

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Order No. 17907-A of Application No. 17907 of the Embassy of Spain**, pursuant to 11 DCMR § 1002, to permit the location of a chancery annex in the R-5-D District at premises 2801 16th Street, N.W. (Square 2577, Lot 821).

<b>HEARING DATE ON ORIGINAL APPLICATION:</b>	February 10, 2009
<b>DECISION DATE ON ORIGINAL APPLICATION:</b>	February 10, 2009
<b>FINAL ORDER ISSUANCE DATE (ORDER NO. 17907):</b>	May 1, 2009
<b>DECISION ON MOTION TO EXTEND ORDER:</b>	May 17, 2011

**ORDER ON MOTION TO EXTEND VALIDITY**  
**OF**  
**BOARD OF ZONING ADJUSTMENT ORDER NO. 17907**

On May 1, 2009, the Board of Zoning Adjustment (“BZA” or “Board”) issued a Notice of Final Rulemaking and Determination and Order (“Order”) not disapproving Application No. 17907 of the Embassy of Spain, to permit the location of a chancery annex in the R-5-D District at premises 2801 16th Street, N.W. (Square 2577, Lot 821). The action was taken pursuant to § 206 of the Foreign Missions Act (“FMA”), approved August 24, 1982 (96 Stat. 283; D.C. Official Code § 6-1306 (2008 Repl.) and Chapter 10 of the Zoning Regulations. These applications are referred to “chancery applications”. Pursuant to § 2125.9, the Order became effective on May 11, 2009.

At the very end of the Order, following the attestation of the then Acting Director of the Office of Zoning and the indication of its May 1, 2009 final order date, are four boilerplate paragraphs written in capitalized letters. These paragraphs have been routinely incorporated into Board orders by its staff. The second of these paragraphs states in full:

PUSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT  
BE VALID FOR MORE THAN TWO YEARS AFTER IT  
BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-

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YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

On March 24, 2011, counsel for the Applicant filed a written motion to extend the validity of the Order. However, the motion was unnecessary because § 3130 is not applicable to chancery applications and the erroneous insertion of the boilerplate paragraph did not cause that provision to apply to this one.

Chapter 31 of Title 11 contains the Board's rules of practice and procedures. Section 3134 establishes specific procedures for considering chancery applications and identifies those other provisions of the chapter that also apply. The relevant provisions of § 3134 are as follows:

- 3134.4 The provisions of §§ 3101, 3102, 3105, 3106, 3108 through 3111, and 3115 apply to applications under chapter 10 of this title, except that no person shall have the standing of a "party" in a proceeding under this section.
- 3134.5 Except as specifically incorporated in § 3134.6, the remaining provisions of this chapter shall not apply to applications under chapter 10 of this title.
- 3134.6 The following subsections apply to applications under chapter 10 of this title, except that no person shall have the standing of a "party" in a proceeding under this subsection:
  - (a) Applications: §§ 3113.3, 3113.4, and 3113.6 through 3113.10;
  - (b) Required Reports: §§ 3114.5 and 3114.6;
  - (c) Hearing Procedures: §§ 3117.7 through 3117.10;
  - (d) Records: §§ 3119.5 through 3119.8;
  - (e) Closing the Record: §§ 3121.5, 3121.9, 3124.2, and 3124.3; and
  - (f) Final decision and final date: §§ 3125.2, 3125.8, and 3125.9.

Since § 3130 is not among the provisions specifically made applicable to chancery applications by § 3134.4 nor among the provisions incorporated by § 3134.6, it follows that § 3130 is not applicable to this or any other chancery application. The boilerplate paragraphs at the end of Board orders do not have any independent legal significance, but are intended to be reminders of specific requirements contained within Chapter 31 or elsewhere. The erroneous insertion of the paragraph referencing § 3130 could not and did not make that provision applicable to this

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application. Thus, as a matter of law, the Order issued on May 1, 2009 had no two-year expiration date or any expiration date at all.

It was therefore unnecessary for the Applicant to request an extension of the validity of Order No. 17907 and its motion to do so is dismissed as unnecessary. However, to avoid confusion, the Board orders that the Order be modified to delete the second capitalized paragraph on page 7 and be re-issued as a corrected order.<sup>1</sup>

Accordingly, it is hereby **ORDERED** that:

- (1) The Order dated May 1, 2009 is modified to delete the second paragraph on page 7 and shall be re-issued as a "Corrected Order"; and,
- (2) The Applicant's Motion to extend the validity of the Order (Exhibit 40) shall be dismissed as moot.

**VOTE:**           4-0-1           (Nicole C. Sorg, Lloyd J. Jordan, Peter G. May, and Marcel A. Acosta by absentee ballot, all voting to Grant the motion to modify the underlying Order, and to Dismiss the Applicant's motion to extend; Meridith H. Moldenhauer not participating)

**BY THE BOARD OF ZONING ADJUSTMENT**  
Each concurring member approved the issuance of this order.

ATTESTED BY: \_\_\_\_\_

  
**RICHARD S. NERO, JR.**  
Acting Director, Office of Zoning

**FINAL DATE OF ORDER:**     AUG 31 2011    

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

<sup>1</sup> The Corrected Order will be referred to as No. 17907-B.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



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As Director of the Office of Zoning, I hereby certify and attest that on August 31, 2011, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail or delivered by electronic mail in the case of those ANCs and SMDs that have opted to receive notices thusly, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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**ATTESTED BY:**



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**RICHARD S. NERO, JR.**  
**Acting Director, Office of Zoning**