GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

June 14,, 2002

MEMORANDUM

TO: Arnold R. Finlayson, Administrator
Office of Documents and Administrative Issuances

FROM: Kathy J. Wright
Office Manager

SUBJECT: Proposed Rulemaking – BZA Application No. ~~16892~~ 16882

Please publish the following in the D.C. Register on Friday, June 21, 2002 as follows:

Notice of Emergency and Proposed Rulemaking and Determination and Order in BZA Application 16892 – Embassy of the People's Democratic Republic of Algeria.

BZA
Case No. 16882
Exhibit No. 37

Board of Zoning Adjustment
District of Columbia
CASE NO.16882
EXHIBIT NO.37

RULEMAKING TRANSMITTAL FORM

DATE AND TIME RECEIVED
Office of Documents use only

TYPE OF RULEMAKING ACTION: [ ] EMERGENCY RULES [ ] FINAL RULES [ ] PROPOSED RULES [X] COMBINED

AGENCY: OFFICE OF ZONING

AGENCY REPRESENTATIVE: JERRILY R. KRESS, FAIA

ADDRESS: 441 4th Street, N.W., Suite 210 South TELEPHONE: (202) 727-6311

TITLE AND DESCRIPTION OF RULES: Permission to reconstruct a chancery building with a small addition for the Embassy of the People's Democratic Republic of Algeria in an R-5-D Zone District at premises 2118 Kalorama Road, N.W. (Square 2527, Lot 48).

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: Not applicable

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: DCR _____ DATE: _____

COMPLETE CITATION to the statute, regulation, or other legal authority which specifically authorizes the issuance of the substance of these rules: Foreign Missions Act, approved August 24, 1982 (96 Stat. 283; D.C. Code, 2001 Ed., § 6-1306 (formerly codified at D.C. Code § 5-1206 (1994 Repl.))), and chapter 10 of the Zoning Regulations, Title 11 DCMR.

LEGAL CERTIFICATION: I certify that I have reviewed the attached rulemaking and, in my opinion, the substance of the text of the rules is legally sufficient.
DATE: JUNE 12, 2002 SIGNED: for PHONE: (202) 442-9777

✓	FINAL		CONDITIONAL	NAME: ROBERT R. RIGSBY	TITLE: CORPORATION COUNSEL

PROMULGATOR: Name and title of the person legally authorized to adopt and promulgate these rules (or the name of the board or other body authorized to adopt rules by vote)
Board of Zoning Adjustment for the District Of Columbia Title:

COMPLETE CITATION to the statute, regulation, order, or other legal authority that specifically authorizes the issuance of the substance of these rules: Foreign Missions Act, approved August 24, 1982 (96 Stat. 283; D.C. Code, 2001 Ed., § 6-1306 (formerly codified at D.C. Code § 5-1206 (1994 Repl.))), and chapter 10 of the Zoning Regulations, Title 11 DCMR.

SIGNATURE OF THE PERSON AUTHORIZED TO ADOPT RULES OR ATTEST TO THE ADOPTION OF RULES

DATE OF APPROVAL OF VOTE: June 11, 2002

APPROVAL OF ATTEST:

TITLE: Director, Office of Zoning PHONE: (202) 727-6311

Office of Documents use only: THIS NOTICE PUBLISHED AT: VOL: DCR: DATE:

GOVERNMENT OF THE DISTRICT OF COLUMBIA

BOARD OF ZONING ADJUSTMENT

NOTICE OF FILING

APPLICATION NO. 16882

On March 27, 2002, the Board of Zoning Adjustment received the above-referenced application from Jim Smith, c/o Mr. Permit L.L.C., on behalf of the Embassy of the People's Democratic Republic of Algeria, to permit the reconstruction of a chancery building with a small addition in the R-5-D Zone District at premises 2118 Kalorama Road, N.W. (Square 2527, Lot 48). The application will be considered by the Board in accordance with the requirements of the Foreign Missions Act, approved August 24, 1982 (96 Stat. 283; D.C. Code, 2001 Ed. § 1306 (formerly codified at D.C. Code § 1206 (1994 Repl.))), and the applicable provisions of the Zoning Regulations, Title 11 DCMR.

The chancery is located in Advisory Neighborhood Commission 1D.

Notice of hearing was published in the *D.C. Register* on April 19, 2002, at 49 DCR 3690, and a public hearing was held on June 11, 2002. At the public hearing, the Board took emergency rulemaking action not to disapprove the application. The Notice of Emergency and Proposed Rulemaking Action are published elsewhere in this edition of the *D.C. Register.* All persons desiring to comment on the proposed rulemaking should file comments in accordance with the instructions contained in the combined Notice of Emergency and Proposed Rulemaking Action.

For additional information about this application, contact the Office of Zoning, 441 4th Street, N.W., Suite 210, Washington, D.C. 20001; telephone (202) 727-6311.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

BOARD OF ZONING ADJUSTMENT

NOTICE OF EMERGENCY and PROPOSED RULEMAKING

and

DETERMINATION AND ORDER

APPLICATION NO. 16882

The Board of Zoning Adjustment, in its capacity as the Foreign Missions Board of Zoning Adjustment for the District of Columbia, pursuant to the authority set forth in the Foreign Missions Act, approved August 24, 1982 (96 Stat. 283; D.C. Code, 2001 Ed. § 6-1306 (formerly codified at D.C. Code § 5-1206 (1994 Repl.))); chapter 10 of the Zoning Regulations of the District of Columbia, 11 DCMR; and section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Code, 2001 Ed. § 2-505(c) (formerly codified at D.C. Code § 1-1506(c) (1999 Repl.))), hereby gives notice of the adoption, as an emergency rulemaking, of its determination not to disapprove the application of the Embassy of the People's Democratic Republic of Algeria to reconstruct a chancery building with a small addition in an R-5-D Zone District, at premises 2118 Kalorama Road, N.W. (Square 2527, Lot 48).

The Board also gives notice of its intent to take final rulemaking action to not disapprove the application in not less than forty (40) days from the date of publication of this notice in the *D.C. Register*.

Emergency rulemaking action is required as a result of the following circumstances: The applicant filed a chancery application with the Board on March 27, 2002. Pursuant to 11 DCMR § 3134.7, the application was accompanied by a letter from the United States Department of State certifying that the applicant has complied with section 205 of the Foreign Missions Act, D.C. Code, 2001 Ed. § 6-1305 (formerly codified at D.C. Code § 5-1205 (1994 Repl.)).

The Office of Zoning, on March 29, 2002, provided notice of the filing of the application to the Department of State; the District of Columbia Office of Planning; the Historic Preservation Review Board; the District of Columbia Department of Public Works; Advisory Neighborhood Commission (ANC) 1D, the ANC for the area within which the property that is the subject of the application is located; the ANC Commissioner for the affected Single-Member District; and the Ward 1 Councilmember. The Office of Zoning subsequently scheduled a public hearing on the application for June 11, 2002, and provided notice of the hearing by mailing a copy to the applicant, to ANC 1D, and to all

property owners within 200 feet of the subject property. Notice of the hearing was also published in the *D.C. Register* on April 19, 2002, at 49 DCR 3690, and posted in the Office of Zoning. In addition, on May 30, 2002, the applicant placed a zoning poster on the front of the property, in plain view of the public. The notice thus complies with the requirements § 3134.9(b), which incorporates by reference the notice requirements for variance and special exception applications under § 3113. However, just prior to the public hearing, the Office of Zoning discovered that it had inadvertently failed to publish a notice of filing and a notice of proposed rulemaking as required by § 3134.9(a) and (b). In order to comply with the requirements of 11 DCMR § 3134.9 and with the notice requirements of the District of Columbia Administrative Procedures Act for rulemaking, the Board determined to proceed with the public hearing as noticed, to take emergency rulemaking action on the application, and to publish a notice of proposed rulemaking as soon after the hearing as possible, providing at least 40 days for additional written public comment on the proposed rule. The record will close at the conclusion of the written public comment period, at which time the Board will take final rulemaking action.

Emergency rulemaking is being taken to avoid substantial financial injury to the applicant, including placing the applicant's construction contract and insurance payments in jeopardy. The subject property was developed with a four-story masonry and frame building. In January 2001, a fire destroyed the top floor and rear portions of the building. The applicant is in the midst of rebuilding the damaged building as a matter of right. However, due to requirements relating to fire, safety, and handicapped access (such as enclosed fire stairs, a second stairway for emergency egress, and an elevator core), the amount of space in the building that would be available for office use has been substantially reduced. The applicant is thus proposing a second-story addition to an existing one-story rear wing. The applicant's construction contractor has advised the applicant that construction must begin on the addition no later than June 28, 2002, to avoid a major disruption in the construction process. The applicant had filed its application in a timely manner to permit the proper sequencing of the construction, and does not bear any responsibility for the failure to publish the proper rulemaking notice. The Office of Zoning provided the public with the same notice that would be provided for applications for variance and special exception relief. Despite the extensive notice of the public hearing, the Board has not received any public comments on the application. The Department of State, the Office of Planning, the Historic Preservation Review Board, and ANC 1D have all submitted favorable reports on the application. Therefore, the Board is unaware of any public opposition or concerns regarding this application. In light of the severe hardship the applicant would face given the delays necessary to comply with the notice requirements of the Administrative Procedure Act for proposed rulemaking, the Board has determined that it is appropriate to proceed with emergency rulemaking action.

The Board has determined not to disapprove the application as an emergency rulemaking for the following reasons:

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

Second, the proposed addition is consistent with the character of the Sheridan-Kalorama Historic District. The Historic Preservation Review Board has approved the conceptual reconstruction plans as appropriate in size, massing, and architectural expression for a large mansion property.

Third, the applicant provides parking in the rear for seven vehicles. The applicant will maintain its parking facilities, which were determined to be adequate in previous Board proceedings. Also, the Secretary of State has determined that there are no special security requirements relating to parking requirements in this case.

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

Fifth, the Director of the Office of Planning, on behalf of the Mayor of the District of Columbia, has determined that favorable action on this application is in the municipal interest.

Sixth, the Secretary of State has determined that a favorable decision on this application would serve the federal interest in that it would assist the United States in continuing to enjoy the support of the Government of Algeria as the United States pursues it search for a new chancery location in Algeria.

Pursuant to D.C. Code § 2-505(c), this emergency rule was adopted on June 11, 2002, and became effective immediately.

This emergency rulemaking will expire on October 8, 2002 (the 120th day after the adoption of this rule), or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than forty (40) days after the date of publication of this notice in the *D.C. Register*. Comments should be addressed to the attention of Jerrily R. Kress, FAIA, Director, Office of Zoning, 441 4th Street, N.W., Suite 210, Washington, D.C. 20001. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

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

VOTE: 5 – 0 - 0 (John G. Parsons, Anne M. Renshaw, Geoffrey H. Griffis, Curtis L. Etherly, and David A. Zaidain, to adopt the Notice of Emergency and Proposed Rulemaking and Determination and Order).

Each concurring member has approved the issuance of this Notice of Emergency and Proposed Rulemaking and Determination and Order.

FINAL DATE OF ORDER: JUN 12 2002