

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17543 of the Kyrgyz Republic, pursuant to 11 DCMR § 1002.1, to allow the location of a chancery in the D/R-3 District at premise 2360 Massachusetts Avenue, N.W. (Square 2507, Lot 50).

**NOTICE OF FINAL RULEMAKING
AND
DETERMINATION AND ORDER**

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 19091
EXHIBIT NO. 8

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) ("the FMA") and Chapter 10 of the Zoning Regulations of the District of Columbia, 11 DCMR), hereby gives notice of the adoption of a determination not to disapprove the application of the Kyrgyz Republic ("Applicant") for the location of a chancery at premise 2360 Massachusetts Avenue, N.W. (Square 2507, Lot 50) ("subject property").

Procedural Background

On July 24, 2006, the Applicant filed a chancery application with the Board. Pursuant to 11 DCMR § 3134.7, the application was accompanied by a letter from the United States Department of State ("DOS") certifying that the Applicant had complied with § 205 of the FMA (D.C. Official Code § 6-1305 (2001), and that the application could be submitted to the Board.

Notice of the filing of the application and notice of the proposed rulemaking were published in the *D C Register* on August 11, 2006, at 53 DCR 6659 and 6591, 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 3134.9(c). Therefore, in compliance with the D.C. Administrative Procedure Act (D.C. Official Code § 2-501 *et seq*), the Board also provided more than thirty days' written notice to the public.

On July 27, 2006, the Office of Zoning ("OZ") provided notice of the filing of the application to the Commission of Fine Arts, the State Historic Preservation Officer for the District of Columbia, the U.S. Department of State, the D.C. Office of Planning ("OP"), the D.C. Department of Transportation ("DDOT"), the D.C. Council Member for Ward 2, Advisory Neighborhood Commission ("ANC") 2D, the ANC within which the subject property is located, and the Single Member District member for 2D02.

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The Office of Zoning subsequently scheduled a hearing on the application for October 24, 2006, and mailed notice of the hearing to the Applicant, ANC 2D, and all owners of property within 200 feet of the subject property. Notice of the hearing was also published in the *D.C. Register* on August 11, 2006, at 53 DCR 6518, and posted in the Office of Zoning. In addition, on October 3, 2006, the Applicant posted on the subject property, in plain view of the public, two zoning placards affording notice of the hearing, in accordance with 11 DCMR § 3113. Accordingly, the notice given to the public complied with the requirements set forth in 11 DCMR § 3134.9.

The Subject Property

The property that is the subject of this application is located at 2360 Massachusetts Avenue, N.W., in an R-3 zone district, as well as within the Diplomatic Overlay District and the Sheridan-Kalorama Historic District. The subject property is 2,726 square feet and is developed with a 4,455 square foot, 3-story row dwelling constructed in 1912. The façade of the row dwelling sits on the front property line and includes an entrance to a below-grade parking garage accessed directly from Massachusetts Avenue. This below-grade garage, and the driveway leading to it, which is in public space, can, together, accommodate three vehicles. There is no vehicular access to the rear of the property because it backs onto Rock Creek Park and is heavily wooded.

Although the property is located in a residential zone district, the character of its neighborhood is marked with diplomatic and institutional development. Properties surrounding the subject property include residential uses and many other foreign mission uses, including embassies, chanceries, and related facilities. Within walking distance of the property is the Dupont Circle Metro Station, and numerous bus lines traverse Massachusetts Avenue. There is also usually some street parking available during the daytime.

The Applicant's Proposal

The Embassy of the Kyrgyz Republic purchased the subject property in 2005, intending to use the property as the ambassador's residence. The Applicant, however, decided to expand the use to include the chancery for the Kyrgyz Republic and, due to a misunderstanding, began chancery operations before coming to this Board.

The Applicant intends to retain the third floor of the row dwelling in residential use for diplomats, their families, and guests. The first floor will be used for ceremonial and receiving functions, and the second floor will be used for consular and chancery offices

The chancery will typically operate from 9:00 a.m. to 5:00 p.m., Monday through Friday. Six diplomats, including the ambassador, currently work in the building, and this number is not anticipated to increase. Three of the diplomats will reside on the third floor, reducing the number of individuals commuting to the site. Of the other three employees, two commute to the site using public transportation and one walks. Most chancery business is conducted electronically, or by telephone, mail, or messenger. Most diplomatic meetings occur off-site with an average of three to four small meetings typically occurring on-site per week.

The foreign mission owns only one vehicle, which will be used by the ambassador and her administrative and diplomatic staff. The vehicle will be parked in the on-site below-grade garage, and so will not take up a street parking space. The staff encourages visitors to use public transportation or to use cabs. The embassy may host special events, involving up to approximately 35 people, the maximum number of people who could be accommodated in the first floor rooms. For these events, guests will be informed that there is no parking available, and will be encouraged to use public transportation or cabs. Often, guests are driven to and from such events, with no parking necessary.

Other than the placement of the national flag and coat of arms adjacent to the front entrance to the building, the Applicant has not made, and does not plan to make, any changes to the exterior of the building.

The Hearing

At the October 24, 2006 hearing, the Kyrgyz ambassador and a member of her diplomatic staff testified as to their current and planned future use of the subject property. They expressed their commitment to maintain the upkeep of the row dwelling and to be a "good neighbor" in this residential, albeit heavily diplomatic, neighborhood.

The Office of Planning recommended not disapproving the application, although it also recommended that several conditions be imposed. No other government agencies commented on the application, either orally or in writing, although OP stated in its October 16, 2006 report that the Historic Preservation Office did not express any concerns with the Applicant's proposal. ANC 2D and the Sheridan-Kalorama Neighborhood Council both opposed the application; the latter pointing out that the subject property has always been a residence. There was also opposition by neighbors concerned about the possibility of poor upkeep of the property, noise, general disturbance of the residential area, and increased foot and vehicle traffic.

At the close of the hearing, a decision meeting was scheduled for October 31, 2006.

Evaluation of the Application

D.C. Official Code § 6-1306(d) directs the Board to consider six factors when analyzing a chancery application. These factors are: (1) the international obligation of the United States, (2) historic preservation, (3) adequacy of off-street parking and proximity to public transportation, (4) the extent to which the area can be adequately protected, (5) the municipal interest, and (6) the federal interest. At the decision meeting on October 31, 2006, the Board considered all the evidence presented and the six factors enumerated above. The Board discussed the conditions recommended by OP, but having found no likelihood of adverse impacts to be mitigated by such conditions, decided not to impose conditions on the application. The Board then voted not to disapprove the application, as explained below.

First, as recommended by the Secretary of State and the Office of Planning, favorable action on the application will fulfill the international obligation of the United States to facilitate the acquisition of adequate and secure facilities by the Kyrgyz Republic for its diplomatic mission in the Nation's Capital.

Second, the Applicant is not proposing to change the building in any way inconsistent with historic preservation principles or detrimental to the historic district in which it is located. Only a national flag and coat of arms has been added to the exterior of the building and no other changes are contemplated. The Board finds that the historic preservation criterion has been satisfied.

Third, there will be only one vehicle associated with the chancery and the Applicant is providing adequate off-street parking. The Secretary of State has determined that there are no special security requirements relating to such parking.

Fourth, after consultation with federal agencies authorized to perform protective services, the Secretary of State has determined that the subject property and the area are capable of being adequately protected.

Fifth, 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 generally consistent with the Comprehensive Plan for the National Capital and the Zoning Regulations.

Sixth, the Secretary of State has determined that a favorable decision on this application will serve the federal interest and stated that it has no objection to the use of the property as a chancery.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. OP recommended that the application be not disapproved and the Board agrees with this recommendation. While OP also proposed certain conditions for this order setting forth the manner in which the chancery would operate, the Board determined that in the absence of likely adverse impacts, conditions were not appropriate. OP stated at the hearing that the rationale for the proposed conditions was primarily for there to be predictability for the community as to how the chancery will operate in the neighborhood. Such predictability is accomplished by the embodiment in this Order of those facts describing Applicant's proposal.

ANC 2D voted not to support the application, but set forth no reasons or concerns in its letter to the Board. The Board has considered the ANC's recommendation, but disagrees with it. The Square within which the proposed chancery use is located is within the Diplomatic Overlay, and therefore has already been designated by the Zoning Commission as appropriate for such use. The chancery use has been found to be in the municipal interest and a past history of residential use is not controlling. Further, the Board found no evidence of likely adverse impacts. For all these reasons and those stated above, the Board is not persuaded by the ANC's recommendation.

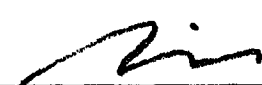
Accordingly, it is hereby **ORDERED** that this application is **NOT DISAPPROVED**.

Vote of the Board of Zoning Adjustment taken at its public meeting on October 31, 2006, to **NOT DISAPPROVE** the application: 4-0-1 (Geoffrey H. Griffis, Patricia Gallagher, Ruthanne G. Miller, and John G. Parsons, to not disapprove. Curtis L. Etherly, Jr. not voting, not having participated.)

BY THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order

ATTESTED BY: _____


JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: JAN 24 2007

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

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, 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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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17543

As Director of the Office of Zoning, I hereby certify and attest that on January 24, 2007, 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 and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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