

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18162 of Humberto T. Gonzalez and Francisco H. Gonzalez on behalf of the Embassy of the Republic of Congo, pursuant to 11 DCMR §§ 1002, 350.6 and to Section 206 of the Foreign Missions Act, to allow the location of a chancery, and to permit improvements in the public space in connection with the chancery, in the RC/R-5-D District at premises 1720 16th Street, N.W. (Square 178, Lot 800).

HEARING DATES: February 8 and March 8, 2011
DECISION DATE: March 8, 2011

NOTICE OF FINAL RULEMAKING
AND
DETERMINATION AND ORDER

The Board of Zoning Adjustment (“Board” or “BZA”), pursuant to its authority set forth in § 206 of the Foreign Missions Act (“FMA”), approved August 24, 1982 (96 Stat. 283; D.C. Official Code § 6-1306),¹ 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 Humberto T. Gonzales and Francisco H. Gonzalez on behalf of the Embassy of the Republic of Congo (the “Applicant”) to permit the chancery use of property located in the DC/R-5-D Zone District at 1720 16th Street, N.W. (Square 178, Lot 800) (the “subject property”) and to make related improvements in the public space to allow erection of a flagpole in front of the property.

Specifically, the Applicant proposes to use the subject property as a chancery for its ambassador and an anticipated permanent staff of 10 employees. The chancery’s hours of operation will be 9:00 a.m. to 5:00 p.m., Monday through Friday. The Applicant expects approximately 20 visitors to the chancery each week, given that visa applications do not require visits to the chancery. The Applicant will host social or diplomatic events at the chancery two or three times

¹ Section 206 of the Foreign Missions Act is also codified at 22 U.S.C. § 4306.

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per year, with a maximum of 50 guests at each event.²

The Applicant proposes to renovate the building at the subject property and to make certain changes to accommodate the chancery use. The rear courtyard area will be converted for use as parking, where four compact parking spaces, including one handicapped-accessible space, will be accessible from the public alley through a new 10-foot-wide opening in the rear garden wall. A 30-foot flagpole will be erected in public space along 16th Street in front of the chancery building.

The Applicant originally proposed creation of a new circular driveway in the public space along 16th Street, which would have required new curb cuts on both 16th Street and Riggs Place, but ultimately revised the application to eliminate the driveway and curb cuts.³ The driveway had been intended for use by the ambassador daily and for the drop-off and pick-up of guests during social and diplomatic events. In constructing the new driveway, the Applicant would have removed the existing fence along the front of the property and installed a new fence with gates to accommodate the driveway.

Evaluation of the Application. Pursuant to § 406(d) of the Foreign Missions Act, D.C. Official Code § 6-1306(d), a determination by the Board concerning the location of a chancery must be based on the six following criteria:

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;
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;
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;

² The Applicant initially indicated that diplomatic or social events, with a maximum of 50 guests in attendance, would occur once per month, but the application was revised at the public hearing and in subsequent filings.

³ At the public hearing, the Applicant also proposed a shorter driveway that would have extended 12 feet from a new curb cut on Riggs Place north into the public space in the front of the subject property. That option would have eliminated the existing curb cut on Riggs Place leading into the garage, and would not have required a curb cut on 16th Street or removal of the perimeter fence at the front of the subject property. In this proceeding, the Board has considered only the Applicant's final proposal, which does not propose any driveway, new curb cuts, or changes to the perimeter fence along the 16th Street frontage of the property.

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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;
5. The municipal interest, as determined by the Mayor of the District of Columbia; and
6. The federal interest, as determined by the Secretary of State.

Factor 1 – International Obligation of the United States. By letter dated February 4, 2011, the Department of State, Office of Foreign Missions, indicated that “favorable BZA action on the present application would fulfill the international obligation of the United States to facilitate the acquisition of adequate and secure premises by the Government of the Republic of Congo for its diplomatic mission in Washington, D.C.” (Exhibit 37.)

Factor 2 – Historic Preservation.

The property is located in the 16th Street Historic District and has been designated as contributing to the character of the historic district. 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. Subsection 316.1 of Title 10, Subtitle C of the District of Columbia Municipal Regulations, HISTORIC PRESERVATION, requires that all applications affecting historic properties be referred to the Historic Preservation Review Board (“HPRB”) when such properties are not under the jurisdiction of the Commission of Fine Arts, as is the case here. On November 29, 2010 the Office of Zoning provided notice of the filing of the application to the Historic Preservation Office of the Office of Planning (“OP”) for referral to the HPRB. Substantial compliance with the District’s historic preservation regulations has therefore been achieved.

The Board’s substantive historic preservation review is guided by the Historic Landmark and Historic District Protection Act of 1978 (the “HP Act”). Because this property contributes to its historic district, the Board must find that the proposed alterations are necessary in the public interest, or that failure to issue the permit will result in unreasonable economic hardship to the owner. HP Act § 6(f); D.C. Official Code § 6-1105(f). The term “necessary in the public interest” is defined to mean “consistent with the purposes of this subchapter as set forth in § 6-1101(b) or necessary to allow the construction of a project of special merit.” HP Act § 3 (10); D.C. Official Code § 6-1102 (1).

The Board concludes that the proposed alterations will be consistent with the purposes set forth in § 2(b) of the HP Act. That subsection, codified at D.C. Official Code § 6-1101(b), sets forth

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several groups of purposes, each applying to particular scenarios. The purposes that apply to alterations of buildings in historic districts, as set forth in subparagraph (b)(1), are:

- (A) Retaining and enhancing those properties which contribute to the character of the historic district and to encouraging their adaptation for current use; and
- (B) Assuring that alterations of existing structures are compatible with the character of the historic district.

The report adopted by the HPRB describes the house as “a prominent mansion” that “freely mixes Arts and Crafts, Queen Anne and Romanesque elements, but is perhaps most noteworthy for its picturesque roofline of Flemish stepped gables and red terra cotta tile.” The HPRB report also states that the building “has an imposing presence on the street, and is one of the few surviving free-standing mansions from the 19th century in the historic district.” (Exhibit 34 at Exhibit 2.)

Much of the testimony in opposition to the application focused on the Applicant’s initial proposal to create a circular driveway in the public space at the front of the subject property, which would have required two new curb cuts as well as the removal of the decorative iron fence and its replacement with a new fence. However, the Applicant’s revisions to its initial proposal eliminated those grounds for objection to the application. The Applicant plans to renovate the interior and exterior of the contributing building, and the proposed chancery use will not otherwise affect the exterior of the building except to add a flagpole in the front of the property.

The report of the Historic Preservation Review Board opposed the driveway aspect of the Applicant’s original proposal but did not otherwise raise concerns about the application. With regard to the Applicant’s plans to create parking spaces at the rear of the property, the HPRB report indicated that “[c]reating an opening in the rear yard, facing the public alley, and paving a portion of the small rear yard for vehicular parking raises no preservation issues or concerns.” (Exhibit 34 at Exhibit 2.) In concluding that the proposed changes to the rear yard are compatible with the 16th Street Historic District, the Board credits the testimony of the Applicant’s historic preservation consultant that the rear yard is not visible from the public right of way and that the brick rear garden wall is not of uniform construction or entirely original to the construction of the house and garage at the subject property.

The Board therefore concludes that the application, as modified to eliminate the proposed driveway, curb cuts, and changes to the existing iron fence, is consistent with the applicable purposes of the HP Act.

Factor 3 – Parking and Public Transportation. The subject property is served by public transportation, including several Metrobus routes along 16th Street. The site is located approximately two-thirds of a mile from two Metrorail stations - Dupont Circle on the Red Line and U Street/African-American Civil War Memorial/Cardozo on the Green and Yellow Lines. As noted above, the subject property will contain four compact parking spaces in the area

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converted from the rear courtyard as well as space for two vehicles in the existing garage. Pursuant to § 2120.3 of the Zoning Regulations, the subject property, as a building contributing to the character of the historic district, is not required to provide additional parking as a result of the change of use because no additional gross floor area is being added to the building. The District Department of Transportation (“DDOT”) had no objection to the application as finally amended, noting that parking accessible from the alley would be most appropriate for chancery vehicles.

The Applicant plans to engage a third-party valet parking provider during special events at the property; the valet parking provider will be licensed, insured, required to obtain the necessary temporary valet parking permit, and responsible for providing off-street parking spaces for all valet-parked vehicles. The Applicant identified 10 commercial parking facilities in the vicinity of the subject property, in addition to a parking lot across 16th Street behind the Scottish Rite Temple, which may be available for valet parking. DDOT indicated that the Applicant’s plans for valet parking service will be evaluated when the necessary application is submitted.

In its letter of February 4, 2011, the Department of State, Office of Foreign Missions, indicated that, after consultation with Federal agencies authorized to perform protective services, the Department of State determined “that there exist no special security requirements relating to parking in this case.” (Exhibit 37.)

Factor 4 – Adequate Protection. In its letter of February 4, 2011, the Department of State, Office of Foreign Missions, indicated that, after consultation 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 37.)

Factor 5 – Municipal Interest. OP was initially unable to make a determination of whether the application was in the municipal interest, but at the hearing on March 8, 2011, OP, on behalf of the Mayor, testified that the application, as revised, satisfied the municipal interest. The OP report indicated that the proposed chancery would generally be consistent with the Comprehensive Plan.

Factor 6 – Federal Interest. By its letter of February 4, 2011, the Department of State, Office of Foreign Missions, indicated that “there is a federal interest in this project,” citing the assistance provided by the Government of the Republic of Congo with zoning and land-use needs in the construction of the U.S. Embassy in Brazzaville and the essential nature of such cooperation 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 37.)

For the reasons discussed above, it is hereby **ORDERED** that this application, pursuant to Exhibit 48, Plans, is **NOT DISAPPROVED**.

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Vote of the Board of Zoning Adjustment taken at its public hearing on March 8, 2011 to Not Disapprove the application:

VOTE: **4-0-1** (Meridith H. Moldenhauer, Nicole C. Sorg, Peter G. May, and Marcel C. Acosta to Not Disapprove; No other Board 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: APR 29 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 PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

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. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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.

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As Director of the Office of Zoning, I hereby certify and attest that on April 29, 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:

John Patrick Brown, Jr., Esq.
Jacques B. DePuy, Esq.
Kate M. Olson, Esq.
Greenstein DeLorme & Luchs, P.C.
19620 L Street, N.W., Suite 900
Washington, D.C. 20036

Serge Mombouli
Ambassador Extraordinary and Plenipotentiary
Embassy of the Republic of Congo
4891 Colorado Avenue, N.W.
Washington, D.C. 20011

Chairperson
Advisory Neighborhood Commission 2B
#9 Dupont Circle, N.W.
Washington, D.C. 20036

Single Member District Commissioner 2B04
Advisory Neighborhood Commission 2B
1701 16th St., N.W., #630
Washington, D.C. 20009

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:

A handwritten signature in cursive script, reading "Jamison L. Weinbaum", written over a horizontal line.

JAMISON L. WEINBAUM
Director, Office of Zoning