

Memorandum

TO: Foreign Missions Board of Zoning Adjustment
JLS

FROM: Jennifer Steingasser, Deputy Director Historic Preservation Development Review

DATE: June 28, 2016

SUBJECT: FMBZA 19301 – Application of the Republic of The Gambia

I. RECOMMENDATION

The Office of Planning recommends that the Foreign Missions Board of Zoning Adjustment **not disapprove** the request by the Republic of The Gambia to locate its chancery at 5630 16th Street, N.W., which is within the SSH-1/R-1-B District.

The Office of Planning supports the conditions suggested by the ANC as part of their report and as outlined in the Summary of this report.

II. APPLICATION-IN-BRIEF

The Embassy proposes to locate its chancery at 5630 16th Street, N.W. For security purposes a 42 inches tall security fence would also be installed on the perimeter of the property. The property was formerly a single-family dwelling. The Government of The Republic of The Gambia purchased the subject location to relocate its chancery operation from leased office space at 2233 Wisconsin Avenue, N.W. to provide an improved presence for its diplomatic mission in the United States.

III. REGULATORY REQUIREMENTS

New chanceries can only be established in the District 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, Chapter 10 and Title 5, Chapter 12.

IV. LOCATION AND SITE DESCRIPTION

Address	5360 16 th Street, N.W.
Legal Description	Square 2721W, Lot 0027
Ward	4, ANC 4A
Lot Characteristics	Rectangular lot, with a gentle slope.
Zoning	The subject property and properties within the square are in a Residential (R-1-B) District within the within the Sixteenth Street Heights1, overlay district.
Existing Development	The property is developed with a main two-story brick detached structure with a two-car garage and driveway at the rear. Vehicular access is off Madison Street. The embassy/chancery use is permitted in this zone.
Adjacent Properties	Properties surrounding the subject property include residential uses and other foreign mission uses, including embassies and chanceries and other institutional uses, particularly along 16 th Street. Squares west of 16 th Street, within this overlay abut Rock Creek Park
Surrounding Neighborhood Character	The surrounding neighborhood is a mix of single-family row and detached homes and foreign missions. Its character is defined by stately residences mixed in with diplomatic and institutional development. South of the site at 5500 16 th Street is the Government of the Republic of Egypt. Immediately north of that property, at the south corner of Longfellow and 16 th Street is the Fourth Church of Christ Scientist. Across Longfellow Street, the Royal Thai Government is located at 5600 16 th Street.

V. OFFICE OF PLANNING ANALYSIS

Section 1001 – Chancery Use Criteria

1001.1 *A chancery shall be a permitted use in a D Overlay District, subject to disapproval by the Board of Zoning Adjustment, based on the criteria in this section.*

The R-1-B District permits chancery uses. However, the proposal does not satisfy the locational requirements noted in Section 1002 (Board of Zoning Adjustment Review), which states:

“1002.1 To locate... a chancery in R-5-D, R-5-E, or SP District or in the D Overlay Districts, or to reconstruct and existing chancery that is destroyed in an R-1, R-2, R-3, R-5-A, R-5-B, or R-5-C district, application shall be made to the Board of Zoning Adjustment.”

Prior decisions provide precedent of the Board’s authority to consider applications outside of the D Overlay. It must first determine whether the area is generally suitable for chancery uses (See

[Order 18242](#), Republic of Serbia, and Page 6). Suitability is determined on a case-by-case basis, depending upon the nature and extent to which the “surrounding area” is already occupied by office and institutional uses. The Board has applied the criterion stated under corresponding DCMR, Title 5, Section 1206(b)(2)(B), as follows:

*A chancery shall also be permitted to locate... in any other area, **determined on the basis of existing uses, which includes office or institutional uses, including but not limited to, any area zoned mixed-use diplomatic or special purpose**; subject to disapproval by the District of Columbia Board of Zoning Adjustment in accordance with this section.”¹*

Thus, the proposed chancery must be located in an area “*determined on the basis of existing uses, which includes office or institutional uses.*”

The neighborhood character surrounding the Subject property, along the 16th Street frontage, including south of the site is comprised of other institutional and diplomatic missions.

OP determined that the property is suitable for the location of a chancery use pursuant to the Foreign Missions Act and the six factors enumerated in § 1001 would be applicable to the proposed chancery use on the subject property.

1001.2 International Obligation: *The international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation's Capitol.*

A letter from the State Department dated June 21, 2016 (Exhibit 34) states that favorable action by the Board would fulfil the international obligation to facilitate the provision of adequate and secure premises for the applicant. DDOT has approved the fence installation, shown in the submitted copy of the permit (Exhibit 33). The Office of Planning agrees that this criterion has been met.

1001.3, 1001.4 Historic Preservation: *Historic preservation, as determined by the Board of Zoning Adjustment in carrying out this section; and in order to ensure compatibility with historic landmarks and districts, substantial compliance with District of Columbia and federal regulations governing historic preservation shall be required with respect to new construction and to demolition of or alteration to historic landmarks*

The property is not landmarked nor is it located within a historic district.

1001.5 Off Street Parking: *The adequacy of off-street parking or other parking and the extent to which the area will be served by public transportation to reduce parking requirements, subject to such special security requirements as may be determined by the Secretary, after consultation with federal agencies authorized to perform protective services.*

¹ Although these provisions appear to conflict, the District of Columbia Court of Appeals determined (in Dupont Circle Citizen’s Association vs. District of Columbia Board of Zoning Adjustment, App. D.C., 530 A.2d 1163, 1987) that Section 5-1206 of Title 5 preempts any otherwise applicable section of the Zoning Regulations.

The property would provide onsite parking for up to five vehicles, - four of which would be devoted to embassy staff. Zoning Regulations require one space per 1,800 square feet of floor area. The chancery use would occupy up to 4,123 square feet of building area, which would require two on-site spaces. One staff person would reside on the property and one space would be assigned to that resident within the two-car garage. Therefore, the garage spaces and parking pad on the property would satisfy the Regulations.

The proposed chancery use would not generate a large number of visitors. Most visitors are anticipated to be diplomats and businesspersons (up to 3 persons weekly) who will arrive by taxi or be driven, so that parking demand would be limited. Limited consular services would be offered and most if not all would be conducted by mail. The applicant states that up to two special events would be held annually with up to 60 persons.

The 16th Street corridor is well served by public transportation, as well as on-demand car services. On-street diplomatic zone spaces would not be requested. The State Department has not determined that special security requirements relating to parking are necessary. The Office of Planning agrees that this criterion has been addressed.

1001.6 Adequate Protection: *The extent to which the area is capable of being adequately protected, as determined by the Secretary, after consultation with federal agencies authorized to perform protective services.*

The State Department provided its written statement to the record regarding adequate protection. Based on the ANC's condition, the chancery will receive Secret Service protection.

1001.7 Municipal Interest: *The municipal interest, as determined by the Mayor of the District of Columbia.*

The Office of Planning represents the Mayor of the District of Columbia regarding this application. The subject property is within the Sixteenth Street Heights Overlay (1) District and the underlying R-1-B District which permits the location of a chancery in the underlying zone.

One goal of the Overlay District is to “*control the expansion of nonresidential uses, and/or further conversion of residential housing to nonresidential uses in order to maintain the housing supply and minimize the external negative impacts of new nonresidential uses that are permitted in the SSH/R-1-B District in order to preserve neighborhood quality.*” (§ 1551.2 (b))

Any proposed new nonresidential use ...shall be permitted as a special exceptionsubject to the following requirements pursuant to § 1553.2 (a)(b):

- (a) *The nonresidential use is capable of being established and operated without adversely affecting the use and enjoyment of neighboring and nearby properties due to traffic, noise, design, or other objectionable conditions; and*

The chancery would not adversely affect the use and enjoyment of neighboring property. Apart from the office functions of the chancery, the residential structure would also include an apartment for one resident/employee in the basement level of the two-story structure. The residential character of the building would not be altered to accommodate the chancery function and residential use. No more than six employees would be employed by the chancery and its hours of operation would be between the hours of 9:30 am to 4:00 pm.

As stated by the applicant, the chancery anticipates a maximum of three visitors per week and two larger events per year, with a maximum of 60 persons. Noise and trash are not anticipated to be a nuisance beyond what currently exists in the neighborhood.

- (b) *There shall be adequate, appropriately located, and screened off-street parking sufficient to provide for the needs of the maximum number of occupants, employees, congregants, and visitors who can use the facility at one time; provided:*

- (1) *The number of parking spaces provided shall be not less than the number required by chapter 21 of this title and shall be located and designed so that they have the least objectionable effects on contiguous or nearby property because of noise, traffic, or other objectionable conditions;*

No more than five parking spaces would be provided and only three spaces would be required. The chancery does not intend to apply for on-street diplomatic parking privileges, at the neighborhood's request.

- (2) *Parking spaces and driveways providing access to them shall not be located in a required side yard, or on the lot between the principal building and a street right-of-way, nor in public space abutting the lot;*

The parking spaces and access driveway is off Madison Street and it is located in the rear of the property.

- (3) *If five (5) or more open parking spaces are provided, the parking spaces shall be screened from all contiguous residential property by a wood fence or a wall made of brick or stone at least twelve inches (12 in.) thick and forty-two inches (42 in.) high, or by evergreen hedges or evergreen growing trees that are thickly planted and maintained and are at least forty-two inches (42 in.) in height when planted; and*

Two on-site spaces would be located in the existing garage. Only two additional spaces and one tandem space could be accommodated within the parking pad. The property is adequately fenced and screened by shrubbery along the 16th Street frontage and by trees which exist along the abutting neighbor's side yard.

(4) *Any lighting used to illuminate open parking spaces shall be so arranged that all direct rays of lighting are confined to the surface of the paved area devoted to parking; any lighting provided shall be the minimum necessary for reasonable visibility by drivers and for security purposes.*

Additional lighting is not proposed. The existing lighting is residential in nature and should not affect neighboring property.

1001.8 Federal Interest: *The federal interest, as determined by the Secretary of State.*

The United States has an Embassy located in the Republic of The Gambia and receives the support and cooperation of the Republic. The State Department indicated that there is a Federal's interest in this project, as cooperation between the United States and The Republic of the Gambia is essential for successfully achieving the Federal Government's mission abroad. (Exhibit 34)

VI. COMMUNITY COMMENTS

This proposal was considered by the ANC 4A at its regularly scheduled meeting on June 7, 2016. The ANC voted to approve the chancery use on the subject property, subject to conditions noted in its report as Exhibit 28.

VII. AGENCY COMMENTS

The District Department of Transportation's comments would be submitted separately to the record. No other agency comments have been received to the record or by OP at the time of writing this report.

VIII. SUMMARY AND RECOMMENDATION

The Office of Planning has no objections to the location of the Republic of The Gambia chancery at 5630 16th Street, N.W.

Further, if the Foreign Missions Board of Zoning Adjustment determines that this request should be approved, OP supports the following conditions expressed in the ANC's report (*with minor adjustments for clarity*):

1. The chancery shall be used only for the activities of The Republic of The Gambia;
2. The chancery will occupy 4,123 square feet comprising the first and second floors of the property with the basement level being devoted to an apartment where a Gambian staff member will reside full time;

3. The number of chancery officials and employees, including the Ambassador, on-site at any one time may not exceed six persons;
4. The hours of operation of the chancery shall be between 9:30 AM to 4:00 PM;
5. The chancery will limit the use of the Property for large receptions, to no more than 60 persons, twice a year;
6. The chancery shall retain and maintain the residential nature of the premises with minor interior alterations;
7. The exterior of the building will be maintained in its current excellent condition and no addition or exterior alteration of the Property will occur, such as an antenna. The chancery may have a small plaque and a flag on a flag pole located in the front of the building indicating the presence of the chancery;
8. Pedestrian access to the chancery shall be from 16th Street N.W.
9. Up to five vehicles will be parked at the chancery's parking spaces and The Republic of The Gambia shall forgo its right to designate on-street parking spaces for diplomatic use;
10. The chancery will receive secret service protection;
11. The Sixteenth Street Heights Civic Association (SSHCA) and The Republic of The Gambia have agreed to negotiate a procedure for resolving disputes concerning the repair of the chancery and its grounds should it become in disrepair - the "Arbitration Process"-in which the majority of the SSHCA membership shall submit to the Ambassador of The Republic of The Gambia a written notice concerning the disrepair to the chancery or its grounds ("Notice"); said Notice shall include visible information regarding the disrepair of the chancery and its grounds, and The Republic of The Gambia shall promptly repair the chancery, and/ or its grounds, or submit itself to the arbitration process; and
12. The SSHCA and the Ambassador of The Republic of The Gambia shall hold quarterly meetings to discuss neighborhood issues.