

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING



Office of the Director

MEMORANDUM

TO: D. C. Zoning Commission

FROM: *JSF*
Ellen McCarthy
Interim Director

DATE: October 7, 2005

SUBJECT: Preliminary Report on Zoning Commission Case No. 04-21, a Proposal for a Zoning Map Amendment to Eliminate Mixed Use Diplomatic Overlay Zones from Portions of the Entirety of Squares 2501, 2505, 2506, 2513, 2514, 2525, 2522 and 2527

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APPLICATION

On August 17, 2004, the Office of Zoning received a petition submitted on behalf of Sheridan Kalorama Neighborhood Council, the applicant, requesting Zoning Commission review and approval of a Zoning Map amendment to eliminate Mixed Used Diplomatic (D) overlay zone districts from the following neighborhood properties:

- Square 2505 Lots 2-10, 18-20, 22, 37-38, 51-54, 56, 800, 807-809, and 812 currently under a Residential (R-1-B) zone district with a Mixed Used Diplomatic (D) overlay zone district;
- Square 2506 Lots 16-24, 28, 46-51 and 800 currently under a D/R-1-B zone district;
- Squares 2513, 2514, 2515 and 2533 currently under D/R-3 zone districts;
- Squares 2515 and 2522 currently under D/R-3 zone districts; and
- Square 2527 Lots 14, 19, 23, 86, 87, 184, 295-296, 301-304, 306, 811, 830, 832-836, and 2069-2085 currently under D/R-1-B zone districts.

The current base zone district on these properties would remain unchanged.

RECOMMENDATION

The Office of Planning (OP) concurs with the Office of Attorney General's observation that the Commission first should accept or reject the following assumptions inherent in this petition prior to consideration of any changes to D overlay zones districts:

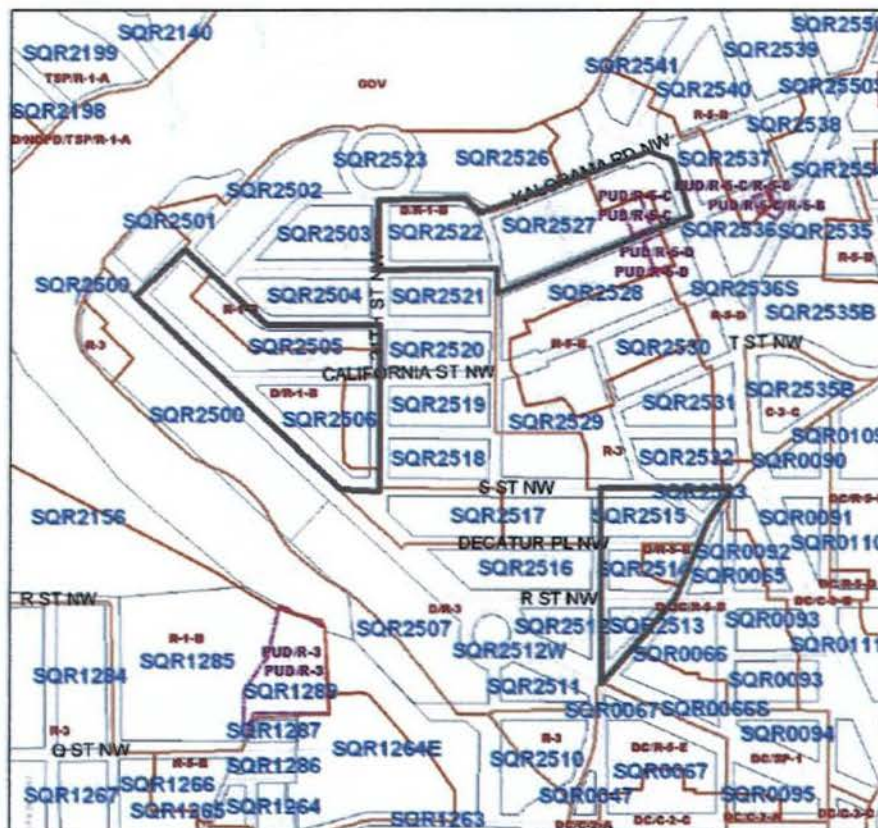
- That it is appropriate to remove properties from D overlay zones; and
- If so, that the same analysis should be used to map locations originally should be used to remove locations.

04-21
25

If the Commission decides in the affirmative on these process issues, OP recommends that the Zoning Commission set this application down for a public hearing.

BACKGROUND

The subject squares are located in the Sheridan-Kalorama neighborhood northeast of Massachusetts Avenue, south of Belmont and Kalorama Roads, and west of Florida and Connecticut Avenue, N.W. (highlighted in Figure 1 below):



Properties within these squares are developed predominantly with a variety of one-family detached, semi-detached and attached residential buildings (refer to Exhibits 1-2). Other nonresidential land uses include the embassies and chanceries of foreign missions (Exhibit 3), many established within former single-family residences. Area zone districts range from R-5-D zone district and C-3-B zone district with a Dupont Circle (DC) overlay zone district to the east along the Connecticut Avenue corridor; D/R-3 zone district to the west along the Massachusetts Avenue, N.W. corridor; and several low-to-moderate intensity residential zone districts in between, some with D overlay districts. Area properties are also within the Sheridan-Kalorama and Massachusetts Avenue Historic Districts.

Most foreign missions in the District have located in northwest quadrant between 16th Street and Wisconsin Avenue, N.W. The Kalorama Heights neighborhood has the most chancery uses and Dupont Circle has the second highest number. A draft report by The National Capital Planning

Commission (NCPC) entitled "Foreign Missions in the District of Columbia, Expanded Context" stated that chancery uses have typically located in northwest Washington because of:

- **Historic development patterns:** Foreign missions started locating along 16th Street in the vicinity of Meridian Hill Park by the 1920's and along Massachusetts Avenue from near Scott Circle to Wisconsin Avenue by the end of the 1930, establishing respective "embassy rows;"
- **Availability of buildings:** Smaller chancery uses tend to occupy lease commercial space, reoccupy buildings vacated by other foreign missions, and former private residences; and
- **Availability of land:** Construction of large chancery facilities was encouraged by the availability of large parcels in the Massachusetts Avenue corridor; however the availability of suitable properties is diminishing.

There also appears to be a general desire on the part of foreign missions to locate their offices in proximity to other chanceries and international organizations, the Department of State, and other federal agencies.

As the petition explains, the concern of the Sheridan-Kalorama Neighborhood Council is "the protection and preservation of Sheridan-Kalorama a vibrant residential community ...". Because this neighborhood has "...lost eighteen percent (18%) of its historic housing stock to chanceries" since passage of the Foreign Missions Act of 1982, this petition seeking to limit further concentration of chancery and mixed chancery-residential land uses in the surrounding residential neighborhood. The petition notes, "Within the Kalorama-Heights neighborhood, there are 104 chanceries and twelve (12) dual-use properties ... (a total of 116) according to a survey conducted by the (applicant) ..." while only 169 countries have foreign missions in the District. Since most neighborhood chancery and "dual" uses have located in converted single-family residences, continued concentration of the office uses within the area could irreparably change the character of this residential neighborhood.

ZONING PROPOSAL

Specific regulations affect chancery¹ location decisions within the District of Columbia. The most recent Federal legislation related to foreign missions is the Federal Foreign Missions Act of 1982. Section 206 of the Act identifies areas where chancery (office) uses may currently locate in the District as a matter of right and subject to disapproval by the Foreign Mission Board of Zoning Adjustment (FMBZA):

¹ The Foreign Mission Act of 1982 includes the following definition: "'chancery' means the principal offices of a foreign mission uses for diplomatic or related purposes, and annexes to such offices (including ancillary office and support facilities), and includes the sites and any building on such site which is used for such purposes."

Matter-of-right land uses and zoning districts	
Commercial	C-1, C-2, C-3, C-4, C-5 PAD)
Industrial	C-M-1, C-M-2, C-M-3, M
Waterfront	W-1, W-2, W-3
Mixed-Use Zone	CR
Permitted if not disapproved by the BZA	
Areas zoned medium-high and high density Residential	R-5-D, R-5-E
Any other area that based on existing uses includes office and institutional uses, including but not limited to any area zoned <i>mixed-use diplomatic</i> or special purpose.	See discussion below.

Except for its applicability to the SP Zone District, the “other area” location category required further interpretation. First, the Zoning Commission rejected arguments that the determination should be done on a case by case method by the BZA as part of a chancery application. Instead, the Commission opted to establish a new Mixed Use Diplomatic (D) overlay zone that would include locations that met the above criteria. The petition notes that the Zoning Commission determined per Order No. 509 (effective April 24, 1987), during consideration of zoning map amendments to conform to the Act, that “a ‘square’ should define an ‘area’ primarily because of the logistical capacity to locate and manage the development of a square, based on municipal records.” The Commission also determined, based on an OP recommendation *reflecting a consultant study prepared for the National Capital Planning Commission (NPCP)*, that the average mix of residential and nonresidential uses on squares designated diplomatic district at that time was 2/3 residential-type land uses and at least 1/3 office, institutional or other land uses. Based on this analysis, sixty additional areas across the District were mapped with the D overlay zone districts because non-residential land utilization on these squares equaled or exceeded 33% of the total land area.

“Since ... the initial application of the rule ...” the petition continues, “there has been no effort in the past almost twenty (20) years to update the D-Overlay.” A task force of neighborhood residents organized in May 2000 proceeded to review D.C. land record summaries provided by the OP and verify existing land uses in the field.

For the purpose of the 1/3-2/3 analyses, the neighborhood task force proposed to refine and clarify land use classifications in the public record as follows:

- Properties with land use code 85 (“chancery, embassy, etc.”) are occupied by chancery (institutional), embassy (residential) and mixed chancery/embassy uses. D.C. land records currently do not distinguish between foreign owned chancery and embassy properties since neither is subject to local property taxes. Furthermore, the land area of “dual-use” lots was divided into residential and institutional portions based on the relative amount of lot frontage occupied by the (assumed) residential and institutional portions existing principal buildings.

- Vacant properties were designated residential uses per Section 2005.1 of the Zoning Regulations that says nonconforming uses discontinued on a property for three years or more, cannot be reestablished (refer to Exhibit 3). Thus, "The property necessarily reverts to the underlying, conforming uses which in all cases in Kalorama, is residential."
- "Private club" uses were designated residential uses per Section 330.5 (g) "... which permits private clubs to locate as a matter of right in low-to-moderate density zones.
- Other uses considered "residentially-compatible," such as churches, playgrounds and memorial parks, were also designated residential rather than institutional uses.

Based on the following findings of a Sheridan-Kalorama Neighborhood Council task force analysis utilizing these classifications, the applicant petitioned for removal of D overlay zone districts from above-listed squares based on the following findings:

- Squares 2505, 2514, and 2533 all have non-residential land utilizations less than 20.8%.
- Changing the previous designation of the private club use on Square 2513 at 1607 22nd Street (lot 803) from institutional to residential use reduced the non-residential land utilization of this square to 32.9%;
- Changing the religious use designation of the property at 2111 Florida Avenue (lot 49), and the Federal park use on 22nd Street (lot 815) on Square 2515 from institutional to residential uses reduced the non-residential land utilization of the square to 15.2%;
- Changing the designation of 2300 Kalorama Road (abandoned for more than 10 years according to the petition), and apportioning the land area of property at 2341 Wyoming Avenue based on the assumed proportion of residential use on-site, reduced the non-residential land utilization of Square 2522 to 16%; and
- Designating the abandoned property at 2201 Wyoming Avenue (the former Libyan ambassador's residence on lot 19) as residential, and apportioning the property at 2341 Wyoming Avenue based on the assumed proportion of on-site residential use, reduced the non-residential land utilization of Square 2527 to 26.9%;

On Square 2506, the Petition designated the vacant property at 2443-2445 Massachusetts Avenue, and four other properties owned by the Venezuelan government, as residential uses. The property at 2410 California Street (lot 29) was identified as meriting "special treatment" because the existing office building "... can never be put to any residential use." The lot was then excluded from the 1/3 – 2/3 analysis of the square resulting in a non-residential land utilization of 27.6%. The petition concludes that submitted analyses showing non-residential land utilizations less than 33% provides adequate justification for eliminating existing D overlay zone districts from all the above referenced squares.

COMPREHENSIVE PLAN AND ZONING ANALYSIS

The Generalized Land Use Map designates the subject squares and properties in the vicinity for low and moderate intensity residential uses. Single-family detached and attached dwelling, row houses and garden apartments as predominant uses characterize this designation. The proposal would reinforce these designations, and further several Comprehensive Plan themes:

- Major Themes of the Comprehensive Plan in Section 101 include:

“... (a) Stabilizing and improving the District’s neighborhoods; ...”

- Section 102 Stabilizing and Improving the Districts Neighborhoods includes:

“102.2 The District elements of the Plan propose that the residential character of neighborhoods be maintained and improved. Many city neighborhoods are historic or possess social, economic, and physical qualities that make them unique and desirable places in which to live. These qualities can also lead to development and redevelopment pressures that threaten the very qualities that make the neighborhoods desirable. These pressures and potential adverse impacts must be controlled to ensure that the character of our neighborhoods is preserved and enhanced. ...

102.4 Promoting and ensuring good quality neighborhoods is of utmost importance to the District. The District elements of the Plan’s policies and strategies on *increasing housing opportunities*, in some neighborhoods will be combined with other District policies on historic preservation, environmental quality, and public facilities to conserve functioning, stable neighborhoods, and to stabilize or improve those which need redirection.”

- Section 302 Housing: General includes:

“302.1 The general objectives for housing are to stimulate production of new *and rehabilitated housing* to meet all levels of need and demand and to provide incentives for the types of housing needed at desired locations.”

- Section 701 Urban Design Goal states the following:

“701.1 It is the goal of the District to promote the protection, enhancement, and enjoyment of the natural environs and to promote a built environment that serves as a complement to the natural environment, provides visual orientation, enhances the District's aesthetic qualities, *emphasizes neighborhood identities*, and is functionally efficient.”

- **Section 1102 Objectives for Residential Neighborhoods:**

“1102.1 The residential neighborhood objectives are as follows:

- (a) To conserve and enhance the essentially satisfactory qualities of the District’s many stable residential neighborhoods including those qualities that make them unique;
- (b) To enhance other neighborhoods and achieve stability; ...
- (d) *To protect residential neighborhoods from disruptive uses; ...”*

- **Section 1207 Ward 1 Actions to Implement Housing Objectives includes:**

“1207.1 The actions to implement housing objectives are as follows: ...

- (g) To address the erosion of the housing stock that has resulted from increasing numbers of Community-Based Residential Facilities, bed-and-breakfast inns, private clubs and clinics by enforcing existing zoning and other regulations and enacting zoning and other corrective measures to prevent the saturation of any neighborhood with non-residential or *institutional uses*, or uses of large size, or incompatible facilities and services; ...”

The Office of Planning shares the applicant’s concern about the impact of a concentration of nonresidential chancery uses along neighborhood residential streets and away from the major transportation corridors. The effort of the Sheridan-Kalorama Neighborhood Council and its task force is an innovative approach to addressing a significant problem facing their neighborhood. One product of these efforts was preparation of the briefing paper entitled, *Foreign Missions & the Threat They Pose to Sheridan-Kalorama’s Historic, Residential Character* that identifies specific negative impacts of the current chancery and dual-use density in general, and some ill-kept mission properties in particular. OP observed that several identified properties have experienced long-overdue exterior maintenance and repairs since publication of this document.

With regards to the Comprehensive Plan, this Petition would further referenced themes and objectives by potentially reducing the concentration of new chancery (office) land uses along residential streets, thus encouraging eventual re-conversion of vacant and underutilized chanceries back to residential use. Additionally, reduction in the number of chancery uses and an increase in residential property owners would increase the viability of the existing stable neighborhood.

Based on this information, OP concludes this proposal does not appear inconsistent with Comprehensive Plan, and supports more specific neighborhood preservation and housing goals identified therein. Therefore, the Office of Planning recommends the project be scheduled for public hearing while noting several issues that need to be addressed in greater detail, including:

- **Property documenting of vacant properties:** OP supports the land use clarifications proposed by the Applicant, however staff has been unable to satisfactorily document that key properties identified as “vacant” have had this status for 3 years or more. Definitive information is not available from the public and utility records (refer to Exhibit 3).

There is also a question regarding chancery uses acquired or otherwise established prior to October 1, 1982. In light of Section 6-1306 of the Housing and Building Restriction Regulations, there is a question whether the status of chancery uses established before that date is subject to change after a 3-year vacancy or could continue indefinitely until another land use is established on the property (refer to Exhibit 4). The Office of Attorney General will weigh in on this legal issue.

- **Dividing lot acreage by assumed utilization of lot frontage:** For purposes of the 1/3-2/3 analysis, the acreage of “dual-use” lot was divided according to the *perceived* utilization of adjacent building frontage without actual knowledge about what happens inside the building. While innovative, this approach appears inconsistent with the Zoning Regulations predicated on actual knowledge of existing and proposed uses, and that provide for principal (residential) and accessory (nonresidential) uses. Without actual knowledge of what happens inside the buildings, this technique is subject to significant error and appears difficult to apply with consistency.
- **Consistent application of 1/3-2/3 analyses:** On Square 2506, the Petition exempted property located at 2410 California Street from the overall calculation based on a lack of residential reuse potential. This standard was not noted in analysis of the other squares, and is inconsistent with an overall assessment of existing land uses, regardless of the adaptive-reuse potential.
- **Consistent application of proposed definition:** The petition would change the designation of the private club use on Square 2513 from institutional to residential use although the property is in a D/R-3 zone district that does not allow private clubs as a matter of right. Furthermore, there is no indication this private club includes a residential component. Based on these circumstances, it does not appear the proposed definition is applicable to this square.
- **Implications of reducing areas identified for chancery uses:** The timing and limited scope of this proposal raises another issue. The Department of State (DOS) expressed concern that the proposed map changes reduce areas identified for chanceries under the D overlay zone districts without commensurate opportunities elsewhere for chanceries to locate as a matter of right and subject to FMBZA disapproval. DOS considers such an action to be inconsistent with the letter and intent of the 1982 Foreign Missions Act. OP considers the proposed reduction to be significant to this neighborhood but miniscule compared to the total area where chanceries currently are allowed as a matter of right or subject to FMZA disapproval.

The Office of Attorney General noted that this proposal makes the following assumptions, which the Commission should either accept or reject before moving on the remap the Overlay:

- That it is appropriate to remove properties from the Overlay; and
- If so, that the same analysis should be used when removing locations as when mapping them.

The answers to these questions go beyond the geographic limits of the Sheridan-Kalorama Neighborhood. Therefore, OAG recommends that this portion of the proceeding be advertised as a text amendment that is of interest to all ANCs.

Also note that prior to this application, OP and NCPC have been working with the DOS to consider the current Mixed Use Diplomatic overlay district to expand the number of areas where chanceries may locate as a matter-of-right, and subject to disapproval by the Foreign Missions Board of Zoning Adjustment. OP is pursuing other strategies to encourage the selection of future chancery sites in the matter-of-right zone districts, where establishment of chancery uses and dual uses have less impact, and other areas where the District would like chanceries to locate.

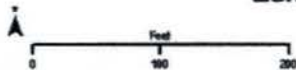
OP will provide a more information about pending proposals in the Final Report on this application.

EMc/afj

Attachments:	Exhibit 1	Squares 2513, 2514, 2515 and 2533
	Exhibit 2	Squares 2505 and 2506, Squares 2522 and 2527
	Exhibit 3	Summary of Inspection and Utility Record Research
	Exhibit 4	Pertinent District of Columbia Regulations and Definitions



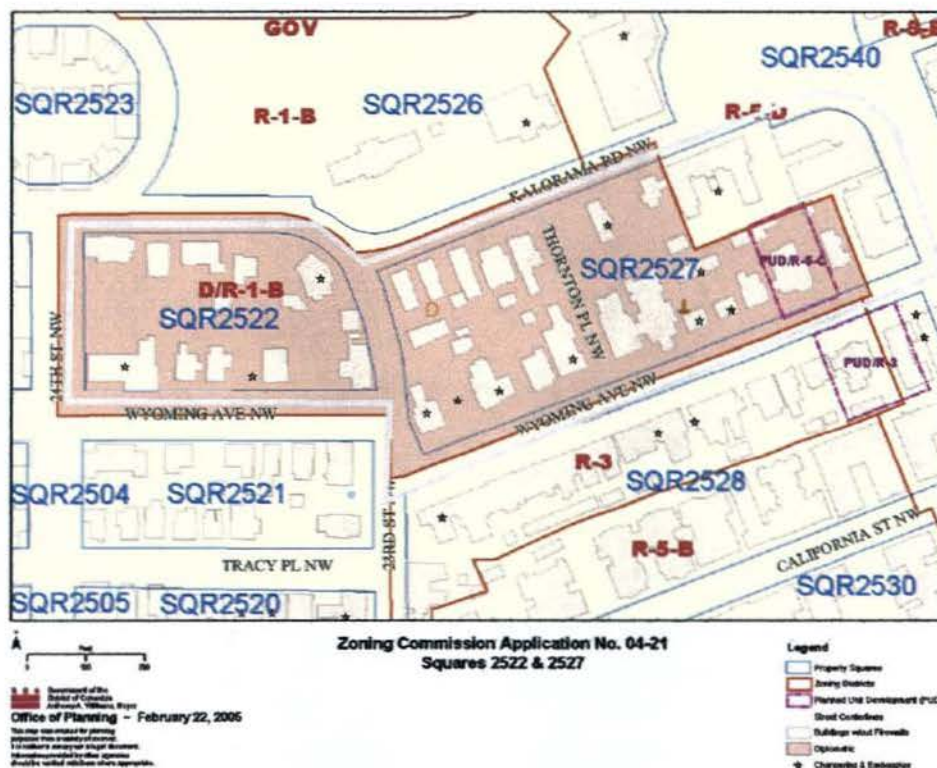
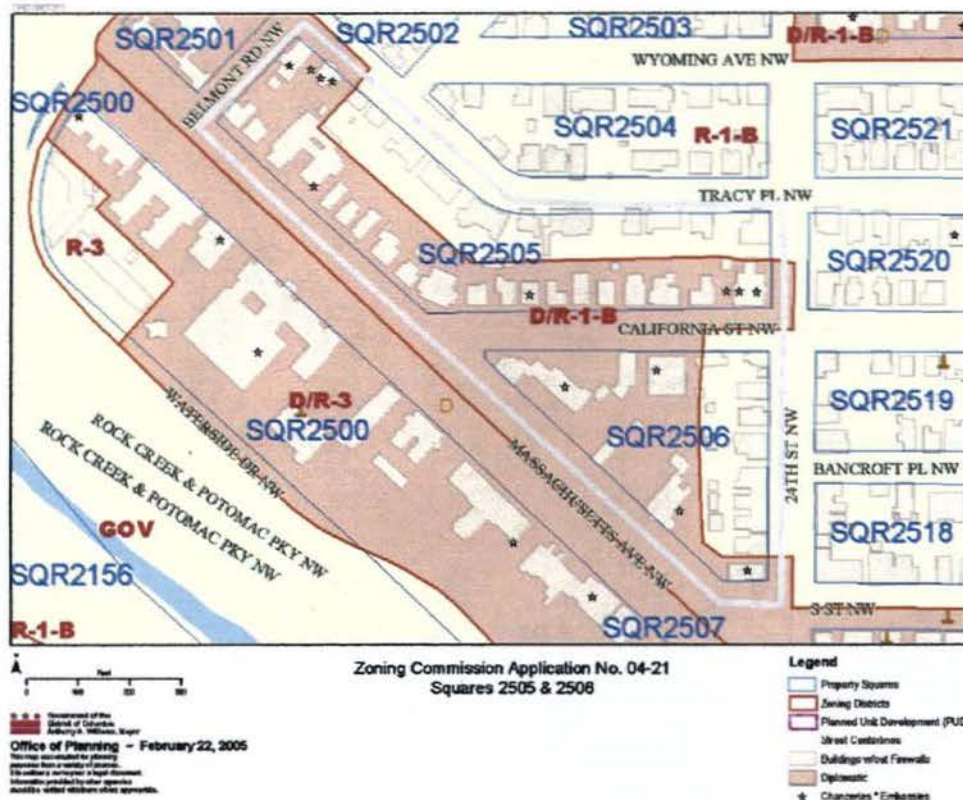
Zoning Commission Application No. 04-21
Squares 2513, 2514, 2515 & 2533



☆☆☆ Government of the
 District of Columbia
 Anthony A. Williams, Mayor
 Office of Planning - February 22, 2005
 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.

Legend

- Property Squares
- Zoning Districts
- Planned Unit Development (PUD)
- Zoning Label
- Street Centerlines
- Buildings w/out Firewalls
- Diplomatic
- ☆ Consulates & Embassies



Summary of Inspection and Utility Records Research

	Address	DCRA Vacant Property Insp. ¹	Utility Records		Probable Vacancy Status
			Washington Gas Records ²	DCWASA Records ³	
1	1900 24TH ST NW	Vacant (embassy)	Active account - no usage since 5/05	Gas on since 2003	Vacant since 5/05
2	2407 CALIFORNIA ST NW	Vacant (embassy)	Active account - no usage since 9/03	Gas on since 2003	Vacant since 03
3	2222 DECATUR PL NW	Occupied (residence)	Active account with usage	Gas on since 1998	Occupied
4	2149 FLORIDA AV NW	Vacant (single fam. duplex)	Active account with usage	Gas off since 2002	Occupied
5	2300 KALORAMA RD NW	Occupied (embassy)	Active account with usage	Gas on since 1999	Occupied
6	2131 MASSACHUSETTS AV NW	Occupied (residence)	Active account with usage	Gas on since 2001	Occupied
7	2209 MASSACHUSETTS AV NW	Vacant (embassy/chancery)	Vacant since 5/02; disconnected for non-pay on 8/2/04	Not in current database	Vacant since 5/02
8	2344 MASSACHUSETTS AV NW	Vacant (embassy)	Inactive account; vacant since 1996	Not in current database	Vacant since 1996
9	2349 MASSACHUSETTS AV NW	Occupied (embassy/chancery)	Active account with usage	Gas on since 1987	Occupied
10	2408 MASSACHUSETTS AV NW	Vacant (embassy)	Active account - no usage since 5/03	Boarded since 2004	Vacant since 5/03
11	2445 MASSACHUSETTS AV NW	Occupied (embassy)	Active account with usage	No information	Occupied
12	2558 MASSACHUSETTS AV NW	Vacant (embassy)	Active account with usage	On & off since 2003 (off 3/29/05)	Vacant since 3/05
12	2136 R ST NW	Vacant (embassy)	No usage since 9/99; disconnect for non-pay 3/31/05	Off since 1997	Vacant since 1997
14	2221 R ST NW	Vacant (embassy/chancery)	No active account - no usage since 9/99	Gas on since 1998	Vacant since 9/99
15	2224 R ST NW	Vacant (embassy/chancery)	Active account with usage	Not in database	Vacancy of unknown duration
16	2129 WYOMING AV NW	Vacant (embassy)	No active account - no usage since 12/88	Not in database	Vacant since 1988
17	2201 WYOMING AV NW	Vacant (embassy/chancery)	Disconnected for non-pay on 9/21/04 - no usage since 5/04	On & off since 2000 (off 2003)	Vacant since 03

Notes:

¹ Site visit by Inspector of the DCRA Housing Regulations Administration Office of Vacant Property

² Research included records to 1986

³ Available records back to the indicated date (information request also forwarded to division that manages archived records)

Pertinent District of Columbia Regulations

Title 6. Housing and Building Restriction Regulations

Chapter 13. Regulation of Foreign Missions

6-1306 Location in the District ...

- (h) Approval by the Board of Zoning Adjustment or the Zoning Commission or, except as provided in § 6-1305 by any other agency or official is not required:**
- (1) For the location, replacement, or expansion of a chancery to the extent that authority to proceed, or rights or interests, with respect to such location, replacement, or expansion were granted to or otherwise acquired by the foreign mission before October 1, 1982; or**
 - (2) For continuing use of a chancery by a foreign mission to the extent that the chancery was being used by a foreign mission on October 1, 1982. ...**

Title 11. Zoning

Chapter 1. ZONING REGULATIONS

199 DEFINITIONS

199.1 When used in this title, the following terms and phrases shall have the meanings ascribed:
...

Chancery - The principal offices of a foreign mission used for diplomatic or related purposes, and annexes to the offices (including ancillary offices and support facilities), including the site and any building on the site that is used for such purposes. ...

Embassy - The official residence of an ambassador or other chief of a diplomatic mission, or that portion of a combined chancery/embassy devoted to use as such official residence. ...

[Comprehensive Plan for the National Capital – Federal Elements, National Capital Planning Commission

Foreign Mission - Any mission to or agency in the US involving diplomatic, consular, or other governmental activities of (1) a Foreign government or (2) an organization (other than an International Organization) representing a territory or political entity which has been granted diplomatic or other official privileges and immunities under the laws of the United States, or which engages in some aspect of the conduct of the international affairs of such territory or political entity, including any real property of such mission and including the personnel of such a mission]

Chapter 2. R-1 RESIDENCE DISTRICT REGULATIONS ...

a. USES AS A MATTER OF RIGHT (R-1)

201.1 The following uses shall be permitted as a matter of right in R-1 Residence districts: ...

- (m)** Chancery existing on September 22, 1978; Provided, that the following requirements shall be met:
 - (1)** After February 23, 1990, the continued use of the chancery shall be limited to the government that lawfully occupied the chancery on that date;
 - (1)** No additional or accessory structure may be constructed on the lot that is occupied by the chancery;
 - (2)** There shall be no expansion of the exterior walls, height, bulk, gross floor area, or any portion of any existing building or structure that is used as a chancery;
 - (3)** If an existing building or structure that is used as a chancery is destroyed by fire, collapse, explosion, or act of God, the building or structure may be reconstructed;
 - (4)** The reconstruction that is authorized by paragraph (4) of this subsection shall not be subject to the requirements of chapter 20 of this title: and
 - (6)** The reconstruction that is authorized by paragraph (4) of this subsection shall be limited to the chancery site as it existed on February 4, 1990; ...

330 R-4 DISTRICTS: GENERAL PROVISIONS

330.5 The following uses shall be permitted as a matter of right in an R-4 district:

- (a)** Any use permitted in R-3 districts under §320.3 of this chapter;
- (b)** Flat;
- (c)** The conversion of a building or other structure existing before May 12, 1958, to an apartment house as limited by §350.4(c) and 401.3;
- (d)** Child development center and/or elderly day care center; provided that the center shall be limited to no more than sixteen individuals;
- (e)** Child/elderly development center located in a building that was built as a church and that has been used continuously as a church since it was built; Provided, that all of the play space required for the center by the licensing regulations shall be located on the same lot on which the center is located;
- (f)** Hospital, sanitarium, or clinic for humans;
- (g)** *Private Club*, lodge, fraternity house, sorority house, or dormitory, except where the use is a service customarily carried on as a business;
- (h)** Museum: and
- (i)** Community based residential facility; ...

2003 CHANGES WITHIN STRUCTURES ...

2003.4 When an existing nonconforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a nonconforming use or less restrictive use. ...

2005 DISCONTINUANCE

2005.1 Discontinuance for any reason of a nonconforming use of a structure or of land, except where governmental action impedes access to the premises, for a period of more than three (3) years, *shall be construed as prima facie evidence of no intention* to resume active operation as a nonconforming use. Any subsequent use shall conform to the regulations of the district in which the use is located.