and public transportation exist to service the expanded residential/chancery use.

After consultation with Federal agencies authorized to perform protective services, the Secretary of State has determined that there exist no special security requirements relating to parking in this case. (Exhibit 38.)

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, after the installation of the proposed security fence, which has an average height of approximately nine feet, six inches, the subject property and area are capable of being adequately protected. (Exhibit 38.)

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

The Director of OP, 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. (Exhibit 35.)

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

Pursuant to Annex I of the *Agreement Between the Government of the United States of America and The Government of the People's Republic of China on the Conditions of Construction of Diplomatic and Consular Complexes in the People's Republic of China and the United States of America*, signed August 20, 2009, the Government of the People's Republic of China is not obligated to grant the necessary approvals for the construction of a planned annex to the Chancery of the U.S. Embassy in Beijing until after the Board has determined not to disapprove this application. Further, both the Government of the People's Republic of China and the cities of Beijing and Guangzhou have, in the recent past, assisted and favorably approved the zoning and land-use requests of the U.S. Embassy and the Consular Post in Guangzhou. Therefore, the Secretary of State has determined that a favorable decision on this application would serve the Federal interest. (Exhibit 38.)

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Having considered and balanced the above factors, it is hereby **ORDERED** that this application (pursuant to Plans - Exhibit 31-C, as revised by Exhibit 48) is **NOT DISAPPROVED**.

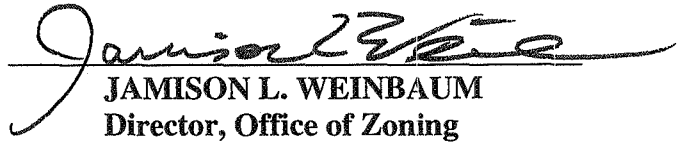
Vote of the Board of Zoning Adjustment taken at its public meeting on December 14, 2010, Not to Disapprove the application:

VOTE: **4-0-1** (Meridith H. Moldenhauer, Nicole C. Sorg, Peter G. May, and Marcel C. Acosta Not to Disapprove; No other Board member member (vacant) participating)

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

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

ATTESTED BY:


JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: FEB 07 2011

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 TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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, 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
Board of Zoning Adjustment



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As Director of the Office of Zoning, I hereby certify and attest that on **FEB 07 2011**, 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:

Christopher H. Collins, Esq.
Kyrus L. Freeman, Esq.
Holland and Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006

Clifton C. Seagroves
Acting Office Director
Office of Foreign Missions
U.S. Department of State
Washington, D.C. 20520

Chairperson
Advisory Neighborhood Commission 2D
2122 California Street, N.W.
Washington, D.C. 20008

Single Member District Commissioner 2D01
Advisory Neighborhood Commission 2D
2126 Connecticut Avenue, N.W., #34
Washington, D.C. 20008

Jack Evans, Councilmember
Ward Two
1350 Pennsylvania Avenue, N.W., Suite 106
Washington, D.C. 20004

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

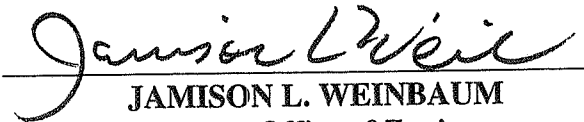
E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

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Melinda Bolling, Esq.
General Counsel
Office of General Counsel
Department of Consumer and Regulatory Affairs
1100 4th Street, S.W., 5th Floor
Washington, D.C. 20024

ATTESTED BY:


JAMISON L. WEINBAUM
Director, Office of Zoning