

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19301 of The Republic of The Gambia, pursuant to 11 DCMR § 1002 and § 206 of the Foreign Missions Act, to allow the location of a chancery in the SSH-1/R-1-B District at premises 5630 16th Street, N.W. (Square 2721W, Lot 27).

HEARING DATE: July 12, 2016

DECISION DATE: July 12, 2016

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 (2012 Repl.)) and Chapter 10 of the Zoning Regulations of the District of Columbia, Title 11 DCMR, and after a public hearing on July 12, 2016, hereby gives notice that it took final action not to disapprove the application of The Republic of The Gambia (“Applicant”) to allow the location of a chancery in the SSH-1/R-1-B District at premises 5630 16th Street, N.W. (Square 2721W, Lot 27) (the “Subject Property”).

A notice of proposed rulemaking was published in the May 27, 2016 edition of the *D.C. Register*. (63 DCR 8093.) In accordance with 11 DCMR §§ 3113.13 and 3134.9(c), the Board provided written notice to the public more than 40 days in advance of the public hearing. On May 4, 2016, the Office of Zoning (“OZ”) provided notice of the filing of the application to the United States Department of State (Exhibit 15), the District of Columbia Office of Planning (“OP”) (Exhibit 13), Advisory Neighborhood Commission (“ANC”) 4A, whose boundaries encompass the Subject Property (Exhibit 11), the Single Member District Commissioner for ANC 4A07 (Exhibit 12), the District Department of Transportation (“DDOT”) (Exhibit 14), and the Councilmember for Ward Four (Exhibit 16).

OZ scheduled a public hearing on the application for July 12, 2016 and provided notice of the hearing by mail to the Applicant (Exhibit 23), ANC 4A (Exhibit 22), and the owners of all property within 200 feet of the subject property (Exhibit 24), as well as to the Department of

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Board of Zoning Adjustment
District of Columbia
CASE NO.19301
EXHIBIT NO.42

BZA APPLICATION NO. 19301
PAGE NO. 2

State (Exhibit 19), the National Capital Planning Commission (Exhibit 18), and the Commission of Fine Arts (Exhibit 17). Notice of the hearing was published in the *D.C. Register* on May 27, 2016. (63 DCR 7970.)

The Proposed Chancery Use

The Applicant proposes to locate its chancery at the Subject Property located at 5630 16th Street, N.W. The Government of The Republic of The Gambia purchased the property to relocate its chancery operation from leased office space at 2233 Wisconsin Avenue, N.W. to provide an improved presence for its diplomatic mission in the United States. The Subject Property is improved with a two-story, one-family dwelling with a two-car garage and driveway at the rear. The Applicant does not propose any exterior addition or modification to the structure itself, aside from the installation of a flag pole and a small plaque, as well as minor interior alternations. On the perimeter of the property, the Applicant proposes to install a 42-inch tall fence, for security purposes.

For the proposed chancery operations, no more than six employees, including the ambassador, would be employed by the chancery. One staff person would reside on the property. The Subject Property provides onsite parking for up to six vehicles, with two parking spaces in the garage and four spaces on the adjacent parking pad. The chancery owns four cars, which would be the only vehicles commuting to the site on a daily basis. The Applicant indicates that the proposed chancery use would not generate a large number of visitors, as limited consular services would be offered and most services would be conducted by mail. The Applicant estimates that it would receive about three visitors on a weekly basis and that these visitors would likely be diplomats or businesspersons who would travel by taxi or be driven to the property. The Applicant states that up to two special events would be held annually with up to 60 persons.

Suitability of the Surrounding Area for Chancery Use

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 Subject Property is located within the R-1-B District and the Sixteenth Street Heights Overlay, which is not referenced in § 1002.1. The Board may still consider the application for this property; however, it must first determine whether the area is generally suitable for chancery uses.¹ (See, Application No. 18242 of The Embassy of The Republic of Serbia, *supra* (R-3 property); Application No. 17481 of the Republic of Hungary, *supra* (R-1-A property).)

¹ In the Zoning Regulations of 2016, the Zoning Commission revisited the issue of “suitability” and amended the regulations regarding chancery applications accordingly. In applying the Zoning Regulations of 2016, the Board instead will consider whether the introduction of a chancery use would cause an existing residential neighborhood to become a mixed use neighborhood, based on the percentage of uses in that area. The Zoning Regulations of 2016 will become effective on September 6, 2016, and therefore, do not apply to this application.

BZA APPLICATION NO. 19301
PAGE NO. 3

The Board therefore first considers whether the area surrounding the Subject Property is 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. (See Application No. 17481 of the Republic of Hungary, *supra*.) The Board credits OP's finding that the neighborhood surrounding the Subject Property contains other institutional and diplomatic missions, particularly along 16th Street, N.W. Similar uses near the Subject Property include property owned by the Government of the Republic of Egypt at 5500 16th Street, N.W. and the Royal Thai Government at 5600 16th Street, N.W. Based on the presence of other institutional and international organizational uses in close proximity, the Board finds that the area surrounding the Subject Property is suitable for chancery use. Therefore, the Board may consider the application by evaluating the criteria provided in the Foreign Missions Act.

Foreign Missions Act Criteria

Pursuant to § 406(d) of the Foreign Missions Act, D.C. Official Code § 6-1306(d), the Board must consider six enumerated criteria when reviewing a chancery application. The provision further dictates who is to make the relevant finding for certain factors. The factors and 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.

In a letter dated June 21, 2016, the Department of State determined that favorable action on this application would fulfill the international obligation of the United States to facilitate the Republic of The Gambia in acquiring adequate and secure premises to carry out their diplomatic mission. (Exhibit 34.) The Board finds that this criterion has been met.

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.

As Office of Planning ("OP") notes in its report, the Subject Property is not a historic landmark, nor is it located within a historic district. (Exhibit 35.) Accordingly, the Board finds that no historic preservation basis exists for it to disapprove this application.

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.

BZA APPLICATION NO. 19301
PAGE NO. 4

The Board concurs with the findings reached by OP that the parking spaces provided on site are adequate to satisfy the Zoning Regulations. The Board also credits OP's finding that Subject Property is well served by public transportation and on-demand car services. (Exhibit 35.)

The Department of State, after consulting with the Federal agencies authorized to perform protective services, determined that there exist no special security requirements relating to parking in this case. (Exhibit 34.) The Board finds that this criterion has been met.

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 consulting 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 34.) Based on this determination, the Board finds that this criterion has been addressed.

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

OP, on behalf of the Mayor of the District of Columbia, determined that approving this application is in the municipal interest and is generally consistent with the Comprehensive Plan for the Nation's Capital and the Zoning Regulations. (Exhibit 35.) OP notes that this property is located within the Sixteenth Street Heights Overlay and the R-1-B District. Pursuant to § 1553.2, a new nonresidential use is permitted within the Sixteenth Street Heights Overlay as a special exception, subject to the requirements of § 1553.2(a)&(b). The Board credits OP's analysis as to those requirements and finds that they have been met. Accordingly, the Board determined that this criterion has been addressed.

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

The Department of State determined that there is a federal interest in this project. Specifically, the Department of State acknowledged the Government of the Republic of The Gambia's assistance in addressing the United States' land use needs in Banjul, The Gambia. Such cooperation was 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 34.) Based on this determination, the Board finds that this criterion has been addressed.

ANC 4A Recommendation

The Board is required under § 13(d) of the Advisory Neighborhood Commission 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 which is ANC 4A. The ANC submitted a resolution dated June 9, 2016, indicating that at its regularly scheduled, duly noticed public hearing on June 7, 2016, with a quorum present, the ANC voted

BZA APPLICATION NO. 19301
PAGE NO. 5

2-0 to support the application, with 12 proposed conditions. (Exhibit 28.) At its public hearing on July 12, 2016, the Board modified the language of several conditions, for clarity, based on testimony of the Applicant, ANC 4A Commissioner David Wilson, and the representative of the Department of State. In addition, the Board determined that three of the ANC's proposed conditions were outside the Board's jurisdiction, and therefore unenforceable as conditions of its order. The Board noted that, although those conditions would not be adopted as part of its order, these provisions remain a part of the agreement negotiated between the Applicant and ANC 4A. With the revisions made to the ANC's proffered conditions discussed during the public hearing, the Board was persuaded to follow ANC 4A's recommendation to not disapprove the application, with conditions.

Based upon its consideration of the six criteria discussed above, and having given great weight to the ANC, the Board has decided not to disapprove this application. As a result, the Applicant will be permitted to allow the location of a chancery in the SSH-1/R-1-B District at premises 5630 16th Street, N.W.

Accordingly, it is hereby **ORDERED** that the application is **NOT DISAPPROVED, SUBJECT TO EXHIBIT 32 – REVISED DC SURVEYOR'S PLAT – AND SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The chancery shall be used only for the activities of The Republic of The Gambia.
2. The chancery will occupy 4,123 square feet comprising the first and second floors of the property with the basement level being devoted to an apartment where a Gambian staff member will reside full time.
3. The number of chancery officials and employees, including the Ambassador, on-site at any one time may not exceed six persons.
4. The public hours of operation of the chancery shall be between 9:30 AM to 4:00 PM.
5. The chancery will limit the use of the Property for large receptions, to no more than 60 persons, twice a year.
6. The exterior of the building will be maintained in its current excellent condition and no addition or exterior alteration of the Property will occur, such as an antenna, unless deemed necessary by the U.S. Department of State. The chancery may have a small plaque and a flag on a flag pole located in the front of the building indicating the presence of the chancery.
7. Pedestrian access to the chancery shall be from 16th Street, N.W.
8. Up to five vehicles will be parked at the chancery's parking spaces and The Republic of The Gambia shall forgo its right to designate on-street parking spaces for diplomatic use.

BZA APPLICATION NO. 19301
PAGE NO. 6

9. The Sixteenth Street Heights Civic Association (“SSHCA”) and the Ambassador of The Republic of The Gambia shall hold quarterly meetings to discuss neighborhood issues.

Vote of the Board of Zoning Adjustment taken at its public hearing on July 12, 2016, to Not Disapprove the application:

VOTE: 4-0-1 (Marnique Y. Heath, Anita Butani D’Souza, Peter G. May, and Marcel C. Acosta to Not Disapprove; Frederick L. Hill not 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:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: September 20, 2016

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

APPROVAL OF THIS 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. THE 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

BZA APPLICATION NO. 19301
PAGE NO. 7

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.