GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

JUL - 1 2003

# MEMORANDUM

**TO:** Alan Bergstein, Chief
Land Use and Public Works
Office of Corporation Counsel

**FROM:** Linda J. Pelzer
Contact Representative

**SUBJECT:** Certification for Final Rulemaking in Application No. 17020
Embassy of Portugal

The attached rulemaking is forwarded to you for review of its legal sufficiency and for signature:

**Final Rulemaking in BZA Application No. 17020 – Embassy of Portugal**

The document **must be returned to the Office of Zoning for transmittal to the Office of Documents** once you have signed the Rulemaking Transmittal form. Please call me on 727-6311 when the document is ready to be retrieved.

alan17020

BZA
Case No. 17020
Exhibit No. 45



Board of Zoning Adjustment
District of Columbia
CASE NO. 17020
EXHIBIT NO. 45

# RULEMAKING TRANSMITTAL FORM

**TYPE OF RULEMAKING ACTION:** ___ EMERGENCY RULES

_X_ FINAL RULES ___ PROPOSED RULES ___ COMBINED

**AGENCY:** OFFICE OF ZONING

**DATE AND TIME RECEIVED**
**OFFICE OF DOCUMENTS USE ONLY**

**AGENCY REPRESENTATIVE:** RICHARD NERO

**ADDRESS:** 441 4th Street, N.W., Wash, D.C. **TELEPHONE:** (202) 727-6311

**TITLE AND DESCRIPTION OF RULES:**

NOT APPLICABLE

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed:

11 DCMR, Chapter 33 (1087); D.C. Official Code, Sec. 6-1306 (2001 Supp.)

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:

**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: 7-1-03 SIGNED: _____ PHONE: 442-9777

☒ FINAL ☐ CONDITIONAL NAME: ROBERT SPAGNOLETTI TITLE: Acting 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):

NAME: BOARD OF ZONING ADJUSTMENT TITLE: _____

COMPLETE CITATION to the statute, regulation, order, or other legal authority that specifically authorizes this person or agency to adopt and promulgate these rules:

11 DCMR, Chapter 33 (1987; D.C. Official Code, Sec. 6-1306 (2001 Supp.)

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

DATE OF APPROVAL OR VOTE: JUL 0 1 2003

APPROVAL OR ATTEST: _____

JERRILY R. KRESS, FAIA

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**

**Application No. 17020 of RNC 2012 LLC, on behalf of the Embassy of Portugal**, pursuant to 11 DCMR § 1002, to permit the expansion of a chancery for the Embassy of Portugal in the DC/SP-1 and DC/C-2-A Districts at premises 2012 Massachusetts Avenue, N.W. (Square 95, Lot 3).

**NOTICE OF FINAL RULEMAKING**
**and**
**DETERMINATION AND ORDER**

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); 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)), hereby gives notice of the adoption of its determination not to disapprove the application of RNC 2012 LLC, on behalf of the Embassy of Portugal, for the expansion of the Embassy of Portugal's chancery building at premises 2012 Massachusetts Avenue, N.W., (Square 95, Lot 3).

Notice of the filing of the application was published in the D.C. Register on May 2, 2003, and notice of the proposed rulemaking was published in the D.C. Register on May 30, 2003. At the June 17, 2003, public hearing, the Board waived the forty day notice of proposed rulemaking requirement set forth in Section 3134.9(c) of the Zoning Regulations and took proposed action to approve the rulemaking. In accordance with the D.C. Administrative Procedure Act (D.C. Section 2-501, *et seq.*), the Board provided well in excess of thirty days' notice to the public. At its public decision meeting on July 1, 2003, the Board took final action not to disapprove the application.

The property that is the subject of the application is located at 2012 Massachusetts Avenue, N.W., and is currently being renovated internally for use by the Embassy as its chancery building as a matter of right. The subject of this application is the Embassy's proposed 500 square foot addition to the rear of the building as well as other exterior changes, including the installation of flagpoles and the coat of arms on the front of the building, a replacement screen wall for the HVAC unit on the east side of the front of the building, the repair of the curb cut along Massachusetts Avenue, a replacement security fence at the rear of the property, and other exterior features as shown on the plans submitted in the record of this case.

On April 14, 2003, 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 had complied with Section 205 of the Foreign Missions Act (22 USC 4305) and that the application could be submitted to the Board.

The Office of Zoning, on April 21, 2003, 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 Transportation; Advisory Neighborhood Commission (ANC) 2B, the ANC for the area within which the subject property is located; the ANC Commissioner for the affected Single Member District; and the Ward 2 Councilmember. The Office of Zoning subsequently scheduled a public hearing on the application for June 17, 2003, and provided notice of the hearing by mailing a copy to the applicant, to ANC 2B, 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 May 2, 2003, and posted in the Office of Zoning. In addition, on May 30, 2003, the applicant posted notice on the property in plain view of the public in accordance with 11 DCMR § 3113. With the Board's waiver of the 40-day notice requirement for the publication of the notice of proposed rulemaking, the notice given complied with the requirements of 11 DCMR § 3134.9.

The record closed on June 30, 2003, at the conclusion of the written public comment period. The Department of State, Office of Planning, Historic Preservation Office, District Department of Transportation, Metropolitan Police Department, and D.C. Fire and Emergency Medical Services Department all submitted favorable reports on the application. The ANC 2B also supported the application with conditions that have been incorporated in this order. The Board has not received any other comments on the application.

At its public decision meeting on July 1, 2003, 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 Portugal for its diplomatic mission in the Nation's Capital.

Second, the Historic Preservation Office found the proposed expansion and other exterior improvements to be consistent with the character of the Massachusetts Avenue and Dupont Circle Historic Districts and approved them in concept.

Third, the applicant provides parking in the rear of the building for sixteen vehicles. The Office of Planning and the District of Columbia Department of Transportation found the

parking facilities to be more than adequate for the chancery building. In addition, the Secretary of State has determined that there are no special security requirements relating to parking in this case.

Fourth, after consultation with Federal agencies authorized to perform protective services, the Secretary of State has determined that the subject property 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 and is consistent with the Comprehensive Plan and the Dupont Circle Overlay District.

Sixth, the Secretary of State has determined that a favorable decision on this application would serve the Federal interest, as the Government of Portugal has consistently been supportive of the United States Embassy in Lisbon in its diplomatic property needs.

Accordingly, it is hereby **ORDERED** that this application is **NOT DISAPPROVED**, with the following conditions:

1. The Embassy of Portugal agrees not to request diplomatic parking spaces along the street frontage of the property that abuts P Street, N.W.

2. The Embassy of Portugal agrees that in the event that the two trees in the public space abutting the property on P Street, N.W., must be removed, replacement trees will be planted of equal or greater size, as measured in caliper inches of the trunk of the tree to be removed, measured at a height of no greater than four feet from the ground.

3. The Embassy of Portugal agrees to appoint a person to serve as a contact for the neighborhood in the event that issues arise regarding the Embassy's use of the property. The Embassy will provide the name and telephone number of the contact person to the representative of the ANC single member district in which the property is located.

Vote of the Foreign Missions Board of Zoning Adjustment taken at its public hearing on June 17, 2003, to **APPROVE** the proposed rulemaking: 5-0-0 (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, John G. Parsons, and Patricia E. Gallagher)

This Notice of Final Rulemaking and Determination and Order was **ADOPTED** by the Foreign Missions Board of Zoning Adjustment at its public meeting on July 1, 2003, by a vote of 5-0-0 (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller to adopt; John G. Parsons, and Patricia E. Gallagher by proxy to adopt).

**FINAL DATE OF ORDER: _____**

**BY ORDER OF THE FM/BOARD OF ZONING ADJUSTMENT**
Each concurring member has approved the issuance of this Notice of Final Rulemaking and Determination and Order.

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.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 OF THE D.C. CODE. *SEE* D.C. CODE § 1-2531 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER. OF THE D.C. CODE. SEE D.C. CODE SECTION 2-1402.67 (2001). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C.LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 14 IN TITLE 2 OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER. NOTE IN SECTION 2-1401.01 OF THE D.C. HUMAN RIGHTS ACT THAT IT IS THE INTENT OF THE COUNCIL OF THE DISTRICT OF COLUMBIA, IN ENACTING THIS CHAPTER, TO SECURE AN END IN THE DISTRICT OF COLUMBIA TO DISCRIMINATION FOR ANY REASON OTHER

THAN THAT OF INDIVIDUAL MERIT, INCLUDING, BUT NOT LIMITED TO, DISCRIMINATION BY REASON OF RACE, COLOR, RELIGION, NATURAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, AND PLACE OF RESIDENCE OR BUSINESS. rsn