

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

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TUESDAY,

OCTOBER 31, 2006

+ + + + +

The Special Public Meeting
convened in Room 220 South, 441 4th Street,
N.W., Washington, D.C. 20001, pursuant to
notice at 9:30 a.m., Geoffrey H. Griffis,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice Chairperson
CURTIS L. ETHERLY, JR.	Board Member
JOHN A. MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

JOHN PARSONS	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLY BAILEY	Zoning Specialist
JOHN NYARKU	Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS

This transcript constitutes the minutes from the Special Public Meeting held on October 31, 2006.

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P-R-O-C-E-E-D-I-N-G-S

9:56 a.m.

CHAIRPERSON GRIFFIS: Good

morning, ladies and gentlemen. Let me call to order our 31st of October 2006 Special Public Meeting. As many of you may be aware, we have put this on the schedule for a decision making. It is, as constituted, the FMBZA. I'm going to dispense or move ahead without having an opening to our Special Public Meeting, so that we can move ahead with our already published Public Hearing schedule and I will do full openings at that time.

However, it should be noted that I am Geoff Griffis, Chairperson. As we constitute the FMBZA, with me is Ms. Miller the Vice Chair. Representing the National Park Service is Mr. Parsons and representing the National Capital Planning Commission is Ms. Patty Gallagher, who is not able to be with us for our decision making this morning.

With that though, let me say a

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1 very good morning to Mr. Moy, who will call
2 the case for decision at this time.

3 MR. MOY: Yes, good morning, Mr.
4 Chair, Members of the Board. The case for
5 decision this morning is FMBZA Application No.
6 17543 of the Kyrgyz Republic, pursuant to 11
7 DCMR 1002.1, to allow the location of a
8 chancery in the D/R-3 District at premises
9 2360 Massachusetts Avenue, N.W., that's in
10 Square 2507, Lot 50.

11 On October 24, 2006, the Board
12 completed public testimony for rulemaking,
13 closed the record and scheduled this decision
14 on October 31, 2006. The Board did not
15 request any additional information. So at
16 this point, staff would say that the Board is
17 stacked on the merits of the application
18 pursuant to 1002.1 of the Zoning Regulations
19 and the six criteria for determination
20 contained in the Foreign Missions Act.

21 And that concludes the staff's
22 briefing, Mr. Chairman.

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1 CHAIRPERSON GRIFFIS: Excellent.
2 Thank you very much, Mr. Moy. I do appreciate
3 it. And as the Board Members know, as we're
4 constituted in the FMBZA, of course, this is
5 a rulemaking. We have had our proceedings.
6 They are full and the record is complete and
7 we are ready to proceed to our deliberation
8 and decision.

9 As a background as we have
10 reevaluated and begun to review the record, it
11 is fairly clear that the applicant and the
12 government of the Kyrgyz Republic, who is
13 proposing occupying the property known as 2360
14 Massachusetts Avenue, N.W., we had some
15 discussion on the utilization of that property
16 in terms of residential on different floors
17 and also part of the official capacity for the
18 diplomats and the ambassador's office.

19 It was broken down in several
20 ways. I will open it up for comments and then
21 I think we can move quickly to proceed. But
22 obviously, the elements of the six criterium

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1 of which we are charged to review are in all
2 applications before us, I believe have been
3 met.

4 I will allow as much time as
5 needed for Board comments and then I will take
6 it back up to run through anything that is
7 left. So with that, are there preliminary
8 comments from other Board Members? If there
9 are no preliminary comments, let me run
10 through the six criterium.

11 Of course, in compliance with our
12 rules, regulations and also in compliance with
13 the Foreign Missions Act of 5-1206(d), the six
14 criterium run through three federal and three
15 municipal. The three federal, of course, have
16 been evidenced to be met. The international
17 obligation to the United States to facilitate
18 the provision of adequate and secure
19 facilities, it was very clear with our
20 testimony from the State Department and also
21 the ambassador representative that that
22 criterium was met.

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1 The extent to which it was capable
2 of adequately protecting by the Secretary was
3 also evidenced. The Office of Planning also
4 weighed in on that. The sixth, the federal
5 interest, is determined by the Secretary.
6 While they did not specifically run through
7 that, they did, in fact, the State Department
8 in their letter, submit that they had no
9 objection to the use of this property as a
10 chancery.

11 The municipal interest, as was
12 presented, I think, great weight, can be
13 afforded to the Office of Planning in terms of
14 their review and analysis and that went to the
15 Historic Preservation. They were consulted,
16 the HPO, on the minor exterior changes that
17 were proposed. The adequacy of the off-street
18 parking also a critical element of the six
19 criterium that we will look at was addressed
20 by the Office of Planning.

21 I would note that there is a
22 driveway, an apron curb cut that allows for,

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1 as our Zoning Regulations would analyze it,
2 one parking, but certainly the availability of
3 putting cars in the driveway may well
4 facilitate three. The number I don't think is
5 important or critical to our decision, at this
6 time; however, that we did have ample evidence
7 brought to fore of the functioning of the
8 facility and also the number of employees and
9 I have not found any evidence that would lead
10 me to believe or deliberate and decide on the
11 fact that there would be some undue burden on
12 the amount of parking or traffic that's
13 created by the utilization of this.

14 And the last, the municipal
15 interest as determined by the Mayor of the
16 District of Columbia, again that is all
17 encompassed in the Office of Planning as they
18 represent the municipal interest and in their
19 full analysis.

20 With that, I think it's
21 appropriate to move ahead under a motion. I
22 can take further deliberation and discussion

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1 of that. Of course, in the FMBZA, we are --
2 well, I'll just go straight to it.

3 I would move that the Board not
4 disapprove the FMBZA Application 17543 and ask
5 for a second.

6 VICE CHAIR MILLER: Second.

7 CHAIRPERSON GRIFFIS: Thank you
8 very much. Is there other comments?

9 VICE CHAIR MILLER: Yes. I would
10 like to pick up upon what you said. First of
11 all, with respect to the adequacy of off-
12 street parking, which is one of the criteria
13 that we look at. I also want to note that
14 there is evidence in the record that this
15 location is served by bus routes and it's in
16 walking distance of a metro.

17 There was evidence that a lot of
18 business is conducted by computer and mail and
19 telephone and most meetings will be held at
20 other locations. And there was data in there
21 with respect to frequency of visitors and that
22 was not very frequent. And that those who did

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1 come traveled by taxi or were driven.

2 Then with respect to the municipal
3 interest, I think one of the big issues in
4 this case was, if you can call it a big issue,
5 whether a conversion of this residence to a
6 chancery use would not be a municipal
7 interest. And in considering that, we would
8 look at whether or not the use was compatible
9 with the residential uses that are neighboring
10 this property.

11 And I think because there are
12 residences neighboring this property, we
13 looked specifically at the impact of a
14 chancery use. And I'm looking at this one in
15 particular. There was evidence in the record
16 about a number of employees who were expected
17 to work at the site. I think that was six.

18 Correct me if I'm wrong, they were
19 low numbers, the number of individuals who
20 were expected to reside was about six. They
21 were expected to have two events and the rooms
22 would only hold about 35 people at a time.

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1 Based on these facts plus what the
2 Chairman said about the capacity for the
3 number of vehicles that are expected to be
4 there, there did not appear to be adverse
5 impacts related to the conversion of the
6 residential use to the chancery use.

7 Office of Planning had put forth
8 come proposed conditions and when questioned
9 about the rationale for these conditions,
10 Office of Planning stated that the reason was
11 so that there could be predictability as to
12 how this chancery would operate, so that the
13 neighbors could have -- well, I don't know if
14 they said this, but they said so that there
15 would be a comfort level in knowing how the
16 operations were going to be conducted and that
17 there would not be an adverse impact.

18 So I think that in voting not to
19 disapprove that we embody in the order the
20 facts of how it will operate in order to have
21 on public record the predictability that the
22 Office of Planning was concerned about. And

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1 I would suggest this instead of conditions,
2 because conditions are usually imposed to
3 prevent an adverse impact when there is
4 evidence in the record that there is a
5 likelihood of an adverse impact. And I don't
6 think that the evidence in this case rose to
7 that level.

8 CHAIRPERSON GRIFFIS: Excellent.
9 Thank you. Others? I think you're absolutely
10 correct.

11 COMMISSIONER PARSONS: I would
12 concur with you and Ms. Miller and am prepared
13 to vote in favor.

14 CHAIRPERSON GRIFFIS: Excellent.
15 The last piece, just to address the issue of
16 conditions. I know we had some discussion on
17 the record that was on point and perfectly
18 appropriate in terms of whether those
19 conditions would end up mitigating an adverse
20 impact or potential adverse impact, as you
21 have related.

22 I think the other aspect to our

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1 discussion, and I know my own deliberation, in
2 terms of the FMBZA is that what authority
3 would actually go towards the enforcement of
4 those conditions? Now, I don't think that we
5 would not just condition something because we
6 didn't know who was going to enforce them, but
7 rather it factors into the larger picture of
8 the appropriateness of conditions and how we
9 might actually rely on them to cure or to
10 prevent a potential adverse impact.

11 Frankly, walking through as you
12 have said Ms. Miller, too, I absolutely agree,
13 the fact of the matter is the elements that
14 were brought up for those conditions to
15 address fell short in terms of evidencing that
16 they were a problem. And I'll go one of the
17 other aspects that we haven't touched on.

18 It's that the condition of the
19 property and there was ample discussion.
20 There was some discussion on the fact that
21 there was needing to be upkeep on the
22 property. And clearly we, I think, addressed

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1 and we should say in our deliberation that
2 that goes beyond the scope of our review and
3 it falls under the building code, which of
4 course, the chancery would be responsible to
5 come into compliance with.

6 All the other elements, I thought,
7 fell well into and were addressed
8 appropriately in the application and what was
9 being sought for review by the FMBZA. And you
10 said it, we have the three bedrooms on the
11 third floor, which accommodate the six
12 persons. The first floor would be used for
13 the ceremony and receiving purposes.

14 We also have the fact that there
15 may be, approximately, four diplomats and two
16 staff in the ambassador's office. We have
17 addressed the parking. The two special events
18 I thought were interesting. When we talked
19 about it, certain special events impact the
20 area and we looked at that. And yet, the
21 structure itself only accommodates 35 persons.

22 Those two events were estimated to

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1 be the only two events that would happen that
2 would have up to 35 persons. So again, there
3 wasn't an additional need to address that, I
4 think, but rather that's actually in the facts
5 of the case that was put before us.

6 The last piece we have touched on
7 briefly and I think I'll end with it is the
8 element of use, whether this was an
9 appropriate use. It's in an area on a row of
10 dwellings that are all residential. This was
11 residential and now it's going -- our personal
12 opinions, obviously, are much aside.

13 We go right to the regulations and
14 the fact of the matter is that this is in the
15 D/R-3 District, which is the Residential Zone
16 specifically designated in the overlay as
17 appropriate for diplomat chancery uses. I'm
18 not sure how we move away from that at all.
19 And so there was some, you know, past history
20 and such of use. But that again doesn't rise
21 to the level of a critical nature for our
22 review.

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1 With that then, I'll leave it
2 noting that again, to reiterate the six
3 criterium of which we are charged to review
4 each application on has been met to my
5 satisfaction. And I'll open it up to others
6 if they have further?

7 If there's nothing further then,
8 we do have a motion before us. It has been
9 seconded. I would ask for all those in favor
10 to signify by saying aye.

11 VICE CHAIR MILLER: Aye.

12 CHAIRPERSON GRIFFIS: Aye.

13 COMMISSIONER PARSONS: Aye.

14 CHAIRPERSON GRIFFIS: And opposed?
15 Abstaining? Mr. Moy, if you wouldn't mind
16 recording the vote?

17 MR. MOY: Yes, sir. Staff would
18 record the vote as 3-0-1. This is on the
19 motion of the Chair, Mr. Griffis, to not
20 disapprove the application, seconded by Ms.
21 Miller, also in support of the motion John
22 Parsons. We have Mr. Etherly not

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1 participating on the case.

2 Mr. Chairman, we also have an
3 absentee ballot from Patty Gallagher, who also
4 participated. On her absentee ballot, she has
5 indicated a vote to also not disapprove the
6 application and that will give a resulting
7 vote of 4-0-1.

8 CHAIRPERSON GRIFFIS: Excellent.
9 Thank you very much. Is there anything else
10 for the Board's attention then under the
11 Foreign Mission's Board of Zoning?

12 MR. MOY: No, sir, that completes
13 the morning session on this.

14 CHAIRPERSON GRIFFIS: Excellent.
15 With that then, let's adjourn our Special
16 Public Meeting.

17 (Whereupon, the Special Public
18 Meeting was concluded at 10:11 a.m.)

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