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October 28, 2013

District of Columbia Zoning Commission
441 4th Street, NW
Suite 200S
Washington, DC 20001

Re: Case No 08-06A--Chanceries--Subtitle X, Chapter 200; Subtitle Y,
Section 410.3; and Subtitle C, Section 1901.5

Honorable Members of the Commission:

Our comments on the above-referenced chancery provisions are as follows:

Subtitle X

200.3(a)(2) - Permits "the first transfer" of a chancery use from one government to another, where the chancery use was established pre-BZA. This new section appears intended to exclude subsequent transfers. The word "first" should be stricken.

If the word "first" is retained, this new provision would be inconsistent with the Foreign Missions Act ("FMA"), 22 USC Section 4306(h)(2), which states that approval by the Foreign Missions Board of Zoning Adjustment ("FMBZA"), the Zoning Commission, or any other agency is not required "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" (which was the effective date of the FMA). The Board of Zoning Adjustment, the Office of the General Counsel of DCRA and the State Department have all confirmed that this Section allows successive transfers of a property from one chancery to another. See Order No. 17096 and Exhibits 22 and 25 therein.

If the word "first" is retained, this new provision would also be inconsistent with 22 USC Section 4306(b)(3) of the FMA, which states that "the limitations and conditions applicable to chanceries shall not exceed those applicable to other office or institutional uses in that area". If

the existing use was an office, and not a chancery, there could be successive transfers of the nonconforming office use from one user to another as a matter of right.

The language of the FMA is clear. There is no prohibition in the FMA on successive transfers of a chancery property from one foreign mission to another.

200.3(a)(3) - States that the FMBZA is empowered to "grant special exceptions and variance requests required for chanceries in all zones". This provision is new. Historically, if a chancery needed a deviation from a current zoning regulation, this was considered a "deviation from standards", and not considered as a special exception or a variance. Special exception and variance requests are not "required" for chanceries. Under 22 USC Section 4306(d) of the FMA, any determination concerning a chancery application "shall be based solely on" the six criteria therein. The proposed language should be changed to say that "the Board may grant relief from the strict application of the zoning regulations as part of its review of a chancery application, applying the criteria of 22 USC Section 4306 of the FMA".

200.3(b) - Allows the FMBZA to review applications for improvements in the public space, "consistent with what is permitted under District law". This section needs to be clarified. If a proposed public space improvement is "consistent with what is permitted under District law", then by definition it complies with the applicable law, and a private-sector applicant would not need to apply to any agency for a discretionary review. A chancery should not need to undergo that review in those circumstances either. The whole point of allowing FMBZA review of public space applications is for those instances where the proposed public space improvement would not comply with existing public space regulations, such as fences that exceed the permitted 42 inch height, and would therefore otherwise be subject to Public Space Committee review. The FMA is intended to provide "one-stop shopping" at the FMBZA for chanceries seeking approval to locate, replace or expand their facilities in the District. The quoted phrase above should be revised to state that the FMBZA may grant permission to construct improvements in the public space when review of those improvements would otherwise be required by the Public Space Committee or other non-FMBZA reviewing agency.

201.2 - States that the chancery applicant has the burden of proof, even if there is no opposition to the application. This section is directly contrary to 22 USC Section 4306(b) of the FMA, which states that a chancery application is deemed approved, subject to disapproval by the FMBZA based solely on the six criteria of the FMA. In other words, the FMBZA has the burden of proof to show why a chancery application should not be approved. This section should be stricken. The same is true for Subtitle Y, Section 410.3.

201.4 through 201.8 - The new regulations appear to omit the Diplomatic Overlay, and allow the FMBZA to consider a chancery application in any residential zone, as well as the SP zones. However, in the low to medium density residence zones [currently R-1 through R-5-C; proposed A-1 through A-3, and A-6 through A-9], the new proposed regulations say that as a threshold consideration of suitability, the FMBZA must determine that the site is in a square that

has at least 50% office or institutional use. The entire lot of each office or institutional use is to be included in that calculation, unless the use is a mixed-use which includes residential, in which case the land area of that use is apportioned between the residential and non-residential, and only the non-residential portion is included. If there is not at least 50% office or institutional use, the application is to be dismissed with prejudice.

This position is totally at odds with the prior interpretations, as well as with several recent FMBZA decisions, such as the Uganda case on 16th Street (Order No. 17787). The Diplomatic overlay map that was established after enactment of the FMA was based on an analysis of whether a particular square had at least one-third office or institutional uses (the "one-third/two-thirds" test). Subsequently, that test was abandoned in favor of a case-by-case test applying the language of 22 USC Section 4306(b) to a particular application at a particular site. If this new section is adopted, it would further constrict those areas presently in the D overlay zone where chanceries are permitted subject to FMBZA review, it would render a whole host of chanceries non-conforming and unable to be reconstructed or expanded with FMBZA review, and it would eliminate the ability of the FMBZA to conduct a case-by case review for sites that are in proximity to other office or institutional uses but which do not meet the new 50% test (for instance, a site across the street from a chancery enclave, or in the same square but with 49% chancery use). Sections 201.3 through 201.8 should be stricken. The same is true for Sections 202.5(j), (k) and (l).

201.10 - States the standards for historic preservation review by the FMBZA. There is case law establishing what is intended in the FMBZA's review of the historic preservation criterion of the FMA. That language is set forth in Section 201.10(a)(1). But, Sections 201.10(a)(2), (b) and (c) go further and set forth the specific criteria under the historic preservation law. This section should be modified, and similar language should be included as that suggested above for Section 200.3(a)(3).

204.3(a) - Notes that chancery orders expire. When it enacted the rule-making procedures for chancery review under the then-new FMA, the Zoning Commission determined in 1983 that chancery orders should not be subject to the same expiration language as non-chancery orders. See 11 DCMR Section 3130 regarding time limits on orders, which does not carry over to chanceries, per Section 3134.6. That rule has been in effect for the past 30 years. Proposed Section 204.3(a) should be stricken.

Subtitle C, Section 1901.5--Parking requirements

The new chancery parking requirement in Section 1901.5 is 0.5 per 1000 sq. ft. of space, in excess of 3000 sq. ft. This new parking requirement is the same for office use. The existing chancery requirement in the D, R-5-D and R-5-E zones is 1 for each 800 sq. ft., or 1200 sq. ft. or 1800 sq. ft., respectively, "or as determined by the Board". The flexibility given to the FMBZA in the original regulations has been removed in the new proposed regulations. The phrase "or as

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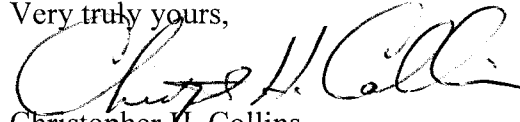
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determined by the Board" should be retained in the parking schedule in Subtitle C, Section 1901.5 of the new regulations.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Chris H. Collins", written in a cursive style.

Christopher H. Collins

CHC/lis

cc: Jennifer Steingasser
Clifton Seagroves, Department of State

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