GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

MEMORANDUM

TO: Arnold Finlayson, Administrator
Office of Documents

FROM: Linda J. Pelzer
Contact Representative

DATE: November 25, 2003

SUBJECT: Publication of BZA Notice of Final Rulemaking for Embassy of Tajikistan

Please publish the following in the D.C. Register on Friday December 5, 2003:

Notice of Final Rulemaking and Order for Board of Zoning Adjustment Case No. 17051 – Embassy of Tajikistan

dcr17051/ljp

BZA
Case No. 17051
Exhibit No. 38

Board of Zoning Adjustment
District of Columbia
CASE NO. 17051
EXHIBIT NO. 38

RULEMAKING TRANSMITTAL FORM

DATE AND TIME RECEIVED
Office of Documents use only

TYPE OF RULEMAKING ACTION: [ ] EMERGENCY RULES [x] FINAL RULES [ ] PROPOSED RULES [ ] 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: Notice of Final Rulemaking and Determination and Order

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: Title 11 (Zoning) Sections

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: Section 206 of the Foreign Missions Act, 96 Stat. 283, 286 (1982); D.C. Official Code §6-1306.

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: NOVEMBER 17, 2003 SIGNED: _____ PHONE: (202) 442-9777

✓	FINAL		CONDITIONAL	NAME:	ROBERT SPAGNOLETTI	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)
District of Columbia 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. Section 206 of the Foreign Missions Act, 96 Stat. 283, 286 (1982); D.C. Official Code § 6-1306.

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

DATE OF APPROVAL OF VOTE:	November 25, 2003	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

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Application No. 17051 of the Republic of Tajikistan, pursuant to 11 DCMR § 1002, to permit the establishment of a chancery for the Embassy of Tajikistan in the R-5-E District at premises 1005 New Hampshire Avenue, N.W. (Square 53, Lot 11).

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 the Republic of Tajikistan for the establishment of the Embassy of Tajikistan's chancery at premises 1005 New Hampshire Avenue, N.W. (Square 53, Lot 11).

Notice of the filing of the application, and the notice of the proposed rulemaking was published in the D.C. Register on July 4, 2003. In accordance with the D.C. Administrative Procedure Act (D.C. Section 2-501, *et seq.*), the Board provided more than thirty days' notice to the public. At the September 30, 2003, public hearing, the Board took proposed action to not disapprove the rulemaking.

The property that is the subject of the application is located at 1005 New Hampshire Avenue, N.W. The Property is a townhouse having three floors and a basement level. The Applicant requests that the ground floor and second floor be used as the chancery and that the existing English basement apartment and the top floor be used as apartments for embassy employees. This property is a historic building, contributing to the character of Schneider Triangle, a historic landmark. A flagpole and small coat of arms will be affixed to the front of the building, but otherwise there will be no exterior or interior changes. The historic preservation staff within the Office of Planning reported to the Board that the plaque and flagpole were acceptable. The historic preservation staff also certified that the building is eligible for the waiver of required parking because of the building's

historic status. The Applicant submitted the latter document to the record of this case.

On June 25, 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 (July 31, 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) 2A, 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 September 30, 2003, and provided notice of the hearing by mailing a copy to the applicant, to ANC 2A, 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 August 4, 2003 and posted in the Office of Zoning. In addition, on September 12, 2003, the applicant posted notice on the property in plain view of the public in accordance with 11 DCMR § 3113. The notice given to the public complied with the requirements of 11 DCMR § 3134.9.

The record closed on September 30, 2003, at the conclusion of the public hearing. The Department of State, Office of Planning, Historic Preservation Office, D.C. Department of Transportation, Metropolitan Police Department, and D.C. Fire and Emergency Medical Services Department all submitted favorable reports on the application. The ANC 2A also supported the application by unanimous vote and by testimony at the public hearing. The Board has not received any other comments on the application.

At the conclusion of the public hearing on September 30, 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 Tajikistan for its diplomatic mission in the Nation's Capital.

Second, the Historic Preservation Office approved the retention of the existing building, especially its façade, as being consistent with the purposes of the

Historic Preservation Act, and also approved the proposed plaque and flagpole proposed by the applicant.

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

Fourth, other District of Columbia agencies reported favorably on the application.

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 for the National Capital and the R-5-E District.

Sixth, the Secretary of State has determined that a favorable decision on this application will serve the federal interest, as the Government of Tajikistan has consistently been supportive of the United States Embassy in Tajikistan and its diplomatic property needs.

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

1. The chancery for the Republic of Tajikistan shall use the ground floor and second floor of the building.

2. The only appendages to be added to the façade of the building shall be the flagpole and the chancery plaque, as drawn for the District of Columbia historic preservation staff.

Vote of the Foreign Missions Board of Zoning Adjustment taken at its public hearing on September 30, 2003 to **NOT DISAPPROVE** the proposed rulemaking: VOTE of 5-0-0 (Geoffrey H. Griffis, Patricia Gallagher, Ruthanne G. Miller, Curtis L. Etherly, Jr., and John G. Parsons not to disapprove).

This Notice of Final Rulemaking and Determination and Order was **ADOPTED** by the Foreign Missions Board of Zoning Adjustment at its public meeting on November 25, 2003, by a **VOTE** of **5-0-0**: (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Patricia Gallagher (by proxy), Ruthanne G. Miller, and John G. Parsons to adopt).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member approved the issuance of this order.

ATTESTED BY:
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF THE ORDER: NOV 25 2003

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

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.

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.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS,

FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. LM/RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 17051

As Director of the Office of Zoning, I hereby certify and attest that on NOV 25 2003 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Cynthia A. Giordano, Esq.
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004

Chairperson
Advisory Neighborhood Commission 2A
725 24th Street, N.W.
Washington, D.C. 20037

Commissioner 2A06
Advisory Neighborhood Commission 2A
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Acting Zoning Administrator
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Washington, D.C. 20001

rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning