

MEMORANDUM

TO: District of Columbia Zoning Commission
JLS
FROM: Jennifer Steingasser, Deputy Director
DATE: March 4, 2015
SUBJECT: 08-06A: Supplemental Report on Draft Text Subtitle X Chapter 2, Chancery Applications, as part of Comprehensive Zoning Regulations Revisions (ZRR)

The Zoning Commission considered comprehensive revisions to the Zoning Regulations at a public meeting on December 11, 2014. At the public meeting the Commission took proposed action on all chapters in Case 08-06A except Chapter 2 in Subtitle X (“Sub X Ch 2”), Chancery Applications. Sub X Ch 2 provides regulations for an application to locate, replace, or expand a chancery use not otherwise permitted as a matter of right.

The Commission deferred voting on Sub X Ch 2 and left the record open for planning alternatives that could address the comments of National Capital Planning Commission (NCPC). The Office of Planning (“OP”) has met with the NCPC staff, had several conference calls about the draft text, and provided multiple versions of modified draft text in response to comments. OP requested and the Zoning Commission granted three 2-week extensions.

In brief chanceries are permitted as follows:

- 1) Matter of Right:
A chancery shall be permitted as a matter of right use in “any area which is zoned commercial, industrial, waterfront, or mixed-use (CR).”
- 2) Subject to Disapproval by the DC Board of Zoning Adjustment:
A chancery shall be permitted subject to disapproval “in any area which is zoned medium-high or high density residential.”
- 3) Subject to Disapproval by the DC Board of Zoning Adjustment:
A chancery shall be permitted subject to disapproval 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.

The text of Subtitle U (Uses) includes chanceries as a matter of right use and reflects all matter of right situations of 1) above. Those locations proposed for chancery use that are “subject to disapproval” are considered through Subtitle X, Chapter 2.

The March 4, 2015 draft text of Sub X Ch 2 mirrors the procedural approach submitted by the Department of State. It has been drafted to further identify the situations “Subject to Disapproval” in the medium-high or high density residential identified in number 2 above, and those other areas “determined on the basis of existing uses” of number 3 above.

In the existing zoning regulations, the situation of number 3 above has been accomplished through the mapping of the D (Diplomatic) overlay and associated regulations. The D overlay and associated regulations (existing Title 11 Chapter 10) were initially mapped and drafted in 1982. The D overlay was mapped onto squares in the R-1 through R-5-C zones, determined by the percent of the square in office and/or institutional use.

The March 4, 2015 draft proposes to broaden the acceptable areas throughout the city where a chancery may be considered in a low to medium density residence zone, and not limit the acceptable areas to those of the D overlay.

The March 4, 2015 proposal allows a real time assessment of the uses within a square (or other area determined acceptable) and would not require any change to the zoning map prior to the Board of Zoning Adjustment considering an application in a low to medium density residence zone. The proposed draft recognizes that when a square is less than 50% residential, a defined term in Subtitle B, a square is no longer a majority residential and could be an acceptable area for a chancery subject to disapproval by the Board. The March 4 draft also allows for a request and demonstration that an alternate area may be acceptable.

Since the December 11, 2014 public meeting, Sub X Ch 2 has been modified in response to comments as follows:

The overall format of the chapter has been reorganized to reflect the format of the existing D overlay.

201.2 The criteria for acceptable areas in low to medium density residence zones have been rephrased to be in the affirmative.

201.4 A new provision has been added to clarify that an area other than a square may be proposed for determining acceptability of a site in a low to medium density residence zone in response to NCPC comments.

201.5 A new provision has been added to clarify that the 50% standard for determining when a square or area is presumed “mixed use” may be rebutted by creditable evidence.

The Office of Planning and the Office of Attorney General used the word “presumed” and “presumption” in this paragraph. However, NCPC asked that the words “considered” and “consideration” be used instead. At the time of this memo, OP has noted the two words side by side and will work with the Office of Attorney General to determine the appropriate wording.

203.6 The historic preservation provision has been modified to more closely reflect the language of the Foreign Mission Acts and comments from NCPC.

204 Application Requirements: The section has been edited to remove redundancies.

205 Implementation: The section has been modified to reflect comments from NCPC about non-conformity and the duration and validity of an approval.

The March 4, 2015 draft text provides clarity and predictability to applicants and neighborhoods. It clarifies the role of the Board to grant relief to the requirements of the zoning regulations and permission to construct improvements in public space.

Continued Coordination with NCPC and Department of State

As of the filing of this report, NCPC reported that the State Department had not provided them with written comments on the draft, although there had been constructive conversations. The Office of Planning will continue to work with NCPC and the State Department as they provide additional comments.

All changes to the Zoning Regulations are required to be referred to NCPC for federal impact assessment after the Zoning Commission takes proposed action and before the Commission takes final action. Additionally, the Zoning Commission agreed to increase the period for public comment, which includes the NCPC review, from the required thirty (30) days to ninety (90) days after the publication of the draft text. This extended time frame provides ample time for continued coordination with NCPC prior to any final action by the Zoning Commission.

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CHAPTER 2 CHANCERY APPLICATIONS

200 GENERAL PROVISIONS

- 200.1 This chapter provides regulations regarding an application to locate, replace, or expand a chancery use not otherwise permitted as a matter of right, to implement the Foreign Missions Act, approved August 24, 1982 (96 Stat. 282, as amended; D.C. Official Code §§ 6-1301 to 6-1315 (2012 Repl.).
- 200.2 For the purposes of this Chapter, the term “Low to Medium Density Residence Zones” shall mean the R zones, RF zones, and the RA-1, RA-2, RA-3, RA-6, RA-7, RA-8 and RC-1 zones.
- 200.3 For the purpose of this Chapter, the term “Special Purpose Zones” shall mean the MU-1 (SP-1), MU-2 (SP-2), MU-15 (SP-1/DC), MU-16 (SP-2/DC), MU-23 (SP-2/CAP), and the D-2 (SP-2/HR) zones.
- 200.4 For the purposes of this Chapter, the term “Medium-high Density Residential Zones” shall mean the RA-4 and RA-9 (R-5-D) residential apartment zones, and “High Density Residential Zones” shall mean the RA-5 and RA-10 (R-5-E) residential apartment zones.

201 CHANCERY USE CRITERIA

- 201.1 The Board shall determine whether to “not disapprove” or “disapprove” a chancery application according to the standards of this section.
- 201.2 A chancery shall be permitted in the Medium-high Density Residential Zones, High Density Residential Zones and Special Purpose Zones subject to disapproval by the Board in accordance with the review standards of § 201.8.
- 201.3 For applications requesting to locate, replace, or expand a chancery in a Low to Medium Density Residence Zone, before applying the criteria of § 201.8, the Board after a hearing on the application shall determine whether the proposed location is in a mixed-use area determined on the basis of existing uses, which includes office and institutional uses.
- 201.4 For the purposes of the § 201.3 determination, the “area” shall be the square within which the proposed chancery is to be located except that the Board at the request of an Applicant, Secretary of State or the Mayor of the District of Columbia may use a larger area if the Board finds the larger area provides a more accurate depiction of the existing mix of adjacent uses based on calculations of the land area devoted to existing uses including office and institutional uses.
- 201.5 An area shall be [presumed or considered] to be a mixed-use area if as of the date of the application more than fifty percent (50%) of the zoned land within the area is devoted to uses other than Residential Uses as defined in Subtitle B, Chapter 2 (“Residential Use”). This [presumption or consideration] may be rebutted by

credible evidence to the contrary as may be submitted by the Applicant, Secretary of State or the Mayor of the District of Columbia.

201.6 If the Board finds that the area is a mixed-use area the Board shall then determine the merits of the application based on the criteria of § 201.8.

201.7 If the Board finds that the area is not a mixed use area the Board shall disapprove the application.

201.8 The Board's determination of the merits of all chancery applications shall be based solely on the following criteria:

- (a) The international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation's Capital;
- (b) Historic preservation, as determined by the Board. 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 landmark;
- (c) 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 needs, subject to such special security requirements as may be determined by the Secretary of State, after consultation with federal agencies authorized to perform protective services;
- (d) The extent to which the area is capable of being adequately protected, as determined by the Secretary of State, after consultation with federal agencies authorized to perform protective services;
- (e) The municipal interest, as determined by the Mayor of the District of Columbia; and
- (f) The federal interest, as determined by the Secretary of State.

202 EXPANSION OR REPLACEMENT OF EXISTING CHANCERIES

202.1 An existing chancery in a Low to Medium Density Residential Zone may be expanded or replaced subject to disapproval by the Board in accordance with the review standards of § 201.8.

203 BOARD OF ZONING ADJUSTMENT REVIEW

203.1 In addition to the procedures for a special exception case set forth in Subtitle Y (Board of Zoning Adjustment Procedures), the following procedures apply to the review of chancery applications.

- 203.2 The consideration of an application submitted under this section shall be considered a rulemaking proceeding.
- 203.3 Any determination by the Board shall be based solely on the criteria in § 201.8.
- 203.4 The Board shall refer each application to the Office of Planning for review and comment. The Board shall specifically request a determination by the Mayor as to the municipal interest.
- 203.5 The Board shall refer each application to the United States Secretary of State for review and comment, and shall specifically request a determination of the federal interest, as set forth in § 201.8 (f), special security requirements, as set forth in § 201.8 (c), and the extent to which the site is capable of being adequately protected, as set forth in § 201.8 (d).
- 203.6 If the application would require the construction, demolition, or alteration of a building located in a historic district the alteration or demolition of a historic landmark, or the construction of a building or structure on the site of a historic landmark the application shall be referred to the Historic Preservation Review Board and if the property is located in the Old Georgetown District described in D.C. Official Code § 6-1201 it shall also be referred to the Commission of Fine Arts for Board and Commission to report as to whether the substantive criteria of § 201.9 have been met.
- 203.7 The Board may grant relief to the requirements of this title for chanceries in all zones and may grant permission to construct improvements in the public space to be undertaken as part of a chancery application being reviewed by the Board, consistent with what is permitted under District law and in accordance with the procedures and standard of this Chapter.
- 203.8 A final determination on a chancery application shall be published in the D.C. Register not later than six (6) months after the date a complete application is filed.
- 203.9 The Board's determination shall not be subject to administrative proceedings of any other District agency.

204 APPLICATION REQUIREMENTS

- 204.1 The owner of property upon which a chancery is proposed to be located, replaced, or expanded, or an authorized representative, shall file an application with the Board.
- 204.2 The application of an authorized representative shall include a letter signed by the owner authorizing the representative to act on the owner's behalf with respect to the application.
- 204.3 The Board may at any time require additional evidence demonstrating the authority of the representative to act for the owner.
- 204.4 An application shall contain a letter or other transmittal from the United States Department of State indicating that the Department of State has reviewed the

application as required by § 205 of the Foreign Missions Act, D.C. Official Code § 6-1305 and has approved the application for the purposes of filing and processing by the Board.

204.5 Each application shall be made on the appropriate form provided by the Director. In addition to the information required by this section relating to appearance and representation, the applicant shall furnish all information required by the application form at the time of filing the application, including, as applicable:

- (a) A plat, drawn to scale and certified by a survey engineer licensed in the District of Columbia or by the D.C. Office of the Surveyor and showing the lot numbers and lot area of all properties within the square;
- (b) A site plan showing the boundaries and dimensions of the existing and proposed structures and accessory buildings and structures and if applicable any area of relief requested;
- (c) Architectural plans and elevations in sufficient detail to clearly illustrate any proposed structure to be erected or altered, landscaping and screening, and where applicable, parking and loading plans;
- (d) A detailed statement addressing the review standards for chancery uses specified in § 201.8; and
- (e) The names and addresses of the owners of all property located within two hundred feet (200 ft.) of the subject property and self-stick labels printed with their names and addresses.

204.6 If the application is for a location in a Low to Medium Density Residence Zone, a written statement by the applicant attesting to:

- (a) A calculation of the land area within the square, or other area determined pursuant to 201.4, of all Low to Medium Density Residence zoned lots, identified by lot numbers;
- (b) For each lot within the square devoted to a use other than a Residential Use within a Low to Medium Density Residence Zone, the number and date of the certificate of occupancy authorizing the use and the use designation authorized; and
- (c) A copy of each certificate of occupancy referenced in § 204.6 (b).

204.7 If the application is for a location in a Low to Medium Density Residence Zone and an area other than a square has been used to calculate the percentage of existing uses pursuant to § 201.4, a statement shall be included explaining the basis for using the area, which shall not be based solely on previous Board action for another location.

204.8 When calculating the land area devoted to Residential Use, the area shall include the entire lot area of any property devoted to Residential Use in the computation of the land area.

- 204.9 If the chancery is to be located in a project with more than residential uses, the Applicant shall calculate the land area within the square devoted to Residential Use by using a ratio equal to the proportion of Residential Use to other uses in the project.
- 204.10 Except as provided in § 204.12, all statements, information, briefs, reports (including reports and statements of experts and other witnesses), plans, photographs, or other exhibits that the applicant may wish to offer in evidence at the public hearing shall be filed at the time of filing the application.
- 204.11 If a map, plan, or other document is readily available to the general public, in lieu of filing a copy of the document, the applicant need only provide a complete citation to the source of the document and indicate where the public may view the document.
- 204.12 No later than thirty (30) days before the date of the public hearing on the application, the applicant shall file with the Board any traffic or transportation reports to be submitted in support of the application. At or before the time of filing the traffic or transportation report with the Board, the applicant shall serve a copy of the report on the ANC for the area within which the property is located, the Office of Planning, and the District Department of Transportation.
- 204.13 No later than twenty-one (21) days before the date of the hearing for the application, the applicant shall file with the Board any additional statements, information, briefs, reports (including reports or statements of expert and other witnesses), plans, or other material that the applicant may wish to offer into evidence at the hearing.

205 IMPLEMENTATION

- 205.1 Following the publication of a notice of final rulemaking giving notice of the Board's decision to not disapprove an application, the applicant may file an application for a building permit with the proper authorities of the District of Columbia.
- 205.2 The Zoning Administrator shall not approve a permit application unless the submitted construction plans conform to the plans approved by the Board in its final decision, as those plans may have been modified by any guidelines, conditions, or standards that the Board may have applied.