Law Offices
HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801

202-955-3000
FAX 202-955-5564
www.hklaw.com

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June 18, 2003

CHRISTOPHER H. COLLINS
202-457-7841

Internet Address:
ccollins@hklaw.com

D.C. OFFICE OF ZONING
2003 JUN 18 PM 1:00

VIA HAND DELIVERY

Ms. Jerrily R. Kress, FAIA
Executive Director, D.C. Office of Zoning
441 – 4th Street, N. W.
Room 220 South
Washington, D. C. 20001

Re: Application No. 17020--RNC 2012 LLC,
on behalf of the Embassy of Portugal

Dear Ms. Kress:

A question was raised by the FMBZA on June 17, 2003 at the beginning of the above-referenced case about the filing fee for the expansion of the building at 2012 Massachusetts Avenue, NW, which expansion is the subject of this Application. For the reasons as set forth more fully below, the Embassy's position in this case is as follows:

1. The filing fee paid by the Applicant for this Application was properly computed based upon the amount of square footage of the expansion space to be added to the building; and

2. The filing fee for an application for permission to expand a chancery should not be based upon the amount of matter-of-right chancery square footage, but rather should only be based upon the square footage of the chancery expansion.

FACTS

The following facts are not in dispute in this case:

BZA
Case No. 17020
Exhibit No. 39

Board of Zoning Adjustment
District of Columbia
CASE NO. 17020
EXHIBIT NO. 39

1. The subject site is split zoned DC/SP-1 and DC/C-2-A. (For ease of discussion herein, these will be further referred to without the DC overlay designation).

2. The existing building is located entirely on the SP-1 portion of the site, and the gross floor area of the expansion space is entirely on the SP-1 portion of the site as well. The C-2-A portion of the site is entirely devoted to surface parking. A small portion of the parking area is located in the SP-1 portion of the site.

3. The building on the site was occupied for office uses for almost 50 years, pursuant to BZA special exception approval and validly issued Certificates of Occupancy, all of which have been submitted to the record in this case.

4. The building on the site is owned by RNC 2012 LLC and is leased to the Embassy of Portugal. The Embassy is presently conducting extensive interior renovation work to the building as a matter of right, pursuant to validly issued permits, in preparation for the occupancy of the building for chancery purposes as a matter of right.

5. The C-2-A zone permits all types of office use, including chancery, as a matter of right.

6. In Case No. 97-7, published in the DC Register on January 29, 1999, in 46 DCR-812, Sections 501.3 and 508.1 of the SP Zoning Regulations were changed. (See Attachment A). Prior to that action, general office was not permitted in the SP zones, and "SP office uses" were only permitted by special exception.

7. In Case No. 97-7, under the heading of Uses as a Matter of Right in the SP zones, Section 501.3 was changed to allow "General office use, including chancery, ...in an SP District as a replacement for office use for...non-profit organization...". (emphasis added). Under this section, the Embassy of Portugal may occupy the existing building on the site for chancery purposes as a matter of right, without the necessity of filing an application to the FMBZA. Chanceries are given the same treatment as other office uses in this provision because, under 22 US Code, Section 4306(b)(3) of the Foreign Missions Act, "the limitations and conditions applicable to chanceries shall not exceed those applicable to other office or institutional uses in" the SP zones.

8. In Case No. 97-7, Section 508.1 was changed to allow "construction of a new office building, or construction of an addition to a building for office use, or conversion of an existing building to office use" as a special exception. (emphasis added). Under this section, the expansion of an office building in the SP zone is subject to special exception approval, or in the case of a chancery, review by the FMBZA under this provision, as well as Chapter 10 of the Zoning Regulations and the Foreign Missions Act.

DISCUSSION

In this Application, the Embassy of Portugal has not requested FMBZA review of its use of the existing building, nor is such review necessary. The only issue before the FMBZA is the expansion of the building by 500 sq. ft. of gross floor area to add a stairway. Pursuant to the entitlement granted by Section 501.3, the FMBZA is without jurisdiction to approve or disapprove the use of the existing building on this site for chancery purposes. However, the FMBZA has jurisdiction to review the proposed 500 sq. ft. expansion of the building.

Section 3180.1(c) of the Zoning Regulations sets forth the fee "for an application for permission to locate, expand or reconstruct a chancery in a ...SP District...". (emphasis added). The only issue before the FMBZA in this Application is the expansion; not location, and not reconstruction. It is not logical to require an applicant to pay a fee based on the size of the entire building, when the only issue over which the FMBZA has jurisdiction is the expansion space.

Consider the example of a chancery of 100,000 sq. ft. which proposes to add a small 2000 sq. ft. expansion:

1. It would not be logical or defensible for the FMBZA to charge a filing fee of $51,000 to review the small expansion of that building, based upon the size of the original building and the expansion space together. The correct fee in that instance would be $1000.

2. If the FMBZA's position in this case is correct, the filing fee in the above example would be the same $51,000 whether the Embassy sought FMBZA review to relocate the entire 102,000 sq. ft. chancery to a new location (a major, major case) or whether they simply sought to add 2000 sq. ft. to their existing chancery (a 2% addition to the building). This position just doesn't make sense.

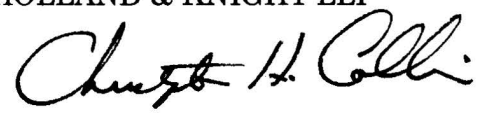
The regulations as written do not require the FMBZA to charge a filing fee for a chancery expansion based on the size of the original building. Support for our position can be found in the plain words of the Regulations themselves. The Chair mentioned that there was other precedent for charging a fee in this manner. The most recent case involving the Embassy of Algeria, in a D overlay zone, included both an expansion and a reconstruction, because the building was gutted by fire and was rebuilt. If the fee in that case was based upon the square footage of the entire building, then there is support for that in the plain words of the Regulations. Even if there were other FMBZA cases where the filing fee was charged for both the expansion space and the existing building in a zone where the existing chancery use was a matter of right (and we have

not been able to find any such cases), it does not mean that such a practice should be perpetuated.

For the above reasons, the Embassy of Portugal respectfully requests a determination that the filing fee paid by the Applicant in this case was properly computed based upon the amount of square footage of the expansion space. Thank you

Very truly yours,

HOLLAND & KNIGHT LLP



Christopher H. Collins

CHC/skp

cc: Josefina Carvalho, Embassy of Portugal (by fax)
Ronald S. Mlotek, Office of Foreign Missions, U.S. Department of State (by fax)
Lori Monroe, Office of the Corporation Counsel (by fax)
Richard Nero, Office of Zoning (by fax)

WAS1 #1191416 v1

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
CASE NO 97-7

The Zoning Commission for the District of Columbia, pursuant to the authority of the Zoning Act of June 20, 1938 (52 Stat. 797, ch. 534. § 1; Mar. 4, 1942, 56 Stat. 122, ch. 126; 1973 Ed., D.C. Code §§ 5-413 et. Seq.) and Title 11, DCMR ch.1, after public notice and hearing prescribed by law, hereby gives notice of the adoption of amendments to the Zoning Regulations and the Zoning Map of the District of Columbia (Title 11 DCMR). The amendments add a new section 501.3 which substitutes the terms "general office use, including chancery" for existing office uses described in the section and amend section 508.1 by changing the first clause. The map amendments rezone a number of sites at the edge of the Central Employment Area into or out of the SP Districts. A notice of proposed rulemaking was published in the D.C. Register on July 24, 1998 (45 DCR 4934).

These amendments were adopted by the Zoning Commission as a final action at a public meeting on November 9, 1998. The specific amendments to the Zoning Regulations and Map are as follows:

A. Title 11 DCMR, Chapter 5, Section 501, USES PERMITTED AS A MATTER OF RIGHT, is amended by adding a new section 501.3 to read as follows:

501.3 General office use, including chancery, shall be permitted in an SP District as a replacement for office use for international organization, non-profit organization , labor union, architect, dentist, doctor, engineer, lawyer or similar professional person existing and approved by the Board of Zoning Adjustment (BZA) or the Zoning Commission or authorized by a validly issued certificate of occupancy prior to (effective date of these amendments).

B. Title 11 DCMR, Chapter 5, Section 508, OFFICE USES (SP), is amended as follows:

508.1 Construction of a new office building or construction of an addition to a building for office use, or conversion of an existing building to office use, shall be permitted in an SP District if approved by the Board of Zoning Adjustment in accordance with the conditions specified in Section 3108 of chapter 31 of this title, subject to the provisions of this section.

C. The adopted amendments to the Zoning Map are as follows:

ATTACHMENT A

1. DUPONT CIRCLE/WEST END SUBAREA

   a. Rezone from DC/SP-2 to DC/R-5-E:
      - Square 96, Lot 814
      - Square 97, lots 816, 2341-2410 (condominium lots at 1316 New Hampshire Avenue, N.W.), and lots 2045-2340 (condominium lots at 1330 New Hampshire Avenue, N.W.)

   b. Rezone from DC/SP-2 to DC/C-3-C:
      - Square 116, lots 59, 60, 61, 809 and 833

   c. Rezone from SP-2 to C-3-C:
      - That part of Lot 49 in Square 99 now zoned DC/SP-2

   d. Rezone from DC/SP-2 to DC/C-2-B:
      - Square 96, Lot 99

2. FOGGY BOTTOM SUBAREA

   a. Rezone from SP-2 to R-5-E:
      - Square 31, lots 28 and 835
      - Square 81, lots 98, 835 and 836

   b. Rezone from R-5-E to R-5-D:
      - All of Square 58

   c. Rezone from R-5-D to SP-2:
      - All of Square 59

3. LOGAN CIRCLE/THOMAS CIRCLE SUBAREA

   a. Rezone from SP-2 to R-5-E:
      - Square 211, lots 37, 38, 47, 821, 822, 850, 852, and 856, and that part of Lot 852 now zoned SP-2

      - Square 243, lots 827 and 832

   b. Rezone from SP-2 to HR/SP-2:
      - Square 212, lots 115-117, and 122