

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 19557 of Commonwealth of Australia**, pursuant to 11 DCMR Subtitle X, Chapter 2, to replace an existing chancery use by demolishing the existing Australian chancery building and replacing it with a new chancery building in the MU-15 zone at premises 1601 Massachusetts Avenue N.W. (Square 181, Lot 162).

**HEARING DATE:** September 13, 2017

**DECISION DATE:** September 13, 2017

**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 November 13, 2017, hereby gives notice that it took final action not to disapprove the application of the Commonwealth of Australia (“Applicant”) to replace an existing chancery use by demolishing the existing chancery building and replacing it with a new chancery building in the MU-15 zone at premises 1601 Massachusetts Avenue N.W. (Square 181, Lot 162) (the “Subject Property”).

A notice of proposed rulemaking was published in the August 11, 2017 edition of the *D.C. Register*. (64 DCR 8140.) 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 7, 2017, 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, the District Department of Transportation (“DDOT”), Historic Preservation Review Board (“HPRB”), and the Councilmember for Ward 2.

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**Board of Zoning Adjustment**  
District of Columbia  
CASE NO 19557A  
EXHIBIT NO 56

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OZ scheduled a public hearing on the application for September 13, 2017 and provided notice of the hearing by mail to the Applicant, ANC 2B, 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 28, 2017. (64 DCR 7240.)

Background

The Subject Property has been used for chancery purposes since the mid-1960s. The Board approved the existing chancery building in BZA Order Nos. 8340 and 8665, dated September, 1965 and April, 1966, respectively. In February 1974, the Board approved an addition to the existing chancery building and construction of a penthouse that exceeds one-third of the total roof area in BZA Order No. 11590.

The Applicant proposes to demolish the existing building at the Subject Property and replace it with a new chancery building, which will contain chancery office space, conference and meeting rooms, consular services, and accessory space for other ancillary uses to the chancery use. The replacement chancery building's height, density, and lot occupancy will be generally consistent with that of the existing chancery building. The new building will have a floor area ratio ("FAR") of 4.32 FAR, which is 1.04 FAR less than the existing structure's density, and maintain the existing building height of 90 feet. The new chancery building will have a lot occupancy of approximately 86.3%. There will be a 1.83-foot side yard along the public alley on the west side of the Site and a 0.83-foot side yard on the east side of the Site, whereas side yards currently do not exist at the Subject Property.

The proposed chancery design features a flat roof and also includes a penthouse, which is set back at least 1:1 from the north, east, and south exterior walls. The main portion of the mechanical penthouse is proposed to be 9' 11" in height above the roof upon which it is located, but is set back 5' 11" from the west wall abutting the alley. The proposed rooftop also supports extensive solar and green roof elements.

In addition, the project will relocate the existing parking garage, which is accessed from Massachusetts Avenue, N.W. and the existing exit on 16th Street, N.W., to the adjacent public alley. The existing curb cuts will be eliminated accordingly. The new, proposed below-grade garage will include 91 vehicle parking spaces. The proposed project will also provide one loading berth, one loading platform, and one service/delivery loading space, which will be accessed from the alley. A sally port to screen vehicles prior to entering the building will be located adjacent to the garage entrance ramp, also along the alley. Bicycle parking and shower/changing facilities will be provided in amounts consistent with the Zoning Regulations; however, the long-term bicycle parking spaces will be provided in a covered shelter on the Site adjacent to the building.<sup>1</sup>

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<sup>1</sup> The proposed project does not comply with the Zoning Regulations for the requirements for FAR in Subtitle G § 602, height in Subtitle G § 603, side yard in Subtitle G § 606, penthouse setback in Subtitle C § 1502, loading in Subtitle C § 901, and bicycle parking in Subtitle C § 805. 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

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 July 20, 2017, the Department of State determined that favorable action on this application would fulfill the international obligation of the United States to facilitate the Commonwealth of Australia in acquiring adequate and secure premises to carry out their diplomatic mission. (Exhibit 32.)

**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 non-contributing to the Massachusetts Avenue and 16th Street Historic Districts. Pursuant to 11-X DCMR § 203.6, this application was referred to the chair of the Historic Preservation Review Board on July 7, 2017 to report as to whether the substantive criteria of this factor was met. (Exhibit 19.) No report was received.

The Office of Planning (“OP”), which includes the Historic Preservation Office, concluded that the new building’s design provided “a general level of compatibility with the neighborhood context while providing a contemporary design vocabulary that expresses the Australian heritage and landscape.” (Exhibit 44.) In addition, OP found that the public space design related well to the surrounding context by providing a high percentage of greenery, limited paving, and reestablishing the double tree canopy on Massachusetts Avenue. Finally, the Applicant provided for the record an evaluation that demonstrated the compatibility of the proposed design with the character of the 16th Street and Massachusetts Avenue Historic Districts. (Exhibit 41D.) 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.**

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applications, but the Board must evaluate these requests exclusively 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).)

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The Board concurs with the findings reached by the District Department of Transportation (“DDOT”) that the impacts of the replacement of the chancery building to the surrounding vehicle network will be minimal. (Exhibit 45.) In addition, the Board credits the findings in the OP report that the Applicant will provide adequate vehicle parking spaces in a below-ground garage. (Exhibit 44.) Further, parking access and loading functions would take place off the alley, in conjunction with security screening, and long-term bicycle parking for 27 spaces would be provided north of the site under a canopy cover. The Board also credits OP’s finding that this site is adequately served by public transportation and is within one mile of three Metrorail stations: Farragut West, Farragut North, and Dupont Circle. (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 32.)

**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 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 32.)

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

OP, on behalf of the Mayor of the District of Columbia, determined that approving Application No. 19557 was in the municipal interest. (Exhibit 44.) OP found that the proposed replacement of the chancery building, though it does not meet the Zoning Regulations for FAR, height, side yard, loading, bicycle parking, and penthouse setback, would not create an adverse impact on the surrounding neighborhood to harm the public good or the intent of the Regulations. OP also made the following specific findings regarding the areas of zoning relief required.

The current design proposes a height of about 90 feet and a FAR of 4.39. The height and density, though they exceed what is permitted in the MU-15 Zone under Subtitle G §§ 602 and 603, are contextually appropriate with the surrounding historic elements in the historic district, particularly at Scott Circle.

With regard to side yard, the east and west walls would be set back 1.83 feet from the property lines, due to the location of the foundation walls and the structural support systems for these walls, though a 15-foot side setback is required in the MU-15, where a side yard is provided, pursuant to Subtitle G § 606. The proposed setback should not have an adverse impact on any abutting property, including the adjacent public alley and 16th Street, N.W.

In addition, although Subtitle C § 901 requires two 30-foot loading berths, two loading platforms and one 20-foot service delivery space, the proposed chancery will provide one 30-foot loading berth, one space for a 20-foot van and a 100 square foot loading platform. Based on the past operations of the chancery with one 30-foot loading berth, additional loading facilities prescribed by the regulations are not necessary for the chancery's needs.

Subtitle C § 805 states that required long-term bicycle parking spaces must be located within the building of the use requiring them; however, the chancery proposes to locate the bicycle parking spaces under a covered shelter on the north side of the building. Although the bicycle parking spaces will not be located within the building, the number of long term bicycle parking spaces provided meets the number of long term spaces required by the Zoning Regulations and are located in a convenient and secure location on the Site and adjacent to the building. The location of the bicycle parking spaces outside of the building allows for Embassy staff to screen all people who enter the building, as they cannot easily screen bicycles in the same manner, thus posing a security risk.

The chancery's mechanical penthouse is proposed to be 9' 11" in height above the roof upon which it is located and exceeds the 1:1 setback required by Subtitle C § 1502 on the north, east, and south sides; however, it is set back 5' 11" from the west wall abutting the alley, not meeting the 1:1 setback requirement. The location of the mechanical penthouse is driven by the location of the building core, which is set off to the west side of the building because of the atrium and skylights in the center portion of the building and other unique programmatic needs of the use. The elevator penthouse exceeds the height of the other portions of the mechanical penthouse by 4.5 feet but exceeds the 1:1 setback from all sides. The proposed setback is the result of the unique programmatic needs of this use, and satisfies the intent of the Regulations, which is to reduce visibility from public space.

#### **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 the Commonwealth of Australia's assistance in addressing the United States' land use needs in Canberra. 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 32.)

#### **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 ANC, which is ANC 2B. The ANC submitted a resolution dated August 21, 2017, indicating that at its regularly scheduled, duly noticed public hearing on August 9, 2017, with a quorum present, the ANC voted

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7-0-0 in support of the project as proposed. (Exhibit 38.) The ANC noted that the Applicant's proposal for public space improvements along Massachusetts Avenue, N.W. would cause the sidewalks to narrow to six feet in some spaces, while ANC 2B's public space guidelines request that sidewalks within the neighborhood have a width of at least ten feet. Nevertheless, the ANC stated that it supports the public space portion of the application "because the applicant will be providing a car drop-off woonerf on its own property, inviting the public to walk on embassy grounds where the path is more than ten feet wide and not on the six foot wide sidewalk." Since the ANC express no unresolved issue or concern, there is nothing to give great weight to.

Based upon its consideration of the six criteria discussed above, and having given great weight to the ANC, 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 41B1-41B2.**

**VOTE: 4-0-1** (Frederick L. Hill, Lesylleé M. White, Peter G. May, and Marcel C. Acosta to Not Disapprove; one Board seat vacant.)

**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:** December 4, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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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.