GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 12290 of Grand Duchy of Luxembourg for a special exception under Sub-section 7104.2 for a change in the non-conforming use of a chancery to a four unit apartment house and law offices in the R-3 District at 2210 Massachusetts Avenue, N.W., basement, first, second and third floors (Square 2511, Lot 35).

HEARING DATES: March 16, and June 15, 1977
DECISION DATE: September 7, 1977
DISPOSITION: GRANTED by a vote of 3-2 (Walter B. Lewis, Charles R. Norris and Leonard L. McCants to grant, William F. McIntosh and Chloethiel Woodard Smith to deny)
FINAL DATE OF ORDER: October 14, 1977

ORDER

Upon consideration of the Motion filed by Philip R. Melkye for Reconsideration and Vaction of Order No. 12290 or in the alternative, for Stay pending appeal, dated October 25, 1977, the Board finds that the motion fails to state an acceptable basis of error on the part of the Board to support a motion for reconsideration. It is therefore ORDERED that the Motion is DENIED.

DECISION DATE: December 6, 1977
VOTE: 3-2 (Walter B. Lewis, Charles R. Norris and Leonard L. McCants to deny; William F. McIntosh and Chloethiel Woodard Smith to grant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 14 DEC 1977

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 12290, of Grand Duchy of Luxembourg, for a special exception under Sub-section 7104.2 for a change in the non-conforming use of a chancery to a four unit apartment house and law office in the R-3 District at 2210 Massachusetts Avenue, N.W., basement, first, second and third floors, (Square 2511, Lot 35).

HEARING DATES: March 16, and June 15, 1977
DECISION DATE: September 7, 1977

FINDINGS OF FACT:

1. The subject property is located at 2210 Massachusetts Avenue in the 2200 block of Massachusetts Avenue between 22nd Street, N.W., and Sheridan Circle along that area of Massachusetts Avenue known as "Embassy Row". The lot, approximately 2,360 square feet in area, is a through lot which fronts both on Massachusetts Avenue and Que Street, N.W.

2. The subject property is improved with a four-story row structure containing 7,358 gross square feet which has been used for a chancery by the Government of Luxembourg since 1961 and before that for a chancery for the Government of Israel.

3. A contract of sale of the subject property has been executed subject to the approval of this application by the Board of Zoning Adjustment. The contract purchaser proposes to use the subject property for law offices and apartments. The front portion of the structure, which faces Massachusetts Avenue, will be devoted to office use. The rear portion of the structure will be devoted to four one bedroom apartments which will be accommodated with an entrance from Que Street. The apartments will occupy approximately 42 per cent of the structure. Offices for four attorneys and three secretaries will occupy approximately 58 per cent of the structure.

4. The hours of operation of the law firm will be essentially 9:00 a.m. to 5:00 p.m. with one partner working half a day on Saturdays for half of the year. There will be a maximum of eight persons occupying the apartments. Total occupancy of the building will be fifteen persons.

5. The subject property is located in the R-3 zoning district which generally extends east of Rock Creek Park on the south side of Massachusetts Avenue and around Sheridan Circle. East of 22nd Street is an R-5-D District which extends one block north and south of Massachusetts Avenue between 22nd and 20th Streets, N.W. C-2-A and C-2-B Districts are found along 22nd Street and P Streets, N.W., approximately one block south of the subject property.

6. The area within 300 feet of the subject site to the east toward Dupont Circle is generally of a higher intensity use. Larger apartment buildings and commercial structures predominate. The area west toward Sheridan Circle and to the north of the subject site can be characterized generally as one of row type dwellings of a mixture of uses including a significant number of embassy, chancery, office and apartment uses. In the Massachusetts Avenue area, the following embassy and chancery uses are noted; on Massachusetts Avenue at 2200, Chancery of Luxembourg, 2208, Embassy of Togo, 2209, vacant, last used as Chancery of Trinidad and Tobago, 2210, Chancery of Luxembourg, 2221, Chancery of Greece. Office uses are located on Massachusetts Avenue at 2202, Offices of Defense Attache, 2205, National Society of the Daughters of American Colonists, 2223, American Society of International Law, 2228, Offices of Defense and Military Attache, Navy. Apartments are located at 2122, 2222, 2231 and 2232 Que Street, N.W. In general,lower density residential districts are found to the north and west of the subject site and higher density residential zones and commercial zones are found to the east and south.

7. The last Certificate of Occupancy for Lot 35, Square 2511 (No. B-32753) was issued on December 12th, 1961 to the Government of Luxembourg for all floors. The Zoning Administrator has determined that the use of the property as a chancery is a valid Class II non-conforming use and may be changed subject to BZA approval as a special exception (Section 7104.2). The BZA approved the use of the property as a chancery by BZA Case No. 6511 which was heard on October 23, 1961.

8. A chancery use is first permitted in the SP District as a matter of right in buildings constructed prior to May 12, 1958.

9. Law offices are first permitted in the SP District as a matter of right in buildings constructed prior to May 12, 1958.

10. The conversion of multiple dwelling use is first permitted as a matter of right in the R-4 District subject to a minimum of 900 square feet of lot area per dwelling unit or in the R-5 District without the area requirement.

11. No structural alterations are contemplated for the structure, although remodeling of the interior including the installation of an elevator to serve both the apartments and the offices is contemplated. With the exception of the enclosing of the garage door, to construct a bedroom, no substantial exterior changes are contemplated.

12. The contract purchaser of the site is a law firm which intends to provide a small brass sign on the exterior of the building similar to that used for other uses in the area.

13. The applicant proposes to provide a total of five parking spaces at the rear and west side of the building, three of which are located in public space. No parking is required under the regulations for the proposed use by virtue of the parking credit permitted for the previous use pursuant to Section 7201. If constructed under present zoning regulations, the SP office use would require one parking space and the R-5-A residential space (four apartments) would require four parking spaces making a combined total of five spaces.

14. On-street parking in the area is very limited and a significant portion is reserved for diplomatic vehicles.

15. The area is well served by public transportation. Bus routes are found along Massachusetts Avenue and Que Street adjacent to the subject property. The Que Street entrance to the Dupont Circle Metro Station is located approximately 1,200 feet east of the site. Commercial parking is readily available in the immediate vicinity. Public lots with available parking are located in the Congressional Quarterly Building, one block from the subject site and the Embassy Row Hotel and an open air lot at 2135 P Street, N.W., both within two blocks of the subject site.

16. The subject property is located within that area of Massachusetts Avenue between Sheridan Circle and Dupont Circle which is designated by the Joint Committee on Landmarks of the National Capital as a Category II Landmark, which makes it desirable to preserve the existing structure.

17. There was testimony that the subject property is not saleable as a residential property as the building has been commercialized, that it would cost approximately $150,000 to convert the structure to suitable residential use and that the building is also too large for most residential needs.

18. A real estate agent testified that he has discussed the sale of the property with 36 diplomatic missions but was unsuccessful in effectuating a sale and that the only written offer to purchase accompanied by an earnest money cash deposit has been received from the contract purchaser.

19. Witnesses for the applicant testified that the proposed use of apartment house and law offices is essentially a neighborhood facility since the apartment users, as residents of the neighborhood, become part of the neighborhood. Additionally, the specific law offices involved, which engages in general, local practice, will both serve the neighborhood and become part of the neighborhood character.

20. The subject square as well as surrounding squares are mixed in use containing many chancery, office, institutional uses as well as multi-family apartments. The area is also in close proximity to both the Central Employment Area and Metro. The proposed use in this important intown area will provide housing and employment in a vicinity having excellent public transportation.

21. The external effects and noise levels of the proposed use will be 50-60 decibels which is masked by existing traffic noise of 70-75 decibels on Massachusetts Avenue.

22. The change in nonconforming use from a chancery to a combination law office/apartment building is generally one which decreases the use intensity of the property. The residential use is compatible given the mixed nature of other residential uses in the area. The law office use is in general a more intensive use than residential but less so than a chancery use and less so than general office use. The number of trips, vehicular and pedestrian, are far less under the proposed use than would be expected with a chancery use, which would be a logical alternative to the proposed use. The subject site is large enough to accommodate a chancery staff of 30 persons. A staff of this size would require approximately 26 parking spaces. Furthermore, trips in and out of such a use including visitors would be over 200 per day. On the other hand, total occupancy under the proposed law office and apartment use will be 15 persons. Because of the less intense operation of the uses only 64 trips per day are expected to be generated. Moreover, the four apartment units will continue a residential use which has existed on the top floor of the subject building. The law practice trips include those of visitors and those of the attorneys. Not more than five clients are expected on an average day and the attorneys will use Metro and taxis almost exclusively for their intown trips.

23. The Municipal Planning Office, by report dated March 10, 1977, recommended Board approval of the application subject to the conditions that not less than 50 per cent of the structure be devoted to residential uses and not more than two parking spaces be reserved for office space during normal working hours and that all spaces be reserved for the residential tenants at all other times.

24. The Sheridan-Kalorama Citizens Association, the Sheridan Kalorama Neighborhood Council, the Dupont Circle Citizens Association, the North Dupont Community Association, Advisory Neighborhood Commission 1-D and property owners and tenants, living within the immediate area of the subject site individually and as signers of petitions, opposed the granting of the application on the grounds that the 2200 block of Massachusetts Avenue is a neighborhood of single family residences which for many years have been used as individual dwellings, embassy residences and chanceries and is not suited by architecture or personality to law firms or apartment houses, as evidenced by the fact that the neighborhood is widely known as "Embassy Row". The opposition also stated that present occupants who have either bought or rented houses in the block did so in reliance on this character of the neighborhood and that the residential character of the neighborhood would be impaired by the congestion and daily flow of business transactions caused by a law firm.

The opposition stated that there would be a further addition to the area parking problems, and that granting the application would set a precedent of new office use which would not be compatible with the present uses of the subject zoned area. The opposition also stated that the creating of new parking spaces is in violation of the adjoining neighbor's privacy.

25. The Sheridan-Kalorama Neighborhood Council filed a motion to dismiss or deny the application on the grounds that the Board lacks jurisdiction under Sub-section 7104.2 of the Zoning Regulations to grant the application insofar as it seeks authorization to use the premises for professional offices since professionals offices are not permitted in the R-5-C District and that District is the most restricted District in which the existing chancery use is permitted. The Council also argued that the application seeks to extend a non-conforming use in violation of Sub-section 7105.2 of the Zoning Regulations since the non-conforming use, namely professional offices, would be extended to the entire premises and structural alterations, namely an elevator, would be made. The Council also argued that Paragraph 7205.22 of the Zoning Regulations would be violated since five open parking spaces would be located within ten feet of walls of a multi-family dwelling.

26. The motion was denied on its entirety by the Board by a vote of 4-1 (Walter B. Lewis, William F. McIntosh, Charles R. Norris and Leonard L. McCants to DENY, Chloethiel Woodard Smith to GRANT). The Board finds that the following facts are dispositive of the issues raised in the motion:

a. The existing chancery is a valid nonconforming use under the Chancery Act of 1964 (§-418(b), et seq., D.C. Code (1973). The Chancery Act provides that the Board may approve, as a special exception, such a use in an R-5-C or R-5-D zone. Furthermore, Section (c) of the Act provides that such a use is not "permitted", as a matter of right, in zones restricted for residential purposes. A chancery use is first permitted as a matter of right in the SP zone. The Board in Order Nos. 10115, dated May 14, 1970 and 11015, dated June 27, 1972, granted changes in nonconforming use from a chancery in an R-5-B District to SP office uses and then a subsequent change of SP uses to law offices. The phrase in Section 7104.2, "nonconforming use may be changed to a use which is permitted", refers to uses permitted as a matter of right.

b. The Zoning Administrator determined in a letter dated August 27, 1976, that the applicant does not need nor seek a nonconforming use extension for the subject property or that any structural alterations would take place. Certificate of occupancy permit No. B-32753 establishes that the chancery use is for the entire premises. The chancery custodian's quarters on the top floor of the structure are accessory to the operation of the main use. In addition, in BZA Order No. 11452, dated October 19, 1973, the Board found that an opening to be cut through a floor for the elevator did not constitute a structural alteration.

c. The Zoning Administrator in the same August 27, 1976, letter determined that the proposed parking complies with the Zoning Regulations. As discussed in Finding of Fact 13 no additional parking is required by virtue of "grandfather rights" of the subject site. There are no legal requirements for off-street parking spaces on private property for either the existing or proposed use. Furthermore, the three existing spaces are on public space and are not within the jurisdiction of the Board and the Zoning Regulations. As to the two new spaces to be provided in an open court the wall from which the ten foot measurement is made concerns a wall containing openings "To provide light or ventilation for such multiple dwelling". The interior of the subject apartment building will be so designed that any windows fronting on the side of the building where the parking spaces are located are not needed for light or ventilation. Again, these two parking spaces are not required spaces under the Regulations.

CONCLUSIONS OF LAW:

Pursuant to Sub-section 7104.2, a Class II nonconforming use may be changed to a use which is permitted in the most restrictive district in which the existing nonconforming use is permitted. As confirmed by the Chief of the Zoning Review Branch of the Department of Housing and Community Development, the chancery use at 2210 Massachusetts Avenue, N.W., is a nonconforming chancery use in an R-3 zone. A chancery is first permitted as a matter of right in the SP zoning district in buildings constructed prior to 1958. Consequently, the chancery nonconforming use as existing is an SP use. The proposed use of law offices is also an SP use as a matter of right in buildings constructed prior to 1958.

The proposed apartment use is an R-5-B use, which is a more restrictive use than the SP use. Accordingly, the Board concludes that the proposed use is permitted in the most restrictive district in which the previous use is permitted, and that the application thus meets the requirements of Subsection 7104.2.

The Board further concludes that applicant meets the provisions of Section 7109 in that the proposed use will be essentially a neighborhood facility and in any event will not be the type of use which would be objectionable to the neighborhood, that the proposed use will not adversely affect the present character of the neighborhood as the proposed use is a less intensive use than the prior use as a chancery and also, the proposed use is compatible with the mixed nature of other uses in the area. The Board concludes that even though the proposed use is not strictly speaking commercial, it will be conducted in accordance with the requirements of the external effects for the C-M District set forth in Section 6101.6 of the Zoning Regulations. Accordingly, it is ORDERED that the application is GRANTED.

VOTE: 3-2 (Walter B. Lewis, Charles R. Norris and Leonard L. McCants to GRANT, William F. McIntosh and Chloethiel Woodard Smith to DENY).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 14 OCT 1977

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 12290 of the Grand Duchy of Luxembourg, for a special exception under Sub-section 7104.2 for a change in the non-conforming use of a chancery to a four unit apartment house and law office in the R-3 District at 2210 Massachusetts Avenue, N.W., basement, first, second and third floors, (Square 2511, Lot 35).

HEARING DATES: March 16 & June 15, 1977
DECISION DATE: September 7, 1977

ORDER

1. By BZA Order No. 12290, dated October 14, 1977, the Board GRANTED this application.

2. The Sheridan-Kalorama Neighborhood Council and Philip R. Melkye filed a petition for review of the Order in the District of Columbia Court of Appeals.

3. By Judgement, dated May 7, 1979, the Court of Appeals REVERSED the Order of the BZA.

4. The intervenors, Grand Duchy of Luxembourg, et al., petitioned the Court of Appeals for Reconsideration by the hearing panel and alternatively, for rehearing en banc. The respondent, District of Columbia Board of Zoning Adjustment also moved for a Rehearing.

5. By Order, dated December 24, 1979, the Court of Appeals DENIED the petition of the intervenors and the motion of the respondent. The Court affirmed its conclusion of May 7, 1979 but substituted a new footnote six in its opinion.

Accordingly, it is ORDERED that BZA Order No. 12290, dated October 14, 1977, is hereby VACATED and pursuant to the Order of the Court, the application is DENIED.

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED By: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER 6 MAR 1980

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

March 11, 1980

Whayne S. Quin, Esq.
Wilkes & Artis
Suite 600
1666 K Street, N. W.
Washington, D.C. 20006

RE: BZA Application No. 12290
2210 Massachusetts Ave., N.W.

Dear Mr. Quin:

You are advised that the BZA at its public meeting of March 5, 1980 DENIED the motion of the applicant to hold in abeyance the Order of the BZA vacating its Order and denying the application.

If you have any questions, feel free to call the Zoning Secretariat at 727-6311.

Very truly yours,

STEVEN E. SHER
Executive Director

cc: Michael S. Levy, Esq.
c/o Landis, Cohen, Singman & Rauh
1019 - 19th Street, N.W.
Suite 500
Washington, D. C. 20036

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 12290 of the Grand Duchy of Luxembourg, for a special exception under Sub-section 7104.2 for a change in the non-conforming use of a chancery to a four unit apartment house and law office in the R-3 District at 2210 Massachusetts Avenue, N.W., basement, first, second and third floors.

HEARING DATES: March 16 & June 15, 1977
DECISION DATE: September 7, 1977

ORDER

1. By Final Order BZA No. 12290 dated October 14, 1977 the Board GRANTED this application.

2. By Judgement, dated May 7, 1979, the D.C. Court of Appeals REVERSED the Order of the BZA.

3. By Order dated December 24, 1979 the D.C. Court of Appeals DENIED the petition of the intervenors and the motion of the respondent for reconsideration by the hearing panel and alternatively, for rehearing en banc.

4. At its meeting held on February 5, 1980, the BZA determined to VACATE its Order dated October 14, 1977 and pursuant to the Order of the D.C. Court of Appeals, the Board DENIED the application.

5. The applicant filed a Motion to hold in abeyance the issuance of an order denying the application.

6. At its meeting held on March 5, 1980, the Board determined to deny the applicant's Motion to hold in abeyance the issuance of an Order. The Board also directed the Zoning Secretariat to issue the order. Said order was issued and became final on March 6, 1980. The applicant was notified by letter dated March 11, 1980 of the Board's decision not to withhold issuance of an order.

7. On March 14, 1980 the applicant filed a timely Motion for Reconsideration and/or Rehearing of the BZA Order Vacating Order dated March 6, 1980 and of denial of Motion to hold in abeyance. The Motion alleged that the Board had erred in that the Board misinterpreted the Order of the D.C. Court of Appeals, that the Board did not consider the equities before vacating its Order, that the Board should delay its Order until the Z.C. has taken final action on the applicant's request for amendment of the

subject Sub-section 7104.2 and that the Board's aforementioned letter of March 11, 1980 violated the D.C. Administrative Procedure Act.

CONCLUSIONS OF LAW:

Based on the entire record, including the Motion with the evidence in support thereof, the Board concludes that it has committed no error in its Order of March 6, 1980 in which it Vacated its Order and DENIED the application and in the Board's Denial of the Motion to hold in abeyance. The Board concludes that the subject Motion of March 14, 1980 presents no evidence that the Board has not already considered. Accordingly, it is ORDERED that the Motion of March 14, 1980 is DENIED in its entirety.

VOTE: 4-0 (William F. McIntosh, Charles R. Norris, Connie Fortune and Leonard L. McCants to deny)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 21 APR 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."