

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16026 of Marymount University, on behalf of the Republic of Armenia, pursuant to 11 DCMR 1001, for permission under Section 1002 to locate a chancery in a D/R-3 District at premises 2225 R Street, N.W., (Square 2516, Lot 69).

HEARING DATE: February 15, 1995
DECISION DATE: February 15, 1995 (Bench Decision)

ORDER

INTRODUCTION

This application was filed by Marymount University on behalf of the Republic of Armenia pursuant to Section 206 of the Foreign Missions Act (Title 11, Public Law 97-241, 92 Stat. 286, August 24, 1982) to locate its chancery at 2225 R Street, N.W. (Square 2516, Lot 69) in a D/R-3 District. The application was considered by the Board in accordance with the requirements of Chapter 10 of the Zoning Regulations. Chapter 10 was adopted by the Zoning Commission to implement Section 206 of the Foreign Missions Act. The public hearing was conducted as a rulemaking proceeding under Chapter 33 of the Supplemental Rules of Practice and Procedure before the Foreign Missions Board of Zoning Adjustment.

APPLICATION

The subject site is rectangular in shape, and is located on the north side of R Street, N.W., between Massachusetts Avenue and 22nd Street, N.W., adjacent to Sheridan Circle in an area predominated by diplomatic uses. The site measures 75 feet in width, contains 7,313 square feet in land area, and is occupied by a four-story building. There is a semi-circular driveway located in public space in front of the building, which runs the full width of the property.

The building, constructed in 1909 as a residence for Senator Gilbert M. Hitchcock, was designed by the prominent Washington architect George Oakley Totten, and is located in both the Massachusetts Avenue and the Sheridan-Kalorama Historic Districts. Since the late 1960's, the building has been approved by the Board of Zoning Adjustment for institutional use. The International Institute of Interior Design occupied the building pursuant to BZA Order Nos. 8864 and 11046 as a professional school, with administrative offices, library and classroom use. The President of the Institute lived on the top floor. In 1990, the Institute merged with Marymount University. Marymount's use of the property was similar to the Institute's except that the residential use of the top floor was discontinued. Marymount's use of the building is focused more on library services and research facilities.

BZA Order No. 8864 establishing the institutional use also granted a parking variance. Although the variance was granted, the Board found in its order that there are four parking spaces at the front of the subject building (in the driveway) which are used to accommodate teachers, and concluded that this parking would be suitable for such use. The order indicated that the hours of operation were from 8:00 a.m. to 10:00 p.m., with up to 25 students on-site at any one time. According to information from the Institute, the total number of faculty and staff varied from seven to ten, with three to five cars usually parked in the driveway in the front of the building. Marymount's faculty and staff had two or three cars at most times. Both the Institute and Marymount had amicable relations with their neighbors.

The Embassy of the Republic of Armenia is the contract purchaser of the property, and intends to use the property for both chancery and residential purposes. The lower three floors of the property (up to 6,971 square feet) will be occupied by the chancery, and the top floor will be used for residential purposes for staff and visiting officials. The small basement will continue to be used for the building's mechanical equipment, storage, etc.

The interior of the building is configured in the grand style of a bygone era. The first floor contains a large entrance foyer area and a salon, with offices and smaller service rooms in the rear. The second floor contains a large foyer and a grand reception/conference room in the front, with several smaller spaces in the rear. The third floor contains three large rooms, and the top floor remains configured as residential space.

The Embassy will install a flagpole, plaque and official seal on the front of the building. The Historic Preservation Review Board recommended approval of these items, by consent calendar, at its January 26, 1995 meeting.

The proposed use by the Embassy of the Republic of Armenia will be less intense than the previous school use of the four-story building by the students, faculty and staff of the Institute and Marymount. Currently, the Embassy of the Republic of Armenia has four diplomats and four staff members. That number is not anticipated to increase in the foreseeable future. The hours of operation of the Embassy are 9:00 a.m. to 6:00 p.m., Monday through Friday. The Embassy receives on average approximately three to four visits per day. This number is not expected to increase at the new site. Most business with the public is conducted by mail, telephone, and telecopy. Most visitors to the Armenian Embassy use taxis and other public transportation. With the opening of the new Armenian Consulate in Los Angeles early this year, visits to the Embassy for consular purposes are expected to remain stable or decrease in the near future.

At present, the four diplomats drive to work, and this pattern is expected to continue at the new site. The Embassy intends to request diplomatic parking designation for the two presently undesignated parking spaces on the street at the curb in front of the property. The driveway in public space in front of the building has historically accommodated up to four or more vehicles and would be suitable for continued use by the Embassy. Thus, with the ability to accommodate up to six vehicles, no additional parking would be needed for the foreseeable future. However, in the event such parking becomes necessary, the Embassy has confirmed with the Ritz Carlton and Embassy Row Hotels, and with the Atlantic Garage at the Universal Building, that parking is available. This parking plan has been specifically discussed at the Advisory Neighborhood Commission (ANC) meeting. The ANC voted to support the application with the understanding that there would continue to be parking in the circular drive for up to four cars, with diplomatic parking designation for the two curbside spaces on the street.

The remainder of the staff either carpools with the diplomats or uses public transportation, and will continue to do so at the new site. The new proposed Embassy is located three blocks from the nearest Metrorail Red Line station at Dupont Circle. In addition, taxis and a number of bus lines travel in both directions on Massachusetts Avenue.

A chancery in the D/R-3 District is a permitted use subject to Board of Zoning Adjustment disapproval after review based upon the six criteria enumerated in Section 206(d) of the Foreign Mission Act and Section 1001 of the Zoning Regulations.

FOREIGN MISSIONS ACT CRITERIA

In considering the subject application, the Board must apply the specific criteria set forth in Section 1001, et seq., of Chapter 10 of the Zoning Regulations. A chancery shall be a permitted use in the Mixed Use Diplomatic District, subject to disapproval by the Board based on those criteria, which are as follows:

1. Section 1001.2. The international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the nation's capital.
2. Section 1001.3 and 1001.4. Historic preservation, as determined by the Board in carrying out this Section, and in order to ensure compatibility with historic landmarks and historic 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.

3. Section 1001.5. 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 any special security requirements that may be determined by the Secretary of State, after consultation with federal agencies authorized to perform protective services.
4. Section 1001.6. 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.
5. Section 1001.7. The municipal interest, as determined by the Mayor.
6. Section 1001.8. The federal interest, as determined by the Secretary of State.

EVALUATION

With respect to the above-referenced six criteria set forth in the Zoning Regulations, the Board states the following:

1. The international obligation of the United States: By letter dated January 26, 1995, the Director of the Office of Foreign Missions of the Department of State, the delegated representative of the Secretary of State, determined that the international obligation of the United States to facilitate the acquisition of adequate and secure facilities for foreign missions in the nation's capital will be met by the approval of this application.
2. Historic preservation: The subject site is located in the Massachusetts Avenue and Sheridan-Kalorama Historic Districts, but is not an individually-designated historic landmark. The four-story plus basement masonry building was built in 1909. There will be no new construction or demolition of the building. By memorandum dated January 27, 1995, the Chief of the Historic Preservation Division reported that the Historic Preservation Review Board (HPRB) recommended approval of the Embassy's proposed additions of a flagpole, plaque and official seal as being compatible with the structure and the historic districts. The Board concurs with this

recommendation. Accordingly, there will be no adverse impact on the historic preservation objectives of the District of Columbia.

3. Parking and transportation: The building was constructed prior to 1958. While there is no parking within the building, or in the side yard, the driveway in public space has historically been used to accommodate up to four or more vehicles in conjunction with the prior Board-approved institutional use. Under Chapter 21 of the Zoning Regulations, no parking is required in conjunction with the proposed use. Even if parking were required, the building is exempt from that requirement as a contributing building in an historic district under Section 2100.5 of the Zoning Regulations. Moreover, a parking variance was granted by the Board, in conjunction with the prior institutional use in Order No. 8864. The variance runs with the land, and extends to the proposed chancery use.

The prior uses of the building, as previously set forth herein, were much more intense than that proposed in the current application. The Institute had up to 25 students at any one time, plus seven to ten teachers and staff.

The proposed chancery will house four diplomats and four staff, with no increases anticipated for the foreseeable future. Only four automobiles are associated with the operation of the chancery, and are used by the diplomatic officers. The other four persons who work in the chancery either carpool with the diplomats or utilize public transportation to travel to and from work. These modes of transportation will continue at the new site. The chancery receives very little visitor traffic (an average of three to four visits per day). All forms of business conducted by the public with the Embassy are typically conducted by mail, messenger, telephone or telecopy.

The applicant's presentation included a report and testimony by an expert in traffic and parking analysis. His report and testimony indicated that there is space for four vehicles in the driveway in public space, plus two more in the curbside parking in front of the building. In addition, in case there is a long-term future demand for more than six parking spaces for Embassy vehicles, Embassy representatives have contacted several commercial parking garage operators in proximity to the subject site, each of which has given assurances that the parking needs of the Embassy can be met on a contract basis. The ANC's endorsement of this

application included a full review and endorsement of this parking plan.

The traffic expert's report and testimony also indicated that the subject site is extremely well-served by public transportation. The site is located three blocks west of the Dupont Circle Red Line Metrorail station at 20th and Q Streets. In addition, there are numerous bus lines travelling in both directions along Massachusetts Avenue. Further, taxis are typically also available on a regular basis along the Avenue. Finally, there is a supply of short-term parking available in the neighborhood for visitors, such as on Decatur Place, around the corner from the subject site.

The Office of Foreign Missions, in its letter of January 26, 1995, has determined that this application meets the requirements of 22 U.S.C. Section 4306(d)(3), in that there are no special security requirements relating to parking considerations in this case.

The Office of Planning (OP), in its report of February 7, 1995, and the Department of Public Works (DPW), in its memo of January 27, 1995, indicated their positions that the proposed chancery would not create objectionable impacts on area traffic and parking conditions.

OP also stated that the driveway in front of the building is located in public space, under the jurisdiction of the Public Space Office of DPW, and therefore parking would not be permitted in that location absent such approval. The applicant stated in response that the building was constructed prior to 1958, without any on-site parking, that parking is not required for the proposed chancery because the parking variance in Board Order No. 8864 runs with the land, and that in any event the building is exempt from parking as a contributing building in the historic districts, pursuant to Section 2100.5 of the Zoning Regulations. The applicant also stated that under 22 USC Section 4306(b)(3), the limitations and conditions applicable to chanceries must not exceed those applicable to office or institutional uses. In this case, Marymount University or a successor educational institution can continue occupying the building, with use of the four parking spaces in the driveway, as approved in Order No. 8864. The applicant also referred to four prior FMBZA applications where the Board's approval included the use of driveways in public space for chancery parking.

The Legal Counsel of the Office of Foreign Missions, U.S. Department of State, testified at the public hearing that

the Foreign Missions Act is a federal law, which preempts both federal and local regulations. He testified that Section 206 of the Foreign Missions Act (22 USC Section 4306) was intended by the Congress to provide for "one-stop shopping" for chancery approvals in the District of Columbia. The express language of the Foreign Missions Act indicates that determinations "concerning the location, replacement or expansion of a chancery ... shall not be subject to the administrative proceedings of any other agency or official," other than the Foreign Missions Board of Zoning Adjustment. 22 USC Section 4306(c)(3).

The Board is persuaded that it has authority to approve the use of public space in front of a building for vehicle parking in conjunction with a chancery application. Unlike curbside parking in the street, no one other than the abutting private property owner can be said to have a reasonable expectation of use of the public space between the building face and the sidewalk. The Board finds that it would be contrary to the Foreign Missions Act to require the chancery applicant to apply separately to the Department of Public Works for this aspect of the chancery approval. The Board does not extend this finding to the curbside parking in the street in front of the property because it cannot be said that the adjacent property owner is the only one with a reasonable expectation of use of that space for parking. Unless otherwise designated, street parking is available to the public.

4. Protection: The Office of Foreign Missions, in its letter of January 26, 1995, determined that pursuant to Section 4306(d)(4) of the Foreign Missions Act, the site and area are capable of being adequately protected.
5. Municipal Interest: The Director of the Office of Planning (OP) for the District of Columbia, the delegated representative of the Mayor, by memorandum dated February 7, 1995, determined that the applicant has met the burden of proof under Sections 1001 and 1002 of the Zoning Regulations relative to the location of the proposed chancery in a D/R-3 District. OP is of the opinion that the location of the chancery as proposed is not expected to create objectionable impacts on traffic and parking conditions in the general area, and recommends approval of the application.

Eight letters of support and a petition in support signed by 14 neighbors were submitted to the record in this case. There was no opposition either at the public

hearing or in the record, in this application. The Board finds that the proposed chancery is in an area predominated by diplomatic uses, and that the proposed use will be compatible with other uses in the historic district and in the area, and less intense than the prior institutional use.

6. Federal interest: By letter dated January 26, 1995, from the Director, and by testimony of the Legal Counsel, the Office of Foreign Missions has determined that the location of the chancery for the Republic of Armenia at 2225 R Street, N.W., is consistent with the federal interest. The Armenian government has recently amended its laws to allow U.S. ownership of property in Armenia. This will allow the U.S. to purchase embassy property which it currently leases. As such, favorable action on this application will be in the federal interest.

ADVISORY NEIGHBORHOOD COMMISSION

The subject site is located within the boundaries of Advisory Neighborhood Commission (ANC) 1D. By letter received on January 30, 1995, ANC 1D unanimously recommended that the application be approved. The ANC vote was based upon the Commission's understanding that the driveway in front of the building will be used for parking by no more than four vehicles, and the ANC's satisfaction that the applicant complies in good faith with the terms of the Foreign Missions Act, insofar as accommodating the community's concerns on parking. The Board agrees with the ANC's conclusion based upon the evidence and testimony.

The Board concludes that it has accorded "great weight" to the issues and concerns of the ANC.

DECISION

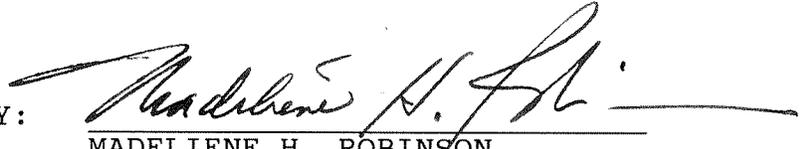
On the basis of the record before it, the Board has determined that this application satisfies the criteria set forth in Section 1001 of Chapter 10 of the Zoning Regulations. Accordingly, it is ORDERED that this application is APPROVED.

VOTE: 4-0 (Reginald Griffith, John G. Parsons, Craig Ellis, Angel Clarens to approve; Laura Richards, not present, not voting)

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

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ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: MAR 31 1995

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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