

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19788 of the Royal Norwegian Embassy, pursuant to 11 DCMR Subtitle X, Chapter 2, to renovate and expand a chancery by renovating the exterior, and constructing an addition to the existing Norwegian chancery building in the R-12 Zone at premises 2720 34th Street N.W. and 3401 Massachusetts Avenue, N.W. (Square 1939, Lot 39).

HEARING DATE: July 25, 2018
DECISION DATE: July 25, 2018

NOTICE OF FINAL RULEMAKING

and

DETERMINATION AND ORDER

The Board of Zoning Adjustment (the “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 July 25, 2018, hereby gives notice that it took final action not to disapprove the application of the Royal Norwegian Embassy (“Applicant”) to renovate and expand a chancery by renovating the exterior, and constructing an addition to the existing Norwegian chancery building in the R-12 Zone at premises 2720 34th Street, N.W. and 3401 Massachusetts Avenue, N.W. (Square 1939, Lot 39)(the “Subject Property”).

A notice of proposed rulemaking was published in the June 8, 2018 edition of the *D.C. Register*. (65 DCR 6314.) 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 June 5, 2018, the Office of Zoning referred the application to the United States Department of State, the District of Columbia Office of Planning (“OP”), Advisory Neighborhood Commission (“ANC”) 3C, whose boundaries encompass the Subject Property, the Single Member District Commissioner for ANC 3C08, the District Department of Transportation (“DDOT”), Historic Preservation Review Board (“HPRB”), the Department of Housing and Community Development, the National Capital Planning Commission, and the Councilmember for Ward 3.

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The Office of Zoning scheduled a public hearing on the application for June 5, 2018 and provided notice of the hearing by mail to the Applicant, ANC 3C, and the owners of all property within 200 feet of the Subject Property. Notice of the hearing was published in the *D.C. Register* on June 8, 2018. (65 DCR 6153.)

Background

The Subject Property is owned by the Royal Norwegian Government and is currently improved with two buildings, including the ambassador's residence and the chancery, with offices for diplomatic services. The Applicant proposes to renovate the existing chancery and to construct an approximately 4,272 square foot addition to create a garden room connecting the two structures. The Applicant also proposes to reconfigure the chancery entrance and a stairwell/common area, as well as undertake associated improvements to the public space abutting the Subject Property.¹

Location in a Mixed Use Area

The Subject Property is located in the R-12 Zone, which is a low-density residential zone. For applications requesting to locate, replace, or expand a chancery in a low- to medium-density residential zone, the Board must first determine that the proposed location is in a mixed-use area on the basis of existing uses. (11-X DCMR §§ 201.3 – 201.7.) Pursuant to Subtitle X § 201.4, the “area” shall be the area that the Board determines most accurately depicts the existing mix of uses adjacent to the proposed location of the chancery. Pursuant to Subtitle X § 201.5, an area shall be considered to be a mixed-use area if more than 50% of the zoned land within the area is devoted to uses other than residential uses.

The Board finds that the area relevant to this determination includes Square 1939 and the portions of Square 2122 adjacent to 34th Street, N.W. The Board determines that this area is mixed-use and thus meets the requirement of Subtitle X § 201.3. The Board credits the information provided by the Applicant to establish that the area relevant to the Board's analysis consists of approximately 300,967 square feet of land area and, of such area, approximately 190,157 square feet of land area is utilized for nonresidential, religious, or diplomatic uses. (Exhibits 6 and 10.) Based on this analysis, nonresidential uses account for approximately 63.2% of the area, which exceeds the 50% threshold for presumptive treatment as mixed-use.

As the Board has concluded that the area that includes the Subject Property is a mixed-used area, the Board shall determine the merits of the application based on the criteria provided in the Foreign Missions Act, also found in Subtitle X § 201.8 of the Zoning Regulations. (11-X DCMR § 201.6.)

¹ The proposed project does not comply with the Zoning Regulations for the lot occupancy requirements under Subtitle D § 704.1 nor the penthouse setback requirements under Subtitle C § 1502.1. The Board, in addition to not disapproving the location of chanceries in certain zones, has the authority to hear requests for special exceptions or variances required for chancery applications, but the Board must exclusively evaluate these requests 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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Foreign Missions Act Criteria

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 6, 2018, 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 the Kingdom of Norway in acquiring adequate and secure premises to carry out their diplomatic mission. (Exhibit 44.)

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 Subject Property is not a historic landmark, nor is it located in a historic district. The Office of Planning ("OP"), which includes the Historic Preservation Office, noted that the Applicant nonetheless "solicited feedback from D.C.'s Historic Preservation staff regarding the proposed exterior design and use of material." (Exhibit 45.) 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.

The Applicant proposes to increase the off-street parking provided from 17 spaces to 23 spaces, which exceeds the requirement of the Zoning Regulations. Fifteen long-term bicycle spaces, as well as accessory locker and showers below-grade, and seven short-term bike-space would also be provided at the front entryway. The Board concurs with the findings reached by the District Department of Transportation ("DDOT") that the impacts of the expansion of the chancery building will have no adverse impacts on the travel conditions of the District's transportation network. (Exhibit 46.)

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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 44.)

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 44.) The Board finds this criterion is met.

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

OP, on behalf of the Mayor of the District of Columbia, determined that approving the application was in the municipal interest. (Exhibit 45.) OP found that the renovation and expansion of the chancery buildings, although not meeting the Zoning Regulations for lot occupancy 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 proposed additions would increase the lot occupancy from 41.7% to 45.4%, while a maximum lot occupancy is 40% permitted in the R-12 Zone. Based on the locations of the proposed additions, OP found that neither should have an undue impact on the light and air to neighboring property, nor should they create privacy concerns for the abutting neighbors to the north or west of the site.

The chancery's proposed elevator override at the southeast corner of the chancery structure does not meet the 1:1 setback required by Subtitle C § 1502.1(a). The proposed setback is the result of the unique programmatic needs of this use, and OP found that this satisfies the intent of the Regulations, which is to reduce visibility from public space.

In addition, OP worked with the Applicant, DDOT's Public Space staff, and the Historic Preservation Office on public space design issues. Based on the Applicant's revised plans in Exhibit 42A, OP noted that those issues had been addressed.

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 Kingdom of Norway's assistance in addressing the United States' land use needs in Oslo. 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 44.)

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 3C. The ANC submitted a resolution dated May 21, 2018, indicating that at its regularly scheduled, duly noticed public hearing on May 21, 2018, with a quorum present, the ANC voted in support of the project as proposed. (Exhibit 39.) The ANC noted that it worked with the Applicant to address concerns regarding parking, lighting, and trash, that were raised by neighbors during the process. The Applicant revised its plans to respond to neighbors' feedback, therefore the ANC has no issues or concerns with the Applicant's proposal. Absent any issues or concerns, the Board has nothing to afford "great weight." *See Metropole v. Bd. of Zoning Adjustment*, 141 A.3d 1079 (D.C. 2016).

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 PLANS AT EXHIBIT 42A.**

VOTE: 5-0-0 (Frederick L. Hill, Peter G. May, Lesylleé M. White, Lorna L. John, and Marcel C. Acosta to Not Disapprove).

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: October 3, 2018

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.