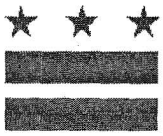
GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Corporation Counsel

Commercial Division
Land Use and Public Works



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PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION

MEMORANDUM

TO: **Jerrily R. Kress, FAIA**
Director, Office of Zoning

FROM: **Alan Bergstein**
Section Chief
Commercial Division, Land Use and Public Works

SUBJECT: **BZA Application 16882 - Algerian chancery**
2188 Kalorama Road, N.W. (Square 2527, Lot 48)

DATE: **August 1, 2002**

Pursuant to your request, please find attached a draft Notice of Final Rulemaking and Determination and Order in the above-referenced matter. If you require any further assistance with respect to this matter, please do not hesitate to contact Assistant Corporation Counsel Marie Sansone at 724-6657.

AHB/mgs
(10809)

BZA
Case No. 16882
Exhibit No. 38

Board of Zoning Adjustment
District of Columbia
CASE NO.16882
EXHIBIT NO.38

DRAFT – August 1, 2002

GOVERNMENT OF THE DISTRICT OF COLUMBIA

BOARD OF ZONING ADJUSTMENT

NOTICE OF FINAL 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, and 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), and chapter 10 of the Zoning Regulations of the District of Columbia, Title 11 DCMR, and having held a public hearing, hereby gives notice that it took final action to not 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 took emergency and proposed action to approve the rulemaking at its June 11, 2002, public hearing on the application. Notice of the filing of the application was published in the *D.C. Register* on June 21, 2002, at 49 DCR 5880. A combined Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on June 21, 2002, at 49 DCR 5824,

providing a 40-day comment period on the proposed rulemaking. At its public decision meeting on August 6, 2002, the Board took final action to not disapprove the application.

The property that is the subject of the application 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.

On March 27, 2002, the applicant filed a chancery application with the Board. Pursuant to 11 DCMR § 3134.7, the application was accompanied by a letter from the United States Department of State certifying that the applicant has complied with section 205 of the Foreign Missions Act, D.C. Code, 2001 Ed. § 6-1305.

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 complied 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 rulemaking notice requirements of 11 DCMR § 3134.9 and the District of Columbia Administrative Procedures Act, and to avoid substantial financial injury to the applicant (including placing the applicant's construction and insurance contracts in jeopardy), the Board determined to proceed with the June 11 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 40 days for additional written public comment on the proposed rule.

The record closed on July 31, 2002, at the conclusion of the written public comment period. The Department of State, Office of Planning, Historic Preservation Review Board, District Department of Transportation, and ANC 1D have all submitted favorable reports on the application. The Board has not received any other comments on the application.

At its public decision meeting on August 6, 2002, the Board determined not to disapprove the application 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.

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

Vote of the Board of Zoning Adjustment taken at its public hearing on June 11, 2002, to **APPROVE** the combined emergency and proposed rulemaking: **5 – 0 – 0** (John G. Parsons, Anne M. Renshaw, Geoffrey H. Griffis, Curtis L. Etherly, Jr., and Patricia E. Gallagher, to approve).

This Notice of Final Rulemaking and Determination and Order was **ADOPTED** by the Board of Zoning Adjustment at its public meeting on August 4, 2002, by a vote of _ - _ - _ (_____, _____, _____, _____, and _____, to adopt).

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

ATTESTED: _____

JERRILY R. KRESS, FAIA

Director, Office of Zoning

PURSUANT TO 11 DCMR § 3134.17, THIS DETERMINATION AND ORDER IS FINAL UPON PUBLICATION OF THIS NOTICE OF FINAL RULEMAKING AND DETERMINATION AND ORDER IN THE *D.C. REGISTER*. THIS DETERMINATION AND ORDER SHALL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.