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RULEMAKING TRANSMITTAL FORM

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TYPE OF RULEMAKING ACTION: [ ] EMERGENCY RULES [x] FINAL RULES [ ] PROPOSED RULES [ ] COMBINED

AGENCY: OFFICE OF ZONING

AGENCY REPRESENTATIVE: JERRILY R. KRESS

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 not disapproving the expansion of the chancery for the Embassy of the Sultanate of Oman.

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: Not applicable.

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: DCR 52 DCR 6216 DATE: JUNE 24, 2005

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 18, 2005 SIGNED: Alan Bryden PCV PHONE: (202) 442-9777

✓ FINAL		CONDITIONAL	NAME: ROBERT J. SPAGNOLETTI TITLE: ATTORNEY GENERAL

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: October 11, 2005
APPROVAL OF ATTEST: NOV 23 2005
TITLE: Director, Office of Zoning PHONE: (202) 727-6311

Office of Documents use only: THIS NOTICE PUBLISHED AT: VOL: DCR: DATE:

CASE No. 17382
EXHIBIT No. 41

Board of Zoning Adjustment
District of Columbia
CASE NO. 17382
EXHIBIT NO. 41

Application No. 17382 of the Sultanate of Oman, pursuant to 11 DCMR § 1002, to permit the expansion of a chancery for the Embassy of the Sultanate of Oman to house the Military Attache and the Cultural Attache, in the D/R-1-B and R-1-B Districts, at premises 2535 Belmont Road, N.W. (Square 2501, Lots 6-8, 15-19, and 805).

NOTICE OF FINAL RULEMAKING
and
DETERMINATION AND ORDER

The Board of Zoning Adjustment ("Board"), pursuant to the authority set forth in the Foreign Missions Act, approved August 24, 1982 (96 Stat. 283; D.C. Official Code § 6-1306), Chapter 10 of the Zoning Regulations of the District of Columbia, 11 DCMR, and § 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c)), hereby gives notice of the adoption of its determination not to disapprove the application of the Sultanate of Oman ("Applicant") for the expansion of the Embassy of Oman's chancery at premises 2535 Belmont Road, N.W. (Square 2501, Lots 6-8, 15-19, and 805).

On June 14, 2005, 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 § 205 of the Foreign Missions Act ("FMA") (22 U.S.C. § 4305) and that the application could be submitted to the Board.

Notice of the filing of the application and notice of the proposed rulemaking were published in the *D.C. Register* on June 24, 2005 (52 DCR 6075 and 52 DCR 6216, respectively). In accordance with the Zoning Regulations, the Board provided written notice to the public more than 40 days in advance of the public hearing. 11 DCMR §§ 3113.13 and 3134.9(c). Therefore, in compliance with the D.C. Administrative Procedure Act (D.C. Official Code §§ 2-501, *et seq.*), the Board also provided more than thirty days' written notice to the public.

On June 15, 2005, the Office of Zoning ("OZ") provided notice of the filing of the application to the Director of the District of Columbia Historic Preservation Review Board, the State Historic Preservation Officer, the U.S. Department of State, the D.C. Council Member for Ward 2, Advisory Neighborhood Commission ("ANC") 2D, the ANC within which the subject property is located, the Single Member District member for District 2D01, and the District of Columbia Office of Planning ("OP"), who notified the District Department of Transportation ("DDOT"). The Office of Zoning subsequently scheduled a public hearing on the application for October 11, 2005, and mailed a copy of the notice of hearing to the Applicant, ANC 2D, and all property owners within 200 feet of the subject property. Notice of hearing was also published in the *D.C. Register* on July 22, 2005 (52 DCR 6823) and posted in the Office of Zoning. In addition, on September 22, 2005, 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 property that is the subject of the application is located at 2535 Belmont Road, N.W. in the Sheridan-Kalorama historic district. It is split-zoned, with the larger western portion in a D/R-1-B district and the smaller eastern portion in an R-1-B district. The property is improved with a three-story building originally constructed as a residence, but used as a chancery for many years. The property has been owned and occupied by the chancery of the Embassy of the Sultanate of Oman for over nineteen years, and before that was owned and occupied by the chancery of the Embassy of France. A second one-story building on the property was originally used as a squash court, but over the years, has been used for storage, office and/or residential uses.

The Applicant proposes to expand its chancery with a new three-story building, which will be connected to the existing building by a below grade multipurpose room, and an above-ground patio on the roof of the multi-purpose room. The roof/patio of the multipurpose room will be between the first floors of the existing and the new building and will be landscaped. The lot occupancy of the existing and new buildings will be 15%, and the rear yard, at 42 feet, and the side yard, at 55 feet from the new construction, are more than adequate. The Applicant proposes to provide thirty-four parking spaces on the subject property and four spaces along the street frontage of the chancery are designated for its use. An additional ten spaces can be made available on the property and/or are available with the use of valet parking. In total, the chancery will be able to provide 37% more parking than required and sufficient parking for the 30 employees who will be working on the property after the construction is completed.

Because of the split-zoning of the property, the Applicant has requested permission, pursuant to § 2514, to extend the application of the provisions of the D Overlay approximately 9 feet into the R-1-B district. Without the extension of the application of the D Overlay, the size of the Applicant's proposed chancery expansion would be reduced by 9 feet.

The record closed on October 11, 2005, at the conclusion of the public hearing on the application. A neighbor had submitted a request for postponement of the hearing, which was denied by the Board. The Department of State, the Office of Planning, and the District Department of Transportation all submitted favorable reports on the application. ANC 2D did not submit a report nor testify at the hearing with regard to the application.

At the conclusion of the October 11, 2005 public hearing, the Board voted 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 facilities by the Sultanate of Oman for its diplomatic mission in the Nation's Capital.

Second, although the Historic Preservation Office did not submit a report concerning the application, the Applicant has designed the new building in accordance with the District's Historic Preservation Design Guidelines to ensure its compatibility with the character of both the

existing building, which will not be changed, and the surrounding historic district. The new building will substantially comply with District of Columbia and federal regulations governing historic preservation.

Third, the Applicant is providing adequate off-street parking and the Secretary of State has determined that there are no special security requirements relating to such parking.

Fourth, 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.

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 generally consistent with the Comprehensive Plan for the National Capital and the Zoning Regulations.

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

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

Vote of the Board of Zoning Adjustment constituted in accordance with the Foreign Missions Act taken at its public hearing on October 11, 2005, not to disapprove the application:

VOTE: **5-0-0** (Geoffrey H. Griffis, Patricia E. Gallagher, Ruthanne G. Miller, Curtis L. Etherly, Jr., and John G. Parsons, to not disapprove).

BY 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 ORDER: NOV 2 3 2005

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 § 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.

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. RSN

Government of the District of Columbia
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 17382

As Director of the Office of Zoning, I hereby certify and attest that on NOV 23 2005 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:

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rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning