

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19134 of The Embassy of Zambia, pursuant to 11 DCMR § 1002 of the Foreign Missions Act, to allow the temporary location of a chancery in the D/R-3 District at premises 2200 R Street, N.W. (Square 2512, Lot 808).

HEARING DATES: October 27¹ and November 10, 2015

DECISION DATE: November 10, 2015

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 10 of the Zoning Regulations of the District of Columbia, Title 11 DCMR, and after having held a public hearing on November 10, 2015, hereby gives notice that it took final action not to disapprove the application of The Embassy of Zambia (“Applicant”) to allow the temporary location of a chancery in the D/R-3 District at premises 2200 R Street, N.W. (Square 2512, Lot 808) (the “Subject Property”).

A notice of proposed rulemaking was published in the September 11, 2015 edition of the *D.C. Register*. (62 DCR 12490.) In accordance with 11 DCMR §§ 3113.13 and 3134.9(c), the Board provided written notice to the public more than 40 days in advance of the public hearing. On September 2, 2015, the Office of Zoning (“OZ”) provided notice of the filing of the application to the United States Department of State (Exhibit 13), the District of Columbia Office of Planning (“OP”) (Exhibit 11), Advisory Neighborhood Commission (“ANC”) 2D, whose boundaries encompass the Subject Property (Exhibit 9), the Single Member District Commissioner for ANC 2D02 (Exhibit 10), the District Department of Transportation (“DDOT”) (Exhibit 12), and the Councilmember for Ward 2. (Exhibit 14.)

OZ scheduled a public hearing on the application for October 27, 2015 and provided notice of the hearing by mail to the Applicant (Exhibit 18), ANC 2D (Exhibit 16), and the owners of all

¹ The hearing for this case was administratively postponed from October 27, 2015 to November 10, 2015.

property within 200 feet of the subject property (Exhibit 17), as well as to the Department of State (Exhibit 19), the National Capital Planning Commission (Exhibit 20), and the Commission of Fine Arts (Exhibit 15). Notice of the hearing was published in the *D.C. Register* on September 11, 2015. (62 DCR 12405.) The hearing was administratively postponed from October 27, 2015 to November 10, 2015. The postponement and rescheduling of this case was announced on the record at the Board's public meeting and hearing on October 27, 2015.

The Applicant proposes to temporarily locate its chancery operations at the Subject Property for a period of approximately one year while its permanent location at 2419 Massachusetts Avenue, N.W. undergoes renovations. No expansion of the structure on the Subject Property is proposed. Additionally, the Applicant indicates that, although it will not provide nine required off-street parking spaces at the Subject Property, it will continue to provide parking spaces for staff at its permanent location. Nonetheless, the Board noted that, because the Applicant requests to establish the temporary use without providing the required off-street parking spaces, a variance from the provisions of § 2101.1 would be required. At the request of the Board, the Applicant filed a revised memorandum from the Zoning Administrator to reflect the addition of a variance from the off-street parking requirements under § 2101.1. (Exhibit 29.)²

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 October 16, 2015, the Department of State determined that favorable action on this application would fulfill the international obligation of the United States to facilitate the Embassy of Zambia in acquiring adequate and secure premises to carry out their diplomatic mission. The Department of State indicated that the current chancery located at 2419 Massachusetts Avenue, N.W. is in dire need of repair, and that the temporary location of the chancery at the Subject Property would facilitate the renovation project. (Exhibit 23.)

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

² Although the establishment of this use would require variance relief, the application involves the establishment of a chancery use and therefore, must be considered exclusively based on the enumerated criteria in the Foreign Missions Act. *See Embassy of the People's Republic of Benin v. D.C. Bd. of Zoning Adjustment*, 534 A.2d 310, 318 (D.C. 1987) (Finding that the Foreign Missions Act is the "exclusive procedure available" to a chancery when its expansion would have otherwise required special exception relief from the Zoning Regulations.)

governing historic preservation shall be required with respect to new construction and to demolition of or alteration to historic landmarks.

The Subject Property is located within the Sheridan-Kalorama Historic District. Staff of the Historic Preservation Office expressed no concerns about the proposed temporary location of the chancery, as no changes to the existing structure are proposed in this application. (Exhibit 26.) The Board concurs and finds that no historic preservation basis exists for it to disapprove this application.

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 Office of Planning (“OP”) (Exhibit 26) and the D.C. Department of Transportation (Exhibit 27) that no alteration would be made to affect the adequacy of on-site parking in this case. Although the chancery will not provide nine of the off-street parking spaces at its temporary location that would be required within the Diplomatic Overlay, the Applicant will continue to provide adequate parking spaces at its permanent location three blocks away. The Board also credits OP’s finding that this site is also adequately served by public transportation, including the Dupont Circle Metrorail station and various Metrobus routes. (Exhibit 26.)

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 23.)

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 23.)

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

OP, on behalf of the Mayor of the District of Columbia, determined that approving this application is in the municipal interest and is generally consistent with the Comprehensive Plan for the Nation's Capital and the Zoning Regulations. (Exhibit 26.)

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

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Department of State acknowledged the Embassy of Zambia's generous assistance in accommodating security requirements for the U.S. Embassy in Lusaka. 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 23.)

ANC 2D Recommendation

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 2D. The ANC submitted a resolution dated October 21, 2015, indicating that at its regularly scheduled, duly noticed public hearing on October 19, 2015, with a quorum present, the ANC voted 2-0 to oppose the application. (Exhibit 25.) The ANC indicated, however, that it would support the location of the chancery, without street parking, for the temporary one-year period. The Board determined to adopt a condition in order to ensure that the use is established for a temporary one-year period, as requested by the ANC and is consistent with the Applicant's request. Accordingly, the decision to not disapprove the Application is consistent with the ANC's recommendation.

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 this application. As a result, the Applicant will be permitted to allow the temporary location of a chancery in the D/R-3 District at premises 2200 R Street, N.W. without providing the requisite number of parking spaces and to use the accessory parking spaces at its permanent location as accessory parking spaces for the temporary use. Accordingly, it is hereby **ORDERED** that the application is **NOT DISAPPROVED, SUBJECT TO THE FOLLOWING CONDITION:**

1. Approval of the temporary use is granted for a period to end on December 31, 2016.

Vote of the Board of Zoning Adjustment taken at its public hearing on November 10, 2015, to Not Disapprove the application:

VOTE: 3-0-2 (Marnique Y. Heath, Peter G. May, and Frederick L. Hill to Not Disapprove; Marcel C. Acosta not participating; 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: February 23, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITION IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITION IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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.