

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19798 of State of Hungary, Ministry of Foreign Affairs and Trade, pursuant to 11 DCMR Subtitle X, Chapter 2, to renovate the existing Hungarian Chancery in the MU-15 Zone at premises 1500 Rhode Island Avenue, N.W. (Square 195S, Lot 800).

HEARING DATE: September 12, 2018
DECISION DATE: September 12, 2018

NOTICE OF FINAL RULEMAKING

and

DETERMINATION AND ORDER

The Board of Zoning Adjustment (“Board”), pursuant to the authority set forth in § 306 of the Foreign Missions Act, approved August 24, 1982 (96 Stat. 283; D.C. Official Code § 6-1306 (2012 Repl.)) and Chapter 2 of Subtitle X of the Zoning Regulations of the District of Columbia, Title 11 DCMR, and after having held a public hearing on September 12, 2018, hereby gives notice that it took final action not to disapprove the application of The State of Hungary, Ministry of Foreign Affairs and Trade (“Applicant”) to renovate the existing Hungarian Chancery in the MU-15 Zone at premises 1500 Rhode Island Avenue, N.W. (Square 195S, Lot 800) (the “Subject Property”).

A notice of proposed rulemaking was published in the July 27, 2018 edition of the *D.C. Register*. (65 DCR 7938.) In accordance with Subtitle Y § 402.1, the Board provided written notice to the public more than 40 days in advance of the public hearing. On July 10, 2018, the Office of Zoning (“OZ”) provided notice of the filing of the application to the United States Department of State; the District of Columbia Office of Planning (“OP”); Advisory Neighborhood Commission (“ANC”) 2B, whose boundaries encompass the Subject Property; the Single Member District Commissioner for ANC 2B05; ANC 2F, whose boundary line abuts the Subject Property and therefore is also an affected ANC; the District Department of Transportation (“DDOT”), Historic Preservation Review Board (“HPRB”), and the Councilmember for Ward 2.

OZ scheduled a public hearing on the application for September 12, 2018 and provided notice of the hearing by mail to the Applicant, ANC 2B, ANC 2F, and the owners of all property within 200 feet of the subject property, as well as to the Department of State. Notice of the hearing was published in the *D.C. Register* on July 27, 2018. (65 DCR 7816.)

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

Board of Zoning Adjustment
District of Columbia
CASE NO.19798
EXHIBIT NO.51

BZA APPLICATION NO. 19798
PAGE NO. 2

Background

The Subject Property is located in the MU-15 Zone district and is presently improved with an existing building known as the Brodhead-Bell-Morton House, which is listed in the D.C. Inventory of Historic Sites and in the National Register of Historic Places. The Applicant purchased the Subject Property in 2016 for chancery use.

The Applicant proposes improvements to the existing building, site, and public space adjacent to the existing chancery annex building. The proposed renovations include interior, structural, and mechanical improvements, most notably including installation of a replacement elevator penthouse, installation of a security fence in public space along the perimeter of the site, relocation of the existing curb cut on Rhode Island Avenue, N.W. with a decrease in curb cut width on 15th Street, N.W. and location of trash receptacles within the public space off N Street, N.W.

Specifically, the Applicant proposes to replace the existing elevator, and consequently, the existing 13-foot roof penthouse that encloses the elevator machine room will be removed and replaced with a three-foot, 11-inch-tall elevator override penthouse.¹

In addition, the Applicant proposes to install a new perimeter security fence around the Subject Property in public space. The proposed fence will be six feet, six inches tall and will sit on top of a one-foot tall knee-wall, creating a total consistent fence height of seven feet, six inches. In its report to the Board, DDOT requested that the fence be reduced to a total height of six feet, six inches. The Applicant determined to retain the proposed height of the fence, however, based on security reasons and the building's landmark status.

The Subject Property currently provides 29 off-street parking spaces accessed from 15th Street, N.W., Corregidor Street, N.W., and Rhode Island Avenue, N.W. Three additional diplomatic parking spaces are located directly to the south of the Subject Property on N Street, N.W. The Applicant proposes to retain the existing curb cut on Corregidor Street, N.W. and the existing driveway from this entrance into the building's porte-cochere, though they will be used for ceremonial purposes only and will be controlled with a new sliding metal gate. The Applicant proposes to provide eight surface parking spaces along 15th Street, N.W. and to relocate loading to an on-site loading zone on N Street, N.W. The existing 33-foot wide curb cut along 15th Street, N.W. will be reduced to 20 feet in width, and trash containers will be located in the enlarged areaway on the south side of the building. Trash will be collected from N Street, N.W. DDOT requested that the trash enclosure height be reduced to 42 inches, which the Applicant accepted and incorporated into its revised plans.

¹ The proposed project does not comply with the Zoning Regulations for the requirements for penthouse setback in Subtitle C § 1502. The Board, in addition to not disapproving the location of chanceries in certain zones, has the authority to hear requests for special exception or variances required for chancery applications, but the Board must exclusively evaluate these requests using the six criteria cited in the Foreign Missions Act. (11-X DCMR § 203.7; *See Embassy of the People's Republic of Benin v. D.C. Bd. of Zoning Adjustment*, 534 A.2d 310 (D.C. 1987).)

Pursuant to § 406(d) of the Foreign Missions Act, D.C. Official Code § 6-1306(d), the Board must consider six enumerated criteria when reviewing a chancery application. The provision further dictates who is to make the relevant finding for certain factors. The factors and relevant findings are as follows:

1. The international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation's Capital.

In a letter dated August 22, 2018, the Department of State determined that favorable action on this application would fulfill the international obligation of the United States to facilitate the Government of Hungary in acquiring adequate and secure premises to carry out their diplomatic mission. (Exhibit 43.)

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

The existing structure is listed in the D.C. Inventory of Historic Sites and in the National Register of Historic Places. Pursuant to 11-X DCMR § 203.6, this application was referred to the chair of the Historic Preservation Review Board on July 10, 2018 to report as to whether the substantive criteria of this factor was met. (Exhibit 23). No report was received.

The Office of Planning (“OP”), which includes the Historic Preservation Office, noted that the Applicant “worked extensively with D.C.’s Historic Preservation staff regarding the proposed exterior changes, including removal of the cut-outs for window air conditioners, the renovated grand stair facing Rhode Island Avenue and use of materials for the screen wall to shield the view of the fire escape from public space, proposed to be designed by a Hungarian artist.” (Exhibit 44.) OP noted that Historic Preservation staff is satisfied with the Applicant’s revised plans. Finally, the Applicant submitted for the record a detailed draft of its Historic Preservation Plan. (Exhibit 8.) Based on the evidence and testimony in the record, the Board finds this criterion is met.

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

The Board concurs with the findings reached by the District Department of Transportation (“DDOT”) that the proposed action will not lead to an increase in vehicle, transit, pedestrian and bicycle trips, and the property is currently functioning as a chancery. (Exhibit 45.) Although the proposal will reduce the number of off-street parking spaces on the Subject Property, the Board finds that the Applicant will provide adequate vehicle parking spaces, as the eight spaces provided

BZA APPLICATION NO. 19798
PAGE NO. 4

exceed the five parking spaces required by the Zoning Regulations. (11-C DCMR §§ 701.5 and 702.) The Board also credits OP's finding that this site is adequately served by public transportation. (Exhibit 44.)

The Department of State, after consulting with the Federal agencies authorized to perform protective services, determined that there exist no special security requirements relating to parking in this case. (Exhibit 43.)

4. 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.

After consulting with the Federal agencies authorized to perform protective services, the Department of State determined that the subject site and area are capable of being adequately protected. (Exhibit 43.)

5. The municipal interest, as determined by the Mayor.

OP, on behalf of the Mayor of the District of Columbia, determined that not disapproving the application was in the municipal interest. (Exhibit 44.) OP found that the proposal does not meet the Zoning Regulations for penthouse setback, as the mechanical penthouse would be reconstructed to enclose a new elevator system with an override of three feet, 11 inches and a setback of one foot, one-and-a-half inches from the edge of the structure. The existing elevator penthouse on the structure is 13 feet in height, with a setback of one foot, seven inches from the roof's edge; therefore, the proposed renovation would result in less visibility from the street. OP found that this satisfies the intent of the regulations.

In its report, OP also noted that the Applicant is proposing an eight-foot wide dish antenna on the renovated roof area as shown on the revised plans. The dish would be mounted no more than nine feet, four inches in height above the roof, which is below the maximum permitted mounted height of 12 feet above the roof, pursuant to Subtitle C § 1304.1(b). OP further indicated that the proposed location of the dish towards the center of the roof would ensure that its visibility would be minimized from public space; therefore, the installation would satisfy the intent of Subtitle C § 1304.1 and would not require relief from the regulations.

Further, OP indicated that the treatment of the public space is an important element of the municipal interest. OP noted that the Applicant worked closely with OP's and DDOT's Public Space staff, as well as with the Historic Preservation Office, on public space issues and OP is satisfied that the Applicant satisfied the requests expressed by Historic Preservation and Public Space staff. Based on OP's findings, the Board finds that this criterion is met.

6. The federal interest, as determined by the Secretary of State.

The Department of State determined that there is federal interest in this project. Specifically, the Department of State acknowledged the Government of Hungary's assistance in addressing the United States' land use needs in Budapest. Such cooperation was essential for successfully achieving the Federal Government's mission for providing safe, secure, and functional facilities for the conduct of U.S. diplomacy and the promotion of U.S. interests worldwide. (Exhibit 43.)

Great Weight

The Board is required under § 13(d) of the Advisory Neighborhood Commission Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001) to give great weight to the issues and concerns raised in the written report of the affected ANCs, which are ANC 2B and ANC 2F. ANC 2F did not submit a written report. ANC 2B submitted a resolution dated July 17, 2018, indicating that at its regularly scheduled, duly noticed public hearing on July 11, 2018, with a quorum present, the ANC voted 9-0-0 in support, with no issues or concerns. (Exhibit 34.) As no issues or concerns were raised by the affected ANCs, the Board had no issues to afford great weight.

Based upon its consideration of the six criteria discussed above, and having given great weight to the ANC and OP, the Board has decided not to disapprove the application. Accordingly, it is hereby **ORDERED** that the application is **NOT DISAPPROVED, AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 40A – PREHEARING STATEMENT: TAB A (ARCHITECTURAL DRAWINGS), AS REVISED BY EXHIBIT 49 – REVISED SHEET SHOWING FENCE HEIGHT.**

VOTE: 5-0-0 (Frederick L. Hill, Marcel C. Acosta, Lesylleé M. White, Lorna L. John, and Peter G. May to Not Disapprove.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: November 1, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.12, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL UPON PUBLICATION IN THE *D.C. REGISTER*.

BZA APPLICATION NO. 19798
PAGE NO. 6

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.