GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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Office of the Director

MEMORANDUM

TO: Foreign Missions Board of Zoning Adjustment

FROM: Andrew Altman
Director

DATE: January 10, 2005

SUBJECT: FMBZA Application 17275

APPLICATION
The US Department of State Office of Foreign Missions submitted an application on behalf of the Embassy of the Republic of Lithuania to expand the existing chancery building on property located at 2622 16th Street, N.W. (Square 2575 Lot 32) pursuant to Section 206 (b) of the Foreign Missions Act (Title II, Public Law 97-241, 96 Stat. 286, August 24, 1982), and Chapter 10 under Title 11 of the District of Columbia Municipal Regulations (DCMR), Zoning.

SUMMARY RECOMMENDATION
The Office of Planning recommends approval of special exceptions to:

- allow expansion of the existing chancery building based on a determination that it meets the criteria of Sections 1001 and 1002; and
- uniformly extend less-restrictive bulk and height provisions of the R-5-D zone district a distance from 8 feet to 22 feet onto an area on the same lot within a D/R-5-B zone district (depending on final addition plans) based on a determination that the proposal meets the criteria under Section 2514.

Granting both special exceptions has been determined to be in the municipal interest.

However, OP does *not* think granting relief from the closed court requirements under Section 406.1 is in the municipal interest because this request does not rise to standards set for variance approval under Section 2103.2. Thus the requested relief cannot be granted without impairing the intent, purpose and integrity of the zone map as embodied in the Zoning Regulations and Zoning Map.

SITE AND AREA DESCRIPTION
District land records indicate the subject through-lot at 2622 16th Street, N.W., with frontage on Mozart Place, N.W., has a land area of 0.39-acre (17,015 square feet). The Statement of the

BZA
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Exhibit No. 29

Board of Zoning Adjustment
District of Columbia
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Applicant indicates that the Embassy of Lithuania has used this building as its chancery since 1924. According the District of Columbia public records, the five-story masonry building includes approximately 12,517 square feet of floor area above-grade and a 2,712 square-foot unfinished basement. Submitted plans indicate the existing paved parking area and carport in the rear yard accommodates 11 vehicles. The single point for vehicular ingress/egress is a curb cut along the 16th Street frontage located in the northeast corner of the property. A metal fence with a remote-controlled driveway entrance gate surrounds the site. There is no access into the property from the Mozart Place frontage.

Surrounding development consists of a building housing the Cuban Interests Section of the Embassy of Sweden on the abutting lot to the north, and apartment buildings on abutting lots to the south on each street frontage, and to the east across 16th Street. The recreation field with the Henry D. Cooke Public School occupies the property to the west across Mozart Place, N.W. The eastern portion of the site and properties to the north, south and east are in a Residence (R-5-D) zone district. The western portion of the site, and properties to the north and south are in a Residence (R-5-B) zone district and a Mixed Use Diplomatic (D) overlay zone district. Properties further west across Mozart Place are in a R-5-D zone district without the overlay district. The existing building and site are neither designated a District of Columbia historic property nor located within a historic district (refer to Exhibit 1).

APPLICANT'S PROPOSAL

Based on the submitted Statement of the Applicant, The Embassy of Lithuania would like to replace 2,225 square feet in the rear of the building with a five-story addition to provide 9,112 square feet of additional office space, and 2,937 square feet of residential space. The building gross floor area would then increase from 12,517 to 22,147 square feet, and include 18,498 square feet of office space and 3,649 square feet of residential space in two apartments. Ambassador Ušackas indicated that only embassy staff and their families would be eligible to occupy the apartments. The addition would include a closed court extending from the second floor level so natural light will continue to beam into the second floor dining/reception room after the new construction encloses the exterior windows. The court would also help illuminate interior office spaces above the ground floor. The rear parking area would expand to accommodate 11 vehicles, with a new 820 square-foot garage large enough for five more vehicles, for a total of 16 parking spaces. The existing carport of the same size would be removed.

The Statement notes that since "... the majority of visitors ... will arrive via taxi or chauffeured vehicles, the allocated parking will be more than sufficient."

The Ambassador explained the additional office space is primarily as a result of Lithuania's membership in the European Union and the associated need for increased staff and more meeting space. The Statement indicates this request is submitted in accordance with Section 1001 of the Zoning Regulations.

EXISTING ZONING AND RELIEF REQUESTED

The eastern half of the property falls within a R-5-D zone district and the western half within a D/R-5-B zone district. The existing building predates the current Zoning Regulations, however Sections 350.1 and 1001.1 allow expansion of chanceries in the R-5-D and D/R-5-B zone districts, respectively, subject to Foreign Missions Board of Zoning Adjustment (FMBZA) disapproval in accordance with Section 1002.1. Proposed demolition and addition will extend the existing building from the R-5-D zone district into the D/R-5-B zone district nearly 8 feet. Expansion of an existing chancery use in the District is allowed in accordance with requirements of the Foreign Missions Act (Title II, Public Law 97-241, 96 Stat. 286, August 24, 1982) and corresponding sections of the DCMR Title 11, Zoning. Section 1002 indicates that:

"1002.1 To locate, replace, or expand a chancery in R-5-D, R-5-E, or SP District or D Overlay District … application shall be made to the Board of Zoning Adjustment. …

1002.4 Any determination by the Board shall be solely based on the criteria set forth under § 1001."

The property is also subject to the following zoning provisions:

Standard	D/R-5-B Requirements R-5-D	Existing	Proposed	Required Relief
Lot Area	Prescribed by FMBZA	9,357 s.f.[1] 7,658 s.f.[1]	Same	N/A
Floor Area (Ratio)	16,843 s.f.[2] (1.8) 26,803 s.f. (3.5)	N/A 12,322 s.f.[4] (1.6)	1,726 s.f.[1,3] (0.2) 20,421 s.f. (2.7)	N/A
Height	50 ft. 90 ft.	N/A 70 ft.	67 ft.[1] 70 ft.	Variance/SE N/A
Lot Occupancy Percentage	60 %[1] 75%	N/A 35%[1]	11%[1] 58%[1]	N/A
Closed Court	3 in./vertical ft. (min. 12 ft., 350 s.f.)	N/A N/A	N/A 16 ft., 288 s.f.[1]	Variance/SE
Rear Yard	4 in./vertical ft. (min. 15 ft.)	N/A 201 feet[4]	175 feet[4] N/A	N/A
Side Yard	None, 3 in./vertical ft. (min. 8 ft.)	0, 31 ft.	0, 17 ft.[5] (17 ft.)[1]	N/A

[1] From the Statement zoning calculations submitted by the Applicant
[2] Calculations of maximum allowable floor area based on based on land records
[3] Includes proposed 924 square of the addition and the 820 square-foot garage
[4] Measurements to centerline of Mozart Place, N.W.
[5] Based on the addition height of 67 feet

Standard	D/R-5-B Requirements R-5-D	Existing	Proposed	Required Relief
Parking (on-site)	1 space/800 s.f. chancery, 1/2 dwellings or as determined by FMBZA		16 spaces (2 spaces required)	Variance/SE
	1 space/1,200 s.f. chancery, 1/3 dwellings or as determined by FMBZA	11 spaces	(15 spaces required)	

This review confirms this proposal requires relief from the height limitation in the D/R-5-B zone district, and minimum closed court and parking requirements. Based on this review, the Office of Planning suggested that Applicant also request approval of the following:

- a special exception under Section 2514 to extend applicability of R-5-D zone district regulations 10 feet further west to make the less restrict regulations applicable to the entire proposed building; and
- a variance under Section 3103.2 to allow the nonconforming closed court.

Note that extending R-5-D zone regulations would increase the height limit within the affected D/R-5-B zone district area to 90 feet, more than the 67-foot height of the addition. It would also reduce the required parking to 16 spaces (15 spaces for office use + 1 space for 2 apartments), the same amount of parking provided under this proposal.

The Applicant, while not agreeing that a chancery use is subject to special exception and variance standards, did provide information in the Statement of the Applicant to support the referenced relief.

ANALYSIS
A explained above, the Applicant's proposal is subject to a number of Zoning Regulation provisions.

Compliance with Section 1001
Expansion of an existing chancery use in both the R-5-D and D/R-5-B zone districts is subject to the following criteria:

"1001.1 The Board shall consider the international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the nation's capital. In a letter to Jerrily Kress, Director of the Office of Zoning and dated December 23, 2004 (refer to Exhibit 2), Ambassador Francis X. Taylor states "…that favorable FMBZA action would fulfill the international obligation of the United States to facilitate the acquisition of secure premises by the Government of Portugal for its diplomatic mission in Washington (D.C.)." The Office of Planning agrees that this criterion has been addressed.

1001.2 The Board shall consider historic preservation, as determined by the Board in carrying out this section. This provision is not applicable because the site has not been designated a historic property and is not located in a local historic district.

1001.3 To ensure compatibility with historic landmarks and historic districts, substantial compliance with District and federal regulations governing historic preservation shall be required with respect to new construction and to demolition of or alteration to historic landmarks. This provision is not applicable for reasons stated above.

1001.4 The Board shall consider the adequacy of off-street or other parking, and the extent to which the area will be served by public transportation to reduce parking requirements, subject to any special security requirements that may be determined by the Secretary of State, after consultation with federal agencies authorized to perform protective services. The site is immediately adjacent to 16th Street, N.W., a principal arterial served by multiple Washington Metropolitan Transit Authority (WMATA) bus routes, although WMATA rail service is not convenient to the site. Section 2101.1 requires approximately 17 parking spaces for the proposed chancery use and building expansion based the requirements for 1 space for every 800 or 1,200 square feet of chancery floor area, and 1 space for every 2 or 3 dwellings in a D/R-5-B and R-5-D zone districts, respectively (per the zoning tabulations in preceding Existing Zoning and Relief Requested section). This proposal would provide 16 parking spaces on-site subject to the FMBZA granting relief from the referenced requirement. The Ambassador stated, after consulting with Federal agencies authorized to perform protective services, there are no special security requirements relating the parking requirements. The Office of Planning concludes that this criterion has been addressed.

1001.5 The Board shall consider the extent to which the area is capable of being adequately protected, as determined by the Secretary of State, after consultation with federal agencies authorized to perform protective services. The referenced letter from the Ambassador states "...the site and area are capable of being adequately protected." The Office of Planning agrees that this criterion has been addressed.

1001.6 The Board shall consider the municipal interest, as determined by the Mayor. The Director of Planning, on behalf of the Mayor, finds the proposed building addition to the subject property would generally be consistent with the Comprehensive Plan and the DC Zoning Regulations. However, the current proposal does require relief from certain zoning requirements. Therefore, this proposal is considered to be in the municipal interest subject to its consistency with health, safety and welfare standards established in the Zoning Regulations as determined by the FMBZA during consideration of the required zoning relief (further discussed below).

The Office of Planning is also very pleased that the Lithuanian Embassy is taking action: (1) to retain its principal offices within the District of Columbia; and (2) continue to function within an area of the District in where such institutional uses are encouraged. Therefore, the Office of Planning concludes that this proposal is consistent with the interests of the District subject to the FMBZA consideration of the required zoning relief.

1001.7 The Board shall consider the federal interest, as determined by the Secretary of State. The Department of State letter indicates that a favorable decision on this application would serve the federal interest. It continues that a favorable decision will assist the Department in completing "extensive and complicated" process of acquiring additional land to enhance the security of the United States Embassy in Vilnius, Lithuania.

Based on this review, this application meets the referenced criteria.

Compliance with Section 3104
Section 3104.1 grants the FMBZA the authority "to grant special exceptions where in the judgment of the Board, those special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps." The referenced special exception would allow less restrictive regulations in the R-5-D zone district to be extended into the more restrictive D/R-5-B zone district per criteria in Section 2514.

Compliance with Section 2514
To extend less-restrictive regulations to a more restrictive zoning district, the following requirements must be met:

(a) *The extension shall be limited to that portion of the lot in the more restrictive use district but not exceeding thirty-five feet (35 ft.);* The Statement of the Applicant indicates the proposed addition would extend the D/R-5-B zone district approximately 7 feet 5 inches. For the sake of clarity, OP supports extending the less restrictive R-5-D zone district regulations 8 feet further west.

(b) *In authorizing an extension, the Board shall require compliance with § 2514.1(d);* This provision refers to R-1 through R-4 zone districts and does not apply in this case.

(c) *The extension shall have no adverse effect upon the present character and future development of the neighborhood; and ...* OP does not think uniformly extending building height allowed in a R-5-D zone district into a D/R-5-B zone district a distance of 8 feet will have an adverse impact on the air and light available to neighboring properties. Shadows cast by the new building would continue to fall on the subject property and adjacent public rights-of-way due to the east-west orientation of the building and lot. Surrounding properties to the north and south are also largely developed.

(d) The Board may impose requirements pertaining to design, appearance, screening, location of structures, lighting, or any other requirements it deems necessary to protect adjacent or nearby property. OP does not think such requirements are necessary.

Section 2514.3 (b) also lists R-5-B and R-5-D zone districts in the same group for the purpose of decreasing use restrictions between zone districts. Based on this assessment, the proposed extension of the R-5-D height and bulk limitations meet the requirements of this section.

Based on the above finding, granting the requested relief would relief is in the municipal interest because it would be in harmony with the general purpose and intent of the Zoning Regulations, and Zoning Map, and proposed changes will not tend to affect adversely the use of the neighboring properties.

Compliance with Section 3103.2:
Section 3103.2 grants the FMBZA the power to grant variances from regulations set forth under the Zoning Act "[w]here by reason of exceptional narrowness, shallowness or shape of a piece of property at the time of the original adoption of the regulations, or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Code Ann. §§ 5-413 to 5-432 (1981) would result in peculiar and extraordinary practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; Provided the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone map as embodied in the Zoning Regulations and Map."

The type of zoning relief needed, to reduce the minimum closed court dimensions, is an "area" variance requiring that circumstances surrounding the requests are "unique" and that the usual application of the referenced regulations would result in "peculiar and extraordinary practical difficulties."

The Statement includes the following justifications for granting the requested relief:

- Extraordinary or Exception Conditions: The Statement of the Applicant indicates that "the lot is long and narrow and split zoned." OP notes that the property is also the narrower of only two through-lots on Square 2575, and thus is unique to this square.

- Peculiar and Extraordinary Practical Difficulties: The Statement continues that meeting the proposed requirement would "(extend) the building mass and height 15 feet further west into the D/R-5-B portion of the lot." The proposed closed court would have a width of 15.7 feet (the narrowest dimension per the zoning definition) and a length of 18.3 feet. Based on submitted plans, the height of the court extending from the second floor level would be approximately 49.5 feet. OP calculates that the required court width would be approximately 16.5 feet per Section 406.1. Taking the 18.3-foot dimension as the new court width would

result in a court length of 29.6 feet parallel to the side property line, an increase of nearly 14 feet. On this basis, OP estimates the *maximum* distance the addition would need to extend into the D/R-5-B zone district would be 22 feet. It appears the further extension could be accommodated on a portion of the proposed paved patio area without affecting the planned parking area or vehicular circulation.

The Statement contends, "... the proposed closed court meets the spirit, if not the letter, of the Zoning Regulations. ... Approval of the closed court as proposed will not result in any substantial detriment to the public good, nor will it substantially impair the intent, purpose or integrity of the zone plan." It concludes, "The non-complying closed court will not adversely affect any neighboring property ..." and "... is sufficient enough to meet the building code requirement of 15 foot separation between building windows."

The Office of Planning finds that the Statement does not adequately explain what is the practical difficulty of meeting the referenced zoning requirement. While there are no planning concerns about nonconforming court area in this case, one of the standards for granting a variance has not adequately addressed. As a result, granting the requested zoning relief is *not* in the municipal interest because doing so would impair the intent, purpose and integrity of the zone map as embodies in the Zoning Regulations and Map.

OP would agree to amend the above recommendation to approve a special exception per Section 2514 to allow less-restrictive area and bulk regulations of the R-5-D zone district to extend up to 22 feet beyond the D/R-5-B zone district boundary if this is necessary to accommodate a further extension of the building addition.

COMPREHENSIVE PLAN
The Comprehensive Plan Generalized Land Use Map designates the surrounding area for Moderate-Density Residential land uses, characterized by row houses and garden apartments as predominant uses.

Chapter 1, Major Themes of the Comprehensive Plan, also includes the following:

"... (d) Preserving and promoting cultural and natural amenities;

(e) Respecting and improving the physical character of the District; ...

(g) Preserving the historic character of the District;

(h) Reaffirming and strengthen the District's role as the economic hub of the National Capital Region; ...

(j) Providing for diversity and overall social responsibilities."

The Economic Development Element of the plan includes this major policy in Chapter 2:

> "200.8 The District places a high priority on expanding its role as a leading center for national and international tourism and international business."

Based in this information, the proposal is not inconsistent with the Comprehensive Plan.

COMMUNITY COMMENTS
This proposal was considered by Advisory Neighborhood Commission (ANC) 1C on January 5, 2005. The ANC voted to recommend FMBZA approval.

RECOMMENDATION
The Office of Planning recommends approval of special exceptions to:

- allow expansion of the existing chancery building based on a determination that it meets the criteria of Sections 1001 and 1002; and
- uniformly extend less-restrictive bulk and height provisions of the R-5-D zone district a distance from 8 feet to 22 feet onto an area on the same lot within a D/R-5-B zone district (depending on final addition plans) based on a determination that the proposal meets the criteria under Section 2514.

Granting both special exceptions has been determined to be in the municipal interest. However, OP thinks granting relief from the closed court requirements under Section 406.1 is *not* in the municipal interest because this request does not rise to standards set for variance approval under Section 2103.2. Thus the requested relief cannot be granted without impairing the intent, purpose and integrity of the zone map as embodied in the Zoning Regulations and Zoning Map.

Attachments:	Exhibit 1	Aerial Map with Zoning
	Exhibit 2	Letter dated December 23, 2005 from Ambassador Francis X. Taylor, US Department of State, to Jerrily Kress, Director of the Office of Zoning

AA/afj

Exhibit 1



FMBZA Application No. 17275
2622 16th Street, N.W.

N

Government of the District of Columbia
Anthony A. Williams, Mayor

Office of Planning ~ December 16, 2004

This map was created for planning purposes from a variety of sources. It is neither a survey nor a legal document. Information provided by other agencies should be verified with them where appropriate. Oblique imagery ©2003 Pictometry International

Legend

- Property Squares
- Diplomatic
- 16th St Heights
- Woodley Park
- Zoning Districts

Exhibit 2

United States Department of State
Washington, D.C. 20520

December 23, 2004

Ms. Jerrily R. Kress
Director
Office of Zoning
One Judiciary Square
441 4th Street, N.W., 2nd Floor
Washington, D.C. 20001

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D.C. OFFICE OF ZONING
2004 DEC 23 AM 10:31

RE: BZA Application No.17275
Embassy of the Republic of Lithuania
2622 16th Street, N.W.

Dear Ms. Kress:

The Department of State hereby provides its comments concerning the application submitted to the Foreign Missions Board of Zoning Adjustment ("FMBZA") by the Embassy of the Republic of Lithuania on November 18, regarding the Embassy's desire to construct an addition to its chancery property located at 2622 16th Street, N.W. The application was submitted pursuant to Section 206 of the Foreign Missions Act (22 U.S.C. §4306.) and D.C. Code 5-1206 and the case is scheduled to be heard on January 25, 2005.

On behalf of the Secretary of State, and pursuant to the Foreign Missions Act, 22 U.S.C. §4301, *et seq.*, particularly sections 4303 and 4306, I hereby convey to the FMBZA the following comments and determinations concerning the subject application. These comments and determinations relate to the statutory criteria governing FMBZA determinations that lie within the purview of the Federal Government, namely 22 U.S.C. §4306(d)(1), (4), and (6), as well as the pertinent portion of (d)(3).

First, with respect to the criterion set forth in 22 U.S.C. §4306(d)(1), I have determined that favorable FMBZA action on the present application would fulfill the international obligation of the United States to facilitate the acquisition of adequate and secure premises by the Government of Lithuania for its diplomatic mission in Washington.

BZA
No. 17275

Second, after consultation with Federal agencies authorized to perform protective services, I have determined, pursuant to 22 U.S.C. §4306(d)(6), that there exist no special security requirements relating to parking requirements in this case. I have also, after similar consultation, and pursuant to 22 U.S.C. §4306(d)(4), determined that the subject site and area are capable of being adequately protected.

Third, pursuant to 22 U.S.C. §4306(d)(6), I have determined that a favorable decision on this application would serve the federal interest. The United States Embassy in Vilnius is in the process of acquiring additional property adjacent to its chancery to enhance its security. The acquisition process in Vilnius is extensive and complicated, and the Board's favorable decision in this case will assist the Department in completing these important purchases in a timely manner.

For the above reasons, the Department of State supports the application of the Embassy of the Republic of Lithuania and respectfully urges the FMBZA to act favorably on it.

Sincerely,

Francis X. Taylor
Ambassador