

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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FOREIGN MISSIONS BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

MAY 22, 2007

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER Chairperson
CURTIS ETHERLY, JR. Vice-Chairperson
MARC D. LOUD Board Member
PATRICIA GALLAGHER Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

JOHN PARSONS
Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary
BEVERLY BAILEY Sr. Zoning Specialist

JOHN NYARKU Zoning Specialist

OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MATT JESICK

The transcript constitutes the minutes from the Public Hearing held on May 22, 2007.

C-O-N-T-E-N-T-S

<u>AGENDA ITEM</u>	<u>PAGE</u>
PRELIMINARY MATTERS (None)	
TO CONSIDER THE FOLLOWING:	
<u>WARD TWO</u>	
<u>17633</u> <u>ANC-2B</u>	8
<u>APPLICATION OF GOVERNMENT OF THE</u> <u>REPUBLIC OF MONTENEGRO</u>	
JONATHAN R. MOORE, ESQ. Moore and Bruce 1072 Thomas Jefferson Street, N.W. Washington, D.C. 20007 202/965-5300	10
MIRO SCEPANOVIC	15
ADJOURN	22

P R O C E E D I N G S

9:43 a.m.

CHAIRPERSON MILLER: This hearing will please come to order. Good morning, ladies and gentlemen. This is the May 22, 2007 public hearing of the Foreign Missions Board of Zoning Adjustment of the District of Columbia.

My name is Ruthanne Miller. I'm the chairperson. Joining me today are Vice-Chairperson Curtis Etherley, to my right; Marc Loud, to my left, the other mayoral appointee. Patricia Gallagher, representing the National Capital Planning Commission; and John Parsons representing the National Park Service.

Copies of today's hearing agenda are available to you and are located to my left in the wall bin near the entrance door.

Please be advised this proceeding is being recorded by the court reporter and is also webcast live. Accordingly, we must ask you to refrain from any disruptive noises or

1 actions in the hearing room.

2 When presenting information to the
3 Board, please turn on and speak into the
4 microphone, first stating your name and home
5 address. When you are finished speaking,
6 please turn your microphone off, so that your
7 microphone is no longer picking up sound or
8 background noise.

9 All persons planning to testify
10 either in support or opposition are to fill
11 out two witness cards. These cards are
12 located to my left on the table near the
13 entrance door and on the witness tables.

14 Upon coming forward to speak to
15 the Board, please give both cards to the
16 reporter sitting to my right. The order of
17 procedure for a Foreign Missions case is as
18 follows: one, statement and witnesses of the
19 Applicant; two, government reports, including
20 the United States, Secretary of State, and the
21 District of Columbia Office of Planning on
22 behalf of the Mayor; reports or

1 recommendations by other public agencies;
2 four, reports of the Advisory Neighborhood
3 Commission; five, persons in support; six,
4 persons in opposition.

5 Please note that requests for
6 party status in FM BZA applications are not
7 applicable.

8 The following time constraints may be
9 maintained: the Applicant, including
10 witnesses, may be permitted 60 minutes to
11 present its case. Persons testifying, whether
12 in opposition or support, will be permitted
13 three minutes each, except an ANC. These time
14 constraints do not include time used during
15 questions from the Board. The Board may place
16 further reasonable restrictions on or permit
17 additional time for testimony as it deems
18 appropriate.

19 Because this is a rulemaking
20 proceeding, there are no parties and therefore
21 there's no cross examination.

22 The record will be closed at the

1 conclusion of each case, except it will remain
2 open for any materials specifically requested
3 by the Board. The Board and the staff will
4 specify at the end of the hearing exactly what
5 is expected and the date when the material
6 must be submitted to the Office of Zoning.
7 After the record is closed, no other
8 information will be accepted by the Board.

9 The Sunshine Act requires that the
10 public hearing on each case be held in the
11 open before the public. The Board may,
12 consistent with its rules of procedure in the
13 Sunshine Act, enter executive session during
14 or after the public hearing on a case for
15 purposes for reviewing the record or
16 deliberating on the case.

17 The decision of the Board in this
18 legislative proceeding must be based
19 exclusively on the public record. To avoid
20 any appearance to the contrary, the Board
21 requests that persons present not engage the
22 members of the Board in conversation.

1 Please turn off all beepers and
2 cell phones at this time so as not to disrupt
3 these proceedings.

4 At this time, the Board will
5 consider any preliminary matters. Preliminary
6 matters are those that relate to whether a
7 case will or should be heard today, such as
8 requests for postponement, continuance or
9 withdrawal; or whether proper and adequate
10 notice of the hearing has been given.

11 If you are not prepared to go
12 forward with the case today, or if you believe
13 that the Board should not proceed, now is the
14 time to raise such a matter.

15 Does the staff have any
16 preliminary matters?

17 MS. BAILEY: No, Madam Chair.

18 CHAIRPERSON MILLER: If not, let
19 us proceed with the agenda.

20 MS. BAILEY: The first case is
21 Application No. 17633, Application of the
22 Government of the Republic of Montenegro,

1 pursuant to 11 DCRA Section 1002, to permit
2 the use of a chancery in the Dupont Circle/SP-
3 1 District at premises 1610 New Hampshire
4 Avenue, N.W., Square 134, Lot 141.

5 CHAIRPERSON MILLER: Thank you. I
6 just want to notice a preliminary matter.
7 It's been brought to my attention that the
8 Office of Planning report is one day late.
9 That it's due eight days prior to the public
10 hearing for chancery applications and in fact,
11 it was submitted seven days late -- I mean it
12 was submitted within seven days, sorry, one
13 day late, but I would propose that we waive
14 that rule and accept it into the record. I
15 believe there's consensus on the Board to do
16 that.

17 Okay, in which case we can now go
18 forward with the application.

19 Will the Applicant come forward.
20 Also, I want to state that the record is very
21 full in this case, that all the members have
22 taken a look at the record and believe that

1 the issue is very fully addressed and don't
2 see any problems with this application, that
3 it's very straight forward and there's no
4 opposition in the case. State Department is
5 in support and the Office of Planning is in
6 support. And the Office of Planning has shown
7 how all the criteria are addressed for our
8 granting this application.

9 So with that in mind, you can
10 either rest on the record or you can say a few
11 words, whatever is your please. But first you
12 should identify yourself for the record.

13 MR. MOORE: Good morning, Madam
14 Chairman and members of the Panel. My name is
15 Jonathan Moore. I'm an attorney in Washington
16 with the law firm of Moore and Bruce. We
17 represent the Applicant, the Republic of
18 Montenegro. I'm accompanied this morning by
19 Ambassador Vlahovic and my first counselor,
20 Mr. Scepanovic.

21 Following up on your comments, we
22 will not be needing the entire time allotted

1 to us this morning. Our statements will be
2 very brief.

3 We wanted to -- we're not going to
4 introduce new testimony this morning. We
5 believe the record is very clear. The Office
6 of Planning and the State Department, Office
7 of Foreign Missions submission in support of
8 our application, we believe, addressed all of
9 the relevant criteria, have done so very well
10 and we take no issue. We had only one point
11 we wanted to bring up that was perhaps an
12 inconsistency and I bear some of the
13 responsibility for that. There was, in fact,
14 a presentation that the Government of
15 Montenegro did to the ANC. We understand that
16 the ANC is in support of our application.
17 When I saw the comment in the letter, we've
18 been trying to make contact with the ANC to
19 put their support for our application on the
20 record. But you know, I don't propose to
21 speak for them, but that correction is
22 appropriate to note in the letter from the

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1 Office of Planning.

2 I think the only important point
3 that I wanted to make here is that, in
4 essence, we are dealing with a continuation or
5 the same use of the property as we previously
6 had. Prior to this or for the past four or
7 five years, the Trade Mission of the Republic
8 of Montenegro to the United States was
9 utilizing the property as a liaison with the
10 United States Government. So that all of its
11 activities that were being carried out are
12 very similar in nature to the same types of
13 activities that will be carried out at this
14 building when hopefully the approval for use
15 as a chancery comes through, the only
16 difference being that at that point in time,
17 the Republic of Montenegro was a political
18 subdivision, first of Yugoslavia, and then of
19 the Republic of Serbia and Montenegro. Since
20 then, in the last year, it has achieved
21 sovereign status and has been duly recognized
22 by the United States Government.

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1 Accordingly, the big difference
2 would be that the employees of the Trade
3 Mission were here on visas but are the embassy
4 staff, of course, has presented their
5 diplomatic credentials in accordance with
6 State Department protocol.

7 So really that was the main point
8 I wanted to make. The other point and I've
9 had discussions with Mr. Mlotek at the State
10 Department about this, curiously, there are
11 special rules in the zoning regulations for
12 locating a chancery in an SP-1 District. And
13 very interestingly, if a Certificate of
14 Occupancy for office use in an SP-1 District
15 had been approved prior to January of 1999, we
16 wouldn't even need to be here today. There's
17 a specific exception in the regulations
18 allowing approval for chancery use based on a
19 previous CO. Unfortunately, the CO we have in
20 this matter was not issued until 2001.
21 Nevertheless, I believe that the policy set
22 forth in that regulation strongly militates

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1 towards approval of this application.

2 And unless any of the members have
3 questions of my witnesses, we will proceed,
4 we're ready to rest on the record as submitted
5 and are pleased to do so.

6 CHAIRPERSON MILLER: Thank you. I
7 just have two questions for you.

8 One is I understand that the
9 office use is very similar to what has been
10 going on now before its becoming a chancery.
11 But was there residential use as well? Is it
12 the same mixed use combination?

13 MR. MOORE: Exactly, yes. In
14 fact, right now, the chancery would have no --
15 the embassy would have no immediate need to
16 use the fourth floor and I think the attic for
17 apartments, but they were approved for that
18 use and in fact, the Trade Mission, at one
19 point in time, one of the Trade Mission
20 representatives and his family lived in one of
21 the apartments upstairs.

22 CHAIRPERSON MILLER: Okay, and did

1 you say, did you present to the ANC or did you
2 just have communications with them?

3 MR. MOORE: There was a full
4 presentation, a chance for a dialogue and we
5 were very favorably received, is my
6 understanding, but we've asked for -- we will
7 be following up on that with the ANC to see if
8 we can't the formal notice to the Board of
9 their views.

10 CHAIRPERSON MILLER: Did they take
11 an official action? Did they vote?

12 MR. SCEPANOVIC: I'm Miro
13 Scepanovic with counsel for the Embassy of
14 Montenegro, and the one who, in fact, made the
15 presentation before the ANC on April 11. Yes,
16 the Commissioners did vote on the conclusion
17 regarding our proposal, our presentation.

18 CHAIRPERSON MILLER: And it's your
19 recollection that it was favorable?

20 MR. SCEPANOVIC: Yes, it was.

21 CHAIRPERSON MILLER: Okay. Thank
22 you. Thank you very much.

1 Any other questions from Board
2 members? Okay, at this point then we can turn
3 to Government reports, including Secretary of
4 State. Thank you. Anything else the
5 Secretary of State wants to put on the record?

6 MR. MLOTEK: Good morning, Madam
7 Chair, and may it please the honorable Board,
8 I'm Ron Mlotek, legal counsel, Office of
9 Foreign Missions, U.S. Department of State.
10 May I ask at the outset, is there an OP, DC OP
11 representative here who is going to -- because
12 we traditionally defer to the District and let
13 them go -- let them precede us.

14 CHAIRPERSON MILLER: Mr. Jesick is
15 here, yes.

16 MR. MLOTEK: All right, if it's
17 all right, we sort of think that that's comity
18 between the federal government and the
19 District government.

20 CHAIRPERSON MILLER: That's fine,
21 and both of you have put in reports that are
22 very full as well.

1 MR. MLOTEK: Right.

2 CHAIRPERSON MILLER: All right,
3 then we'll turn to the Office of Planning.

4 MR. JESICK: Good morning. My
5 name is Matt Jesick. The Office of Planning
6 reviewed this application against the criteria
7 contained in Section 1001 of the zoning
8 regulations which governs the establishment of
9 chancery uses and based on those criteria, the
10 Office of Planning has found that the
11 application is in the municipal interest and
12 based on input from the State Department is
13 also in the federal interest and in the
14 interest of the United States.

15 So the Office of Planning
16 recommends approval of the application. We
17 have no outstanding issues. For the rest of
18 my testimony, I'll rest on the record, but I'd
19 be happy to ask answer any questions.

20 CHAIRPERSON MILLER: Thank you.
21 Any questions from the Board?

22 No. Thank you. It was a great

1 report.

2 Okay, Mr. Mlotek.

3 MR. MLOTEK: We're whizzing right
4 along.

5 CHAIRPERSON MILLER: Well, you did
6 a wonderful job here.

7 MR. MLOTEK: Again, for the
8 record, I'm Ron Mlotek, representing the
9 Department of State. I would also be prepared
10 largely to rest on the record, except for one
11 thing. We do like to have some words from us
12 in the record not even in a case that's is
13 totally simple and uncontested such as this.

14 Basically, in order to protect and
15 advance our relations with the foreign
16 government concerned. I can recall in the 25
17 years I've been doing this job, there have
18 been many instances where although the United
19 States government had no interests at the
20 particular time of the FM BZA hearing in that
21 foreign capital, one, two, three, four, five
22 years later, suddenly we did have an interest

1 and then it was very useful for us to come
2 back and take the BZA transcript containing my
3 remarks in it and bring it to the attention of
4 the foreign government. So that's primarily
5 the reason I want to just take a few seconds
6 to do it now.

7 We did submit a letter for the
8 record. It is the standard letter of our
9 support and findings, determinations under the
10 Foreign Missions Act, that this application by
11 the Government of Montenegro does fulfill the
12 requirements, at least the federal
13 requirements, of the Foreign Missions Act. We
14 also think, as a matter of our own opinion
15 that it is compatible in terms of the
16 District's interest as well and we're pleased
17 that the Office of Planning so found also.

18 You know, of course, that
19 Montenegro is a former constituent of the
20 former Yugoslav Republic. As far as I can
21 recall, I'm sure the diplomatic staff here
22 will correct me if I'm wrong. I think this is

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1 the last of the Yugoslav former republics. I
2 am correct. The last of the former Yugoslav
3 republics to establish formal diplomatic
4 relations at the embassy level with us. So
5 we're very gratified by that.

6 The one point that I did want to
7 just draw attention for the record to is that
8 at the present time all of the United States
9 property needs in Montenegro are being met.
10 We do have a chancery there. The Ambassador
11 of Montenegro reminded me this morning that as
12 foreign minister which was his immediate
13 previous position, he presided over the
14 opening of the United States embassy in
15 Montenegro. So that's a very excellent
16 experience for the ambassador to have, that he
17 saw the process from his end and he now sees
18 it from the U.S. end. Of course, he tells me
19 that in Montenegro the process took one single
20 day, not weeks. We explained to the
21 ambassador why it takes a little longer in our
22 case.

1 The government of -- the
2 authorities in Montenegro were very helpful to
3 us and as a result of our assisting them and
4 facilitating their acquisition of this
5 chancery here today, we feel certain and
6 confident and certainly hope that in the
7 future if we have any such need in Montenegro
8 for expanded facilities or a new facility over
9 there, that the government, the authorities at
10 the national and local level will similarly be
11 helpful to us. And with that, I'll rest. And
12 if there are any questions, I'd be pleased to
13 answer them.

14 CHAIRPERSON MILLER: Thank you
15 very much. Any questions from the Board?

16 Okay. As far as other public
17 agencies go, this is located in an historic
18 district in Dupont Circle, but I understand
19 that there are no external changes, structural
20 changes being planned. So their approval is
21 not required. And we do have a letter from
22 the U.S. Commission of Fine Arts, Exhibit 29.

1 They say that they don't actually have
2 jurisdiction over this property, but that they
3 have no objection. So that's what I have in
4 the record for other public reports.

5 Is anyone here from the ANC on
6 this case? Okay, not seeing anyone. Is there
7 anyone here in the audience who wishes to
8 testify in support or opposition to this case?
9 Okay, then I think that covers what we need to
10 hear and the record is very full in this.

11 Do we have a motion in this case?

12 COMMISSIONER PARSONS: Madam
13 Chairman, I have reviewed the OP report which
14 I think is an excellent summary of the
15 chancery use criteria, the seven criteria that
16 we have to follow. I don't see any need to
17 repeat that because I endorse it and Mr.
18 Jesick's summary is excellent. And with that,
19 as a basis, I would move that we do not
20 disapprove this application and move it
21 forward.

22 CHAIRPERSON MILLER: I'd second

1 the motion. Is there discussion on the
2 motion?

3 I would say that this is going so
4 quickly because this is a very straight
5 forward case. The use is not really changing
6 and Office of Planning has addressed each of
7 the criteria fully. State Department is
8 supportive. And the application is also very
9 full and complete in addressing the criteria.
10 So I would agree that I don't see a need to
11 actually articulate everything that Office of
12 Planning said because it's basically what we
13 would say as well, that they have met all
14 those criteria.

15 So if there's not any more
16 discussion, I think we can just proceed and
17 vote on this application.

18 All those in favor say aye.

19 (Chorus of ayes.)

20 CHAIRPERSON MILLER: All those
21 opposed?

22 (No response.)

1 CHAIRPERSON MILLER: All those
2 abstaining?

3 (No response.)

4 CHAIRPERSON MILLER: Would you
5 call the vote, please?

6 MS. BAILEY: The vote is recorded
7 as 5-0-0, not to disapprove the application.
8 The motion was made by Mr. Parsons, seconded
9 by Ms. Miller; Mr. Etherly, Ms. Gallagher, and
10 Mr. Loud approve the motion.

11 CHAIRPERSON MILLER: Thank you
12 very much. I think that completes this case.
13 Good luck to you. Thank you very much and do
14 we have any other business for this Board?

15 MS. BAILEY: Not with this Board.

16 CHAIRPERSON MILLER: Thank you
17 very much. Then that concludes the hearing
18 this morning for the FM BZA.

19 (Whereupon, at 10:03 a.m., the
20 hearing was concluded.)

21

22

