

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18242 of The Embassy of The Republic of Serbia, pursuant to 11 DCMR § 1001, and 22 USC § 4306 of the Foreign Missions Act, to allow the location of a chancery use in the D/R-3 and R-3 Districts at premises 2221 R Street, N.W., and 2222 Decatur Place, N.W. (Square 2516, Lots 4 and 29).¹

HEARING DATES: July 26 and September 13, 2011
DECISION DATE: September 13, 2011

NOTICE OF FINAL RULEMAKING

and

DETERMINATION AND ORDER

The Board of Zoning Adjustment (“Board” or “BZA”), pursuant to the authority set forth in § 206 of the Foreign Missions Act (“FMA”), approved August 24, 1982 (96 Stat. 283; D.C. Official Code § 6-1306 (2008 Repl.)), and Chapter 10 of the Zoning Regulations of the District of Columbia (DCMR Title 11), hereby gives notice of the adoption of its determination not to disapprove the application of the Embassy of the Republic of Serbia (the “Applicant”) to permit the chancery use of property located in the D/R-3 and R-3 Zone Districts at 2221 R Street, N.W., and 2222 Decatur Place, N.W. (Square 2516, Lots 4 and 29) (“Subject Property”) and to permit a parking space in the public space in front of the Subject Property.

PRELIMINARY MATTERS

The Application

On April 25, 2011, the Applicant filed a chancery application with the Board. (Exhibit 1.) The

¹ The caption has been amended to reflect that the Subject Property is currently two lots of record: Lot 4, which contains the former residence of the ambassador of Yugoslavia, at 2221 R Street, N.W.; and Lot 29, which is improved with a smaller building formerly used as a garage and residence for a member of the ambassador’s staff, at 2222 Decatur Place, N.W. As one of the successor states of the former Federal Republic of Yugoslavia, the Republic of Serbia recently became the successor in title to the Subject Property. The two existing lots (4 and 29) will be combined through the subdivision process into one record lot.

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application was filed by Christopher H. Collins, Esq., with the law firm of Holland & Knight, who was authorized to represent the Applicant before the Board. (Exhibit 7.) Pursuant to 11 DCMR § 3134.7, the application was accompanied by a letter from the United States Department of State (“Department of State” or “State Department”) certifying the Applicant had complied with the FMA and that the application could be submitted to the Board. (Exhibit 25.)

Notice of Proposed Rulemaking

Notice of the filing of the application and a notice of proposed rulemaking were published in the *D.C. Register* on April 29, 2011. (58 DCR 3853 and 3854). 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 3134.9(c).) On April 28, 2011, the Office of Zoning provided notice of the filing of the application to the District of Columbia Office of Planning (“OP”) (Exhibit 15), Advisory Neighborhood Commission (“ANC”) 2D, where the Subject Property is located (Exhibit 16), the Single Member District member for ANC 2D02 (Exhibit 17), the District Department of Transportation (“DDOT”) (Exhibit 19), and the Councilmember for Ward 2 (Exhibit 18). Notice of the filing was provided to the Department of State on April 26, 2011. (Exhibit 14.) The Office of Zoning scheduled a public hearing on the application for July 26, 2011, and mailed a copy of the notice of hearing to the Applicant (Exhibit 20), ANC 2D (Exhibit 21), and owners of all property within 200 feet of the Subject Property (Exhibit 22). Notice of the hearing was published in the *D.C. Register* on May 6, 2011 (58 DCR 4017). In addition, on June 30, 2011, the Applicant posted notice on the property in plain view of the public in accordance with 11 DCMR § 3113. (Exhibit 26.)

Request for Party Status

The Board received requests for party status filed by Eric Greenwald and J. Ross Newman, two residential neighbors, both of whom own property on Decatur Place immediately adjacent to the Subject Property. The FMA § 206(f) requires that the regulations issued to carry out its provisions provide for proceedings of a rulemaking, rather than of an adjudicatory nature. (D.C. Official Code § 6-1306 (f).) The Board’s rules therefore provide that no person has standing as a party in a chancery application. (11 DCMR § 3134.3.) However, any person wishing to do so may appear at the hearing and present evidence, testimony, or argument. (11 DCMR § 3134.12.) Therefore, the requests for party status were denied.

Absence of National Capital Planning Commission Representative from Hearing

Christopher Collins, counsel for the Applicant, noted that the National Capital Planning Commission (“NCPC”) representative was not present at the public hearing. He suggested the presence of the NCPC representative was required as a matter of law. Although FMA § 206(i)(2)(B) states that when the Board hears a chancery application the NCPC representative shall be its Executive Director, nothing in the FMA prevents the Board from hearing an application in the NCPC member’s absence, so long as the Board has a quorum with the

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members then present. *See Application No. 17481 of the Republic of Hungary*, 53 DCR 9740 (2006).

Government Reports

OP and the Department of State submitted favorable reports on the application. (Exhibits 34 and 35, respectively.)

Advisory Neighborhood Commission

ANC 2D appeared at the public hearing to express their conditional support for the application. ANC 2D urged the Board to not disapprove the application, only if “(1) it includes the stipulation that the current plans to remove the green space in the rear of the property, replacing it with a paved parking lot, is removed from the proposal, and (2) that there will be no subsequent attempts to create a parking lot.” (Exhibit 27.)

Persons in Opposition

Ellen McCarthy, from Arent Fox, representing the Sheridan Kalorama Neighborhood Council (“SKNC”) and Eric Greenwald and J. Ross Newman, testified in opposition to the application, and asserted that the Applicant’s proposal was not consistent with the municipal interest. The Sheridan-Kalorama Historical Association, Inc. submitted a letter in opposition to the Board. (Exhibit 28.)

Persons in Support

The Embassy of the Republic of Cyprus, which is located adjacent to the Subject Property, submitted a letter in support of the application. (Exhibit 37.)

THE PROPOSED CHANCERY USE

The property that is the subject of this application is located in two adjoining lots, known as 2221 R Street and 2222 Decatur Place, which will be subdivided into one lot of record by the Applicant (Square 2516, Lots 4 and 29.) The Subject Property has a total lot area of 9,750 square feet and is improved with a four-story masonry building, with frontage along R Street, which was constructed in 1912, and a two-story masonry carriage house, with frontage along Decatur Place, N.W. The main building contains 11,208 square feet of floor area, and has a building height of 50 feet. As proposed, the first floor will include offices, reception and meeting rooms, and support functions; the second floor will include restored formal spaces; while the third and fourth floors will include office and support space. A brick-clad hydraulic elevator shaft will be added to the exterior of the building, within the closed court at the rear of the building, and will not be visible from the street. The carriage house contains a garage with two parking bays on the ground floor and a staff residence on the second level. Both buildings are currently vacant.

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The Applicant proposes to use the Subject Property as a chancery for its ambassador and an anticipated permanent staff of 12 diplomats and five administrative personnel, including a driver who will live on the premises in the staff residence on the second floor of the carriage house. The chancery's hours of operation will be 9:00 a.m. to 5:00 p.m., Monday through Friday. The Consular Section is open from 10:00 a.m. to 1:00 p.m. for visas and other services. The Applicant expects approximately 25 visitors to the Consular Section each week, but the number of visitors conducting other business is expected to average five per week. The Applicant will host special events at the chancery once or twice a year. The Applicant estimates these special events will last between two and three hours, with approximately 100 guests in attendance at each.

As shown on the revised plans included with the application, the Applicant proposes to provide parking and landscaping on site. The Applicant's final plan incorporates modifications to reflect OP's requests, as well as comments made by the opposition.² The final plan includes four open parking spaces in the rear yard; this parking area will use pervious pavers and will include a six-foot-wide planting strip in the middle to accommodate a mature tree, which will provide visual relief from the parking surface from either side of the property. The garage in the first floor of the carriage house will be modified to provide parking and pass-through access: the western parking bay in the garage will serve as vehicle parking, while the eastern bay will provide pass-through access to the parking area in the rear yard and will double as a parking space for the last car to arrive. One vehicle will be parked in the public space between the sidewalk and the chancery building³, and the Applicant proposes to request one diplomatic parking space on R Street.

The Applicant proposes to renovate the interior and exterior of both existing buildings on the Subject Property. Two exterior changes to the principal building, fronting on R Street, are proposed to improve access to the building: a brick-clad hydraulic elevator shaft, approximately 7 feet x 9 feet, will be constructed in the closed court at the rear of the building, and the front step at the consular entrance will be lowered. Additional public space improvements will include: landscaping; the placement of appropriate exterior signage adjacent to the main entrance and the Consular Section entrance; and if required, the replacement of the existing flagpole with one of a similar size, in the same location. The remaining public space features are existing and will remain. These include the two curb cuts for vehicle entrance/exit on the one-way westbound R Street, plus the paved motor court and planter beds in front of the building, as well as the canopy, entry way and other architectural projections into the public space on R Street, and the

² The Applicant's original proposal provided for a total of seven open parking spaces in the rear yard, one in the motor court in front of the chancery building, and one diplomatic parking space on R Street. ANC 2D and SKNC expressed their opposition to the removal of green space and conversion of the rear yard into parking. OP requested that the Applicant "...investigate alternative parking pad designs and landscape options to lessen the impacts on this green area, and potentially reducing the number of on-site parking spaces." (Exhibit 34.)

³ Although parking is not typically allowed in public space, the Board has the authority over public space features in chancery applications. See, *Application No. 17886-A of the Republic of South Africa*, order issued April 14, 2009; *Application No. 18131-A of the Embassy of the Peoples' Republic of China*, order issued May 18, 2011.

curb cut on Decatur Place leading to and from the parking area. Hose bibs will be installed in discrete locations on both the front and rear facades of the principal building to facilitate landscape maintenance. Additional repairs to improve the existing exterior architectural details and elements will be made. Existing windows will be repaired, to the extent possible. If necessary because of deterioration, replacement windows of the same material and profile will be installed. The exterior walls will be repaired, tuck pointed, and painted. The existing metal canopy, located over the main entrance, will be repaired and refinished.

Changes to the carriage house will include interior renovations of the second-floor residence and an upgrade of the existing garage doors. New brick garden walls will be constructed from both sides of the carriage house to the side property boundaries, to screen the view of the rear yard parking area from the street.

DETERMINATION

I. Jurisdiction over Lot 29 Portion of Application

Subsection 1002.1 of the Zoning Regulations states in part, “To locate, replace, or expand a chancery in an R-5-D, R-5-E, or SP District or in the D Overlay District ... application shall be made to the Board of Zoning Adjustment.”

The Zoning Regulations contain no other provision authorizing an application to locate, replace, or expand a chancery in areas not identified in this subsection. While Lot 4 is zoned D/R-3 and therefore meets the above criteria, Lot 29 meets none. That does not mean that the BZA is without jurisdiction to consider the application for that property; however, it must first determine whether the area is generally suitable for chancery uses. *See, Application No. 17481 of the Republic of Hungary, supra* (R-1-A property); *Application No. 16620 of the Embassy of the Republic of Azerbaijan, 47 DCR 10215 (2000) (R-1-A property); Application No. 14820 of the Defense Procurement Division on behalf of the Coordination Council for North American Affairs, September 23, 1988 (R-5-B property).*

The Board therefore first considered whether the area surrounding Lot 29 was suitable for chancery uses. Suitability is determined on a case-by-case basis, depending upon the nature and extent to which the “surrounding area” is already occupied by office and institutional uses.⁴ *See Application No. 17481 of the Republic of Hungary, supra.*

Square 2516 and the surrounding area are characterized by a mixture of residential, diplomatic, and institutional uses. OP described the neighborhood character surrounding the Subject Property as moderate density residential and office uses. The adjacent properties are comprised of a mixture of row dwellings as well as buildings currently used as residences or devoted to

⁴ The word “area,” under the FMA, indicates “...an area of sufficient size to have significance and import for the purposes of land use regulations.” Order No. 509A at 2.

chancery or other nonresidential use. There are numerous diplomatic, institutional, and commercial land uses in Square 2516 and in the surrounding area, in addition to residential uses.⁵

Based upon the prevalence of existing diplomatic and office uses, the Board concludes that the area surrounding Lot 29 is suitable for the location of a chancery use. Having made that determination, the Board went on to apply the six factors enumerated in § 406(d) of the Foreign Missions Act to the proposed chancery use on the entire Subject Property.

II. The Proposed Chancery Use should not be Disapproved

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 exclusively on the following six 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 to 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;
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.

As will be explained below, the Board determined that the application should not be disapproved because it meets all of these criteria. This "not disapproval" includes the public space relief described above as well as zoning relief as described under Factor 6. When zoning relief is

⁵ The following diplomatic uses are in Square 2516: Embassy of the Republic of Cyprus: 2211 R Street, N.W.; Union of Burma: 2223 R Street, N.W.; Republic of Chile: 2305 Massachusetts Avenue, N.W.; Government of the Republic of Egypt: 2300 and 2310 Decatur Place, N.W.; and 2301 Massachusetts Avenue, N.W.; State of Vietnam: 2251 R Street, N.W.; and Decatur Place, N.W.; Republic of the Philippines: 2253 R Place, N.W.; Government of Pakistan: 2201 R Street N.W.; and 2315 Massachusetts Avenue, N.W.; Republic of Kenya: 2249 R Street, N.W.; Republic of Haiti: 2311 Massachusetts Avenue, N.W.; Republic of Armenia: 2225 R Street, N.W.

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requested in the context of a chancery application, the variance and special exception criteria of §§ 3103 and 3104 do not apply. Instead, the Board may only apply the six FMA factors in determining whether to not disapprove that portion of the chancery application before it.

Criterion 1 -- International Obligation of the United States

As asserted by the State Department, 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 Republic of Serbia for its diplomatic mission in Washington.” (Exhibit 35.)

Criterion 2 -- Historic Preservation (as Determined by the BZA)

The Subject Property is located in the Sheridan-Kalorama 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. “Substantial compliance” is not defined in the FMA. 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.” *Sheridan Kalorama Historical Ass’n v. Christopher*, 49 F.3d 750, 759-760 (D.C. Cir. 1995) (referral of a chancery application to the Mayor’s Agent for Historic Preservation was “...well within the limits of ‘substantial compliance.’”).

At present, the Mayor has made the Director of OP his agent for carrying out his historic preservation responsibilities. Notice of this application was provided to OP. Therefore, substantial compliance has been met.

As to the substantive issue presented, the Applicant’s architects have consulted with the staff of the Historic Preservation Office and the plans have received preliminary approval from staff. The architects will follow the adopted guidelines for renovation of historic buildings. Confirming this, at the public hearing, OP testified that the State Historic Preservation Office, located within OP, had no concerns with the Applicant’s proposal. (Exhibit 34.) The Board finds that the proposed plans are consistent with the applicable purposes set forth in the Historic Landmark and Historic District Protection Act of 1978, D.C. Law 2-144, as amended; D.C. Official Code §§ 6-1101 *et seq.* (2001). Therefore, this criterion is satisfied.

Criterion 3 -- Adequacy of Parking (subject to such special security requirements as may be Determined by the Secretary)

There are currently two parking spaces provided on the Subject Property. No additional parking is required under the Zoning Regulations.⁶ However, as previously discussed, the Applicant

⁶ Although additional parking would typically be required for the change in use proposed, because the building is a contributing structure it falls within the historic preservation exception provided under 11 DCMR § 2120.3, which

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seeks to increase the parking provided on site. The Applicant's revised plan provides for a total of seven on-site parking spaces and has incorporated additional landscaping to lessen the impacts to the surrounding area.⁷

The Subject Property is well served by public transportation. The site is within walking distance of the Dupont Circle Metrorail station. Several Washington Metropolitan Area Transit Authority bus routes service Massachusetts Avenue and Florida Avenue, within a short walk to the site. Therefore, the Board finds that adequate parking and public transportation exist to service the proposed chancery use.

After consultation with Federal agencies authorized to perform protective services, the Department of State, Office of Foreign Missions, determined "that there exist no special security requirements relating to parking in this case."

Criterion 4 -- The Extent to which the Area is Capable of being Adequately Protected (as Determined by the Secretary)

The Department of State, Office of Foreign Missions, after consultation with Federal agencies authorized to perform protective services, "...determined that the site and area are capable of being adequately protected." (Exhibit 35.)

Criterion 5 -- The Municipal Interest (as Determined by the Mayor)

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. (Exhibit 34.)

The improvements on the Subject Property are nonconforming as to height and closed court area, and will become non-conforming as to lot occupancy when the use of the property changes from residence to chancery.⁸ The existing building heights will not be changed, and lot occupancy – both existing and proposed – will be within the two-percent flexibility that the Zoning Administrator is authorized to permit pursuant to § 407 of the Zoning Regulations. The hydraulic elevator will be located in the corner of the closed court and will not diminish the light and air to the chancery building or to adjacent properties. OP concluded that the requisite zoning relief will not adversely impact neighboring properties and thus recommends the Board grant the

states that additional spaces are not required for additions to contributing structures unless the gross floor area would increase by 50% or more, which is not the case here.

⁷ The Applicant recognizes that the inclusion of a diplomatic parking space on R Street is subject to the approval of DDOT. To the extent that such approval is not granted, the Applicant requests that two parking spaces be allowed in the public space in front of the chancery building.

⁸ The height of the existing building is non-conforming and is not proposed to be changed. Construction of the elevator in the closed court will reduce the court area to 345 square feet and the existing nonconforming lot occupancy will increase to 41.8%.

requested relief from 11 DCMR §§ 400.1, 403.2 and 406.1.⁹

Criterion 6 -- The Federal Interest (as Determined by the Secretary)

According to the Department of State, "the Government of the Republic of Serbia and the City of Belgrade have generously assisted with the zoning and land-use needs required for the current construction of a new U.S. Embassy in Belgrade. Such cooperation is 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 35.) Therefore, the Department of State has determined that a favorable decision on this application would serve the Federal interest.

III. Great Weight

The Board is required under § 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) (2001) to give great weight to the issues and concerns raised in the written report of the affected ANC. The ANC conditioned its support of the use of the Subject Property as a chancery on the elimination of parking on Lot 29. The Board has considered the arguments of the ANC, but does not find them persuasive in light of the predominately mixed-use residential, diplomatic, and institutional character of the neighborhood, the past and proposed future use of Lot 29 as accessory to an abutting diplomatic use, and the Applicant's revised plans, which reduced the proposed number of outdoor parking spaces to four and proposed additional landscaping in the rear yard.

Accordingly, it is hereby **ORDERED** that this application is **NOT DISAPPROVED**, and is subject to Exhibit No. 10 – PLANS, as revised by Sheets G-1, G-1.2, and A-7 contained in Exhibit No. 49A.

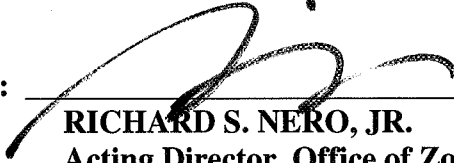
Vote of the Board of Zoning Adjustment constituted in accordance with the Foreign Missions Act taken at its special public meeting on September 13, 2011, not to disapprove the application.

VOTE: 3-0-2 (Meridith H. Moldenhauer, Nicole C. Sorg and Peter G. May voting to not disapprove; Marcel C. Acosta and Lloyd J. Jordan not participating.)

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

A majority of Board members has authorized the issuance of this order.

ATTESTED BY:


RICHARD S. NERO, JR.
Acting Director, Office of Zoning

⁹ Note that, pursuant to § 3134, the variance and special exception criteria of §§ 3103 and 3104 are not applicable to chancery applications.

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FINAL DATE OF ORDER: October 24, 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.

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 October 24, 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 or delivered by electronic mail in the case of those ANC's and SMD's that have opted to receive notices thusly, to each person, entity, and public agency listed below:

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