

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19134-A of The Embassy of Zambia, pursuant to 11 DCMR Subtitle X § 201, 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 DATE: February 15, 2017

DECISION DATE: February 15, 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 Subtitle X of the Zoning Regulations of the District of Columbia, Title 11 DCMR, and after having held a public hearing on February 15, 2017, hereby gives notice that it took final action not to disapprove the application of The Embassy of Zambia (“Applicant”) for a modification of consequence to BZA Order No. 19134 to continue 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 modification of consequence permits the Board to grant modifications to its orders without a hearing, provided that the Board does not determine that the request is for a modification of significance, for which a hearing is required. However, in this instance the Office of Zoning understood that the Applicant desired a hearing, and so one was held.

A notice of proposed rulemaking was published in the December 30, 2016 edition of the *D.C. Register*. (63 DCR 16193.) 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 December 19, 2016, 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”) 2D, whose boundaries encompass the Subject Property, the Single Member District Commissioner for ANC 2D02, the District Department of Transportation (“DDOT”), and the Councilmember for Ward 2.

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EXHIBIT NO.62

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OZ scheduled a public hearing on the application for February 15, 2017 and provided notice of the hearing by mail to the Applicant, ANC 2D, and the owners of all property within 200 feet of the subject property, as well as to the Department of State, the National Capital Planning Commission, and the Commission of Fine Arts. Notice of the hearing was published in the *D.C. Register* on December 23, 2016. (63 DCR 15735.)

Background

In Order No. 19134, the Board approved the Applicant's request to temporarily locate its chancery operations at the Subject Property for a period of one year while its permanent location at 2419 Massachusetts Avenue, N.W. underwent renovations. Order No. 19134 was issued on February 23, 2016, and contained one condition, as follows:

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

The Applicant's current request is to modify the condition in order to allow the temporary use of the Subject Property to continue for an additional year, as the renovations are not yet completed at 2419 Massachusetts Avenue, N.W. No other changes are proposed to the scope or intensity of the temporary use approved in Order No. 19134.

When determining whether to grant a modification of consequence, the Board applies the standards applicable to the original application. 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 January 9, 2017, 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 continuing to allow the temporary location of the chancery at the Subject Property would facilitate the renovation project. (Exhibit 56.)

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.**

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The Subject Property is located within the Sheridan-Kalorama Historic District. In Application No. 19134, 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. (See OP Report, Exhibit 26, p. 2.) The only change proposed in this application is extending the time limit for the temporary use of the Subject Property, therefore, the Board 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”) in Application No. 19134 (Exhibit 26) that no alteration would be made to affect the adequacy of on-site parking in this case. The Board also credits OP’s original finding that this site is adequately served by public transportation, including the Dupont Circle Metrorail station and various Metrobus routes. (Exhibit 26.) These aspects of the project will not be affected by the modification of the condition; therefore, the Board concurs with OP’s finding that this criterion is met.

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 56.)

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 56.)

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. 19134 was in the municipal interest and is generally consistent with the Comprehensive Plan for the Nation's Capital and the Zoning Regulations. (Exhibit 26.) The only change proposed in this application is in the time limit for the temporary use of the property; therefore, the Board finds that this criterion is met by the current application.

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 Embassy of Zambia’s generous assistance in

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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 56.)

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 January 17, 2017, indicating that at its regularly scheduled, duly noticed public hearing on January 9, 2017, with a quorum present, the ANC voted 2-0-0 to recommend "the denial of allowing the conversion of an existing single family dwelling into a Chancery in D-R-3, but supports granting the embassy the right to continue to operate at this location without street parking for the necessary duration until the permanent quarters are rehabilitated on Massachusetts Avenue NW." (Exhibit 57.) The Board understands the ANC report to mean that although it would ordinarily oppose the permanent use of the property, it supports this limited extension of the temporary use. As such, the Board finds that the ANC has no issues and concerns with respect to the application that is actually before the Board, and therefore there is nothing to give great weight to. See *Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1086 (D.C. 2016) (ANC Act "does not require the BZA to give 'great weight' to the ANC's recommendation but requires the BZA to give great weight to any issues and concerns raised by the ANC in reaching its decision").

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 request to modify the condition of Order No. 19134. As a result, the Applicant will be permitted to continue to allow the temporary location of a chancery in the D/R-3 District at premises 2200 R Street, N.W. 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, 2017.

VOTE: 3-0-2 (Frederick L. Hill, Peter G. May, and Marcel C. Acosta to Not Disapprove; two Board seats 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: May 8, 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 § 702.2, 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 SUBTITLE A § 303, 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 CONDITIONS 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.