

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 12826, of the Royal Kingdom of Saudi Arabia, pursuant to Section 4603 of the Zoning Regulations, for permission to use the premises as a chancery in the D/R-1-A District at the premises 2929 Massachusetts Avenue, N.W., (Square 2198, Lot 14).

HEARING DATE: January 23, 1979  
DECISION DATES: March 7, April 4, May 2, June 6, July 11  
and August 8, 1979

FINDINGS OF FACT:

1. This application was originally advertised as a special exception under Sub-section 8207.2 of the Zoning Regulations. After receiving advice from the Office of the Corporation Counsel, by corrected notice, dated November 21, 1978, all parties were advised that, pursuant to the Zoning Regulations adopted by the Zoning Commission in Order No. 236, the application would not be considered as a special exception but would be governed by Section 4603 of the Zoning Regulations.
2. The subject property is located at the northern corner of the intersection of Massachusetts Avenue and Rock Creek Drive, N.W. It is known as 2929 Massachusetts Avenue and is in a D/R-1-A District.
3. The subject lot is approximately 26,000 square feet in area and is improved with a three story detached brick mansion style building. The mansion, known as the "Maie Hewitt Williams House" was designed by Clarke Waggaman and is listed in the National Register of Historic Sites. It is located within and forms an integral part of the Massachusetts Avenue Historic District, a District of Columbia Inventory of Historic Sites Category II historic place, which embraces those properties fronting on or prominently visible from Massachusetts Avenue, N.W., between 17th Street and Observatory Circle.
4. The subject property is set back approximately forty feet from the curb line of Massachusetts Avenue. It has a semi-circular driveway to the front. In the rear of the building are a portico terraces, a fountain and garden. There is a one car garage in the courtyard. The property is surrounded on it's north, east and west boundaries by a ten foot brick wall.

5. The mansion was built as a private residence for Mrs. John Williams in 1917, but in 1922 it was sold to Count Laszlo Szechenyi, Minister to the United States from Hungary and was used as the Royal Hungarian Legation until 1938 when the Count died. Countess Szechenyi, the former Gladys More Vanderbilt, utilized it as her residence until her death in 1965. It was acquired by the Seafarers Washington Building Corporation in 1967 and by the applicant in 1977. The mansion has been vacant since 1967 and is presently in an advanced state of deterioration. The applicant's restoration plans were approved by the Joint Committee on Landmarks on August 21, 1978. The approved plans included the construction of a stairway to provide access to the chancery from Rock Creek Drive.

6. The applicant, a foreign government having diplomatic relations with the United States Government, proposes to use the subject premises as its Chancery.

7. To the immediate east of the subject property is Rock Creek Drive followed by Rock Creek Park. To the south is Massachusetts Avenue, and across it are the Embassies of Bolivia, Brazil and Great Britain. To the west is the Embassy of the Royal Kingdom of Saudi Arabia and then Thirtieth Street, N. W. To the north of the subject property is the rear yard of one residence on Benton Place which abuts the rear yard of the subject property. In Square 2199 which is to the north of the subject Square 2198 there are four embassies. In the subject square there is one embassy and five residences. The subject property is in the corridor known as "Embassy Row".

8. The gross floor area of the subject structure is approximately 16,000 square feet. The applicant contended that approximately 11,599 square feet will be used for chancery purposes, including the Ambassador's personal office, the economic consular's work office, a visa and related matters office, a transmission of messages office and a record keeping office. The applicant contended that the remaining 4,401 square feet, consisting of a spacious ballroom and banquet room to be used by the Ambassador for social functions and a caretaker's quarters, would be used for embassy purposes.

9. The hours of operation of the Chancery will be from 9:00 a.m. to 6:00 p.m. The staff will consist of a total of thirty-five employees, only twenty-five of whom will be present at any one time with the remainder travelling on business. The chancery will be open to the public from 9:00 a.m. to 12:30 p.m. Visitors will average twenty-five a day with only six visitors present at any one time. Visitors seeking visas to Saudi Arabia are few since the Saudi Arabian Government limits visas to persons who are either on official business or who have a written request from persons within the Kingdom to conduct business there. There is no tourist trade as such to Saudi Arabia.

10. The application is brought under Section 4603 of the Zoning Regulations, which provides in pertinent part as follows:

4603.1 In areas mapped D, R-5-C, or SP, a chancery is a permitted use, provided that the Board of Zoning Adjustment determines after a public hearing that the proposed Chancery is not incompatible with the present and proposed development of the neighborhood.

4603.2 In determining that the proposed chancery is not incompatible with the present and proposed development of the neighborhood, the Board of Zoning Adjustment must find that:

4603.21 The architectural design and the arrangement of all structures and of off-street parking spaces are in keeping with the character of the neighborhood

4603.22 The height of the building does not exceed the maximum permitted in the applicable single or combined District in which it is located.

4603.23 The percent of lot occupancy does not exceed the maximum permitted and the minimum yard and court requirements are met in the applicable single or combined District in which it is located.

4603.24 The maximum FAR does not exceed the FAR prescribed for the applicable single District or the combined Districts in which it is located or an FAR of 1.5, whichever is greater.

4603.25 Except for Chanceries located in an R-5-C or R-5-D District, off-street parking spaces will be provided at a ratio of not less than one such space for every eight hundred (800) square feet of gross floor area devoted to chancery use.

4603.28 The use will not create dangerous or other objectionable traffic conditions.

11. At it's public meeting of March 7, 1979, the Board determined that where a country has its embassy and it's chancery in two separate, distinct buildings that the gross floor area of it's chancery building shall include the total amount of space in the building used by the government, including all supportive and accessory uses. The Board further determined that, in the subject application, the ballroom, banquet room and caretaker's quarters

should be included in the gross floor area of the subject chancery for the purpose of determining the required number of parking spaces. The applicant was requested to submit a modified parking plan for twenty cars, in accordance with Article 72 of the Zoning Regulations. The Board determined that when all parties had filed their submissions it would consider the following remaining issues:

1. Whether the plan to be submitted by the applicant provides for twenty parking spaces in accordance with the Zoning Regulations and the ruling of the Board.
2. Whether the arrangement of the proposed parking spaces is in keeping with the character of the neighborhood.
3. Whether the use would create dangerous or other objectionable traffic conditions.

The revised parking plan marked as Exhibit No. 72 of the record, was submitted June 25, 1979.

12. The height of the subject building is thirty seven feet. It does not exceed the maximum height of forty feet which is permitted in the R-1-B District, and thus in the combined subject D/R-1-B District, as specified in Sub-section 3201.1 and Paragraph 4603.22.

13. The subject structure occupies about twenty-seven percent of Lot 14, which is less than the permitted forty percent. The rear yard of the subject site exceeds the required twenty-five feet in depth. The eastern side yard exceeds the required eight feet. There is a non-conforming side yard of approximately two feet on the west. The subject property was constructed prior to the current Zoning Regulations and from the aspect of the west side yard is a non-conforming structure. The subject structure from the above aspects complies with the applicable single or combined district in which it is located.

14. The subject structure has a gross floor area of about 16,000 square feet which results in a floor area ratio (F.A.R.) of about .60, less than half the permitted F.A.R. of 1.5. It thus satisfies the requirements of Paragraph 4603.24.

15. As heretofore mentioned the subject structure is in an advanced state of deterioration. The Building will be restored to its former stately condition. The architectural design will be preserved in all sections restored, externally and internally. There will be no additions to the building. The exterior walls surrounding the building, the shrubbery and trees will be preserved. The applicant will expend substantial funds in the renovation of this historic structure which will enhance the historic character of the neighborhood.

16. The applicant's traffic expert witness testified that the use of the subject property as a chancery would have no adverse impact on traffic operations. This conclusion was based on a number of field inspections of the site, traffic counts during peak hours, observations and records of parked vehicles in the area and the existing conditions in terms of traffic operations. The traffic expert testified that traffic on Massachusetts Avenue past the subject site operates at a level of service D in both morning and evening peak hours. There is a signal at the intersection of Rock Creek Drive and Massachusetts Avenue. The signal operates on a 120 second cycle of which 104 seconds are assigned for green time on Massachusetts Avenue. The remaining sixteen seconds are for Rock Creek Drive. No parking is permitted on Massachusetts Avenue. Parking is permitted without any restriction on both sides of Rock Creek Drive. There is very good bus service on Massachusetts Avenue; during peak hours the average headway is 2.3 minutes. There is also Metrorail service that comes as far as Dupont Circle.

As to employees of the Saudi Arabian Chancery, eighty-five percent resides in northern Virginia and the remaining fifteen percent in the District of Columbia. The assumption of a modal split is that ninety percent of the employees will come by automobile and only ten percent by transit. With 1.3 persons per car, this would require a maximum number of parking spaces for employees of seventeen. This is based on the twenty-five employees at one time on the subject site. As to the visitors, with the peak accumulation of six visitors, approximately eighty percent arrive by taxicab. There would be a need for two parking spaces for visitors. Taking the number of trips that would result from the chancery operation, including both the employees and the visitors, there would be no change in the level of service on Massachusetts Avenue. In terms of parking requirements, the total number of spaces needed would be nineteen. The Department of Transportation is considering whether to provide for five diplomatic spaces on Rock Creek Drive. Thus, there would be five spaces on-street in addition to the number of on-site spaces that would be provided. There would thus be substantially more spaces available approximately twenty-four to thirty-four spaces than the peak demand of nineteen spaces.

The approximate morning peak hour traffic flow on Massachusetts Avenue in the inbound direction is 2600 vehicles going southeast on Massachusetts Avenue toward Dupont Circle. The traffic generated by the proposed chancery use would be less than one-half of one percent of that figure. It would not be any increase at all since with the present location of the chancery on Eighteenth Street just off Massachusetts Avenue, probably all the employees will be traveling down Massachusetts Avenue in the future just as they do now.

As to the neighborhood streets, the traffic witness testified that the proposed chancery use will not generate traffic on Benton Place or Edgevale Terrace. No more than one car per day could be generated on Thirtieth Street. The Board concurs with the findings and conclusions of the traffic witness that the proposed chancery use will not create dangerous or other objectionable traffic conditions. It also notes that the nineteen parking spaces were predicated upon the original parking plans submitted by the applicant, and not upon the revised plans ordered by the Board.

17. As stated in Finding No. 11, the Board determined that twenty off-street parking spaces were required for the subject property. The applicant submitted a new parking plan marked as Exhibit No. 75 of the record, reflecting eighteen spaces in the rear of the property and two spaces in the courtyard adjacent to the subject building. Twenty spaces represents one space for every 800 square feet of gross floor area. The direct access parking is provided via a driveway and aisle fourteen feet in width, except where the driveway passes through a nine foot gateway in the wall surrounding the rear yard of the property. This gateway could be widened to fourteen feet by demolishing a portion of the wall and moving some plantings. The applicant will provide attendant parking and can thereby accommodate up to ten additional cars, excluding the garage space and the circular driveway. The applicant proposes to pave the open parking area with a material known as "grass brick" which is not an impervious material and permits grass to grow through it. Visually, the effect of installing this surface is to create more green open space.

Approximately ten percent of the staff utilize public transport, since the subject site is on several Metrobus routes and is only a short bus ride from the Dupont Circle Metro Station. Ninety percent commute to work by car with an average of 1.3 persons per vehicle. The maximum employee demand for parking will be seventeen spaces.

The Chancery will be open to the public only from 9 a.m. to 12:30 p.m. Visitors will average twenty-five a day, with only six visitors present at any one time. Of the visitors, approximately eighty percent will arrive by taxi, based on past experience. The peak visitor demand for parking will be two spaces. The demand of staff and visitors for parking will therefore total nineteen spaces. This is less than the twenty required direct access on-site spaces, and less than the thirty spaces which will be provided with attendant parking.

As previously stated, the Department of Transportation (DOT) is considering reserving five spaces for chancery use on the west side of Rock Creek Drive directly adjacent to the subject site. If off-site parking or pick up occurs, it will be confined to the area immediately adjacent to the subject site. As noted, the applicant will construct a stairway to provide access to the Chancery from Rock Creek Drive. The DOT may eliminate parking on the east side of Rock Creek Drive which borders Rock Creek Park. Thus, parking on Rock Creek Drive will actually be reduced overall, and the lane of access will be widened thereby improving traffic safety. The existing parking on Rock Creek Drive is utilized by commuters; there is only one residence adjacent to Rock Creek Drive in Square 2198 and that residence fronts on Benton Street, N.W.

18. The design and arrangement of the off-street parking spaces are in keeping with the character of the neighborhood. The off-street parking spaces will be located in the rear yard of the property. The restoration plans approved by the Joint Committee on Landmarks included location of off-street parking spaces in the rear yard. The rear yard is surrounded by a ten foot wall. The wall will screen the parking area from view from Rock Creek Drive which abuts the property on the east. The Saudi Embassy abuts the property on the west. The sole private residential use abutting the property is to the rear. The rear yard of this residential use is about four feet lower in grade than the rear yard of the chancery and, as a result, the wall at the rear yard of the subject site is about fourteen feet high when measured from the rear yard of the residential use. Cars parked in the rear yard of the subject site could not be seen from the rear yard or the first floor of the residential structure. The residential structure is located about seventy-five feet from the fourteen foot wall. The line of sight is such that little if any of the rear yard of the subject site could be seen from the second floor of the residential structure. The Board finds that the arrangement of the off-street parking spaces is in keeping with the character of the neighborhood.

19. Pursuant to Sub-section 4604.1 of the Zoning Regulations the application and site plan were referred for review and report to the Office of Planning and Development, the Department of Transportation and the Department of Housing and Community Development. Comment was also requested of the U.S. Department of State and the National Capital Planning Commission. Pursuant to Sub-section 4604.2 the application was referred to the Historic Preservation Officer of the District of Columbia for a report on the impact of the proposed chancery on said district or landmark.

20. By report dated December 1, 1978 the OPD recommended that the application be approved on the grounds that it met all the requirements of the sub-sections of Section 4603 as to the height of the building, percentage of lot occupancy, minimum yard requirements, F.A.R., off-street parking spaces, compatibility with the present and future development of the neighborhood and that the Chancery use will not create dangerous or other objectionable traffic conditions. The Board concurs with the findings of the OPD.

21. The DOT, by memorandum dated December 7, 1978, reported as follows:

"Massachusetts Avenue is a principal arterial with a forty foot roadway in the vicinity of the proposed development. Parking is prohibited at all times. Rock Creek Drive, abutting the property on the east side, is a local street with a twenty-six foot wide roadway. Unrestricted parking is in effect on both side of this street. Thirtieth Street, west of the subject site, is a local street with a thirty foot side roadway.

Traffic to and from the site will pass either the intersection of Massachusetts Avenue and Rock Creek Drive or the intersection of Massachusetts Avenue and Thirtieth Street. Westbound, Massachusetts Avenue currently operates at level of service A during the morning peak hour between 8:00 a.m. and 9:00 a.m. The eastbound direction operates at level of service D during the morning peak hour. During the p.m. peak hour, between 5:00 p.m. and 6:00 p.m., the westbound direction operates at level of service D and the eastbound direction operates at level of service A.

The applicant states that the Chancery will have an average daily staff of 25 persons, although a total of approximately 35 persons will be employed at the facility. Furthermore, 25 daily visitors are expected to be generated by the facility, but the maximum at any one time is 6 visitors. The chancery

is open to the public from 9:00 a.m. to 12:30 p.m. only. Eighty percent of the visitor trips are made by taxi, according to the applicant's traffic consultant.

The applicant's traffic consultant projects a 10 percent transit usage and a 90 percent automobile usage at 1.3 occupants per vehicle. Using these assumptions, the chancery will generate approximately 18 vehicles during each peak hour. Even if the generated traffic by the chancery approaches or leaves the site in the peak direction, the level of service that currently exists would not be measurably affected.

The applicant proposes to provide on-site parking spaces at one space per 800 square feet of chancery use. The gross floor area devoted to chancery use is 11,599 square feet, thus requiring 15 spaces according to Zoning Regulations.

Employees of the chancery should be encouraged to increase transit usage and the automobile occupancy rate. This will lessen the likelihood that the 15 spaces will be insufficient, which is probable if the above rates are used. For those occasional functions when there is a greater parking demand, we do not object to the use of attendant on-site parking for approximately 25 automobiles as suggested by the applicant.

The existing 10 foot circular driveway on Massachusetts Avenue will be retained. Access to the proposed backyard parking spaces will be provided by way of a nine foot driveway off the circular driveway.

Metrobus routes N-1, N-2, N-3, N-4 and 37 operate on Massachusetts Avenue. Thirty-two inbound buses pass the site during the morning peak hour and 28 outbound during the evening peak hour. During the off-peak hours, buses pass the site at 10 to 15 minute intervals. The site is not served directly by Metrorail."

The Board notes that the DOT report as to on-site parking spaces was predicated upon the original parking plan submitted by the applicant. As stated in finding no. eleven the gross floor area was increased to include the ballroom, banquet room and caretaker's quarters thus increasing the required number of on-site parking spaces to twenty rather than fifteen. At the public hearing of January 23, 1979, the DOT testified that based on its analysis of the traffic impact there would be no objectionable traffic conditions generated. The Board concurs in the findings of the DOT.

22. The Department of Housing and Community Development, by memorandum dated December 1, 1978, reported as follows:

"In accordance with Section 4604 of the Zoning Regulations, the Department of Housing and Community Development has reviewed the above regulations. We have found that the proposal meets the requirements for this District and that the proposed chancery is not incompatible with the present and proposed character of the neighborhood. Accordingly, we have no objection to favorable action by the Board of Zoning Adjustment on this application." The Board concurs in the findings of the Department.

23. The Department of State, by letter dated December 1, 1978 reported that the Department of State wished to inform the OPD of it's strong support for the application of the Royal Kingdom of Saudi Arabia for a chancery to be located at 2929 Massachusetts Avenue, N.W. The Department of State was of the opinion that this matter involves substantial Federal interests related to the conduct of foreign relations both here and abroad. The Department concluded, after carefully reviewing the application that the proposed use appears to be fully appropriate for its location, does not create adverse impacts, and based on Section 4603 of the Zoning Regulations, merits approval. The Board appreciates the concerns expressed by the Department of State. For different reasons, fully discussed herein, the Board concurs with the State Department's determination.

24. The National Capital Planning Commission, by letter of November 29, 1978, stated as follows"

"The application, which was received by the Board on October 24, was referred to the Commission by the Director, Municipal Planning Office, by letter dated November 7, pursuant to Paragraph 4604.1 of the Zoning Regulations. Since the referral was subsequent to the November 2 meeting of the Commission and the public hearing is scheduled on December 6, prior to the December 7 meeting of the Commission, we are unable to present the application to the Commission for report and comment to the Board.

It should be noted, however, that chancery use at the premises 2929 Massachusetts Avenue, N.W. is consistent with the Foreign Missions and International Agencies element of the Comprehensive Plan for the National Capital.

It should be further noted that although the application purports to be an application for a "special exception" the Comprehensive Plan requires that a chancery use at this location shall be permitted as a "matter-of-right".

25. The State Historic Preservation Officer for the District of Columbia, by memorandum dated November 28, 1978 reported as follows:

"This is in response to your request of November 8, 1978, for a report pursuant to Section 6404.2 of the Zoning Regulations on the impact of the proposed chancery of the Royal Kingdom of Saudi Arabia to be located at 2929 Massachusetts Avenue, N.W., which is within the Massachusetts Avenue Historic District.

After reviewing the materials submitted for review, I am of the opinion that the proposed exterior alterations to the building and the site will not have an adverse impact on significant architectural and historic qualities of the Massachusetts Avenue Historic District.

For your information, these proposed alterations were referred to this office by the Chief of the Permit Branch on August 21, 1978, pursuant to D.C. Regulations 73-25 (Landmark Case No. 78-366). At its meeting on September 8, the Joint Committee on Landmarks of the National Capital reviewed the plans and recommended to me that the proposed alteration was not contrary to the public interest and should not be delayed. I concurred in the Joint Committee's recommendation."

The Board concurs with the findings of the Joint Committee and the Historic Preservation Officer.

26. By vote of the Commissioners of ANC 3C of January 16, 1979, four in favor, two opposed and one abstaining, the ANC recommended that the application be approved subject to the satisfactory resolution of five specific areas of concern listed below and specific unanswered questions concerning (a) the legality of the mixed use diplomatic districts vis-a-vis the Chancery Act of 1964 (b) an apparent conflict between the requirements of Article 46 of the Zoning Regulations and the provisions of Section 8207.2 relating to special exceptions and (c) the issues raised by the correspondence to the ANC from neighboring residents of the subject area. The ANC also testified that it is its perspective that no Chancery is inherently compatible with any residential area it may abut.

The five specific areas of concern are:

- a. Parking, overflow of vehicles to residential areas, driveway width, and screening of parking areas: As to this specific area of concern, the ANC recommended that the Board rule on how many spaces are required, the recourse if the parking is insufficient, how wide the driveway must be and the screening of the parking area. The ANC also requested that the immunity of chancery employees under the Diplomatic Relations Act be waived by the Ambassador.
- b. Access to Rock Creek Drive: The ANC recommended against a stairwell from the parking area to Rock Creek Drive and a curb cut on Rock Creek Drive to the parking area so as to discourage parking on Rock Creek Drive and to encourage the use of the rear lot from Massachusetts Avenue.
- c. Lighting interior and exterior: The ANC recommended subdued lighting and appropriate window shading/curtains in all areas which have windows in public view or in view of residential neighbors adjacent to the proposed chancery. As to the parking area, the ANC recommended that any lighting installed lie low to the ground and be subdued.
- d. Transferability and enforceability: The ANC recommended that the Board limit any approval to the subject applicant and that the Board require a new application under other circumstances. The ANC recommended that the present Ambassador assure that if any aspect of the Chancery function expand so as not to be self contained by the subject property, that temporary or permanent satellite offices for that expanded function be established and that any commitments made by the present Ambassador be reaffirmed by any subsequent Ambassadors.
- e. Maintenance and upkeep: The ANC recommended that the Board insure that maintenance of the property will be regular and appropriate in order to protect nearby residential neighbors from potential harmful effects.

27. The Cleveland Park Association and residents of the immediate neighborhood appeared through counsel in opposition to the application. The D.C. Federation of Civic Associations, Inc., adopted the position of the Cleveland Park Association. There was a letter in opposition signed by approximately thirty residents of the immediate neighborhood. The opposition raised the same kinds of issues raised by the ANC in its five specific areas of concern, the applicability of Sub-section 8207.2 versus Section 4603 of the Zoning Regulations, the applicability of the Chancery Act of 1964 and the issues of specific neighbors that were attached to the ANC report. These specific issues were basically that the proposed use is an office use and that an office use is not compatible with the present and proposed development of the neighborhood as to the arrangement and number of off-street parking spaces and that the use will create objectionable traffic conditions.

28. The Board is required by statute to give great weight to the issues and concerns expressed in writing by the ANC. In addressing these issues and concerns, as well as those of the opposition, the Board replies as follows:

- a. The Board at its public meeting of March 7, 1979, determined that twenty off-street parking spaces were required under the Zoning Regulations and that the applicant submit a modified parking plan that reflects full compliance with Article 72 of the Zoning Regulations. The Board has approved the parking plan and determined that its arrangement is in keeping with the character of the neighborhood (Finding No. 18). The Board also found that the proposed chancery use would not create dangerous or other objectionable traffic conditions (Finding No. 17). As hereinafter stated the Board will condition the granting of the application to the effect that the existing wall and plantings abutting the access driveway will be preserved

As to the remedies available if there is an overflow of parking and the lack of immunity for chancery employees, the Board states that it has no jurisdiction over these concerns. It is the Board's function to determine that the applicant provides the amount of parking spaces required by the Zoning Regulations and that the number provided is sufficient. The Board has so found. It is the function of other departments to enforce any violations thereof. As to the issue of immunity, the Board cannot usurp the administrative functions of the Ambassador.

29. Advisory Neighborhood - 3C has requested the Board to address certain legal issues. The question has been raised whether the Board has jurisdiction to hear and decide the application. The question of jurisdiction relates to the legality of Zoning Commission Orders No. 236 and 237 which created and mapped the Diplomatic District. The Board concludes that it is not the proper forum in which to raise such an issue, and that absent any stay on the effectiveness of the Zoning Commission Orders, the Board has jurisdiction to hear and decide the case.

The Board also rejects the opposition's contention that the special exception criteria of Sub-section 8207.2 of the Zoning Regulations are applicable to the subject opposition. As stated in Finding No. 1 the Board determined that the review process under Section 4603 of the Zoning Regulations will govern and the application was readvertised under a corrected notice. The Board further concludes that the requirements of Article 72 of the Zoning Regulations are applicable to chancery use and so ruled in it's public meeting of March 7, 1979 as stated in Finding No. 11.

30. Advisory Neighborhood Commission - 3C further requested the Board to address the concerns raised by the residents of the neighborhood in their correspondence to the ANC (EX. 54, Tab B). The Board finds that the material issues raised by these residents (i.e., that the proposed use is an office use and is not compatible with the residential character of the neighborhood, traffic, noise, parking, and the Board's lack of jurisdiction) were encompassed in the issues already considered at the public hearing and in this Order. The Board further notes that some of the neighbors referred to by the ANC in fact testified at the public hearing and were subject to cross-examination. Other issues such as the possibility of electronic contamination and microwave emission are hypothetical, unfounded and immaterial. They were not raised at the public hearing and accordingly not subject to cross-examination. The Board will not decide specious matters.

31. On August 7, 1979, the Board visited the site personally to inspect the building. It also toured the immediate neighborhood. Accompanying the Board on its tour were counsel for the applicant and the opposition, a representative of ANC 3C and a neighboring property owner who had appeared in opposition to the application.

- b. It is presumed that the Department of Transportation will reserve five parking spaces for chancery use on the west side of Rock Creek Drive directly adjacent to the site. The Board finds that this accommodation will prevent any tie-up of traffic and that the use of the stairwell will facilitate a visitors business. It is anticipated that the parking spaces to the rear of the subject property will be used by parties who are not short term parkers. There are no plans before the Board for a curb cut on Rock Creek Drive.
- c. There has been testimony that the applicant plans to restore the subject property to its former state. There has been testimony that the use will be in keeping with the character of the neighborhood. The Board is confident that the amenities pertaining to the lighting concerns of the building and rear parking accommodations will be observed and implemented by the applicant.
- d. In the subject application the Board is required to determine only if the subject property can be used as a chancery under the provisions of Section 4603 of the Zoning Regulations. It will not determine who will use the property. The Zoning Commission in its Order No. 236 and 237 created and mapped the Diplomatic District. The Orders provide for the establishment of chanceries. They address themselves to the properties not persons. The Board in this case will not limit the use of the property only to certain parties. As to firm and binding assurances from the Ambassador as to how he will control the use of the property and on the conduct of subsequent Ambassadors the Board deems such a concern as ultra-vires to the Board's functions.
- e. As to the maintenance and upkeep of the property the Board reiterates what it stated in reply to issue and concern No. 3.

CONCLUSIONS OF LAW:

The opposition has raised the question of whether the Board even has jurisdiction to hear and decide the application. As raised by the opposition, the question of jurisdiction relates to the legality of Zoning Commission Orders No. 236 and 237 which created and mapped the Diplomatic District. The Board concludes that it is not the proper forum in which to raise such an issue, and that absent any stay on the effectiveness of the Zoning Commission Orders, the Board has jurisdiction to hear and decide the case.

Based on the record, the Board concludes that the applicant has substantially complied with the requirements of Section 4603 of the Zoning Regulations. The architectural design and the arrangement of all structures and of off-street parking spaces are in keeping with the character of the neighborhood (Finding Nos. 5, 15, 17 and 25). The height of the building is three feet less than the maximum height permitted by the Zoning Regulations (Finding No. 12). The subject structure occupies approximately twenty-seven percent of lot 14 which is less than the permitted forty percent of the Zoning Regulations. The rear yard exceeds the required twenty-five feet in depth: The eastern side yard exceeds the required eight feet width. The western side yard although two feet wide is a lawful non-conforming side yard (Finding No. 13). The FAR of the subject improvement is approximately .60 which is less than half the permitted floor area ratio of 1.5 (Finding No. 14). Twenty off-street parking spaces are provided at the ratio of one space for every 800 square feet of gross floor area devoted to Chancery use (Finding No. 17). The proposed use will not create dangerous or other traffic conditions (Finding Nos. 16, 17, 18 and 21). Based on the above, the Board concludes that the proposed chancery is not incompatible with the present and proposed development of the neighborhood.

In reference to the applicant's request to permit the parking area to be covered by the above-mentioned grass-brick surface, the Board concludes that no variance is required. The Board also concludes that a variance is not required to permit the nine foot wide gateway in the wall surrounding the rear yard to remain. Under Section 4604.3 the Board has the authority to require special treatment regarding the parking area and access to parking as conditions to this Order. Here the special surface and the retention of the existing gateway will mitigate any possible adverse impacts on the neighborhood and will protect this historic structure.

Since the surface material is relatively unknown, a trial period will be established with review of that aspect of the application after two years of experience.

The Board has satisfactorily addressed itself to the issues and concerns of the ANC, and has accorded to the ANC the "great weight" to which it is entitled.

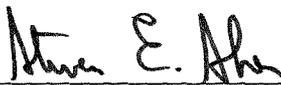
Accordingly, it is ORDERED that this application is GRANTED. Pursuant to the authority contained in Sub-section 4604.3, the Board hereby ORDERS that the surface of the parking lot shall be paved with checker block pavers as shown on Exhibit No. 47 of the record, rather than with an all weather impervious surface. The Board also ORDERS that approval of the material for the surface of the lot shall be for a period of TWO YEARS only from the final date of this Order, in order for the Board to be able to review the suitability of the material in light of traffic, weather, maintenance and other conditions. It is hereby ORDERED that the applicant shall reapply to the Board prior to the end of the TWO YEAR period for permission to continue use of the checker block pavers.

VOTE as to the granting of the application: 4-1 (William F. McIntosh, Charles R. Norris, Leonard L. McCants and Ruby B. McZier to GRANT, Chloethiel Woodard Smith OPPOSED).

VOTE as to the surface of the parking lot: 3-1 (Ruby B. McZier, Charles R. Norris, and Leonard L. McCants in favor of checker block pavers, Chloethiel Woodard Smith OPPOSED, William F. McIntosh not voting).

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

ATTESTED BY:

  
\_\_\_\_\_  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER:

9 NOV 1979

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.

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.