

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16519 of the Adel Partnership on behalf of the Embassy of the Republic of Benin, pursuant to Section 206(b) of the Foreign Missions Act and Subsection 1001.1 of the Zoning Regulations to permit the location of a chancery in a D/R-1-B District at premises 2124 Kalorama Road, N.W. (Square 2527, Lot 835).

HEARING DATE: December 8, 1999

DECISION DATE: January 5, 2000

DETERMINATION AND ORDER

The Adel Partnership filed an application with the Foreign Missions – Board of Zoning Adjustment (Board) on behalf of the Embassy of the Republic of Benin to locate a chancery in a mixed-use diplomatic zoning district. After public hearing, the Board determined not to disapprove the application, provided Embassy complies with certain agreed-upon conditions that address community concerns, including maintaining the historic and residential character of the neighborhood and parking and traffic.

PRELIMINARY AND PROCEDURAL MATTERS

On October 5, 1999, the owner of the subject property, the Adel Partnership, filed an application with the Board to permit the location of a chancery for the Embassy of the Republic of Benin in a D/R-1-B zoning district at premises 2124 Kalorama Road, N.W. (Square 2527, Lot 835). The Embassy of the Republic of Benin is the contract purchaser of the property. The Adel Partnership and the Embassy are represented in these proceedings by Christopher H. Collins, Wilkes, Artis, Hedrick & Lane Chartered.

The application is filed pursuant to Section 206 of the Foreign Missions Act, approved August 24, 1982 (92 Stat. 286, D.C. Code § 5-1206 (1994 Repl.)), 22 U.S.C.A. § 4306 (1990), and 11 DCMR § 1002.1 (1995). Under Section 206(b)(2)(B) of the Foreign Missions Act, 22 U.S.C.A. § 4306(b)(2)(B), D.C. Code § 1206(b)(2)(B), a chancery is permitted to locate in an area zoned mixed-use diplomatic, subject to disapproval by the Board in accordance with certain criteria. To implement Section 206, the Zoning Commission has adopted regulations in 11 DCMR ch. 10 (1995) affecting the location of chanceries in the Mixed Use Diplomatic (D) District, an overlay zoning district.

The Board's rules of practice and procedure relating to chancery applications are found in 11 DCMR § 3134, 46 DCR 7853 (1999). Under Section 206(f) of the Foreign Missions Act, 22 U.S.C.A. § 4306(f), D.C. Code § 5-1206(f), and 11 DCMR §§ 1002.3 and 3134.2, proceedings before the Board on a chancery application are of a rulemaking and not of an adjudicatory nature.

Pursuant to 11 DCMR § 3134.7, the application was accompanied by a letter from the United States Department of State, dated October 5, 1999, certifying that the Embassy of the Republic of Benin has complied with Section 205 of the Foreign Missions Act, 22 U.S.C.A. § 4305 (1990), D.C. Code § 5-1205 (1994 Repl.), relating to the property of foreign missions.

On October 6 and 7, 1999, the Board referred the application to the Office of Planning; United States Department of State, Office of Foreign Missions; Historic Preservation Review Board; Commission of Fine Arts; the Zoning Administrator, Department of Consumer and Regulatory Affairs; ANC 1D, the ANC for the area within which the subject property is located; and ANC 1C, the ANC for the area in proximity to the subject property. *See* 10 DCMR §§ 1002.5 – 1002.7, 3113.7, 3134.10. By letter dated October 21, 1999, the Commission on Fine Arts indicated that the subject property does not fall within its jurisdiction. Exh. 28.

Notice of the filing of the application was published in 46 DCR 8360 (Oct. 15, 1999); and notice of proposed rulemaking was published in 46 DCR 8839 (Oct. 29, 1999). Notice of the public hearing, set for December 8, 1999, was published in 46 DCR 8738 (Oct. 29, 1999).

By letters dated October 28, 1999, the Office of Zoning mailed the notice of hearing to the applicant and the affected ANC 1D. The Office of Zoning also mailed letters of notice to all individuals and entities listed on the applicant's list of owners of all property within 200 feet of the boundaries of the subject property.¹ *See* Exhs. 7, 27. In addition, on November 19, 1999, the applicant posted a zoning notice along side the front door of the property, in plain view of the public. Exh. 40.

The Board held a public hearing on the application on December 8, 1999. As a preliminary matter, the Board considered a written request dated December 7, 1999, from Andrea C. Ferster, attorney for 2120 Kalorama Road, Inc., a four-unit residential cooperative apartment building located immediately adjacent to the subject property, to postpone the hearing on the grounds that the cooperative had not received mailed notice.²

¹ At the public hearing on December 8, 1999, the applicant's attorney advised the Board that the list included owners of property within 220 feet of the subject property.

² D. Philip Baker, a resident and member of the Board of Directors of the Dresden Condominium, 2126 Connecticut Avenue, N.W., also raised questions at the hearing regarding the mailed notices. He had learned of the application from a meeting with the two ANC 1D commissioners on November 15, 1999. The mailing list provided by the applicant, Exhibit 7, includes 62 Dresden Condominium unit owners. The Dresden Condominium Association, Inc., pursuant to a motion made by Mr. Baker, voted on November 15,

In an attached affidavit dated December 7, 1999, the managing agent for 2120 Kalorama Road, Inc., William C. Smith & Co., Inc., indicates that a letter of notice was not received. Exhs. 43-44. Ms. Ferster was not present at the hearing; however, Louis Kaplan, a resident of the cooperative, was present and spoke on behalf of the cooperative. Mr. Kaplan stated that he had learned of the application ten days earlier at an ANC 1D meeting.

The Board's rules of practice and procedure in 11 DCMR § 3113.13(b), applicable to chancery applications through § 3134.6(a), require that mailed notice be provided to the owners of all property within 200 feet of the property involved in the application. The applicant's mailing list, Exhibit 7, is derived from the District of Columbia Office of Tax and Revenue records and contains the correct name and mailing address of the managing agent for 2120 Kalorama Road, Inc., William C. Smith & Co., Inc., at 1220 L Street, N.W. The residents of the cooperative agree that the notice should have been mailed to the managing agent. The Director of the Office of Zoning certified on October 28, 1999, that notices were mailed to all the individuals and entities listed on the applicant's mailing list, which included the managing agent, *see* Exhs. 7, 27; and the Office of Zoning did not receive any returned mail from the managing agent. Tr. at 13; exh. 29.

In light of the provisions of the Foreign Mission Act and Zoning Regulations that require the Board to make a final determination on a chancery application no later than six months from the filing of an application, 22 U.S.C.A. § 4806(c)(3), D.C. Code § 1-1206(c)(3), and 11 DCMR § 1002.10, the Board declined to postpone the public hearing. The Board's rules of practice and procedure in 11 DCMR §§ 3113.13 and 3113.14 specify several methods of providing notice of a public hearing, all of which were met in this case. Notice was given by publication in the *D.C. Register*; by mailing the notice to the owners of all property within 200 feet of the subject premises; by mailing the notice to the affected ANC 1D; and by posting the subject premises. Mr. Kaplan received actual notice of the hearing ten days before the hearing; and presented detailed written and oral comments at the December 8, 1999, hearing on behalf of 2120 Kalorama Road, Inc., and the Dresden Condominium Association, Inc. *See* Exh. 51. In addition, a petition filed with the Board on December 2, 1999, opposing the application included the signatures of several residents of 2120 Kalorama Road, Inc. Exh. 31.

To afford Mr. Kaplan and the residents of 2120 Kalorama Road, Inc., additional time to prepare their comments, the Board left the record open until December 16, 1999. Mr. Kaplan submitted written comments on his own behalf and on behalf of the cooperative, with accompanying letters from Donna S. Hays, board member, Sheridan-Kalorama Historical Association; Howard S. Berger, President, Sheridan-Kalorama Historical Association; Christopher K. Chapin, President, Sheridan-Kalorama Neighborhood Council. The Board did not accept a letter from Marie Drissel, as she

1999, to oppose the chancery application. The opposition is included in the record as Exhibit 34. As the Dresden Condominium is located more than 200 feet from the subject property, 11 DCMR § 3113.13(b) does not require that mailed notice be given to the unit owners or their board of directors or association.

resides outside the 200-foot radius of the site. The Board also returned a letter dated December 8, 1999, from D. Philip Baker that was received after the record was closed. The applicant was given until December 23, 1999, to respond to the submissions. The Board concludes that this procedure went beyond that required by the Foreign Missions Act and the Board's rules, and afforded the residents of 2120 Kalorama Road, Inc., adequate notice of the public hearing and an opportunity to comment.

At the hearing, the applicant presented statements by Mr. Collins; Lucien Tonoukouin, Ambassador of the Republic of Benin to the United States; and Robert L. Morris, traffic and transportation expert.

Ronald S. Mlotek, Chief Legal Counsel, and Richard C. Massey, Office Director for Real Estate, of the United States Department of State, Office of Foreign Missions, participated in the hearing in support of the application.

The Board waived the filing deadline for the Office of Planning report, exhibit 45, dated December 7, 1999. Based on concerns relating to the historic and residential character of the neighborhood and parking and traffic impacts, the Office of Planning, as the delegated representative of the Mayor of the District of Columbia, questioned whether the proposed chancery was in the municipal interest. The Office of Planning also indicated that the Office of the Fire Marshall reported no problems with the proposed application. Mary Vogel, community planner, represented the Office of Planning at the hearing.

The ANC 1D, the affected ANC, also received a waiver of the filing deadline for its report, exhibit 39, dated December 1, 1999. The ANC opposed the application based on concerns related to parking, traffic, maintenance of the historic and residential character of the neighborhood, and security. Linda K. Bumbalo, ANC 1D chairperson, appeared at the hearing on behalf of the ANC.

The Embassies of Algeria, Argentina, Ethiopia, Senegal, Sri Lanka, and Thailand submitted letters in support of the application, noting the long tradition of the neighborhood as a home for embassies, ambassadorial residences, and international organizations. Exhs. 35, 37, 41, 42, 59, 60, 62.

At the hearing, District of Columbia Councilmembers Jim Graham and David A. Catania and neighborhood residents Daniel Brown, Douglas LaBossiere, Trevor Bussell, and Louis Kaplan spoke in opposition to the application. They expressed concern that the Sheridan-Kalorama neighborhood had become saturated with chanceries, adversely affecting the neighborhood's historical and residential character. They identified property maintenance, parking, and enforcement as specific concerns.

Several persons also submitted written comments in opposition to the application. The Board received petitions, exhibits 31 and 56, signed by a number of residents of the Kalorama neighborhood opposing the chancery application based on concerns relating to parking and traffic congestion and noise. An accompanying cover letter from Doug

LaBossiere, dated December 2, 1999, expressed general concerns relating to the appearance and maintenance of embassies in the Kalorama neighborhood. The Board also received letters from William and Lois Stratton, the Dresden Condominium Association, and the Chancellery Condominium Association opposing the application on similar grounds. Exhs. 32-34.

The Board held its decision meeting on January 5, 2000. Reginald W. Griffith, Executive Director of the National Capital Planning Commission, having read the transcript and complete record, participated in and voted at the meeting. The Board, voting 4:0, determined not to disapprove the application, subject to certain conditions designed to address community concerns relating to preservation of the historic and residential character of the neighborhood, traffic, and parking.

THE PROPOSED CHANCERY LOCATION

The proposed chancery location, 2124 Kalorama Road, N.W. (Square 2527, Lot 835), is on the south side of Kalorama Road, approximately 400 feet west of Connecticut Avenue, N.W. It is within approximately 600 feet of the Taft Bridge over Rock Creek Park. The subject property measures 12,401 square feet in land area. It is occupied by a two and three-story brick building with approximately 4,217 square feet gross floor area and by a small accessory building in the rear. The property is owned by the Adel Partnership, a District of Columbia general partnership, and is currently vacant.

The property is located in the D/R-1-B zoning district and is within the Sheridan-Kalorama Historic District. The R-1-B district permits matter-of-right residential development and a variety of building types for residential use. The portion of Square 2527 zoned R-1-B received the Diplomatic Overlay (D) designation in 1987 pursuant to Zoning Commission Order No. 509, 34 DCR 2759 (1987). A foreign chancery is permitted in a D/R-1-B district, a mixed-use diplomatic district, subject to disapproval by the Board. 11 DCMR § 1001.1. The D/R-1-B district encompasses a substantial portion of Square 2527, except for the eastern portion of the square, which is designated R-5-D. Pursuant to 11 DCMR § 1000.6, chanceries are also permitted to locate in the R-5-D district, subject to disapproval by the Board. The D/R-1-B district also extends to include Square 2522, the adjacent square to the west. The mix of uses in Square 2527 includes residential, apartment, embassy, chancery, hotel, and institutional uses.

The subject property is surrounded on the north, south, and west by embassies and chanceries. Across Kalorama Road to the north is the Embassy and Chancery of the People's Republic of China. Immediately to the west of the Chinese Embassy is the Portuguese Embassy and Chancery, and to the west of that is the French Embassy.

To the east, the subject property is adjacent to a four-unit cooperative apartment building and then the Algerian Embassy. The Windsor Park Hotel is to the east of the Algerian Embassy and further to the east, the Dresden Condominium occupies the southwest corner of Kalorama Road and Connecticut Avenue, N.W.

To the south of the subject property, on the rear portion of Square 2527 facing Wyoming Avenue, N.W., there is a mix of single-family, multi-family, and chancery uses, with one private school at 2107 Wyoming. The Algerian chancery on Wyoming Avenue, N.W., abuts the subject property at the rear. The Republic of Macedonia purchased the property at 2129 Wyoming Avenue, which is vacant and in disrepair, for its chancery.

Abutting the subject property to the west is the Ethiopian Embassy and Chancery, at the corner of Kalorama Road and Thornton Place, N.W. Across Thornton Place to the west is the lot that had been occupied by Embassy of the Arab Republic of Egypt, Cultural and Educational Bureau, and beyond that are large single family homes, with one duplex home amongst them.

There are other foreign government properties nearby. In the immediate area west of Connecticut Avenue, Syria, Sri Lanka, Thailand, Poland, Barbados, Senegal, Jordan, and Afghanistan maintain chanceries. Across Connecticut Avenue and within two blocks, are the Chancery of the Gabonese Republic and the Russian Trade Mission.

The Embassy of the Republic of Benin is the contract purchaser of the subject property and intends to use the property as its chancery. The Embassy has operated a chancery at 2737 Cathedral Avenue, N.W., since 1963, and has outgrown the space. The Embassy intends to retain the Cathedral Avenue property as a chancery annex and to operate its consular and visa services office at that location. The Cathedral Avenue property will be renovated, a process expected to take three months, when the new chancery begins operations. Consequently, the consular and visa services office will operate from the new chancery until the renovations are completed and then return to the Cathedral Avenue chancery annex.

DETERMINATION

Section 206(d) of the Foreign Missions Act, 22 U.S.C.A. § 4306(d) (1990), D.C. Code § 5-1206(d) (1994 Repl.), establishes six criteria upon which the Board must base its determinations regarding the location of a chancery in a mixed-use diplomatic district. The chancery use criteria are also set forth in 11 DCMR § 1001 (1995). After public hearing and having reviewed the record, the Board has determined as follows with respect to each of the criteria:

1. International Obligation of the United States

Pursuant to 11 DCMR § 1001.2, "The Board shall consider the international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the nation's capital." Theodore E. Strickler, Deputy Assistant Secretary of State for the Office of Foreign Missions, in his letter dated November 29, 1999, Exhibit 36, determined, and the Board concurs, that favorable action on the

application would fulfill the international obligations of the United States to facilitate the acquisition of adequate and secure premises for the Government of the Republic of Benin for its diplomatic mission in Washington, D.C.

2. Historic Preservation

Under 11 DCMR § 1001.3, the Board must “consider historic preservation, as determined by the Board in carrying out this section.”³ The subject property is a 1932 two and three-story masonry Regency Revival-style building. While not designated a historic landmark, it is considered a contributing property to the Sheridan-Kalorama Historic District. The Federal Elements of the Comprehensive Plan adopted by the National Capital Planning Commission provide that foreign missions should give preference to certain chancery locations, including locations in historic districts. Exh. 30 at p. 22.

The Embassy proposes no changes to the exterior of the building, except the addition of a flagpole and small plaque to identify the premises. Pursuant to its November 18, 1999, consent calendar, the Historic Preservation Review Board (HPRB) approved, as consistent with embassies in the area, a free-standing flagpole to be placed in the front yard and a plaque to be placed to the right of the front door. Exh. 30 at 14. After discussions with the Sheridan-Kalorama Historical Association, the Embassy agreed instead to attach a smaller flagpole to the building above the front door. On December 1, 1999, the Historic Preservation Division of the Department of Community and Regulatory Affairs, pursuant to delegated authority from the HPRB, reviewed and approved the proposed flagpole change.

A number of witnesses, as well as the Office of Planning and ANC 1D, expressed the concern that a lack of property maintenance at the subject premises could adversely affect the Sheridan-Kalorama Historic District. The witnesses identified several chancery buildings, including Benin’s Cathedral Avenue chancery, that suffer from neglect and disrepair, as well as poorly maintained and paved-over yards.

At the hearing, Ambassador Lucien Tonoukouin stated his country’s commitment to maintaining the subject premises. He assured the Board that no work would be done to alter the exterior of the building without first obtaining the necessary historic preservation approvals. Before the hearing, Ambassador Tonoukouin met with the Sheridan-Kalorama Historical Association and developed a number of conditions relating to use of the property, including retention of a resident caretaker to maintain both the inside and outside of the premises on a daily basis, that will help preserve the residential and historic character of the subject property. These conditions have been incorporated into this Board’s order.

³ The chancery use criteria in 11 DCMR 1001.4 are not relevant, as this application does not involve new construction or the demolition of or alteration of a historic landmark. See 11 DCMR §§ 1002.7 – 1002.8.

Ambassador Tonoukouin advised the Board that the Embassy had deferred maintenance on its Cathedral Avenue chancery pending completion of its plans to purchase the subject property, and that the Embassy intends to hire a property maintenance company to keep the both the Cathedral Avenue chancery annex and the new chancery in good repair. The Ambassador also advised the Board that the Government of the Republic of Benin has committed the necessary monies for these purposes.

Based on the above, the Board determined that historic preservation does not present grounds for disapproval of the application. The Embassy has agreed to maintain the property in a manner that will continue to contribute to the historic character of the neighborhood. The flagpole and plaque, changes to the exterior of the building, have received the necessary historic preservation approvals. Appropriate conditions, agreed-upon by the Embassy and designed to preserve the residential and historic character of the property, are included in the Board's order.

3. Adequacy of Parking

The chancery use criteria in 11 DCMR § 1001.5 include parking considerations:

The Board shall consider 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.

Many of the witnesses, as well as the Office of Planning and ANC 1D, questioned whether the proposed chancery would provide adequate parking. Robert L. Morris, the applicant's expert on traffic and transportation matters, provided a written report and testimony in support of the application. After reviewing the parking and traffic conditions at the proposed chancery location, Mr. Morris concluded that the proposed chancery would provide adequate off-street parking and would not adversely impact traffic operating conditions in the area. He concluded that from a traffic engineering point of view, chancery use of the subject property would be appropriate. In addition, Ambassador Tonoukouin described the Embassy's staffing and parking plans for the proposed chancery. After hearing and review of the record, the Board concludes the Embassy will provide adequate off-street parking for the proposed chancery.

The Embassy intends to use the subject premises for chancery purposes and to retain its existing chancery at 2737 Cathedral Avenue, N.W., as a chancery annex. Upon beginning operations at the new location, the Embassy will temporarily relocate its staff to the new chancery and close the Cathedral Avenue property for renovation, a process expected to take three months. After completion of the renovation, the consular and visa services office, which receives the majority of visitors to the chancery, will return to the Cathedral Avenue chancery annex.

The Embassy currently has a total of six diplomats and seven non-diplomatic staff, including two drivers. The Embassy does not anticipate adding new staff, except for a resident caretaker for the subject premises. After renovation of the Cathedral Avenue property, there will be up to seven diplomatic and non-diplomatic staff at the new chancery on a daily basis, including the resident caretaker. The remaining seven staff members will be posted at the Cathedral Avenue chancery annex. The typical hours of operation for the chancery are 9:00 a.m. to 5:00 p.m., Monday through Friday.

There are five cars with diplomatic license plates associated with the Embassy. Only two of the non-diplomatic staff have cars, both of which have local, non-diplomatic license plates. The Embassy has parking space for 12 to 15 cars at its Cathedral Avenue property.

The Embassy will provide parking space for four diplomatic cars in the driveway at the new chancery, and no non-diplomatic cars will be driven to the site.⁴ The driveway extends approximately 77 feet from the front lot line to a brick fence at the rear of the property. There is an additional 10 feet from the curb to the front lot line. Of the four diplomatic cars that will be parked at the proposed chancery, two cars are expected to arrive in the morning, remain parked throughout the day, and depart in the evening. The other two cars, the Ambassador's car and the Embassy staff car, both of which have assigned drivers, may be needed at various times throughout the day. The Embassy staff car will shuttle staff from the Cathedral Avenue chancery annex to the new chancery. In light of these arrangements, the Board finds that the Embassy will be able to move or shuffle the two cars easily and safely, with little or no impact on Kalorama Road, N.W., traffic.

The Board also considered the visual impact of the proposed parking arrangements. The driveway extends through a walled and built-over passageway to the rear of the lot, and is screened by mature trees and shrubs. Therefore, the parking of four vehicles in the driveway will not have a negative visual impact on the community. Further, given the length of the driveway, the parked vehicles will not block the sidewalk or otherwise occupy the area between the front lot line and the curb.

The Board also finds that the availability of on-street parking will not be adversely affected. First, the Embassy agreed not to request diplomatic parking privileges on Kalorama Road.

Second, the subject property is well-served by public transportation. Embassy staff and visitors who use public transportation will be able to continue to do so. Both the proposed chancery and the Cathedral Avenue chancery annex are within a 12-minute walk from the Woodley Park Metrorail station. The L1 bus route that operates along Connecticut Avenue includes eight buses southbound during the morning rush hour and

⁴ Since the subject property is certified as contributing to the Sheridan-Kalorama District, the Zoning Regulations do not require off-street parking. See 11 DCMR § 2100.5 (1995).

eight buses northbound during the evening rush hour. The Ambassador testified that the commuting patterns of the chancery staff who rely upon the bus for transportation coincide with the direction of the L1 bus route during rush hours. In addition, the 42, R41, and R42 bus lines operate nearby on Columbia Road. Taxis are also available in the area, given the number of hotels, restaurants, shops, offices, and other commercial uses both to the north and south along Connecticut Avenue.

Third, the existing Cathedral Avenue chancery receives very little visitor traffic, an average of three to four visitors per day for consular services and visas. There are on the average two visits per week for other purposes. Visitors typically arrive by taxi. The small number of visitors to the chancery can be attributed to the following: (1) All forms of business conducted by the public with the Embassy are typically conducted by mail, messenger, telephone, or fax; (2) Americans traveling to Benin typically apply for visas by mail; (3) the Beninese community in the Washington, D.C., area is relatively small; and (4) social functions are not hosted at the chancery. The consular and visa offices, which receive the majority of the chancery's visitors, will return to the Cathedral Avenue chancery annex upon completion of the three-month renovation project. As a result, the Embassy expects little visitor traffic to the proposed chancery.

The Board finds that, as conditioned by this Order, the proposed chancery will provide adequate parking due to (1) the small number of diplomats and staff to be posted at the proposed chancery; (2) the arrangements for on-site driveway parking for four vehicles with diplomatic license plates; (3) the availability of the Cathedral Avenue chancery annex on-site parking spaces and Embassy shuttle; (4) the availability and convenience of public transportation; (5) the Applicant's agreement not to request diplomatic on-street parking privileges; and (6) the small number of visitors the chancery expects to receive on a daily basis, which will decrease after completion of the Cathedral Avenue chancery annex renovations. Further, the Deputy Assistant Secretary of State has determined on behalf of the Secretary that there are no special security requirements related to parking in this case. Exh. 36. Based on the above, the Board concludes that the parking considerations specified in 11 DCMR § 1001.5 do not furnish grounds for disapproval of the application.

4. Security

Under 11 DCMR § 1001.6, the Board must "consider 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." The Deputy Assistant Secretary of State, after consultation with the federal agencies authorized to perform protective services, has determined on behalf of the Secretary that the subject site and area are capable of being adequately protected. Exh. 36. The Board finds accordingly that security concerns do not present grounds for disapproval of the application.

5. The Municipal Interest

Under 11 DCMR § 1001.7, the Board must “consider the municipal interest, as determined by the Mayor.” The Mayor of the District of Columbia has delegated authority to the Office of Planning to determine the municipal interest for purposes of Section 206 of the Foreign Missions Act. *See* Mayor’s Order 83-106 (Apr. 28, 1983). The Office of Planning questioned whether the proposed chancery was in the municipal interest, but did not make a recommendation as to the Board’s determination with respect to the municipal interest.

Based upon its analysis of traffic and neighborhood impacts, the Office of Planning expressed strong concerns that the application does not meet the criteria for location of a chancery in a D/R-1-B district. The Office of Planning concerns with respect to historic preservation, maintenance of the proposed chancery, and parking and traffic have been addressed above in sections 2 and 3 of the Board’s determination and will not be repeated here. The Office of Planning also raised the concern that the Sheridan-Kalorama area has become “saturated” with chanceries, such that the proposed new chancery would have a significant adverse impact on its residential character.

The Office of Planning concurs with ANC 1D that the subject property is “essentially a residential use area.” Councilmember David A. Catania also considered the Sheridan-Kalorama neighborhood as essentially a residential use area. Section 1104.1(t) of the Comprehensive Plan, Policies in Support of the Residential Neighborhood Objective, states District of Columbia policy to

Discourage the location of new chanceries and the expansion of existing chanceries in any area that is essentially a residential use area, consistent with section 206(b)(2) of the Foreign Missions Act, approved August 24, 1982 (96 Stat. 286, D.C. Code 5-1206(b)(2)).

There is an inherent tension in this policy, which on the one hand seeks to discourage the location of chanceries in essentially residential use areas and, on the other, recognizes that under Section 206(b)(2) of the Foreign Missions Act, chanceries are permitted to locate in any area zoned mixed-use diplomatic, subject to disapproval by the Board in accordance with the Section 206(d) chancery use criteria. While the Board cannot, consistent with Section 206(b)(2) of the Foreign Missions Act, disapprove this application to locate a chancery in a mixed-use diplomatic district on the grounds that the area that is essentially a residential use area, the Board has included in this order numerous conditions designed to maintain the premises in a manner consistent with the residential character of the neighborhood.

These conditions include requirements and restrictions relating to landscaping and maintenance, interior and exterior lighting, draperies and shades, deliveries and pick-up, storage and collection of trash, parking, social functions, resident caretaker services, security systems, brick fencing, telecommunications equipment and antennas, and

historic preservation. In addition, the Embassy of the Republic of Benin plans to retain a property management company to look after both the new chancery and the Cathedral Avenue chancery annex. The Office of Planning was not aware of the Embassy's plans to retain a resident caretaker and property management company until the December 8, 1999, hearing, and indicated at the hearing that these plans, if carried out, would overcome one of its major objections with respect to the application.

The Office of Planning also notes that while the Federal Elements of the Comprehensive Plan for the District of Columbia point to the Sheridan-Kalorama area as one where existing embassy locations may be retained and new embassy locations are to be encouraged "to preserve and enhance the residential character of the area," the zoning maps associated with the Comprehensive Plan place Square 2527, the square within which the proposed chancery is located, in an area generally appropriate for chancery use, subject to the Board's disapproval.⁵ In 1987, the Zoning Commission, in Zoning Commission Order No. 509, amended the Zoning Map by mapping that portion of Square 2527 zoned R-1-B with the Diplomatic (D) Overlay District. To be eligible for the D overlay designation, at least one-third of the square had to have office or institutional uses.

Since the mapping of the D Overlay District in 1987, apart from the approval of the Macedonian chancery on Wyoming Avenue, which has yet to be occupied, there have been no chancery applications for Square 2527. Moreover, the Embassy of the Arab Republic of Egypt, located at Thornton and Kalorama, has relocated to 1303 New Hampshire Avenue, N.W. There had been 25 staff members and 15 cars associated with the Egyptian Embassy use.

The Office of Planning and ANC 1D, nonetheless, urge the Board to consider the cumulative impact of the proposed Benin chancery use upon the Sheridan-Kalorama residential neighborhood. The determination in this case, while legislative in nature, requires the Board to apply the chancery use criteria on a site-specific basis. If the Board were to adopt a position that no additional chanceries should be permitted to locate in a neighborhood zoned mixed-use diplomatic because the neighborhood had reached a point of saturation with respect to such uses, it could be argued that the Board had abdicated its responsibility to examine each application on the merits and had invaded the policy-making function of the Zoning Commission in establishing the D Overlay District. *Cf. Sheridan-Kalorama Neighborhood Council, Inc. v. District of Columbia Board of Zoning Adjustment*, 341 A.2d 312, 318 n.8 (D.C. 1974) (discussing saturation in the context of an application for a special exception). The Board therefore makes no finding concerning whether the Sheridan-Kalorama area has become saturated with chanceries.

⁵ The Zoning Regulations define an "embassy" as the official residence of an ambassador; while a "chancery" consists of the principal offices of a foreign mission used for diplomatic purposes. *See* 11 DCMR § 199.1 (1995).

The Office of Planning also raised concerns about the enforceability of the conditions under which the Embassy has agreed to operate and which the Board has included in its order. For example, while acknowledging that the Embassy's proposed shuttle system is a reasonable solution to the parking issue, the Office of Planning points out that long-term monitoring is required to ensure that the new chancery can actually provide adequate parking.

Ronald S. Mlotek, Chief Legal Counsel, and Richard C. Massey, Office Director for Real Estate of the State Department's Office of Foreign Missions, addressed the question of enforcement. The State Department has taken the position that the Board can impose conditions, whether agreed-upon or not, in its determinations under the Foreign Missions Act. Under Section 206(g) of the Foreign Missions Act, 22 U.S.C.A. § 4306(g), D.C. Code § 5-1206(g), "The Secretary [of State] shall require foreign missions to comply substantially with District of Columbia building and related codes in a manner determined by the Secretary to be not inconsistent with the international obligations of the United States." When the Board includes conditions in its order on a chancery application, the State Department considers those conditions enforceable in the same manner and to the same extent as the building and related codes of the District of Columbia.

The State Department outlined the procedures that should be followed in the event of a violation or other community concern. The complaining party should first contact the pertinent embassy to discuss the matter. If that fails, the next step would be to request the relevant District of Columbia agency to investigate the matter and certify to the State Department that a violation has occurred. The State Department will then take up the matter diplomatically with the foreign mission. In the case of exigent circumstances, complaints should be referred directly to the State Department.

Finally, as observed in the Office of Planning report, the substantial presence of international organizations, embassies, and chanceries in Washington, D.C., as the Nation's Capital, shape the character and form of the District and add immeasurably to its diversity and richness. While the hearing on this matter included reference to a number of foreign missions that have allegedly become burdensome to the communities within which they have located, favorable action on this application will give the Republic of Benin, a developing country, the opportunity to dispel some of the preconceived, negative sentiments about foreign missions and their role within the District's neighborhoods.

The Embassy of the Republic of Benin has pledged to be a "place of peace and friendship" and a good neighbor. The Board believes the Embassy should be given the opportunity to work collaboratively and in harmony with the Sheridan-Kalorama neighborhood to address community issues of mutual concern. To that end, the Embassy has agreed to designate a community liaison, and this agreement has been incorporated into the Board's order.

For the reasons stated above, the Board concludes that the municipal interest does not require disapproval of the application.

6. The Federal Interest

Pursuant to 11 DCMR § 1001.8, the Board must “consider the federal interest, as determined by the Secretary of State.” The United States Department of State strongly supports the application. The Deputy Assistant Secretary of State, on behalf of the Secretary, determined that a favorable determination on this application would serve the federal interest. Exh. 36. At the public hearing, Ronald S. Mlotek, Chief Legal Counsel of the Office of Foreign Missions, emphasized the United States international obligation to facilitate the location of foreign chanceries in the nation’s capital as directly related to the reciprocal treatment of United States missions abroad. The Department of State explained that while the United States Embassy in Cotonou does not own any real property in Benin, the Government of the Republic of Benin has assured the United States that it is free to acquire, possess, and sell property in Benin. Further, the United States Embassy has enjoyed the support and cooperation of the Government of the Republic of Benin over the years in the management of its leased real estate interests. The Board concludes therefore that a favorable determination on the application will serve the federal interest.

THE ANC RECOMMENDATION

The subject site is located within the boundaries of the Sheridan-Kalorama Advisory Neighborhood Commission (ANC) 1D. By letter dated December 1, 1999, the ANC reported that at a duly-noticed public meeting with a quorum present, the ANC, by a vote of 2:0, recommended denial of the application based upon concerns relating to parking and traffic, historic preservation, the residential character of the neighborhood, and security. These concerns have been addressed throughout the Board’s determination, particularly in sections 2, 3, 4, and 5, relating to historic preservation; parking, including security; security; and the municipal interest. The Board is required to give “great weight” to the affected ANC’s recommendations. The Board has carefully and thoroughly considered the ANC’s recommendations, but for the reasons set forth below and elsewhere in this determination, does not find the recommendations persuasive.

As to parking, the record indicates that the 77-foot length of the driveway extends from the front lot line to the end of the driveway and does not include public space. The driveway is sufficiently long to accommodate four Embassy cars under the parking arrangements proposed by the Embassy and incorporated as a condition of this order.

The proposed parking arrangements are designed to allow the cars to be moved in a safe and orderly manner. Moreover, there will be no on-street diplomatic parking.

Given the small number of Embassy staff to be posted at the proposed chancery and the small number of expected visitors, the chancery will not adversely affect parking and traffic conditions in the neighborhood. No social functions will be held at the new chancery. Public transportation is readily accessible, and the Ambassador stated that Embassy staff commuting patterns coincide with the L1 bus schedule. While the owners of the subject property used to park one car in the driveway, any use of the property, even single-family residential use, would likely involve multiple vehicles and multiple persons. The ANC expressed concern regarding traffic impacts as related to the Q Street bridge construction. Upon completion of the construction in August 2000, normal traffic patterns should resume, with no added impacts from the proposed chancery.

The Embassy has agreed to numerous conditions, incorporated into this order, to maintain the historic and residential character of the subject property. The Embassy will retain a resident caretaker and property management company to keep the property in good repair, and funds have been committed for that purpose. The Ambassador explained that while the Embassy has outgrown its Cathedral Avenue chancery space, all diplomatic posts and staff positions have been filled. With the exception of the resident caretaker, there are no plans to add additional positions in the long-term future.

The State Department has determined that there are no special security requirements associated with the proposed location, and that the site is capable of being protected.

Finally, the Comprehensive Plan amendment referenced by the ANC was crafted to address the municipal interest in strengthening residential neighborhoods, subject to the federal interest in allowing chanceries to locate in areas, such as the subject area, that meet the requirements of Section 206(b)(2)(B) of the Foreign Missions Act.

While the Board has given great weight to the recommendations of the ANC, for the reasons stated above and throughout this determination, the Board has determined that the application should not be disapproved, subject to conditions designed to address community concerns.

ORDER

For the reasons stated above, the Board has determined that this application satisfies the chancery use criteria set forth in 11 DCMR § 1001. Accordingly, it is **ORDERED** that this application is **NOT DISAPPROVED**, subject to the following conditions:

1. The Embassy of the Republic of Benin will retain and maintain the residential features and appearance of the premises in a manner

consistent with the residential character of the neighborhood. This includes exterior landscaping and maintenance, interior lighting visible from Kalorama Road, N.W.; exterior lighting; use of draperies and/or shades in the windows; maintenance of the driveway and walkway; and only one small plaque adjacent to the front door to identify the premises as the Chancery of the Republic of Benin. No new fluorescent fixtures shall be installed in the building, but any such existing fixtures in the kitchens, bathrooms, and basement may remain.

2. Delivery and pick-up of equipment and supplies will be done during working hours and in a quiet and orderly manner. Trash will be stored in covered containers and put out only on the days designated for pick-up.
3. The driveway will normally be occupied by up to four cars per day. The Embassy of the Republic of Benin will not request diplomatic parking privileges on Kalorama Road, N.W.
4. The Embassy of the Republic of Benin will not hold social functions at the premises.
5. The Embassy of the Republic of Benin will have a caretaker reside at the chancery who will look after the premises.
6. Security systems will be installed and maintained on the premises. The existing brick fence along the front of the property will be maintained. No new security fencing will be placed around the front of the property along Kalorama Road, N.W. No exterior security cameras visible from outside the property will be installed.
7. No intrusive telecommunications equipment will be installed. No antennas will be installed, without first obtaining the necessary approvals.
8. The Embassy of the Republic of Benin will run a shuttle between its existing chancery located on Cathedral Avenue and its new chancery on Kalorama Road to accommodate those personnel who work at the Kalorama Road chancery but park at the Cathedral Avenue annex.
9. Any proposed future exterior alterations to the property must be approved by the Historic Preservation Review Board.

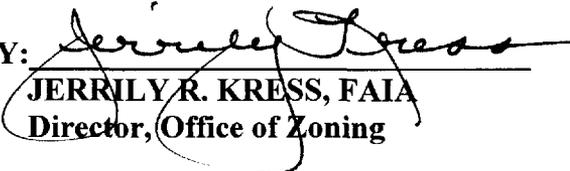
10. The Embassy shall designate a community liaison to work collaboratively with the residents of the Sheridan-Kalorama neighborhood on matters of mutual concern.

VOTE: 4:0 (Sheila Cross Reid, Robert N. Sockwell, John G. Parsons, and Reginald W. Griffith not to disapprove the application.)

**BY ORDER OF THE FOREIGN MISSIONS BOARD OF ZONING
ADJUSTMENT**

Each concurring member has approved the issuance of this Determination and Order and authorized the undersigned to execute this Determination and Order on his or her behalf.

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: MAR 17 2000

UNDER 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBSECTION 3125.6.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16519:

As Director of the Office of Zoning, I hereby certify and attest that on MAR 17 2000, a copy of foregoing Determination and Order in BZA Application No. 16519 was mailed first class, postage prepaid, or via D.C. Government interoffice mail, to the following parties and persons who appeared and participated in the public hearing concerning the matter:

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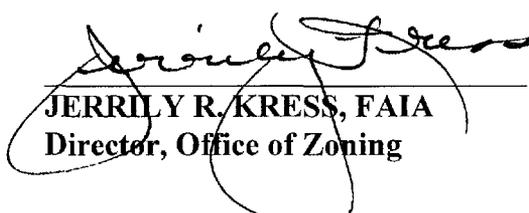
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ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning