ADVISORY NEIGHBORHOOD COMMISSION 3-C

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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08-Rosalyn P. Doggett
09-Ruthanne Miller

DISTRICT OF COLUMBIA
2000 NOV 27 AM 9:22

November 27, 2000

Foreign Missions Board of Zoning Adjustment
441 4th Street, N.W.
Washington, D.C. 20001

BZA
Case No. 16620
Exhibit No. 60

Re: Application No. 16620
Embassy of the Republic pf Azerbaijan
2741 34th Street, N.W.

Dear Commissioners:

Enclosed is Advisory Neighborhood Commission 3C's (ANC 3C) proposed findings of fact and conclusions of law, set forth in a proposed form of determination and order, with respect to Application No. 16620 by the Embassy of the Republic of Azerbaijan. The Embassy has asked the Foreign Missions Board of Zoning Adjustment for permission to convert a single family detached house in an R-1-A district, into a chancery office.

ANC-3C urges the Board to ***disapprove*** the Application on the grounds that the location of a chancery in this low-density residential neighborhood is contrary to the Foreign Missions Act, the Comprehensive Plan and the zoning that implements the Comprehensive Plan.

In essence, Square 2122, the square in which the proposed chancery office would be located, and the overall neighborhood, are overwhelmingly low density residential and chancery office uses exist only along Massachusetts Avenue in the *original* mixed-use diplomatic district (the "*original* D district") established in 1978. The neighborhood has no "institutional uses" as defined by National Capital Planning Commission (NCPC) and the Zoning Regulations. Finally, there are insufficient existing office or institutional uses in Square 2122 to justify a chancery office in this neighborhood.

Board of Zoning Adjustment
District of Columbia
CASE NO.16620
EXHIBIT NO.60

Thank you for your consideration of our views on this application.

Sincerely,

Ruthanne G. Miller

Chair, ANC 3C

Appendix A — Proposed form of Determination and Order

Appendix B — Zoning Map of the Proposed Site and Surrounding Neighborhood

Appendix C — Amendments to Zoning Map for 16th Street and Massachusetts Avenue as a result of Zoning Order Nos. 237 (Apr. 14, 1978) creating the *original* D district

Appendix D — Excerpt from Planning Report – Revised Foreign Missions and International Organizations Element of the Comprehensive Plan for the National Capital (July 28, 1983)

Appendix E — Excerpt from National Capital Planning Commission, Criteria and Methodology for Site Selection for the Creation of Chancery Centers by Federal Agencies on Federal Properties in the District of Columbia (August 1, 1984).

Appendix F — Board of Zoning Adjustment Order No. 14820 (Defense Procurement Division on behalf of the Coordination Council for North American Affairs [Taiwan]) (Sept. 7, 1988).

Appendix G — Excerpt from web page (http://www.state.gov/background_notes/holysee_0007_bgn.html) of the Department of State

Appendix A

Proposed form of Determination and Order

DISTRICT OF COLUMBIA REGISTER
Volume __, No. __
December __, 2000
Actions of the Executive Branch and Independent Agencies
Notices, Opinions, and Orders
Boards, Commissions, and Agencies

Board of Zoning Adjustment - Orders - Appl. No. 16620
(The Embassy of the Republic of Azerbaijan)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16620 of the Embassy of the Republic of Azerbaijan, pursuant to Section 206 of the Foreign Missions Act, for permission to locate a chancery in an R-1-A District at premises 2741 34th Street, N.W. (Square 2122, Lot 27).

HEARING DATES: October 17 and 24, 2000
DECISION DATE: December 5, 2000

DETERMINATION AND ORDER

I. PRELIMINARY AND PROCEDURAL MATTERS

On July 26, 2000, the owner of the subject property, the Embassy of the Republic of Azerbaijan (the "Embassy"), filed an application with the Board to permit the location of a chancery for the Embassy in a low density residential (R-1-A) district at premises 2741 34th Street, N.W. (Square 2122, Lot 27). The Embassy is represented in these proceedings by Cynthia A. Giordano, Linowes & Blocher LLP.

The application is filed pursuant to Section 206 of the Foreign Missions Act, (D.C. Code § 5-1206 (1994 Repl.)), 22 U.S.C. § 4306 (1999), and 11 DCMR § 1002.1 (1995) (hereinafter referred to as the "Foreign Missions Act"). Under Section 206(b)(2)(B), a chancery is permitted to locate "in any other area, *determined on the basis of existing uses*, which includes *office or institutional uses*, including but not limited to any area zoned mixed-use diplomatic or special purpose, subject to disapproval by the District of Columbia Board of Zoning Adjustment in accordance with" criteria specified in Section 206(d).

The Board's rules of practice and procedure relating to chancery applications are found in 11 DCMR § 3134, 46 DCR 7853 (1999). Under Section 206(f) of the Foreign Missions Act and 11 DCMR §§ 1002.3 and 3134.2, proceedings before the Board on a chancery application are of a rulemaking and not of an adjudicatory nature. Pursuant to 11 DCMR § 3134.7, the application was accompanied by a letter dated July 25, 2000, from the United States Department of State, certifying that that the Embassy has complied with Section 205 of the Foreign Missions Act, relating to the property of foreign missions.

On August 17, 2000, the Board referred the Application to the Zoning Administrator, the Department of Consumer and Regulatory Affairs; the City Council member for Ward 3, ANC 3C and ANC 3C08, the single member district for the area within which the subject property is located. See 10 DCMR §§ 1002.5 – 1002.7, 3113.7,

and 3134.10 and on August 23, 2000, the Board referred the application to the Office of Planning; United States Department of State, Office of Foreign Missions; the Historic Preservation Review Board and the Commission of Fine Arts. By letter dated August 30, 2000, the Commission on Fine Arts indicated that the subject property does not fall within its jurisdiction. Exh. 26. By fax dated October 6, 2000, the Department of State advised the Board that favorable action by the Board would fulfill an international obligation of the United States, that there existed no special security requirements and that there was a substantial federal interest in the proposed chancery; the Department's original letter was received on October 10, 2000. Exh. 32.

Notice of the filing of the application was published in 47 DCR 7246 (Sept. 1, 2000); and notice of proposed rulemaking was published in 47 DCR 7146 (Sept. 1, 2000). Notice of the public hearing, set for October 17, 2000, was published in 47 DCR 6887 (Aug 25, 2000). By letters dated August 17, 2000, the Office of Zoning mailed the notice of hearing to the Embassy and the affected ANC 3C. The Office of Zoning also mailed letters of notice to all individuals and entities listed on the Embassy's list of owners of all property within 200 feet of the boundaries of the subject property. Exh. 7. In addition, on September 29, 2000, the Embassy posted a zoning notice on the front fence of the property, in plain view of the public. Exh. 39.

The Board held a public hearing on the application on October 17, 2000, which was continued to October 24, 2000. As a preliminary matter, the Board considered the request of the Embassy to waive the normal filing fee of $500. Counsel for the Embassy pointed out that the Embassy had previously filed Application No. 16589 but had withdrawn that application prior to the scheduled public hearing because of the requirement that the Board make its decision within six months of the filing of the application and the Embassy's need for more time to prepare its case. Representatives of the Department of State subsequently indicated, however, that the Department had not been prepared to support the initial application. (Statement of Mr. Theodore E. Strickler, Deputy Assistant Secretary of State, Transcript, Oct. 17, 2000, at 75-76). After due consideration, the Board determined to waive the payment of a second filing fee.

At the hearing, the Embassy presented statements by Mr. Hafiz Pashayev, Ambassador of the Republic of Azerbaijan to the United States; Ms. Giordano, counsel to the Embassy, and O.R. George, of George & Associates, Inc., traffic expert.

Mr. Theodore E. Strickler, Deputy Assistant Secretary of State (on October 17, 2000), and Ronald S. Mlotek, Chief Legal Counsel, Office of Foreign Missions, and Ms. Gilda Brancato, Attorney-Adviser, Office of the Legal Adviser (on October 24, 2000), of the United States Department of State, participated in the hearing in support of the application. The Department also arranged for two residents of the District to testify in favor of chanceries generally. In addition, several letters were received in support of the application. (Exhs. 44, 48, 49 and 59).

Over the objections of Mr. Mlotek, the Board waived the filing deadline for the Office of Planning report dated October 13, 2000, Exh 50; on October 23, 2000, the Office of Planning filed a revised report correcting two minor typographical errors. On

October 24, 2000, Mr. Mlotek filed an additional statement (Exh. 52) noting that the original report from the Office of Planning contained the two minor typographical errors.

Based on the low density residential character of the neighborhood, the Office of Planning, as the delegated representative of the Mayor of the District of Columbia, opposed the proposed chancery office **as not in the municipal interest**. Arthur Jackson, community planner, represented the Office of Planning at the hearing on October 17, 2000, and was joined by Ms. Ellen McCarthy, Deputy Director of the Office of Planning, on October 24, 2000.

By letter dated October 6, 2000, ANC 3C opposed the application based on concerns related to maintenance of the low density residential character of the neighborhood. Exh. 31. In addition, Ms Rosalyn Doggett, ANC 3C08, the single member district Commissioner for the subject property, appeared at the hearing on behalf of ANC 3C to oppose the application. Councilpersons Kathy Patterson, Ward 3, and Harold Brazil, At Large, submitted letters dated October 13 and 16, 2000, respectively, supporting the position of ANC 3C. Exhs. 41 and 45.

Several persons also submitted written comments in opposition to the application. The Board received statements, Exhs 27, 29, 33, 34, 35, 36, 37, 38, 42, and 43, signed by a number of residents of the neighborhood opposing the chancery application based on concerns relating to principally to the maintenance of the residential character of the neighborhood and the existing saturation impact of chancery office facilities in the adjacent mixed-used diplomatic district (the "*original* D district"). The statements of the residents also pointed out significant errors of fact made by the Embassy with respect to the neighborhood.

The Board held its decision meeting on December 5, 2000. John G. Parsons and William Lawson, having read the transcript and complete record, participated in and voted at the meeting. The Board, voting _-_, determined to disapprove the application because the site of the proposed chancery is not within an "area, *determined on the basis of existing uses*," that includes the requisite amount of "*office or institutional uses*" so as to be eligible for consideration under Section 206(b)(2)(B) of the Foreign Missions Act. In addition, the Board noted that permitting the invasion of a low density residential neighborhood by foreign chancery offices would be contrary to the legislative history of the Foreign Missions Act and predecessor federal statutes and the planning assurances embodied in the *original* D district under the Zoning Regulations. Further, the Board agrees with the Office of Planning that the proposed chancery location is against the municipal interest reflected the Comprehensive Plan and in the Zoning Regulations for the District of Columbia.

II. THE PROPOSED CHANCERY OFFICE LOCATION

1) THE SITE OF THE PROPOSED CHANCERY OFFICE IS A THREE-BEDROOM HOUSE.

The site of the proposed chancery office is 2741 34th Street, N.W. on Lot 27, Square 2122 on the corner of 34th and Fulton Streets within an R-1-A district. Lot 27 measures 13,386 square feet and is occupied by a detached two-story building configured for use as a three-bedroom single family house with approximately 5,216 square feet.

2) SQUARE 2122 IS OVERWHELMINGLY RESIDENTIAL WITH CHANCERY OFFICES ONLY ALONG MASSACHUSETTS AVENUE AS PROMOTED BY THE 1978 *ORIGINAL* D DISTRICT.

Square 2122, which is more triangular than rectilinear, is zoned R-1-A, the most restrictive low density residential zoning provided for in the Zoning Regulations.

Immediately south of the subject property at 2735 34th Street is another detached single family house of 3,128 square feet (which belongs to the Holy See). Farther south on 34th Street are several lots, two of which are open gardens and the other of which is a garage for 3339 Massachusetts Avenue, a mansion that occupies two lots fronting on Massachusetts Avenue. It was the residence, before 1984, of the Catholic Archbishop who is the representative of the Pope to the Roman Catholic Church in the United States. Since January 10, 1984, the resident Archbishop has been granted diplomatic status in the United States as the Apostolic Nuncio, the ambassador of the Holy See to the United States, and 3339 Massachusetts Avenue is now known as the Apostolic Nunciature, the embassy, or residence, of the Apostolic Nuncio.

Square 2122 is bisected by the *original* D district, with the part of the square fronting on Massachusetts Avenue (and the lots that are associated with the Apostolic Nunciature) included in the *original* D district. Close to the southeast end of Square 2122 on Massachusetts Avenue is the Finnish Chancery, which was constructed in 1991, after the Board's decision in Application No. 15487 (June 2, 1991). The last lot is parkland owned by the National Park Service.

3) THE OVERALL NEIGHBORHOOD IS OVERWHELMINGLY RESIDENTIAL WITH CHANCERY OFFICES ONLY ALONG MASSACHUSETTS AVENUE AS PROMOTED BY THE 1978 *ORIGINAL* D DISTRICT.

The balance of the neighborhood, which generally may be considered to be the triangle bounded by Massachusetts Avenue, 34th Street and Garfield Street, consists of approximately 73 detached single family houses, generally of three to four bedrooms with compact yards. In addition to the part of Square 2122 that fronts on 34th Street, the neighborhood consists of the part of Square 2120 that fronts on 34th Street and Square 1939 (which fronts on both 34th Street and Massachusetts Avenue) and Squares 2141 and 1942. Square 2119, which fronts on 34th Street, is vacant parkland.

The neighborhood is a low density residential district. "Of right" uses in an R-1-A district include, among other uses, one-family detached dwellings, churches or other places of worship, embassies,[1] and grandfathered chanceries[2]. Additional uses permitted in R-1-A districts include private schools (11 DCMR § 206) and clerical and religious

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[1] Defined as the official residence of an ambassador or other chief of a diplomatic mission, or that portion of a combined chancery/ embassy devoted to use as such official residence. 11 DCMR § 199.10)

[2] Under the Zoning Regulations, chanceries existing on September 22, 1978, such as the Belgian chancery located at the corner of Garfield and 34th Street, are grandfathered in an R-1-A district provided, that after February 23, 1990, the continued use of a chancery is limited to the government that lawfully occupied the chancery on that date and no additional structure may be constructed on the lot that is occupied by the chancery). 11 DCMR § 201.1. Chanceries are also only a grandfathered use in low density residential neighborhoods under the Foreign Missions Act.

group residences in excess of 15 persons (which would cover 3339 Massachusetts Avenue if it had that many residents); provided the use does not adversely affect the neighborhood (*11 DCMR § 215*).

Immediately across 34th Street from the subject property, in Square 1939, and, to the north and west, in Squares 2141 and 1942, are detached single family houses. The neighborhood has been very quiet and quite stable, with residents of long standing on 34th Street; a number of residents have lived in their houses for more than 25 years and several generations of one family have owned one of the houses since it was constructed in 1926. (Transcript, Oct. 24, 2000, at 221, 237-241)

The neighborhood does, however, have diplomatic uses along Massachusetts Avenue. The part of Square 1939 fronting on Massachusetts Avenue is within the *original* D district and contains: (i) the Norwegian Embassy and Chancery, which was constructed as an addition to the Norwegian Embassy in the 1970's; and (ii) farther to the west in the next block of Square 1939 and fronting on Massachusetts Avenue, the embassies of the Cape Verde Islands and the Côte d'Ivoire. Also within Square 1939 but just off Massachusetts Avenue on 34th Place is the Embassy of Nepal and on Fulton Street at the corner of Massachusetts Avenue in Square 1942 is the Embassy of Liberia. At the northwest end of Square 2120 is the Belgian Chancery, which also was built before the Zoning Regulations were amended in 1978 to protect low density residential areas from invasion by chancery office uses. The balance of Square 2120 is occupied by detached single-family houses.

More distant from the site of the proposed chancery office, but within the very enlarged version of an "area" proposed by the Department of State, are the lawns surrounding the Vice President's residence and the tennis courts and athletic fields of schools associated with the National Cathedral. Contrary to suggestion by the Embassy and the Department, residences, including official residences and embassies, as well as athletic fields are not considered to be "institutional uses" for purposes of Section 206(b)(2)(B) of the Foreign Missions Act.[3]

III. DETERMINATION

The Foreign Missions Act mandates the use of a rulemaking procedure by the Board in considering applications to locate chanceries. Section 202 of the Foreign Missions Act defines a chancery to mean, "the principal offices of a foreign mission used for diplomatic or related purposes, and annexes to such offices (including ancillary offices and support facilities) and includes any building on such site which is used for such purposes". Under Section 206(b)(1) of the Foreign Missions Act, a foreign mission may locate its chancery as a matter of right in any area that is zoned commercial,

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[3] "Institutional use", for purposes of Section 206(b)(2)(B) of the Foreign Missions Act, is defined as a non-residential use ***not*** including "churches or other places of worship; pre-schools; kindergartens; elementary and secondary schools; ... and playgrounds, ... athletic fields or other outdoor facilities". FOREIGN MISSIONS AND INTERNATIONAL ORGANIZATIONS, *Real Property Manual*, 35 (1997). The *Real Property Manual* was prepared jointly by NCPC, the District of Columbia and the Department of State. The same definition is used by NCPC in FEDERAL ELEMENTS, COMPREHENSIVE PLAN FOR THE NATIONAL CAPITAL (1989)(hereinafter the "FEDERAL ELEMENTS") at 312.

industrial, waterfront, or mixed-use (CR). In addition, a foreign mission may locate its chancery "(A) in any area which is zoned medium-high or high density or (B) in *any other area, determined on the basis of existing uses, which includes office or institutional uses,* including but not limited to any area zoned mixed-use diplomatic or special purpose, subject to disapproval by the Board of Zoning Adjustment in accordance with" Section 206 of the Foreign Missions Act [Emphasis supplied]."

1) **THIS BOARD HAS PREVIOUSLY CONCLUDED THAT ONE THIRD OF THE EXISTING USES IN AN AREA SHOULD BE OFFICE AND INSTITUTIONAL USES IN ORDER TO CONSIDER APPROVING THE LOCATION OF CHANCERY OFFICES IN THAT AREA UNDER THE FOREIGN MISSIONS ACT.**

In *Application No. 14820 (Defense Procurement Division on behalf of the Coordination Council for North American Affairs [Taiwan])* (Sept. 7, 1988) (hereinafter "*Application No. 14820*"), the Board held that, upon an adequate showing being made to the Board as to *existing uses* in an *area,* the Board had jurisdiction to determine whether or not to disapprove, based on the factors listed in Section 206(d) of the Foreign Missions Act, an application to locate a chancery office in an area that is not zoned for office or institutional use, including an area that is not within the D district.

The Board also determined, over the objections of the Department, to use one of the standards used by the Zoning Commission — for an *area* to be found to include office or institutional uses, "at least 1/3 of the existing uses should be office or institutional":

> A minimal office presence within an essentially residential area would not reasonably be a premise for further erosion of that area's existing residential character, nor would it be reasonable for this Board to exercise its rulemaking power to alter the character of such an area by allowing a chancery to locate within it. *Application No. 14820* at 3.

2) **THIS BOARD HAS PREVIOUSLY CONCLUDED THAT, UNDER THE FOREIGN MISSIONS ACT, "EXISTING USES" ARE MEASURED IN THE "AREA" WITH THE SAME ZONING; USES IN ADJACENT AREAS THAT PERMIT OFFICE OR INSTITUTIONAL USES, EVEN IF IN THE SAME SQUARE, ARE NOT RELEVANT.**

In *Application No. 14820*, the Board also determined the pertinent *area* to be used to analyze existing office and institutional uses. In *Application No. 14820*, the applicant had proposed to locate a chancery office in Square 153, which is bounded by New Hampshire Avenue, R Street, 18th Street and S Street. The part of Square 153 fronting on New Hampshire Avenue was zoned SP-1; the balance of Square 153 was zoned R-5-B. The Board determined that the pertinent *area* for review was only that portion of Square 153 which was zoned R-5-B and that the Board would not enlarge that *area* to include other squares or the *portion* of Square 153 that was zoned SP-1 (General Purpose), noting that "special purpose" districts are explicitly mentioned in Section 206(b)(2)(B) of the Foreign Missions Act (as are "mixed diplomatic use districts") and are used for offices.

The Board concluded its analysis as follows:

> The larger area which surrounds the immediate area of the application is marked by particularly closely drawn zone district boundary lines. For that reason, under certain

> literalistic readings of the word "area," the area in which the proposed chancery would be located could arguably be extended to include the immediately adjacent SP-1 zone or the reasonably proximate C-2-A zone. But the engrafting of such zone districts onto the area of consideration would also engraft onto the area the matter-of-right or special exception offices which are located in those zones. **These mixed-use and office zones, and the included office uses, should not be merged with a residentially zoned area which both the Zoning Commission and the Congress have legislatively determined to warrant different treatment.** Id. at 4 [Emphasis supplied].

"Existing office and institutional uses", under Section 206(b)(2)(B) of the Foreign Missions Act, should not be measured by uses in an adjacent part of the same square that was included in the *original* D district where the entire square was not subsequently included in the *enlarged* D district. Under the reasoning in *Application No. 14820*, the part of a square that is residentially zoned but is adjacent to the part of the same square in a district that permits office use is protected from invasion by a foreign chancery office. The lesson of *Application No. 14820* is that "*area*", for purpose of the Section 206(b)(2)(B) analysis, does not include areas with different zoning that permits office and institutional use. The same lesson must be applied to the part of Square 2122 that is zoned strictly low density residential (and to other similar squares). If that same lesson is not applied, then an inevitable creep of office uses will engulf those squares.

3) THE "ONE-THIRD/TWO-THIRDS" FORMULA WITH RESPECT TO OFFICE AND INSTITUTIONAL USE DOES NOT APPLY TO SQUARE 2122 AS WHOLE BECAUSE PART OF THE SQUARE IS STRICTLY RESIDENTIAL AND PART IS IN THE *ORIGINAL* D DISTRICT.

The basic argument advanced to support application of the one-third existing office and institutional uses to Square 2122 was an NCPC letter dated June 21, 2000, (Exhibit A to the Statement of the Applicant Exh. 30), over the signature of the then acting Executive Director of NCPC. It appears that, in February 2000, the staff of NCPC had correctly advised the Department of State that the site of the proposed chancery office was outside the *original* D district. It was, therefore, not suitable for use as chancery offices. Nevertheless, the June 21, 2000, letter stated that, if NCPC were currently mapping the *enlarged* D district, it would have included the site of the proposed chancery office in the *enlarged* D district.

There was an indication that an NCPC staff person (not the acting Executive Director) had had a brief telephone conversation with someone at the Apostolic Nunciature and, on that basis, decided that one half of the Apostolic Nunciature was devoted to chancery, or office, uses. Then, apparently he concluded that, with the construction of the Finnish Chancery, one third of Square 2122 was now devoted to "office or institutional uses". This was an incorrect conclusion for several reasons.

A. The history of the development of the original *D district confirms the importance of the principle established in* Application No. 14820.

(a) Square 2122 was included in the *original* D district based on a "special streets" principle.

In creating the *original* D district in 1978 at the request of NCPC,[4] the Zoning Commission made the following statement:

> Because of a number of circumstances, certain areas of the District which are zoned for low or medium density residential development have been enhanced by a substantial degree of diplomatic or institutional development which has historically marked and presently marks the character of those areas. "Embassy Row" stamps Massachusetts Avenue, N.W., from Dupont Circle to Observatory Circle and 16th Street, N.W., north to Park Road. Massachusetts Avenue and 16th Street are major roadways, characterized by their signally attractive settings. Statement of Reasons, Zoning Commission Order Nos. 236 and 237at 6.

The Zoning Commission's careful distinctions are particularly apparent in designations made with respect to Square 2122 and, immediately to the west, Square 1939 in the companion order, Zoning Commission Order No. 236 (Sept. 14, 1978):

> Square 1939 --- Lot 38 fronting on 35th Street *[still privately owned]*; all the lots fronting on Massachusetts Avenue *[the embassy of the Côte d'Ivoire, the embassy of the Cape Verde Islands, a private residence and the Norwegian Embassy]*; and lots 19, 20, and 810 fronting on 34th Street *[the then existing location of the Norwegian Chancery which had been constructed as part of the Embassy]* shall become D/R-1-B.
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> Square 2122 --- Lots 21, 20 and 6 fronting on 34th Street *[the garage and gardens belonging to the Holy See]* and all lots fronting on Massachusetts Avenue *[the rest of the Holy See's lots, what is now the Finnish Chancery but was in 1978 a private residence and a lot that belongs to the National Park Service]* shall become D/R-1-A.

The balance of Squares 2122 and 1939 were not included in the *original* D district and are not included to this day. Nothing in the creation of the *original* D district was based on an analysis of "office and institutional uses", a concept later introduced in an effort to deal with the Foreign Missions Act.

(b) The Foreign Missions Act did not affect zoning in low density residential districts.

In 1982 Congress enacted the Foreign Missions Act to provide the Department of State with leverage to demand reciprocity in dealing with foreign countries.[5] The legislative history characterized this reciprocity analysis as the "key feature". [6]

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[4] The District of Columbia Home Rule Act (Pub. L. 93-198, 87 Stat. 774 (1973), as amended by Pub. L. 105-33, 111Stat. 712 (1997)) provides, in Section 492, that "Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the National Capital."

[5] The Senate Report on S.854, a basis for the Foreign Missions Act, explained its purpose as follows:

> The purpose of S. 854 is to address a serious and growing imbalance between the treatment accorded in many countries to official missions of the United States, and that made available to foreign government missions in

The Conference Committee specifically clarified that Section 206 did not grant *carte blanche* for chancery offices to invade residential areas:

> Section 206(b)(2) permits chanceries, upon application, to locate, as at present, in areas zoned **medium-high or high-density** residential, as well as in other areas which include office and institutional uses, including mixed-use diplomatic and special purpose districts. All locations within these areas are subject to disapproval under the District of Columbia zoning process as provided in this section. **This subsection will not permit chanceries to be located in any area which is essentially a residential use area.** [Emphasis supplied] JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE at 41, House Rep. 97-693 (1982).

Congress wanted the Department of State to have leverage to deal with foreign countries. It did not, however, authorize the Department of State to use low density residential neighborhoods as bargaining chips in dealing with foreign governments.

(c) The "one-third/two-thirds" formula introduced in 1987 deals with Section 206(b)(2)(B) of the Foreign Missions Act; the formula does not replace the rationale for the *original* D district.

The "one-third/two-thirds" formula was first advanced in *"Planning Report – Revised Foreign Missions and International Organizations Element of the Comprehensive Plan for the National Capital (July 28, 1983)"* as a way to implement the part of Section 206(b)(2)(B) that authorized the Board to permit chancery offices to locate in any "area" based on existing "office and institutional uses". That criterion was eventually adopted by the NCPC Task Force one year later in its *"Criteria and Methodology for Site Selection for the Creation of Chancery Centers by Federal Agencies on Federal Properties in the District of Columbia (August 1, 1984)"*.

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the United States. The bill creates within the Department of State an Office of Foreign Missions charged with the responsibility of assuring that treatment of United States missions abroad and the national security interests of our government within the United States are both taken into consideration when foreign governments seek to establish or operate missions with this country. As a result, the foreign governments represented by missions in the United States will have an incentive to provide fair, equitable and nondiscriminatory treatment to U.S. missions and personnel in their territory.... S. Rep. 97-329 at 1 (Apr. 8 1982).

[6] The legislative history also stated that chanceries were less favorably treated under the Zoning Regulations in comparison to other permitted institutional or commercial uses. In particular, in "*lesser density commercial districts*, which may be most suitable for smaller chancery uses, over 50 stated uses are permitted as a matter of right, including all office uses, with the exception of chancery uses". S. Rep. 97-329 at 14 [Emphasis supplied]. The Report criticized the resulting restriction on chancery offices, which were required to use a special exception procedure. S.854 also shifted jurisdiction over the location of chancery offices to a new "Foreign Missions Commission". This part of the bill received severe criticism and did not survive. Among the provisions deleted in conference were "provisions granting authority to the National Capital Planning Commission to settle chancery issues and ... establishing the Foreign Missions Act as the exclusive law governing foreign missions in the District of Columbia." JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE at 40, House Rep. 97-693 (1982). Section 206 of the Foreign Missions Act, as enacted, "retains the existing D.C. zoning structure" and "provides for chanceries to be treated similarly to, and no less favorably than, office and institutional uses". *Id.*

Chapter II of the *Criteria* begins by restating the "one-third/two-thirds" analysis of the *Planning Report.* The next paragraph of the *Criteria* continues:

> Among the locations that meet the criteria [for the location of chanceries], the [Federal] Element [of the Comprehensive Plan] indicates that Foreign Missions should give preference to locations: ...b. *On special streets or places, in Historic Districts; or in Historic Landmarks;* ...."

The "one-third/two-thirds" formula to was thus added to, but did not replace, the "special streets" rationale in the case of low residential areas along special streets. This is the genesis of the "one-third/two-thirds" formula that has since been sometimes taken, quite mistakenly, as the sole rationale for the D district after its *enlargement* in 1987.[7] Because of the "special streets" rationale for the designation of part of Square 2122 as being within the *original* (and now the *enlarged*) D district, it is important that the principle of Application No. 14820 be applied so that only uses in the strictly residential part of Square 2122 are considered in making an evaluation under Section 206(b)(2)(B) of the Foreign Missions Act. Under that principle there is no basis to approve a chancery office at 2741 34th Street.

4) THERE ARE INSUFFICIENT EXISTING OFFICE OR INSTITUTIONAL USES IN SQUARE 2122 TO JUSTIFY INSERTING A CHANCERY OFFICE IN A LOW DENSITY RESIDENTIAL NEIGHBORHOOD.

The Embassy and the Department of State seized on the NCPC guess as to the uses of 3339 Massachusetts Avenue to proclaim that there were sufficient "office and institutional" uses to justify chancery offices taking over totally in a low density residential neighborhood. That guess was, as indicated above, based on an NCPC staff member's very informal telephone conversation. It was completely controverted by the more detailed examination of the premises of the Apostolic Nunciature undertaken by the Office of Planning. See Exh. 50.

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[7] In responding to the NCPC proposal, the Zoning Commission overrode the objections of the Department of State to the "one-third/two-thirds" formula, which the Department now rushes to embrace and apply inappropriately. It concluded that mapping of "areas" would provide a degree of certainty and that using the square as the definition of an area was a reasonable and logistically manageable manner of implementing the Foreign Missions Act. Accordingly, using the "one-thirds/two-thirds" formula, the Zoning Commission added 17 whole squares to the *original* D district, which had until then in large part consisted of partial squares. Zoning Commission Order No. 509 (Feb. 9 1987).

Nevertheless, NCPC stopped talking about the separate reasons that underlay the *enlarged* D district. By the time NCPC published the revised FEDERAL ELEMENTS in 1989, the confusion between the 1978 "special streets" concept and the 1987 interpretation of the legal requirements of the Foreign Missions Act had worsened. Page 137 of the FEDERAL ELEMENTS reproduces a "Diagram No. 1" misleadingly entitled "Chancery Facility Locations Permitted Pursuant to Section 206(b)(2)(B) of the Foreign Missions Act". A more accurate title would have been "The Revised D District Combining 'Special Streets' Designations and, under Section 206(b)(2)(B) of the Foreign Missions Act, 'Existing Office and Institutional Uses' Designations". Because Diagram No 1 shows the *enlarged* D District, it includes the *partial, but only the partial,* squares fronting on 16th Street and Massachusetts Avenue being in the *enlarged* D district. NCPC had now all but merged its *original* 1978 planning standard of "special streets" into its 1984 reasoning on how to apply the legal standard of "existing office and institutional uses" in Section 206(b)(2)(B) of the Foreign Missions Act.

The Department of State also asserted that the status of 3339 Massachusetts Avenue as a chancery office is written down in, and established by, "Diplomatic Lists" published by the Department of State.[8] In the alternative, the Department asserted that, even if 3339 Massachusetts Avenue was not currently used as a chancery office, it could be so used at the sole discretion of the Apostolic Nuncio. (Transcript, Oct. 24, 2000, at 114). These assertions turn out to be quite incorrect.

A. 3339 Massachusetts Avenue was neither an embassy nor a chancery office when the Foreign Missions Act took effect.

On October 1, 1982, the Holy See owned 3339 Massachusetts Avenue, as well as additional lots in Square 2122. But Massachusetts Avenue was not then the Apostolic Nunciature. It was the individual *residence* of the Most Reverend Archbishop Pio Laghi, the Apostolic Delegate, who had been sent by Pope John Paul II to maintain relations with the Roman Catholic Church in the United States. Archbishop Laghi did not have diplomatic status in 1982; in fact, by definition, an Apostolic Delegate does not ever have diplomatic status. See, *Legate*, ENCYCLOPEDIA BRITANNICA, at http://www.britannica.com/seo/l/legate/.

By federal statute (Act of Feb. 28, 1867, ch. 99, 14 Stat. 412, 413), the United States was effectively prohibited from maintaining diplomatic relations with the Holy See. Thus, 3339 Massachusetts Avenue was not "being used by a foreign mission on October 1, 1982", as required by the grandfather clause of Section 206(h).[9] Of course, the use of 3339 Massachusetts Avenue as a residence was completely in keeping with the applicable R-1-A zoning as described above.

On November 23, 1983, more than a year after the effective date (October 1, 1982) of Section 206(h) of the Foreign Missions Act, "In order to provide for the establishment of United States diplomatic relations with the Vatican," the spending prohibition in the Act of Feb. 28, 1867, was repealed (Act of Nov. 1983, Pub. L. No. 98-164 § 134, 97 Stat. 1029).

On January 10, 1984, the Department of State issued a formal announcement:

> The United States of America and the Holy See, in the desire to further the existing mutual friendly relations, have decided by common agreement to *establish diplomatic relations* between them at the level of embassy on the part of the United

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[8] Mr. Mlotek: "The Vatican property is carried on the books of the Department of State as a chancery. Under the Foreign Missions Act, it is a chancery. Why? Because it was in chancery use as of October 1, 1982, and therefore is grandfathered as a chancery for all eternity ...." Transcript, Oct. 17, 2000, at 104.

[9] Section 206(h) permits the "continuing use of a chancery by a foreign mission *to the extent that the chancery was being used by a foreign mission on October 1, 1982"*. In 1982 "foreign mission" was defined to mean "any official mission to the United States involving diplomatic, consular, or other governmental activities of – (A) a foreign government, or (B) an organization (other than an international organization, as defined in Section 209(b) of {the Foreign Missions Act]) representing a territory or political entity which has been granted diplomatic or other official privileges and immunities under the laws of the United States, including any real property of such a mission and including the personnel of such a mission". Foreign Missions Act § 202(a)(4), Pub. L. 97-241, 96 Stat. 282, 284 (1982) (current version at 22 U.S.C. § 4302(a)(4)). The definition was amended in 1985 and 1987.

States of America, and Nunciature on the part of the Holy See *as of today, January 10, 1984*. [Emphasis supplied].

On January 10, 1984, Archbishop Laghi became the Apostolic Nuncio, with full diplomatic status in the United States, and Lot 16 in Square 2122, 3339 Massachusetts Avenue, thereupon (but not before) became the Apostolic Nunciature.

The Department of State's web page dated July 2000 makes the following statement: "From 1870 to 1984, the United States did not have diplomatic relations with the Holy See. ...The United States and the Holy See announced the establishment of diplomatic relations in January 1984." *http://www.state.gov /www/background_notes/holysee 0007_bgn.html, at 5*. It also currently states, "The Holy See maintains an Apostolic Nunciature, the equivalent of an *embassy*, in the U.S. at 3339 Massachusetts Ave. NW, Washington, DC 20008 ...." *Id.* at 4 [Emphasis supplied]. R-1-A zoning continues to permit the residential or embassy use of 3339 Massachusetts Avenue that was observed by the Office of Planning. See Exh. 50.

B. 3339 Massachusetts Avenue may not now be used as a chancery office.

But the use of 3339 Massachusetts Avenue solely or predominately as an office was not permitted in 1982 (the effective date of the Foreign Missions Act), nor is it permitted today, by the R-1-A zoning without action by the Board under Section 206 of the Foreign Missions Act.[10] Therefore, the use of 3339 Massachusetts Avenue must currently be treated, *as a matter of law under the Foreign Missions Act*, as a residential use and not as a chancery office use. It is an embassy — "the official residence of an ambassador or other chief of a diplomatic mission...."

C. Consequently, Square 2122,even taken as a whole, does not have one-third office or institutional uses.

On the basis of the foregoing, the arguments made about chancery office uses at 3339 Massachusetts Avenue (uses not observed by the Office of Planning) or about the hypothetical power of the Apostolic Nuncio unilaterally to convert the use of 3339 Massachusetts Avenue to exclusive use as a chancery office are simply unsupported by the facts or the law and are without merit, no matter what is written down in Diplomatic Lists. More importantly, the entire argument about "existing office and institutional uses" in Square 2122, which was wholly dependent upon turning the Apostolic Nunciature into a chancery office, collapses. The only office or institutional use within Square 2122 today is that of the Finnish Chancery and that use constitutes less than one third of the uses in Square 2122.

Based upon the foregoing, it is ORDERED that the application be DISAPPROVED.

VOTE: _[-_] (_____, _____,

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[10] In 1960, the Holy See applied to the Board for a variance to permit relocation of a garage accessory to 3339 Massachusetts Avenue, which application was granted (Application No. 5836 (Feb. 24, 1960)). Since the establishment of diplomatic relations with the Holy See in 1984, however, the Apostolic Nuncio has never applied to the Board, pursuant to Section 206(b)(2)(B) of the Foreign Missions Act, for the Board not to disapprove the use of 3339 Massachusetts Avenue as a chancery office.

_____, _____ and
_____ to disapprove)

BY ORDER OF THE FOREIGN MISSIONS BOARD OF ZONING ADJUSTMENT

Each concurring member has approved the issuance of this Determination and Order and authorized the undersigned to execute this Determination and Order on his or her behalf.

FINAL DATE OF ORDER: December 5, 2000

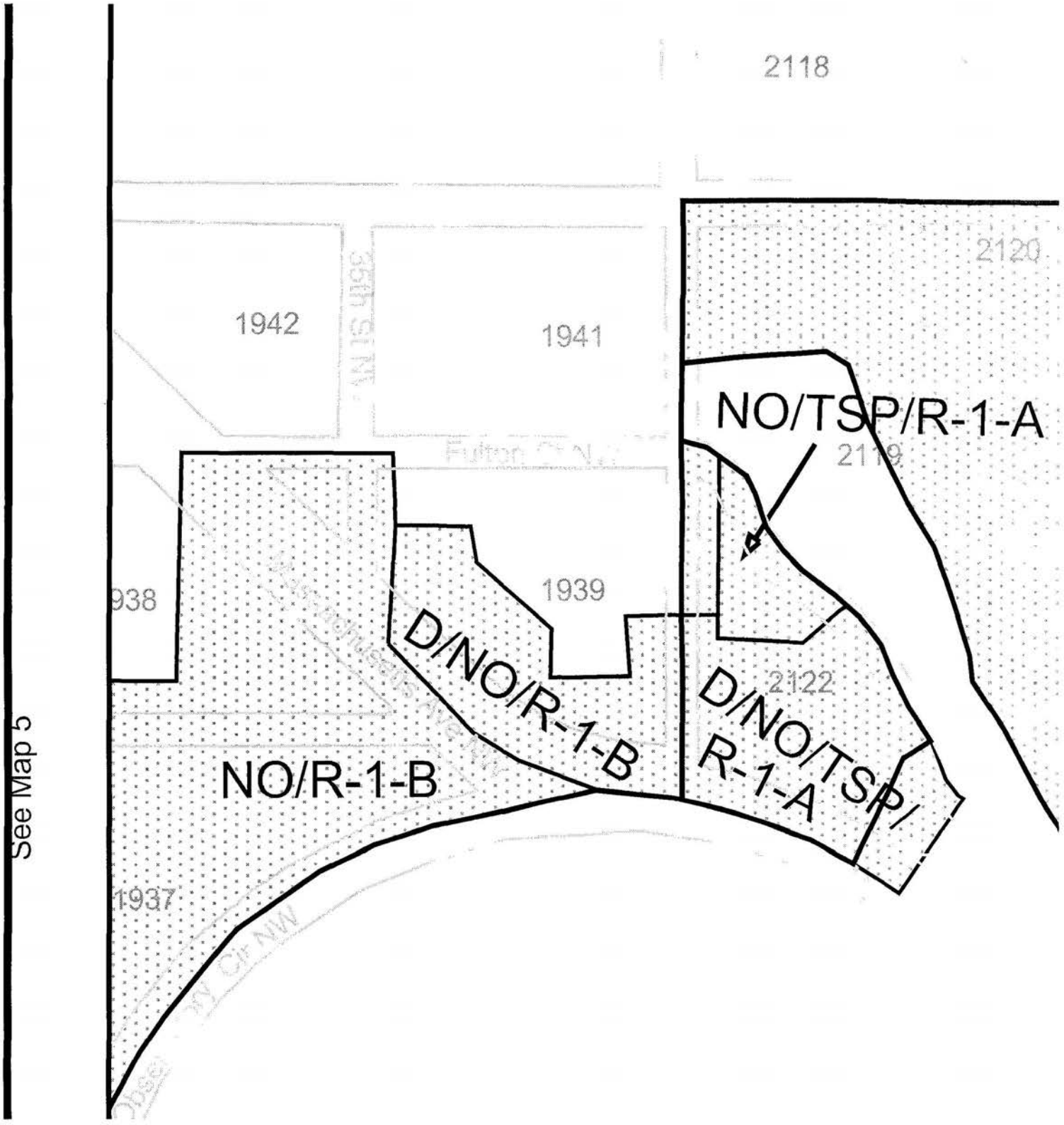
UNDER 11 DCMR SUBSECTION 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBSECTION 3125.6

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

ATTESTED BY: _____
, Executive Director

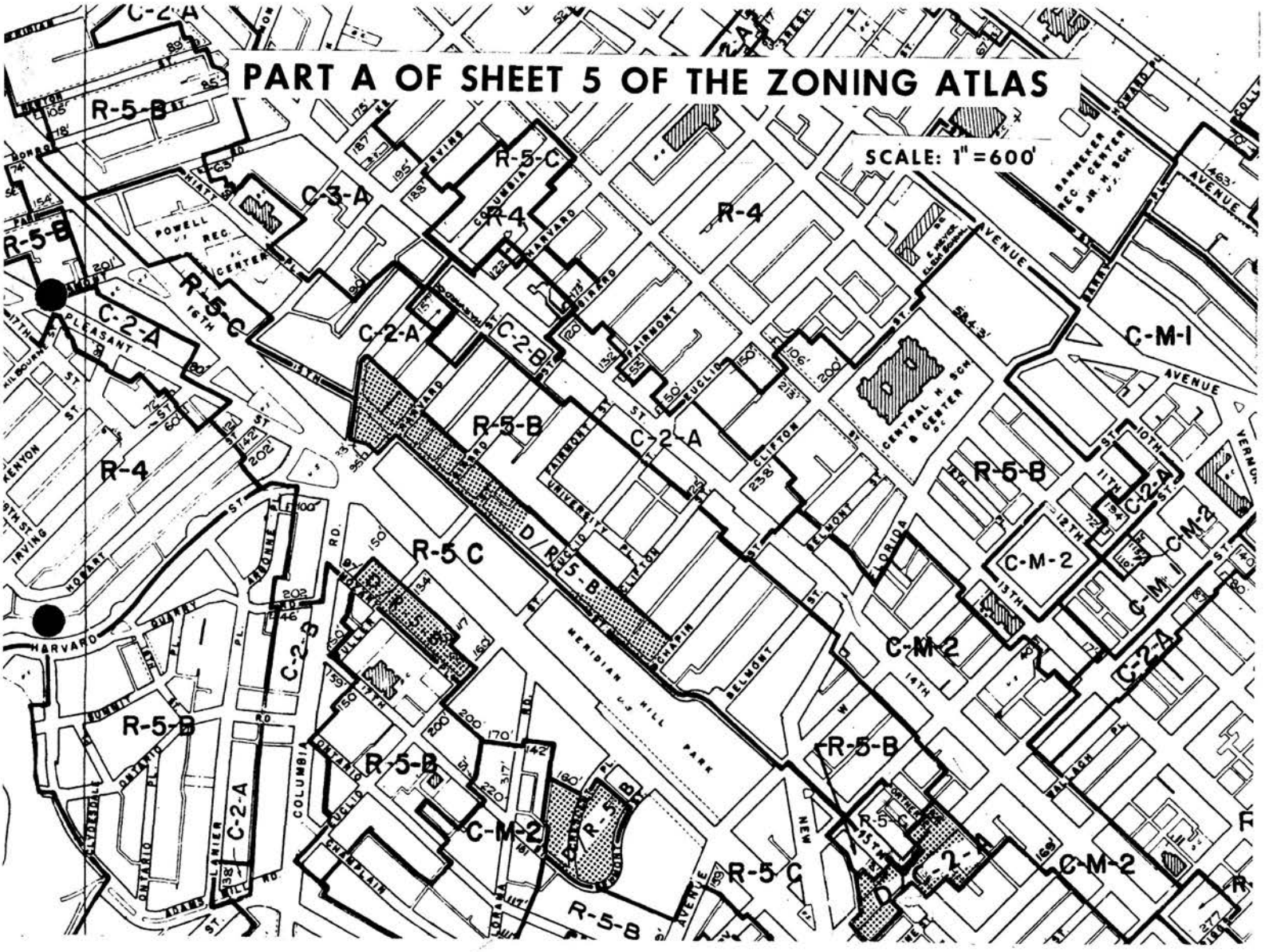
Appendix B

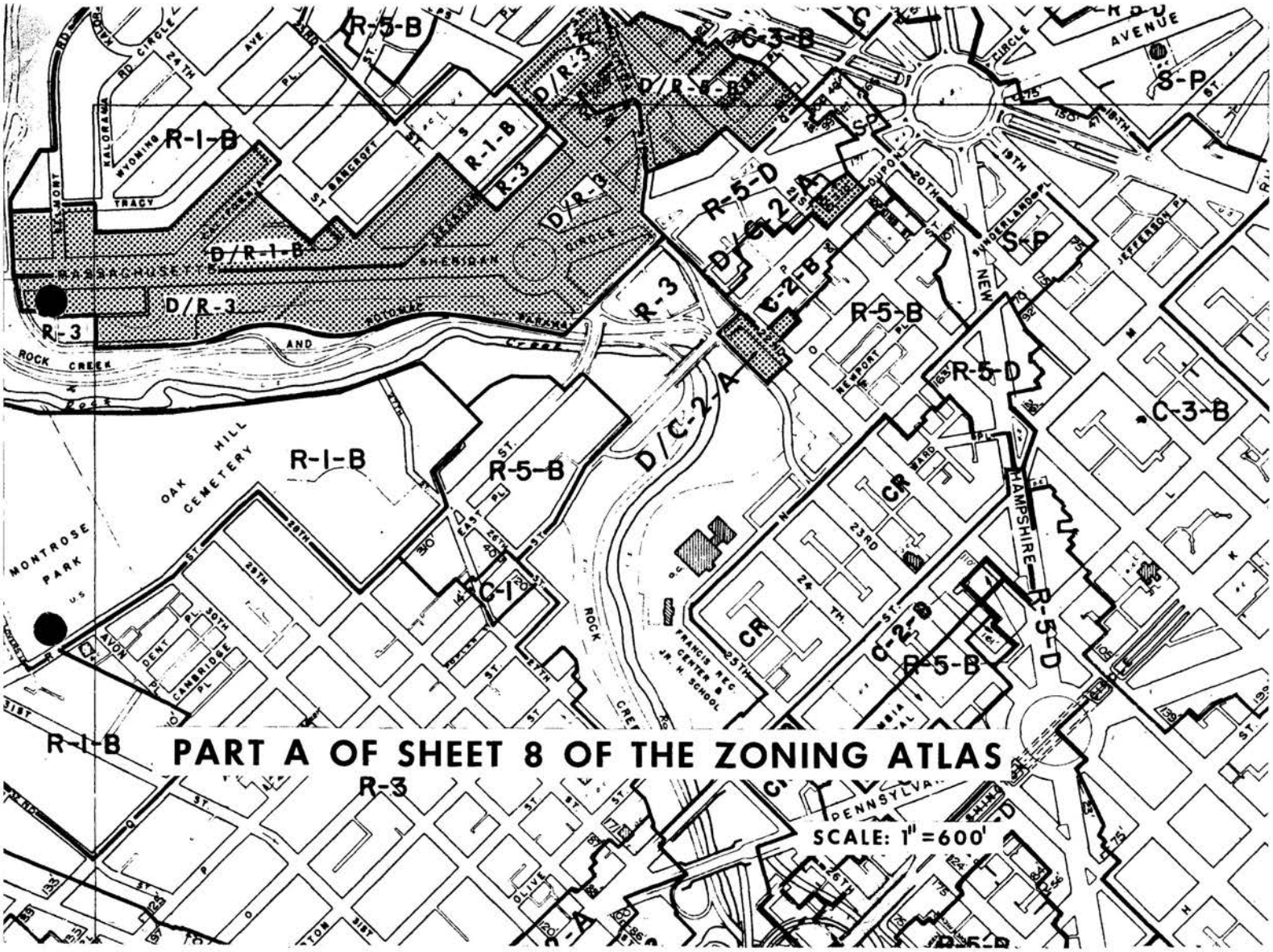
Zoning Map of the Proposed Site and Surrounding Neighborhood


See Map 5
2118
2120
1942
1941
36th St N.
NO/TSP/R-1-A
2119
1939
938
D/NO/R-1-B
2122
D/NO/TSP/
R-1-A
NO/R-1-B
1937

Appendix C

Amendments to Zoning Map for 16th Street and Massachusetts Avenue as a result of Zoning Order Nos. 237 (Apr. 14, 1978) creating the *original* D district


PART A OF SHEET 5 OF THE ZONING ATLAS
SCALE: 1" = 600'
R-5-B
C-2-A
C-3-A
R-5-C
R-4
C-2-B
C-M-1
C-M-2
R-5 C
D/R-5-B
MERIDIAN HILL PARK
HARVARD
COLUMBIA
CENTRAL H SCH & CENTER
BANNEKER REC. CENTER & JR. H. SCH.
POWELL JR. REC. CENTER
16TH ST.
14TH ST.
13TH ST.
12TH ST.
11TH ST.
10TH ST.
9TH ST.
HOBART
IRVING
KENYON
PLEASANT
HARVARD
FAIRMONT
EUCLID
CLIFTON
CHAPIN
BELMONT
FLORIDA
VERMONT
ONTARIO
LANIER
COLUMBIA
NEW HAMPSHIRE AVENUE
MISSISSIPPI AVENUE
463' AVENUE



PART A OF SHEET 8 OF THE ZONING ATLAS

Appendix D

Excerpt from Planning Report – Revised Foreign Missions and International Organizations Element of the Comprehensive Plan for the National Capital (July 28, 1983)

PLANNING REPORT

REVISED FOREIGN MISSIONS AND INTERNATIONAL ORGANIZATIONS ELEMENT of the COMPREHENSIVE PLAN FOR THE NATIONAL CAPITAL

JULY 28, 1983

NATIONAL CAPITAL PLANNING COMMISSION
WASHINGTON D.C. 20576

CHAPTER IV

PLANNING FRAMEWORK

RATIONALE FOR PROPOSALS RELATING TO FOREIGN MISSIONS

Criteria for Locating Chanceries

The revisions to the Foreign Missions and International Organizations element of the Comprehensive Plan to conform it to the Foreign Missions Act, focuses on the provisions of Section 206 of the Act. Section 206 establishes criteria governing the location, replacement, or expansion of chanceries in the District of Columbia.

Section 206(b)(1) of the Act permits chanceries to locate, as a matter of right, in any area within the District of Columbia zoned commercial, industrial, waterfront or mixed use (CR).

Section 206(b)(2) permits chanceries, subject to disapproval by the Board of Zoning Adjustment (BZA), to locate in areas within the District zoned medium-high or high density residential, as well as in any other areas of the city that are determined on the basis of existing uses, which include office and institutional uses, including areas zoned mixed-use diplomatic or special purpose. It is this provision of the Act that requires interpretation. Specifically, Section 206(b)(2)(B) provides that a chancery shall be permitted to locate -

> "(B) in any other area, determined on the basis of existing uses, which includes office or institutional uses, including but not limited to any area zoned mixed-use diplomatic or special purpose . . ."

A definition of "institutional uses" is required to interpret this provision and to determine which areas should be included. An examination of case law, statues, ordinances, and materials related to land use regulation and zoning in many jurisdictions were considered. After considerable discussion the following definition of institutional use was selected:

> "A non-residential use (other than retail and personal service establishments, offices, and industrial uses) such as colleges and universities; museums; non-profit art galleries; public libraries; and hospitals, sanitariums, clinics and health care facilities for more than 16 persons but not including churches or other places or worship; preschools, kindergartens, and elementary or secondary schools; police and fire stations; utilities; community centers; cemeteries; playgrounds and outdoor swimming pools, athletic fields, or other outdoor facilities."

Various methods were explored to delineate the areas provided for in Section 206(b)(2)(B). A city square was used as the area unit for analysis purposes. One method was based on the number of existing office and institutional uses located in a square without consideration to the size of the use. Another method was based on the square footage of existing land uses in a city square as recorded in the data inventory in the District's computer system called MAGIS. After considerable testing of both methods, the square footage of existing uses in the MAGIS system was selected, since it provided a uniform set of data and took into account the size of the land uses in a square.

Since the existing Diplomatic district are considered appropriate for chancery locations under the Act and consist of mixed-use squares containing office, institutional and residential and other uses, it was determined that the average mixed-use ratio in the squares in existing Diplomatic districts should be used as the guide for identifying other squares throughout the city that would qualify under Section 206(b)(2)(B) of the Act.

Using the District's MAGIS computer data, the average mixed-use ratio for city squares containing lots zoned "Diplomatic" was found to approximate a ratio of 2/3 residential type land uses and 1/3 office, institutional and other land uses. This ratio is based on the relationship of land uses within individual squares within the Diplomatic districts.

The mixed-use ratio was then applied to city squares zoned R1A through R5B to determine those squares that equal or exceed the ratio. Additionally, each of these squares was further analyzed to insure that they contained an existing office or institutional use. The squares that met these tests were determined to be consistent with the provisions of Section 206(b)(2)(B) of the Act and included as chancery areas subject to disapproval by the D.C. Board of Zoning Adjustment. These areas are indicated on Diagram No. 1 in the proposed revised element.

Existing chancery facilities which are currently located in squares which do not meet the 2/3 - 1/3 mixed use test should be permitted to remain to avoid causing displacement and relocation problems. However, they should only be permitted to expand on their existing property. Accordingly, the sites of such chanceries are deemed to be qualifying areas under section 206(b)(2)(B) of the Foreign Missions Act. Such expansion would be subject to disapproval by the D.C. Board of Zoning Adjustment in accordance with the Act.

Embassies, as the residence of ambassadors, should be located among other residential uses and realize the amenities of local neighborhoods. Sites which can accommodate daily parking requirements in off street areas are preferred rather than those which can only accommodate curb parking. For convenience, security, and to avoid long commuting times, sites in reasonable proximity to the Foreign Mission's Chancery should be given special consideration.

Planning Policies for Foreign Missions

Foreign Missions are located in Washington because it is the seat of national government. Since the basic function of a diplomatic mission is representation of its national interest before the U.S. Government linkages and convenient access to Federal agencies dealing in international activities is fundamental. It is the expressed preference of the State Department that Foreign Missions located within the District of Columbia. According to general international law and practice, chanceries are to be established within the capital city of the host nation.

Massachusetts Avenue, N.W.

The existing concentration of Chanceries, and Combined Chancery/ Embassies in the area along Massachusetts Avenue, N.W., between Scott Circle and 35th Street is proposed to be retained. Known as Embassy Row, this area contains about one-third of all Mission facilities. The existing chancery facilities contribute significantly to the visual character and interest of the city. The adaptive reuse of the handsome Beaux Arts residential structures by Foreign Missions has been an important element in the preservation and enhancement of this area to the benefit of the city. It has become a unique physical reflection of Washington as a world capital and diplomatic center. A mixture of Foreign Mission and residential uses in this area is appropriate.

Along Massachusetts Avenue east of Scott Circle to 3rd Street, N.W. Foreign Missions are encouraged to locate their facilities. This would assist in the revitalization the northern section of the Downtown Urban Renewal Area and promote and extend an international image to this part of the Avenue.

International Center

The site of the International Center was expanded by Public Law 97-186 approved May 25, 1982, to include additional land area for 10 chancery sites north of Van Ness Street, N.W. Foreign Missions should give priority consideration to chancery sites in the Center to take advantage of the convenient public transportation, related commercial services, easy access for the public and readily available sites.

Van Ness Center Area

Commercial areas in the Van Ness Center area provide opportunities for leased space for Chancery facilities and for related activities and services for the Foreign Missions located in surrounding areas. Currently, there are several Chancery facilities in leased space in the commercial area. It is adjacent to the International Center with convenient access to Metrorail and other public transportation. In the surrounding areas a number of new Chanceries and Embassies have recently relocated. The Van Ness area is rapidly becoming a focus for international activities.

16th Street, N.W.

In recent years there has been a notable exodus of Foreign Mission facilities from the 16th Street area. Since 1965 there has been a net loss of 20 Foreign Mission facilities from this area -over one-half of the facilities that were there in 1965.

Special efforts are needed to retain the existing Chanceries and Embassies and to attract additional ones to this area to aid in preserving and enhancing this historically significant special street and gateway to the Nation's Capital. Its earlier prominence as a prestigious location for diplomatic activities and ambassadorial residences should be restored. Many existing structures along this street can be easily adapted to chancery or embassy use and can provide the prestige and national symbolism Foreign Missions desire.

Pennsylvania Avenue, N.W.

The Pennsylvania Avenue Development Area, generally between 3rd and 15th Streets, N.W., is a location that should be provided as an area for chancery facilities. It offers a central location with convenient access by public transportation and is close to Federal offices. Chanceries would add to the variety of uses in the area and they would contribute to establishing an international character for this avenue that serves as a parade route on national occasions.

International Cultural and Trade Center

The Center is proposed to be developed on publicly owned land adjacent to the Expressway overlooking the waterfront in Southwest Washington. The site is a short distance from the Smithsonian museums on the Mall, and is conveniently located to Federal agencies. It is easily accessible by automobile and within a short walk of three Metro stations. The facility is proposed to encompass the 10th Street Overlook, Parcel 76, and part of the existing Jefferson recreation field. It draws upon the existing resources of East Potomac Park, the waterfront restaurants, the fish market, nearby hotel, office and shopping facilities, and major visitor attractions.

The objectives in designating this site as an international complex are: (1) to provide an appropriate focus and showcase for the Washington international community; (2) to encourage greater international trade and cultural interchange; (3) to enhance the Southwest waterfront area as an attraction for both tourists and area residents; and (4) to create additional local employment and business opportunities.

Foreign Missions are encouraged to locate chancery facilities performing cultural, trade, commercial, or educational functions in the Center. Private, semi-public, and public organizations with functions associated with international activities also are encouraged to locate in the Center.

Appendix E

Excerpt from National Capital Planning Commission, Criteria and Methodology for Site Selection for the Creation of Chancery Centers by Federal Agencies on Federal Properties in the District of Columbia (August 1, 1984).

CRITERA AND METHODOLOGY FOR SITE SELECTION FOR THE CREATION OF CHANCERY CENTERS BY FEDERAL AGENCIES ON FEDERAL PROPERTIES IN THE DISTRICT OF COLUMBIA

AUGUST 1, 1984

NATIONAL CAPITAL PLANNING COMMISSION

COMMISSION MEMBERS

Appointed by the President of the United States

Glen T. Urquhart
CHAIRMAN

Bruce Kirschenbaum
Helen M. Scharf

Appointed by the Mayor of the District of Columbia

Robert J. Nash
Ann V. Todd

Secretary of Defense
Honorable Caspar W. Weinberger

Secretary of the Interior
Honorable William P. Clarke

Administrator of General Services
Honorable Ray Kline (Acting)

Chairman, Committee on Governmental Affairs, United States Senate
Honorable William V. Roth, Jr.

Chairman, Committee on the District of Columbia, U.S. House of Representatives
Honorable Ronald V. Dellums

Mayor, District of Columbia
Honorable Marion S. Barry, Jr.

Chairman, Council of the District of Columbia
Honorable David A. Clarke

EXECUTIVE DIRECTOR
Reginald W. Griffith

In Reply Refer To:
NCPC File No. CP01.

September 5, 1984

Mr. Michael Newell
Director, A/ICP
Department of State
SA-1
Washington, D. C. 20520

Dear Mr. Newell:

Enclosed is the report titled "Criteria and Methodology for Site Selection for the Creation of Chancery Centers by Federal Agencies on Federal Properties in the District of of Columbia". The report has been prepared pursuant to the Memorandum of Agreement between the Department of State and the Commission dated June 6, 1983, specifically Item 3c.

At its meeting on August 1, 1984, the Commission's Task Force on Foreign Missions approved the enclosed report on behalf of the Commission. The Task Force recommended that the Department of State publish the report in conjunction with the Commission. We request your concurrence and look forward to working with you.

We are pleased to have had the opportunity to be of service to the Department of State in preparing this report.

Sincerely yours,

Reginald W. Griffith

Reginald W. Griffith
Executive Director

Enclosure

CHAPTER II

SUMMARY OF CHANCERY PROVISIONS IN THE FOREIGN MISSIONS AND INTERNATIONAL ORGANIZATION ELEMENT

Summary of Criteria for Chancery Locations

In 1983, when the revised Foreign Missions and International Organization Element was adopted by the Planning Commission there were 145 Foreign Missions in the District of Columbia. They were located in 353 separate facilities.

The Foreign Missions and International Organizations Element of the Comprehensive Plan has been revised to conform it to the provisions in Section 206 of the Foreign Missions Act. Section 206 focuses on setting criteria by which Chanceries are to locate, expand, or be replaced in the District of Columbia. With the amendment of the Foreign Missions and International Organizations Element, criteria and areas are designated for Chancery uses.

Section 206(b)(1) of the Act permits Chanceries to locate, as a matter of right, in any area within the District of Columbia zoned commercial, industrial, waterfront or mixed use (CR).

Section 206(b)(2) permits Chanceries, subject to disapproval by the Board of Zoning Adjustment (BZA), to locate in areas within the District zoned medium-high or high density residential, as well as in any other areas of the city that are determined on the basis of existing uses, which include office and institutional uses, including but not limited

to areas zoned mixed-use diplomatic or special purpose. Specifically, Section 206(b)(2)(B) provides that a Chancery shall be permitted to locate -

> "(B) in any other area, determined on the basis of existing uses, which includes office or institutional uses, including but not limited to any area zoned mixed-use diplomatic or special purpose . . ."

To determine the areas which meet this provision of the Act, the following procedure was followed. A mixed-use ratio of 2/3 residential land uses and 1/3 office, institutional and other land uses, was applied to city squares zoned R-1-A through R-5-B to determine those squares equalling or exceeding the ratio. Each of these squares also had to contain an existing office or institutional use. The squares that meet these tests were determined to be consistent with the provisions of Section 206(b)(2)(B) of the Act. These areas are generally indicated on Diagram No. 1 of the Foreign Missions and International Organizations element. The Commission intends that the Diagram No. 1 be a softline diagram and that it provide guidance in making Section 206(b)(2)(B) determinations.

Among locations which meet the criteria, the Element indicates that Foreign Missions should give preference to locations:

a. In Chancery areas specifically set aside and developed by the U.S. government for such purposes.

b. On special streets or places, in Historic Districts; or in Historic Landmarks; or

c. In areas being assisted or supported by governmental renewal or revitalization programs.

Appendix F

Board of Zoning Adjustment Order No. 14820 (Defense Procurement Division on behalf of the Coordination Council for North American Affairs [Taiwan]) (Sept. 7, 1988).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14820, of the Defense Procurement Division on behalf of the Coordination Council for North American Affairs, pursuant to Section 206 of the Foreign Missions Act, for permission to locate a chancery in an R-5-B District at premises 1701 - 18th Street, N.W., (Square 153, Lot 132).

HEARING DATE: July 13, 1988
DECISION DATE: September 7, 1988

ORDER DISAPPROVING APPLICATION

The Foreign Missions Board of Zoning Adjustment has decided to disapprove this application. As is explained below, the basis for the Board's decision is that the site of the proposed chancery is not within an "area, determined on the basis of existing uses, which includes office or institutional issues...." Before reaching the discussion of the reasons for this decision, the Board will address some preliminary matters.

This application was filed on April 5, 1988, and heard on July 13, 1988. Pursuant to D.C. Code Sec. 5-1206 (c)(3) (1988), the final determination of the Board must be made no later than October 5, 1988.

On June 17, 1988, the Dupont Circle Citizens Association filed a motion to dismiss the application on the ground that the Board has no authority to consider an application to locate a chancery in an R-5-B zone district if the Zoning Commission has not designated the site as within the Diplomatic ("D") Overlay District.

In its opposition to the motion to dismiss, applicant suggested that a motion to dismiss "is a nullity" in a rulemaking proceeding.

It may be correct that a motion to dismiss is not an apt characterization of a challenge of the authority of the Board in this rulemaking proceeding. If that is correct, it is equally correct that standing as a party is not a prerequisite for an interested person or entity to present a challenge to the Board's authority to consider the

application. Accordingly, the Board considered the merits of the motion to dismiss, and denied the motion.

The Board does not question the sound planning judgment of the National Capital Planning Commission, the Zoning Commission, or any other agencies which participated in the mapping of Diplomatic zones to implement D.C. Code Section 5-1206. It was reasonable for the Zoning Commission to conclude, as it states in Z.C. Order 509, that "the mapping of the areas [where chanceries may locate in the R-1-A through R-5-B zone districts] will be beneficial to the State Department and foreign governments, because the degree of certainty which will result will allow them to plan more effectively."

This Board is constrained, however, to exercise its authority and responsibility as provided in Section 5-1206 and in light of guiding decisions of the District of Columbia Court of Appeals. The particularly pertinent decisions, Dupont Circle Citizens Association v. BZA, 530 A.2d 1163 (1987) and Embassy of the People's Republic of Benin v. BZA, 534 A. 2d 310 (1987) were decided after the Zoning Commission promulgated Order No. 509. For that reason, the Board requested the Corporation Counsel to advise the Board "whether it has the authority under D.C. Code sec. 5-1206 (b)(2)(B) (1987 Supp.) to determine whether an area which is not within a Diplomatic ("D") zone district is in an area which meets the criteria of the cited D.C. Code provision." By memorandum dated April 8, 1988, Deputy Corporation Counsel Richard L. Augulia advised:

> Notwithstanding the D zone district, the Act permits a chancery to be located in areas based on existing uses, which includes office or institutional uses, subject to the disapproval of the... FMA-BZA (D.C. Code § 5-1206 (b)(2) upon application to the FMA-BZA (D.C. Code § 5-1206 (c)(1)). The... FMA-BZA must apply criteria contained in the Act before reaching its final determination (see D.C. Code § 5-1206(d)).
>
> In order to make a final determination through a rule-making procedure, (see D.C. Code § 5-1206(f)) the FMA-BZA must interpret "any other area, determined on the basis of existing uses, which includes office or institutional use". (See D.C. Code § 5-1206(b)(2)(B)). The FMA-BZA must define the relevant area, identify the existing office and institutional uses within the area, determine whether the amount of such uses would qualify the area as within the language of the statute and then, if the finding is in the affirmative, determine on the basis of the six criteria whether the chancery should be permitted to locate there. D.C. Code § 5-1206(d).

The advice of the Deputy Corporation Counsel was accompanied by a well-reasoned analysis, and the Board concurs with the advice that it has the authority and the obligation to decide this application. Accordingly, the Board denied the motion to dismiss the application.

The Board has determined in the circumstances of this application to apply the criteria which guided the Zoning Commission in mapping the D zone in R-1 through R-5-B zone districts. Indeed, the Board finds substantial support for this approach in the land use analysis prepared by Rivkin Associates for the applicant (Ex. 9), in the Statement of the Applicant filed June 29, 1988 (Ex. 39) at pages 6 and 7, and in the Applicant's analysis of the "Eligibility of the area pursuant to Section 206 of the Foreign Missions Act" (Ex. 17) at pages 2 and 3. In all of these documents, applicant relies upon the standard that for an area to be deemed as one "which includes office or institutional uses," at least 1/3 of the existing uses should be office or institutional uses.

This Board agrees that this approach is fair and reasonable. The rationale which was persuasive to the Zoning Commission, as set forth in Order No. 509 is persuasive to the Board. A minimal office presence within an essentially residential area would not reasonably be a premise for further erosion of that area's existing residential character, nor would it be reasonable for this Board to exercise its rulemaking power to alter the character of such an area by allowing a chancery to locate within it.

Nothing before this Board establishes any superior, or even equal, alternative measure, to determine whether an area should be treated as a Sec. 5-1206 (b)(2)(B) area, than the 1/3 of total floor area measure. This latter measure was derived by the Planning Commission and Zoning Commission from a study of the average amount of floor area which is devoted to office and institutional uses in squares which were located in the then existing D overlay zone. In particular, the applicant has not proposed an alternative measure or standard which the Board would conclude is reasonable.

The Board also believes that in the particular circumstances of this application, it is reasonable to treat as the pertinent "area" for review only that portion of Square 153 which is zoned R-5-B. The Board will not enlarge this area by including other squares, or the portion of Square 153 which is zoned SP-1. The latter area is a zone district which is explicitly identified in D.C. Code Sec. 5-1206(b) as one in which a chancery may be located subject to this Board's disapproval.

The larger area which surrounds the immediate area of the application is marked by particularly closely drawn

zone district boundary lines. For that reason, under certain literalistic readings of the word "area," the area in which the proposed chancery would be located could arguably be extended to include the immediately adjacent SP-1 zone district or the reasonably proximate C-2-A zone. But the engrafting of such zone districts onto the area of consideration would also engraft onto the area the matter-of-right or special exception offices which are located in those zones. These mixed-use and office zones, and the included office uses, should not be merged with a residentially-zoned area which both the Zoning Commission and the Congress have legislatively determined to warrant different treatment.

The Board finds particular support for this approach in that Congress itself, in Sec. 5-1206, treats various zone districts as discrete classes of areas, which warrant different treatment. In applying the Congressional statute, it is reasonable for the Board to accord the R-1-A through R-5-B areas the full measure of protection which the Congressional legislation contemplates.

On the basis of Ex. 9, it is evident to the Board that 1/3 of the floor area within the R-5-B zoned portion of Square 153 is not shown to be currently occupied by offices or institutional uses. This conclusion is confirmed by the circumstance that the applicant, perhaps studiously, has omitted any explicit discussion of the existing uses within this area. Nonetheless, Ex. 9 allows the Board to conclude as is set forth above.

Because the Board has exercised the quasi-legislative authority vested in it under Sec. 5-1206 to determine that the proposed chancery location is not within an area which meets the criteria of Sec. 5-1206(b)(2)(B), it is not necessary to address the criteria of Sec. 5-1206(d).

Based upon the foregoing, it is ORDERED that the application is DISAPPROVED.

VOTE: 3-1 (John G. Parsons, Charles R. Norris, Carrie L. Thornhill to disapprove; Reginald W. Griffith not to disapprove; Paula L. Jewell, not voting, abstaining).

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

ATTESTED BY: Edward L. Curry by
EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: SEP 23 1988.

14820order/LJP43

Appendix G

Excerpt from web page (http://www.state.gov/background_notes/holysee_0007_bgn.html) of the Department of State

U.S. Department of State, July 2000
Bureau of European Affairs

Background Notes:
The Holy See

People

Government

Foreign Relations

U.S. Relations

Travel/Business

Geographic Learning Site

Home Page

Official Name:
The Holy See (The State of the Vatican City)

PROFILE

Geography

Area (Vatican City): 0.439 sq. km. (109 acres).
Cities: Vatican City.
Terrain: low hill.
Climate: temperate, mild, rainy winters with hot, dry summers.

People

Population: 813.
Ethnic groups: Italian, Swiss, other.
Religion: Catholic.
Language: Latin.
Literacy: 100%.
Work force: About 3,000 lay workers (mostly resident outside the Vatican).

Government

Type: Papacy; ecclesiastical governmental and administrative capital of the Roman Catholic Church.
Independence: Lateran Pacts regulating independence and sovereignty of the Holy See signed with Italy on February 11, 1929, and revised in 1984.
Suffrage: The Pope is elected for life by members of the College of Cardinals who are less than 80 years old.

PEOPLE AND HISTORY

Almost all of Vatican City's 813 citizens live inside the Vatican City walls. The Vatican includes Vatican government officials, Roman Catholic Church dignitaries, priests, nuns, and guards as well as approximately 3,000 lay workers who comprise the majority of the work force.

Head of State--Pope John Paul II
Secretary of State (Prime Minister)--Cardinal Angelo Sodano
Deputy Secretary of State (Interior Minister)--Archbishop Giovanni Battista Re
Secretary of the Section for Relations With States (Foreign Minister)--Archbishop Jean-Louis Tauran
Apostolic Nuncio (equivalent to ambassador) to the United States--Archbishop Gabriel Montalvo

The Holy See maintains an Apostolic Nuniciature, the equivalent of an embassy, in the U.S. at 3339 Massachusetts Ave. NW, Washington, DC 20008; tel. (202) 333-7121.

FOREIGN RELATIONS

The Holy See maintains formal diplomatic relations with 172 nations; 71 of these maintain permanent resident diplomatic missions accredited to the Holy See in Rome. The rest have missions located outside Italy with dual accreditation. The Holy See maintains permanent diplomatic missions to 197 countries and international organizations.

The Holy See is especially active in international organizations. It has permanent observer status at the United Nations in New York, the Office of the United Nations in Geneva and specialized institutes, the UN Food and Agriculture Organization in Rome, and the UN Educational, Scientific and Cultural Organization in Paris. The Holy See also has a member delegate at the International Atomic Energy Agency and at the UN Industrial Development Organization in Vienna. It maintains permanent observers at the Organization of American States in Washington, DC, and the Council of Europe. In addition, the Holy See has diplomatic relations with the European Union in Brussels. In 1997 the Holy See became a member of the World Trade Organization.

In 1971, the Holy See announced the decision to adhere to the nuclear Non-Proliferation Treaty in order to "give its moral support to the principles that form the base of the treaty itself." The Holy See also is a participating state in the Organization for Security and Cooperation in Europe.

U.S.-HOLY SEE RELATIONS

The United States maintained consular relations with the Papal States from 1797 to 1870 and diplomatic relations with the Pope, in his capacity as head of the Papal States, from 1848 to 1868. These relations lapsed with the loss of all papal territories in 1870.

From 1870 to 1984, the United States did not have diplomatic relations with the Holy See. Until the establishment of formal relations, some U.S. presidents designated personal envoys who visited with the Holy See periodically for discussions on international humanitarian and political issues. Myron C. Taylor was the first of these representatives, serving from 1939 to 1950. Presidents Nixon, Ford, Carter, and Reagan also appointed personal envoys to the Pope. The United States and Holy See announced the establishment of diplomatic relations in January 1984. On March 7, 1984, the Senate confirmed William A. Wilson as the first U.S. Ambassador to the Holy See. Establishment of diplomatic relations has bolstered the frequent contact and consultation between the United States and the Holy See on many important international issues of mutual interest. The United States values the Holy See's significant contributions to international peace and human rights.

Principal U.S. Embassy Officials (September 2000)

Ambassador--Corinne "Lindy" C. Boggs
Deputy Chief of Mission--Joseph Merante
Second Secretary--Mark J. Powell
Second Secretary--Gregory S. D'Elia
Ambassador's Special Assistant--Jennifer Dudley

The U.S. Embassy to the Holy See is located in the Villa Domiziana, Via delle Terme Deciane 26, 00153 Rome, Italy. Tel: (39) 06-4674-3428. Fax: (39) 06-575-8346. Within the United States: PSC 59, Box 66, APO AE 09624.

TRAVEL AND BUSINESS INFORMATION

The U.S. Department of State's Consular Information Program provides Consular Information Sheets, Travel Warnings, and Public Announcements. **Consular Information Sheets** exist for all countries and include information on entry requirements, currency regulations, health conditions, areas of instability, crime and security, political disturbances, and the addresses of the U.S. posts in the country. **Travel Warnings** are issued when the State Department recommends that Americans avoid travel to a certain country. **Public Announcements** are issued as a means to disseminate information quickly about terrorist threats and other relatively short-term conditions overseas which pose significant risks to the security of American travelers. Free copies of this information are available by calling the Bureau of Consular Affairs at 202-647-5225 or via the fax-on-demand system: 202-647-3000. Consular Information Sheets and Travel Warnings also are available on the Consular Affairs Internet home page: http://travel.state.gov. Consular Affairs Tips for Travelers