Application No. 17384 of the Embassy of the Republic of Moldova, pursuant to § 1002, to permit the replacement of wooden windows with vinyl windows in the C-3-C District at premises 2101 S Street, N.W. (Sheridan-Kalorama Historic District) (Square 2532, Lot 37).

NOTICE OF FINAL RULEMAKING
and
DETERMINATION AND ORDER

The Board of Zoning Adjustment (Board") pursuant to the authority set forth in section 206 of the Foreign Missions Act ("FMA"), approved August 24, 1982 (96 Stat. 283; D.C. Official Code § 6-1306[1]), Chapter 10 of the Zoning Regulations of the District of Columbia (11 DCMR) hereby gives notice of the adoption of its determination not to disapprove the application of the Embassy of the Republic of Moldova ("Applicant") to replace the original wooden windows with new vinyl windows at its chancery building, located at premise 2101 S Street, N.W. (Square 2532, Lot 37).

Procedural Background

On July 15, 2005, the Applicant filed a chancery application with the Board[2]. Pursuant to 11 DCMR § 3134.7, the application was supported by a June 14, 2005 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 July 29, 2005, at 52 DCR 7157 and 52 DCR 7037, 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 July 21, 2005, OZ provided notice of the filing of the application to the Director of the District of Columbia Historic Preservation Review Board ("HPRB"), the U.S. Department of

[1]The section § 206 is codified at both 22 U.S.C. § 4306 and D.C. Official Code § 6-1306 (2001). For ease of reference, the D.C. Code section will be cited herein.

[2]On June 16, 2005, the Applicant had filed with the Board an appeal of the decision of the staff of the Historic Preservation Review Board denying the Applicant permission to replace windows in its chancery building. The Applicant's appeal was returned to the Applicant by the Office of Zoning ("OZ") because it was not based on a zoning map or regulation, the only type of appeal over which the Board has jurisdiction. *See,* D.C. Official Code §§ 6-1306(c)(1) and 6-1306(d) (2001). *See also,* The Zoning Act of 1938, 52 Stat. 797, 800 (1938); D.C. Official Code § 6-641.07(g)(1) (2001). (Board can hear appeals of decisions made in the "c[illegible] Zoning Regulations.)

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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 2D02, and the District of Columbia Department of Transportation and Office of Planning ("OP").

The Office of Zoning subsequently scheduled a hearing on the application for October 18, 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 the hearing was also published in the *D.C. Register* on July 29, 2005, at 52 DCR 6959, and posted in the Office of Zoning. In addition, on December 3, 2005, the Applicant posted, in plain view of the public, three zoning placards on the property affording notice of the hearing, in accordance with 11 DCMR § 3113. The notice given to the public complied with the requirements of 11 DCMR § 3134.9.

By letter dated October 11, 2005, the Applicant requested a postponement of the hearing date due to unavoidable conflicts. At the scheduled October 18, 2005 hearing, the Board announced a new hearing date of December 6, 2005. The hearing was held and concluded on that date, but the record was held open for several submissions requested by the Board, and a decision date set for December 20, 2005. On December 20, 2005, at a special public meeting, the Board voted 5-0-0 to not disapprove the application.

The Subject Property and History of the Applicant's Proposal

The property that is the subject of this application is located at 2101 S Street, N.W. in a C-3-C zone district and in the Sheridan-Kalorama Historic District. It is developed with a Beaux-Arts style limestone-block five story building constructed in 1896 as a residence, but used as a chancery for many years. The building has two rounded bays, going up all five stories, on either side, with a flat area in the center where the front door is located. The windows on the second floor in the rounded bays are curved to match the curve of the bay. There is also a pair of muntined French doors on the second story. The building is a contributing building to the Sheridan-Kalorama Historic District and the surrounding area is developed with a mix of uses, including apartment, hotel, retail, and office uses.

The windows in the subject building, including their frames, sashes, and moldings, are in very poor condition, and allow cold (or hot, depending on the season) air to enter the building, causing discomfort to its occupants, and higher costs to the Applicant. Therefore, in or around September, 2004, the Applicant hired a contractor to replace the seriously deteriorated windows and their attendant elements.

Apparently, however, the Applicant was unaware that a permit would be required for the work. Work was begun without a proper permit, and on November 17, 2004, the Department of Consumer and Regulatory Affairs ("DCRA") issued a Stop Work Order, bringing the window replacement to a halt. At this point in time, the window replacement was nearly completed for the third through fifth floors, but the replacement windows had vinyl frames, rather than wooden frames, as the originals had had. Also at this point in time, the component parts were custom manufactured for the windows on the first and second floors, but they had not yet been installed.

In order to permit the window replacement to continue, on April 11, 2005, the Applicant filed for the necessary permit. The Applicant also worked with the staff of the Historic Preservation Office ("HPO") to try to reach a workable compromise whereby it would be able to retain the already-installed replacements on the third through fifth floors and use the already-manufactured components for the first and second floors, while maintaining the historic integrity of the building.

Complete window replacement with wooden windows as similar as possible to the originals was financially infeasible for the Applicant. After working with the HPO staff, it received three estimates for this work, ranging from $61,500 to $85,426. An amount in this range is approximately 25% of the Embassy's entire annual budget. The Applicant was in a quandary because by at least early 2005, the Applicant had already paid in full for the already-contracted-for window replacement, the custom-made windows could not be returned, and the Applicant could not get further funds to re-do the work.

On May 26, 2005, the HPRB staff issued its report recommending denial of the Applicant's application for a permit to retain the newly-installed upper floor windows and continue replacing those on the first two floors. The report opined that the replacement windows were inconsistent with the HPRB's window standards, outlined at 10A DCMR, Chapter 23, and were incompatible with historic wooden windows in the Historic District. Of particular concern were the curved windows in the bays, particularly on the second floor, which are perhaps the most distinctive on the building, and the most likely to be noticed by pedestrians along the street frontage.

The Applicant then applied to this Board for permission to retain and complete its window replacements as proposed. At the Board hearing on December 6, 2005, the Office of Planning recommended denial of the application, stating that the replacement windows do not meet the window standards at 10A DCMR, Chapter 23. The Department of State, however, recommended approval of the application, stating that such approval would fulfill the international obligation of the United States and would serve the federal interest.

At the close of the hearing, the Board left the record open for further submissions from the Applicant and OP. The Applicant submitted an extensive narrative of all the work already performed and the work proposed. The narrative was accompanied by a photograph of the building, with each window numbered, and corresponding attachments showing the original and replacement window specifications, with detailed renderings of each, and a table of the proposed modifications. Most importantly, however, the Applicant informed the Board that it had reached an agreement with its contractor to restore the curved windows and the French doors on the second story "in kind" at minimal expense to the Applicant. In a December 18, 2005 Supplemental Report, OP noted that the "in kind" restoration of the second floor windows and French doors was an improvement over the initial proposal to replace these windows/doors with vinyl-framed replacements.

Evaluation of the Request

D.C. Official Code § 6-1306(d) directs the Board to consider six factors when analyzing a chancery application. These factors are: (1) the international obligation of the United States, (2)

historic preservation, (3) adequacy of off-street parking and proximity to public transportation, (4) the extent to which the area can be adequately protected, (5) the municipal interest, and (6) the federal interest. At the December 20, 2005 decision meeting, the Board considered the six factors, as set forth below, and voted not to disapprove the application.

First, as recommended by the Secretary of State, 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 Republic of Moldova for its diplomatic mission in the Nation's Capital.

Second, the Board determines that the Applicant's final plans to replace the windows on its chancery, including the "in kind" restoration of the curved second floor windows and the French doors, is compatible with the Sheridan-Kalorama Historic District and substantially complies with District of Columbia and federal regulations governing historic preservation. The Board is mindful that the use of vinyl components may not meet the letter of the historic preservation regulations, but taking into account all the circumstances surrounding this application, the Applicant's window restoration and replacement substantially complies with historic preservation guidelines.

The new windows on the three upper floors are reasonable and appropriate replacements for the original windows. Although the new windows on the first and third through fifth floors have vinyl sashes and panning, rather than wood, they are compatible with the appearance of the building and the streetscape. They do not detract from the character of the building or the historic district within which it is situated. Photographs of the building and those surrounding it clearly demonstrate that the windows are harmonious with the area and do not cause any sense of discord with the characteristics of the historic district.

The "in kind" restoration of all windows (and doors) on the second floor, most visible from the street and most notable for their historic bowed character, will not alter these windows in any way. The original wooden frames and sashes will be fully restored and rebuilt and then put back in place. The original bowed glass will be removed from the windows, reglazed, and replaced within the newly-restored frames. With respect to the French doors, they will be replaced "in kind" with wooden components and cut glazing between the muntins. This approach represents a workable solution to the problem of economically maintaining the authenticity and historic compatibility of the second floor windows.

The third criterion to be considered by the Board, pursuant to the FMA, is adequacy of parking. This criterion does not come into play in this application.

Fourth, the Secretary of State has determined that the subject building and the surrounding area continue to be capable of being adequately protected.

Fifth, the Board determines that granting the application will be consistent with the municipal interest. Chanceries are an important part of the municipal fabric of the District and they need to be maintained in good, usable condition. It does not serve the municipal interest to force the small workforce of a small chancery to work in discomfort and to forego meetings because its home government cannot afford to replace the chancery windows with wooden replacements. It

is in the municipal interest to work with foreign missions, particularly those representing smaller or more impoverished nations, to make them feel welcome in the District. Further, while OP was not supportive of the Applicant initially, it agreed that the Applicant's final resolution concerning the "in kind" replacement of the second floor elements was "certainly an improvement over the initial proposal."

Sixth, the Secretary of State has determined that a favorable decision on this application will serve the federal interest, particularly as the government of Moldova has been helpful to the United States Embassy in its diplomatic property needs.

At its executive session on DATE, the Board took final action to adopt this order. Accordingly, it is hereby **ORDERED** that this application is **NOT DISAPPROVED.**

Vote: The Foreign Missions Board of Zoning Adjustment voted at its public meeting on December 20, 2005, to not disapprove the application: **5-0-0** (Geoffrey H. Griffis, Patricia 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: APR 03 2006

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.