

PETITION FOR MAP CHANGE

SQUARES 2505 (Lots 2-10, 18-20, 22, 37, 38, 51-54, 56, 800, 807-809 and 812), 2506 (Lots 16-24, 28, 46-51 and 800), 2513, 2514, 2515, 2522, 2527 (Lots 14, 19, 23, 86, 87, 184, 295, 296, 301-304, 306, 811, 830, 832-836 and 2069-2085) & 2533

I. BACKGROUND

This Petition is submitted on behalf of the petitioner, the Sheridan-Kalorama Neighborhood Council ("SKNC"). By this petition, SKNC is seeking to remove the Diplomatic Mixed-Use Overlay from those properties within the Sheridan-Kalorama neighborhood for which the nonresidential land use ratios fall below the required thirty-three percent (33%).

A. Site Description.

This petition covers the following properties:

<u>Square</u>	<u>Lots</u>
2505	2-10, 18-20, 22, 37, 38, 51-54, 56, 800, 807-809, 812
2506	16-24, 28, 46-51 and 800
2513	The entire Square
2514	The entire Square
2515	The entire Square
2522	The entire Square
2527	14, 19, 23, 86, 87, 184, 295, 296, 301-304, 306, 811, 830, 832-836, 2069-2085
2533	The entire Square

These properties are all located within the Sheridan- Kalorama neighborhood. Each of the squares is currently included in the Diplomatic Mixed-Use Overlay and have the following underlying zoning:

<u>Square</u>	<u>Zone</u>
2505	Split zoned D/R-1-B (along Massachusetts Avenue, California Street and North on Belmont Road)(Lots 2-10, 18-20, 22, 37, 38, 51-54, 56, 800, 807-809 and 812) and R-1-B (Northern part of square along Tracy Place)
2506	Split zoned D/R-1-B (along Massachusetts Avenue, Decatur Place and California Street)(Lots 16-24, 28-30, 46-51 and 800) and R-1-B (Western portion along 24 th Street)

Case 04-21
ZONING COMMISSION
District of Columbia
CASE NO. 04-21
EXHIBIT NO. 4

2513	D/R-3
2514	D/R-3
2515	D/R-3
2522	D/R-1-B
2527	Split zoned D/R-1-B (Lots 14, 19, 23, 86,87, 184, 295, 296, 301-304, 306, 811, 830, 832-836, 2069-2085) and R-5-B (northeast corner of Square)(Lots 47-49 and 2001-2004, 2006-2012, 2014-2020, 2022-2028, 2030-2036, 2038-2044, 2046-2056, 2057-2068)
2533	D/R-3

A zone map and the Sanborn and Baist Atlas maps for the subject properties is attached (Exhibits 1, 2 & 3).

B. The Petitioner.

The Sheridan-Kalorama Neighborhood Council (SKNC) is a District of Columbia Non-Profit Corporation, whose principal address is 2136 Leroy Place, NW, Washington, D.C. 20008. SKNC represents more than 400 home owners in Sheridan-Kalorama. SKNC's members' main concern is the protection and preservation of Sheridan-Kalorama as a vibrant residential community characterized by homes built in the late 19th and early 20th Century. On account of Sheridan-Kalorama's rich diversity of revival-style architecture, the neighborhood was designated a National Historic District in 1987.

C. Diplomatic Missions and Zoning in the District of Columbia.

Of the 191 countries in the world, the United States maintains diplomatic relations with 180. Of those 180 countries, 169 have foreign mission in Washington, D.C. *Draft Comprehensive Plan, Foreign Missions and International Organizations Element* (http://www.ncpc.gov/publications_press/compplan/ForeignMissions.pdf). This is a twenty-seven percent (27%) increase since 1983. *Id.* The number of facilities occupied by these foreign missions has increased from 375 in 1983, to 483. *Id.* Currently, all chanceries in the District are located in Northwest D.C. *Id.* Within the Kalorama Heights neighborhood, there are 104 chanceries and twelve (12) dual-use properties, meaning those where both residential and chancery functions are housed, according to a survey conducted by the Sheridan Kalorama Neighborhood Council (see below).

1. The Foreign Missions Act.

In 1938, Congress granted the Zoning Commission its primary power to "regulate the location * * * size * * * and uses of buildings, structures, and land * * * in order, to promote the health, safety, morals, convenience, orderly prosperity, or general welfare of District of

Columbia.” Act of June 20, 1938, 52 Stat. 797, ch. 534, Section 1; D.C. Code § 6-641.01. Congress directed the Commission to “promote * * * use of land as would tend to create conditions favorable to health, safety * * * prosperity, [and] protection of property” and “with a view to encouraging stability of districts and of land values therein.” D.C. Code § 6-641.02.

Before 1957, the Zoning Commission placed no restrictions on foreign missions, but, in regulations adopted that year, the Commission concluded that chanceries are “business offices” and should be able to locate in residential areas only through special exception proceedings before the BZA. *See* Zoning Regs. (1961) Paragraphs 1201, 3101.410. In 1961, the presidentially appointed Board of Commissioners of the District of Columbia ordered that all zoning regulations apply to foreign missions in the District of Columbia.

In order to afford effective protection to life, health, safety, comfort, and the well being of the community, it is hereby ordered, * * * that * * * those buildings, to be occupied by or for any foreign government shall comply with applicable laws and regulations * * * to the extent set forth herein.

a. Zoning Regulations of the District of Columbia. Full Compliance with All Provisions.

Commissioner’s Order No. 61-1054, June 19, 1961, *reprinted* 7 Whiteman Digest of International Law (1970).

In 1964, Congress placed more severe limitations on foreign diplomatic missions than the Zoning Commission had been willing to adopt, prohibiting them altogether from locating chanceries in residential districts except for medium and high density apartment districts. Act of October 13, 1964, Pub. L. No. 88-659, 78 Stat. 1091 (1964), Section I; D.C. Code § 5-418(c)(1981). Existing chanceries were allowed to continue and “ordinary repairs” could continue to be made to their buildings. Section I, D.C. Code § 5-419(1)(1981).

Congress legislated to preserve residential areas from “esthetic deterioration” and other deleterious effects. S. Rept. 360, 88th Cong., 1st Sess. (1963) at 1. “The proliferation of chanceries within residential areas produces parking problems, traffic congestion and esthetic deterioration.” *Id.* at 2. Congress agreed with the Commission that chanceries are business establishments and concluded that local citizens should be protected “from the disruptive effects of the location of commercial enterprises in residential areas.” H.R. Rept. 1727, 88th Cong., 2d Sess. (1964) at 3-4. The 1964 Act was intended to provide non discriminatory treatment of foreign missions by establishing uniform standards as to where they might locate. S. Rept. 360, *supra*, at 1, 2.

Zoning Commission Order No. 237 (September 14, 1978) designated certain areas within the District of Columbia with diplomatic overlay districts. The Zoning Commission chose a number of squares, and portions of other squares, for the overlay but provided that any chancery locating within the overlay areas would be required to obtain special exception relief from the Board of Zoning Adjustment, through contested case procedures. The areas mapped were existing residential areas adjacent to or in the vicinity of "Embassy Row" areas, primarily along the major transportation corridors which already housed many embassies and chanceries. In establishing the overlay for these areas, the Zoning Commission also established significant use and development criteria for the chanceries seeking to locate in the new overlay areas by means of the adopted special exception practice. The restrictions and the process utilized for protecting low and moderate density residential neighborhoods and for evaluating new chancery uses within those neighborhoods were removed with the adoption of the Foreign Missions Act in 1982 and the Zoning Commission's establishment of a new criteria for evaluating the mapping of the diplomatic overlay.

In 1982, in the Foreign Missions Act, 22 U.S.C. § 4301, et seq., Congress carefully crafted limited exceptions to the Zoning Commission's plenary power over zoning, leaving its powers substantially intact to regulate land use except as to the location, replacement, or expansion of chanceries in many areas. Moreover, Congress broadened the areas in which chanceries might locate and altered Commission and BZA procedures for processing applications to locate, replace or expand chanceries.

Outside the District, the Foreign Missions Act expressly preserves state and local laws and regulations involving "zoning * * * [and] land use." Sec. 207, 22 U.S.C. § 4307, D.C. Code § 6-1307. Within the District, the new statute made no changes in Zoning Commission, or any other District of Columbia agency, authority to regulate every aspect of land use by diplomatic missions except as to the "location, replacement, or expansion of chancery that would otherwise be considered by the Board of Zoning Adjustment." Sec. 206, 22 U.S.C. § 4306, D.C. Code § 6-1306.

Congress meant to rectify certain problems inherent in the then existing procedures for resolving zoning issues relating to chanceries in the District of Columbia and to provide the State Department with certain authority over foreign missions here that would be used to affect the treatment of our missions abroad. In that regard, when the Act was introduced into the Senate it created a Foreign Missions Commission in the District of Columbia to deal with the location of such missions here because "municipal decisions are taken without fully balancing foreign policy and national security questions." S. Rept. No. 97-329, 97th Cong. 2d Sess. 3 (1982).

When the Foreign Missions Act reached the Senate floor, strong opposition was expressed regarding the creation of a Foreign Missions Commission for the District of Columbia, the State Department's assumptions with respect to the ability of the District to properly apply its zoning laws, and assertions that the federal interest was not protected by the District of Columbia zoning process. See 128 Cong. Rec. S7781-8715 (April 27, 1982). Recognizing that the "proposed Foreign Missions Commission is inconsistent with the practices of numerous other

foreign nations” (128 Cong. Rec. S7810) and that no evidence has been presented which supported the State Department’s claim that the District’s application of its zoning laws adversely affected the foreign policy objectives of the United States or justified intervention in state and local land use matters, the Senate amended the Act to delete the provisions establishing a Foreign Mission Commission and to emphasize that the Department of State would have no authority to preempt state and local decisions, even if the legislation served to preempt certain District of Columbia statutes. *Id.* at S8712-7813.

As stated by Senator Glenn (128 Cong. Rec. S7787), Congress was not prepared to grant the Federal Government broad new authority to run roughshod over local regulatory activities relating to zoning and land use.

See also the discussion in *Benin v. BZA*, 534 A.2d 310, 315-316 (D.C. 1987).¹

Similar discussions were held in the House regarding a version, which would have given the National Capital Planning Commission the authority to make final decisions on chancery location applications. In a colloquy between Congressman Ronald Dellums and James H. Michel, Acting Legal Advisor, Department of State, Congressman Dellums defined that portion of the legislation being considered which dealt with the District of Columbia as solely related to zoning issues. *See* Location of Foreign Missions in the District of Columbia, Hearing and Markup before the House Committee on the District of Columbia, 97th Cong., 1st Sess. at 42 (Serial No. 97-27) (June 1981). Moreover, in response to Mr. Michel’s statement as to the basis for seeking such legislation, Congressman Dellums noted that the concerns of the State Department related to problems perceived by foreign “governments as they move through the zoning process of the local government.” *Id.* at 44.

The Conference Committee limited the language in Section 206 as proposed by the House and the Senate. The Committee members were willing to restrict the District’s zoning agencies only in carefully defined, and very limited, respects. While displacing local use controls in commercial, industrial, waterfront, and mixed use districts with regard to the location of chanceries, the Act retained BZA’s role in evaluating applications for chancery sites in residential areas. Sections 206(b)(2) & (c); 22 U.S.C. §§ 4306(b) & (c); D.C. Code §§ 6-1306(b)(2) & (c).

The Act does not allow chanceries to be located in residential areas except in medium high or high-density residential districts. Section 206(b); 22 U.S.C. § 4306(b); D.C. Code § 6-1306(b). Existing chanceries in residential areas keep only those “rights or interests” as to

¹ In *Benin*, the Court recognized that Congress, in enacting the FMA, meant to rectify problems inherent in the existing zoning process, and, in that context, adopted a comprehensive scheme for addressing zoning issues that affect chanceries, such as their location and the application of the District’s zoning regulations and maps. As additional support for its holding the Court noted that the FMA “repealed the provisions of D.C. Code §§ 5-418(b) through (e) (1981), which had imposed limitations on the construction, alteration, or conversion of buildings for chancery use.” *Id.* at 320.

“location, replacement, or expansion” which they had previously acquired but received no additional rights. Section 206(h); 22 U.S.C. § 4306(h); D.C. Code § 6-1306(h).² *Id.* at 20877.

In the preface to the House Committee Report, Congressman Dellums stated that the Conference Committee focused on four issues: who was to decide on the location of chanceries, where may they locate, which criteria is to be used by the new Board of Zoning Adjustment and whether the decision making process would be a rulemaking. Reviewing the decision reached on where chanceries may locate, Congressman Dellums stated that the legislation created “one new term, ‘institutional use,’ which must be defined by planning and/or zoning authorities.” *See* Location of Foreign Missions in the District of Columbia, Hearing and Markup before the House Committee on the District of Columbia, 97th Cong., 1st Sess. at vii (Serial No. 97-27) (June 1981).

Thus, the 1982 law retains Zoning Commission and BZA control over zoning in the District, but restricts their flexibility in determining where chanceries may locate and the considerations to be given to other zoning issues affecting chanceries. *See* H. Conf. Rep., H. Rep. No. 97-693, 97th Cong. 2d Sess. (1982) at 40-43, *reprinted* 1982 (Pt. 2) U.S. Code Cong. & Ad. News, 691, 701-705. Rep. Fascell reported the balance achieved by Congress to the House. Rep. Fascell informed the House during consideration of the conference report:

The Committee of conference * * * paid special attention to the section of this provision regarding the location of chanceries in the District of Columbia. After consideration of two compromise proposals, the conference committee agreed to a procedure which balanced both the Federal and municipal interests in choosing sites

² The terms “location replacement, or expansion” constitute a shorthand description of the various zoning issues that arise from the development of property by chanceries. Thus, when the Bill was introduced into Congress, section 206 provided the following:

In order to ensure the fulfillment of the international obligations of the policy of this title, and to ensure the orderly development of the national capital, the location, height, bulk, number of stories and size of any building and other real property of a foreign mission in the District of Columbia, and the provision of open space in and around any such building or other property, shall be subject to approval by . . .

127 Cong. Rec. 20875-20876 (September 17, 1981). That language was substituted with the terms “location, replacement or expansion” and read

Sec. 206. (a) In order to ensure the fulfillment of the international obligations of the United States and the policy of this title, the location, replacement or expansion of any building or other real property in the District of Columbia which is used for the diplomatic, consular, or other governmental activities (except property used exclusively for residential purposes) shall be subject to the approval of . . .

where foreign chanceries may locate in the District of Columbia. I feel that this legislation represents a good compromise * * * recognizing the understandably strong interest in the District of Columbia in controlling their city plan.

2. Zoning Commission Regulations – Adoption of the 1/3-2/3 Rule.

When Congress enacted the Foreign Missions Act in 1982, it left it to the District of Columbia Zoning Commission, with review by the National Capital Planning Commission (“NCPC”) to adopt regulations that would implement Section 206(b)(2)(B). Accordingly, in response to the passage of the Foreign Missions Act, the Zoning Commission (Order No. 397) redefined chancery and international organization and refined its prior order establishing a mixed use diplomatic district for the location of new chanceries. *See also* Zoning Commission Order No. 237, Case No. 77-46. The Zoning Commission also promulgated new regulations to govern the Board of Zoning Adjustment process with regard to the placement of chanceries as distinct from those regulations governing the approval of other uses by the Board. *See* Section 3134 *et seq.* of the Zoning Regulations, 11 D.C.M.R. The Zoning Commission did not then adopt regulations to implement section 206(b)(2)(B), which authorized chanceries, subject to BZA approval, in any other area, determined on the basis of existing uses. Instead, on April 9, 1984, the Zoning Commission initiated a case to consider amendments to the zoning regulations which would implement section 206(b)(2)(B). Z.C. Case No. 84-7

In Zoning Commission Order No. 509, Case No. 84-7, February 9, 1987, the Zoning Commission noted that, the National Capital Planning Commission, the federal agency responsible for implementing the Foreign Missions and International Organizations Element to the Comprehensive Plan, and it had explored various alternatives to delineating the areas provided for in section 206(b)(2)(B). The Zoning Commission ultimately determined that “a ‘square’ should define an ‘area’ primarily because of the logistic capacity to locate and manage the development of a square, based on municipal records.” The Zoning Commission, based on the advice of the Office of Planning, also determined that utilizing the average mixed-use ratio in the squares already designated as a diplomatic district should be used as a guide for identifying other squares in the city that would qualify under section 206(b)(2)(B). Using the District’s MAGIS computer data, the average mixed-use ratio was found to approximate a ratio of 2/3 residential-type land uses and 1/3 office, institutional and other land uses.

In its order in the matter, the Zoning Commission noted that:

The U.S. Department of State (State), by written submission dated February 27, 1986 and by testimony presented at the public hearing, indicated that it does not believe that foreign chanceries have an absolute right to locate in any District area they may choose.

State argues that the Act requires the BZA to accept applications for chancery uses in all Section 206(b) (2) (B) areas, not just those zoned mixed use diplomatic or special purpose. Further, the Section 206 (b) (2) (B) determination is to be made by BZA, based solely on the six criteria set out in the Act. The Act leaves this responsibility to the BZA, not to NCPC or the Zoning Commission. NCPC and the Commission have their statutory roles with respect to the zoning maps and regulations, but all actions regarding chanceries must be consistent with Section 206.

State opposed the use of a square as the determination of an “area”. An additional objection to the proposal is the failure to grant to chanceries the equal treatment required by Section 206 (b) (3) for all Section 206 (b) (2) (B) areas. Among other things, State argues that these two provisions require chanceries to be treated the same as nonprofit organizations under Sub paragraph 3101.412 of the Zoning Regulations.

In response, the Zoning Commission stated that

As to the concerns of the Department of State and others, regarding new chanceries that want to locate in the R-1-A through R-5-B Districts being able to apply directly to the BZA for review, the Zoning Commission concludes that it was not the intent of Congress to require that the BZA consider such applications without the guidance of the Zoning Commission which this rulemaking will provide. No explicit provision to that effect is found in the Act, and a congressional bar on a Zoning Commission role should not be lightly inferred. Indeed, to the contrary, the Act in several places explicitly refers to Zoning Commission action under the Act.

Moreover, the Commission is persuaded that the mapping of the areas will be beneficial to the State Department and foreign governments, because the degree of certainty which will result will allow them to plan more effectively.

As to the concern of State regarding the use of a “square” as an “area”, the Commission concludes that defining an area as a square is a reasonable and logistically manageable manner of implementing the Act.

As to the concerns of the ANCs and others regarding the methodology that was used to identify squares that qualify for

rezoning, the Commission believes that the alternative methodology that was included in the OP memorandum dated June 27, 1986, represents an appropriate, fair, and balanced mechanism to further implement Section 206 (b) (2) (B) of the Act.

II. PROPOSED MAP CHANGES

A. Efforts of SKNC to Determine Correct Application of 1/3-2/3 Rule.

Since enactment of the Foreign Missions Act in 1982, Sheridan-Kalorama has lost eighteen percent (18%) of its historic housing stock to chanceries. As indicated above, the Kalorama Heights neighborhood is home to 116 chanceries. The percentage of non-residential, diplomatic use in this neighborhood exceeds that of any other District neighborhood. According to the National Capital Planning Commission ("NCPC"), locations for 100 new and relocated chanceries may have to be found in the next twenty-five (25) years, which could require the identification of four to five chancery sites per year. NCPC reports that

forty-eight (48) chanceries relocated within the District in the last twenty (20) years, and if this trend continues, some 60 chanceries will relocate by 2030. In addition, approximately 40 new foreign missions could locate new chanceries in the District.

Since the adoption by the Zoning Commission of the 1/3-2/3 rule in Z.C. Order No. 509 and the initial application of the rule, there has been no effort in the past almost twenty (20) years to update the D-Overlay. Consequently, in response to the increasing loss of housing stock to chanceries in the Sheridan-Kalorama neighborhood, in May 2000, the SKNC formed the Sheridan-Kalorama Foreign Missions (SKFM) Task Force, whose purpose was, *inter alia*, to verify the application of the 1/3-2/3 rule to squares within the D-Overlay. Upon completion of its field-survey of land uses in Sheridan-Kalorama, it was revealed that when the 1/3-2/3 rule is correctly applied, eight (8) of the fifteen (15) squares in the neighborhood now covered in whole or in part by a Diplomatic Overlay should not be located within the D-Overlay, because their non-residential land-use ratios fall below the required thirty-three percent (33%). Accordingly, SKFM sought the assistance of the Office of Planning ("OP") to remedy this situation. Over the past two years, SKFM and OP have worked together to propose the instant map amendment so as to remove the D-Overlay from the subject squares.

In cooperation with OP to determine the correct application of the 1/3-2/3 rule, SKFM developed a land-use database comparing the current application of the 1/3-2/3 rule and the corrected application of the rule. *See Exhibit 9*. The database provides two contrasting views of diplomatic or institutional land-use in Kalorama. The contrast arises for two main reasons:

- (1) Between May and October 2003, the SKFM Task Force conducted a field-study, going property by property and classifying uses by visual inspection; this resulted in

contemporaneous and accurate classification of properties, whereas the District's view is based on unconfirmed, historical land- and tax-record databases.

- (2) The SKFM Task Force, interpreting relevant zoning regulations, the Foreign Missions Act and the Comprehensive Plan, reached different conclusions than the District about how to classify properties.

From this database, OP and SKFM reached an agreement as to how to classify properties and further agreed that the SKFM Task Force field study provides an acceptable, if not more reliable, picture of current uses.

Main points that were pivotal to whether a square's non-residential ratio exceeds thirty-three percent (33%) or not were as follows:

- (1) Embassy versus Chancery. The District's database treated embassies and chanceries as one institutional use. The SKFM Task Force drew a distinction between the two uses, classifying the former as a residential use, the latter as institutional, which distinction is consistent with the Comprehensive Plan and the Federal Element.

- (2) Vacant Properties. The SKFM Task Force classified all vacant properties residential because under the zoning regulations if a property has not been used for a non-conforming purpose for three (3) years, then the non-conforming use is considered to have been abandoned and the property necessarily reverts to the underlying, conforming use, which in all cases in Kalorama, is residential. In contrast, the District's treatment of vacant properties depended on a "use designation," so that properties with an R/V use designation are classified residential, but those with a C/I/CE designation are classified institutional.

- (3) Private Clubs. In classifying private clubs as residential, the SKFM Task Force relied on Section 330.5(g) of the zoning regulations, which permits private clubs to locate as a matter of right in low-to-moderate density zones. The District's database had grouped private clubs under institutional for the purpose of calculating the non-residential ratio.

- (4) Other Residentially Compatible Uses. The District previously treated churches and recreational uses, such as memorial parks and playgrounds, as institutional, whereas the SKFM Task Force treated them properly as residential.

B. Discussion of the Squares:

Squares 2505, 2514 and 2533

No matter how these three (3) squares are viewed, the District and the SKFM Task Force data are in agreement that the level of non-residential use is far below thirty-three percent (33%)

in each case. Strikingly there are absolutely zero non-residential uses in Square 2533. In Square 2505, the non-residential ratio is 20.8% according to SKFM and slightly higher, but only 22.5%, according to the District's data. In Square 2514, the District's data shows the non-residential percentage is 16.5%, whereas SKFM's data places the ratio at 9.2%. The D-Overlay should come off these four squares.

Square 2506

Non-Residential Ratio:

District = 46.1% SKFM Task Force = 27.6%

This Square merits special treatment, due to the presence of an anomaly at 2410 California Street. A low-rise office building stands at this address and it can never be put to any residential use. It has recently changed hands from Yugoslavia to Slovenia, which, according to signs on the door, intends to use it as its chancery. This is the only office building inside the neighborhood -- which is to say not fronting Massachusetts, Connecticut or Florida Avenues -- and calls for carve-out treatment. We propose that the D-Overlay remain affixed to this property (lots 29-30; 15,414 sq. ft.), but that it be removed from the remainder of Square 2506. Removing 2410 California St. from the calculation of this square's ratio yields a non-residential concentration of only twenty-eight (27.6%). If it is included as a chancery, the square's ratio exceeds thirty-three percent (33%) by three points. The SKFM Task Force non-residential ratio of 27.6% is calculated by dividing 34,118 sq. feet (the total land area occupied by chanceries, excluding Slovenia), by 123,761 sq. feet, which is the total square footage of the square, excluding Slovenia. If 2410 California Street was included in the calculation, again, the non-residential ratio would increase to thirty-six percent (36%): 49,532 sq. feet occupied by chanceries divided by the total square footage of Square 2506 (139,175 sq. ft.).

Concluding the analysis of Square 2506, we direct your attention to a handful of properties owned by the Government of Venezuela. The District classified 2445 Massachusetts Avenue (U.S. of Venezuela), a "191" vacant property, and treats it as non-residential. The SKFM Task Force, as explained in the above, treats all vacant properties as residential. There are four (4) other occupied Venezuelan properties that OP classifies "85," but which in actuality are residential uses, not chanceries.

Square 2513

Non-Residential Ratio:

District = 42% SKFM Task Force = 32.9%

The American Newspaper Women's Club at 1607 22nd Street should be classified residential (see introduction), but the District classifies private clubs as institutional uses.

Square 2515

Non-Residential Ratio:

District = 62.4% SKFM Task Force = 15.2%

The District classifies the Friends Meeting House at 2111 Florida Ave. “81,” a religious use, but groups the property under the institutional, non-residential category. It should be grouped under the residential category.

There is a federal park on 22nd Street, called The Spanish Steps, which the District classified “87”, or recreational, but with an institutional C/I/CE use designation. Recreational property, like parks and playgrounds, should be classified as residential.

Square 2522

Non-Residential Ratio:

District = 41.7% SKFM Task Force = 16%

The Thai Cultural Center at 2300 Kalorama Road is the most important classification error in this square. The District classifies it “85” (embassy/chancery), even though it has been abandoned for more than ten (10) years and should be classified residential.

Only a minority of The Kingdom of Afghanistan at 2341 Wyoming Ave. is a chancery, but the District treats 100% of the property as institutional. By the SKFM Task Force’s field estimate, at least seventy-seven percent (77%) of the property serves as the ambassador’s residence; the remaining twenty-three percent (23%) is the chancery, so the Task Force classified it dual-use (residential-chancery).

Square 2522’s non-residential ratio of 16% stems from coding the Thai Cultural Center “vacant” and Afghanistan a “mix” of residential and chancery uses. It is worth pointing out that even if the Thai Cultural Center were to remain classified a chancery, the square would still fall three (3) points under the thirty-three percent (33%) non-residential ratio, assuming Afghanistan’s 77/33 mixed use composition. On the other hand, were 100% of Afghanistan assumed to be chancery (which it isn’t), the square’s non-residential ratio, assuming Thai Cultural to be vacant, would be twenty-seven percent (27%), still well under a third.

Square 2527

Non-Residential Ratio:

District = 36.3% SKFM Task Force = 26.9%

The long-abandoned and derelict former Libyan ambassador’s residence at 2201 Wyoming Avenue cannot be classified “85” (chancery/embassy). It can be legitimately classified residential for two reasons: (1) it is abandoned and (2) its original use was primarily the ambassador’s residence, not a chancery.

The Republic of Syria's property on Wyoming Avenue is part residential and part chancery; SKNC allocates twenty percent (20%) of the property to chancery use, but the District previously classified the entire property "85" or chancery/embassy institutional. It is worth noting that even if the entire property were put to chancery use, the non-residential ratio in Square 2527 would still fall below one percentage point below thirty-three percent (33%).

Similarly, the District erroneously classified 2209 Wyoming "85" institutional, even though it should be classified entirely residential, as this property is the Ethiopian ambassador's residence.

Other Potential Changes to the D-Overlay.

The correct application of the 1/3-2/3 rule cannot be underestimated. In addition to the above squares, the application of the D-Overlay to Square 2512 should also come into question. This is because one of the Greek properties on the back of Square 2512 -- 2201 Massachusetts Avenue -- is being converted to the Greek Ambassador's residence. That property will then be considered residential. In addition, the property located at 2224 R Street has been vacant for at least five years, was used as a residence before it became vacant and is no longer owned by a foreign government.. The change of these two properties would raise the ratio of the square (2512) to more than two thirds residential and require removal of the Diplomatic overlay from the square as well.

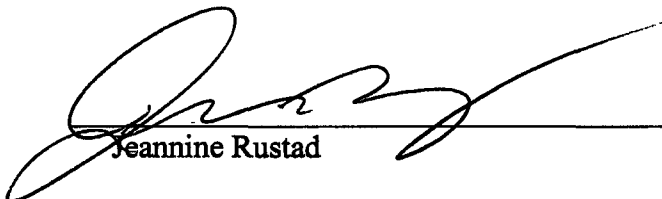
CONCLUSION

As illustrated above, the non-residential uses in the subject properties fall below the thirty-three percent (33%) threshold of the 1/3-2/3 rule for the application of the Diplomatic Overlay, the premise upon which the Zoning Commission mapped certain areas with a diplomatic overlay. As these properties no longer fall within the threshold for the application of the Diplomatic Overlay, the zoning map should be amended so as to remove the Overlay from Squares 2505 (Lots 2-10, 18-20, 22, 37, 38, 51-54, 56, 800, 807-809 and 812), 2506 (Lots 16-24, 28, 46-51 and 800), 2513, 2514, 2515, 2522, 2527 (Lots 14, 19, 23, 86,87, 184, 295, 296, 301-304, 306, 811, 830, 832-836 and 2069-2085) and 2533.

Respectfully submitted,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

By: 
Richard B. Nettler


Jeannine Rustad

EXHIBITS

1. Zone Map (subject properties highlighted)
2. Sanborn Atlas Maps (subject properties highlighted)
3. Baist Atlas Maps (subject properties highlighted)
4. List of Executive Committee members of SKNC
5. Draft Comprehensive Plan, Foreign Missions and International Organizations Element
6. Z.C. Order Nos. 236 & 237
7. Z.C. Order No. 400
8. Z.C. Order No. 509
9. Database