

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



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).

NOTICE OF FINAL RULEMAKING

and

DETERMINATION AND ORDER

The Board of Zoning Adjustment (Board), pursuant to the authority set forth in section 206 of the Foreign Missions Act (FMA), approved August 24, 1982 (96 Stat. 283; D.C. Official Code § 6-1306 (2001)), and Chapter 10 of the Zoning Regulations of the District of Columbia, DCMR Title 11, hereby gives notice of the adoption of its determination not to disapprove the application of the Embassy of Spain (Applicant) to use the building located at 2801 16th Street, N.W., as a chancery annex and for certain public space improvements.

PRELIMINARY MATTERS

The Application

On October 31, 2008, the Applicant filed a chancery application with the Board. (Exhibit 3) The application was filed by the law firm of Holland & Knight, LLP, which was authorized to represent the Applicant before the Board. (Exhibit 8). Pursuant to 11 DCMR § 3134.7, the application was accompanied by a letter from the United States Department of State certifying that the Applicant had complied with the FMA and that the application could be submitted to the Board. (Exhibit 1)

Notice of Proposed Rulemaking

Notice of the filing of the application and a notice of proposed rulemaking were published in the *D.C. Register* on November 14, 2008 (55 DCR 011932 and 55 DCR 011922, respectively). In accordance with the Zoning Regulations, the Board provided written notice to the public more than 40 days in advance of the public hearing. 11 DCMR §§ 3113.13 and 3134.9(c). The Office of Zoning provided notice of the filing of the application on October 31, 2008 to the District of

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Columbia Department of Transportation (DDOT) and the Ward 1 Councilmember, on November 3, 2008 to the United States Department of State, and on November 4, 2008 to the District of Columbia Office of Planning (OP), the Advisory Neighborhood Commission (ANC) 1B (the ANC for the area within which the subject property is located), and the ANC Commissioner for the affected Single Member District. The Office of Zoning scheduled a public hearing on the application for February 10, 2009, and mailed a copy of the notice of hearing to the Applicant, ANC 1B, and to all property owners within 200 feet of the subject property. In addition, on January 22, 2009, the Applicant posted notice on the property in plain view of the public in accordance with 11 DCMR § 3113. (Exhibit 30).

Government Reports

State Department

The State Department submitted a favorable report regarding the application (Exhibit 29) and noted, among other things, that the Spanish government and the City of Madrid had both assisted with the zoning and land-use needs of the U.S. Embassy in Madrid and its consular post in Barcelona. In addition, Richard Massey appeared at the hearing on the Department's behalf. He testified that no special security requirements were associated with the establishment of a chancery annex at the property.

District Department of Transportation (DDOT)

DDOT submitted a report in support of the application, noting that the nine parking spaces proposed by the Applicant were sufficient for the proposed chancery annex. (Exhibit 35). However, DDOT also expressed concern regarding pedestrian safety along 16th Street, where an existing circular driveway is located. Because of this concern, DDOT requested that the Board "require the [A]pplicant to provide staff members at each 16th Street curb cut entrance thirty minutes before an event commences and after an event concludes." (Exhibit 35)

Office of Planning (OP)

OP found that the proposed use would generally be compatible with the surrounding uses and area. The OP report recommended approval of the application, subject to the Applicant addressing the above concerns expressed by DDOT. (Exhibit 34). However, the OP representative, Maxine Brown-Roberts, changed OP's recommendation regarding the DDOT concerns in light of a proffer from the Applicant. At the public hearing, the Applicant's counsel stated that removable bollards would be placed at both ends of the circular driveway, precluding vehicular access and ensuring pedestrian safety. Furthermore, the Applicant stated that the bollards would be removed only during very limited special events involving dignitaries such as the Royal Family or the U.S. President. Ms. Brown-Roberts stated that these measures would ensure pedestrian safety and she also thought that DDOT would be "comfortable" with this proposal from the Applicant. She did suggest that the Board consider imposing a condition which would require the bollards to remain in place at the driveway.

Advisory Neighborhood Commission (ANC)

As stated above, ANC 1D was notified of the filing and was sent a copy of the application. (Exhibit 19). The ANC was also advised to file a written report detailing its issues and concerns, in accordance with 11 DCMR 3115 (Exhibit 19). The ANC did not appear at the public hearing. However, the ANC did file a written report in support of the application, noting that the Applicant would make several public space improvements which would enliven this block of 16th Street. (Exhibit 33)

Persons in Support/ Persons in Opposition

No persons appeared at the hearing in support or in opposition of the application.

THE SITE AND AREA DESCRIPTION

The subject property is located at 2801 16th Street, N.W. (Square 2577, Lot 821). The property has a lot area of 29, 995 square feet and is zoned R-5-D. The principal building on the property, which fronts on 16th Street, N.W., is a vacant three-story masonry building, which was formerly used as the Ambassador's residence. The property is also improved with a vacant two-story masonry building, which fronts on 15th Street, N.W., which was formerly the chancery, and a one-story, two-car garage. The property is within the Columbia Heights neighborhood, which has a variety of uses and building types, including apartments, condominiums, row houses, and institutional uses. Building heights vary from two to three stories for row houses, four or five stories for larger historic buildings, and up to nine stories for apartment and condominium buildings. Other countries having chanceries or embassies in the area include Poland, Cuba, and Lithuania. (OP Report, Exhibit 34)

THE PROPOSED CHANCERY USE

Description of the Use

The Applicant proposes to establish a chancery annex at the principal building, in the form of a "Spanish Cultural Center". The use will include diplomatic, cultural, and educational uses, and will operate in a manner similar to the adjacent Mexican Cultural Institute. As shown on the plans, the building includes spaces to be used exclusively by diplomatic staff, as well as spaces that will be open to the public. The anticipated cultural uses will be primarily tailored to students, researchers, specialists, and representatives of institutions. Events will include visual arts, performing arts, film, video, music language, literature, humanities, as well as social, political and economic issues. In addition to the basic events, the building will include an Information and Documentation Center, which will be available during certain hours for researching bibliographic material, video, image and audio archives on contemporary Spain, Spanish culture, and other issues. The Education office will also respond to requests for

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counseling on U.S./Spain education issues and academic certifications, and will organize other educational activities aimed at Spanish citizens residing in the area. (Exhibit 6)

The Applicant anticipates hosting two or three special events per year. The events will be of short duration – one to three hours—and may attract up to 500 people, depending upon the event. The dates and times of these special events will be coordinated with the adjacent Mexican Cultural Institute in order to allow each organization to use the maximum amount of parking available on both sites. (Exhibit 6)

The Proposed Renovation

As shown on the submitted plans, the Applicant intends to renovate the interior and exterior of the existing principal building, to remove portions of the building and add to the rear of the building, to remove the garage, and to renovate and upgrade a number of public space improvements along 16th Street.

The proposed Spanish Cultural Center will include exhibit space, multi-purpose rooms, and diplomatic offices. The cellar level will include security, mechanical and storage space. The first level will be used primarily for public functions, and will include multiple exhibit spaces, a multi-purpose room, and a small café. The second level will house several diplomatic offices, workrooms, and meeting spaces. The third level will include several offices, and will include multiple conference rooms and workspaces. Approximately 3,546 square feet of gross floor area will be added to the rear of the building, to include the café and kitchen, plus circulation, multi-purpose rooms and a small amount of office space.

As to the exterior building elements, the roofing will be replaced to match the original materials where architecturally significant; and, the new construction at the rear of the building will have a stucco finish to match the existing façade, and the existing stucco finish will be repaired or replaced where necessary. All existing windows will be re-glazed with thermal glass, and in some cases the entire window will be replaced with new windows to match the original windows.

The proposed improvements to the public space are shown on Sheet A2.1 of the plans dated February 10, 2009. These improvements include: the removal of the non-original fencing along 15th, 16th, and Fuller Streets, and replacement with new decorative fencing, the repair and repaving of the concrete driveway on 16th Street, the construction of a new accessible walkway at the corner of 16th and Fuller Streets, rebuilding the monumental entry stairs from the sidewalk to the building entrance, and removal of unhealthy and overgrown trees and shrubs with new landscaping.

Parking

The property currently includes a small two-car parking garage. As part of the redevelopment, the Applicant proposes to remove the garage and locate nine surface parking spaces at the rear of the property. In addition, the Applicant is entering into a shared parking agreement with the

Mexican Cultural Institute, which is located to the immediate north of the property, to share parking spaces during special events. The Mexican Cultural Institute currently has 18 surface parking spaces at the northern portion of the property that will be made available for shared use. The agreement also contemplates that the two entities will coordinate so as not to have special events at the same time. Thus, a total of 27 parking spaces will be available to both institutions during special events. (Exhibit 6)

DECISION

Pursuant to § 1000.6 of the Zoning Regulations, a chancery is a permitted use in the R-5-D District, subject to disapproval by the Board of Zoning Adjustment pursuant to the criteria established in § 206(d) of the FMA, and incorporated into § 1002 of the Regulations. Section 206 (d) of the FMA establishes six exclusive criteria upon which the Board must base its determination regarding the specific merits of a particular chancery location. The Board must accept the findings of the Secretary of State with respect to criteria 3, 4, and 6, and it must accept the findings of the Mayor for criteria 7. As will be explained below, the Board has determined that the Project should not be disapproved because it meets all of these criteria.

Criteria 1 -- International Obligation of the United States

As asserted by the State Department, favorable action on the application will fulfill the international obligation of the United States to facilitate the acquisition of adequate and secure facilities by the Kingdom of Spain for its diplomatic mission in the Nation's Capital. (Exhibit 29).

Criteria 2 -- Historic Preservation (as determined by the BZA)

The Property is not located in an historic district and it is not a historic landmark. Accordingly, District and federal regulations governing historic preservation are not applicable in this case. However, as indicated in OP's report, the property is included in a proposed Meridian Hill Historic District which is contemplated for the future. Given these circumstances, the Applicant worked with a historic preservation consultant, and met with the staff of the District's Historic Preservation Office regarding the exterior improvements to the building and the site. According to OP, the proposed plans call for a "sensitive rehabilitation" of the building.

Criteria 3 -- Adequacy of Parking (subject to such special security requirements as may be determined by the Secretary)

Parking at the chancery will not technically comply with the Zoning Regulations, which require 19 spaces for the proposed use. However, the Board finds that parking at the site will be adequate. As discussed above, the Applicant will provide nine surface parking spaces at the rear of the building to be reserved for staff use. In addition, the Applicant has entered into a shared parking agreement with the adjacent Mexican Cultural Institute, which provides an additional 18 surface parking spaces. The Applicant will also rely upon valet parking at the nearby

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Washington Family Church and Scottish Rite Center during special events, off-street parking at the DC USA parking garage, and the availability of public transportation using the Columbia Heights Metrorail station and multiple metrobus lines along 16th Street. The State Department has determined that no special security requirements exist relating to parking. (Exhibit 29).

Criteria 4 -- The Extent to which the Area is Capable of being Adequately Protected (as determined by the Secretary)

The Department of State has determined that the Property is capable of being adequately protected. (Exhibit 29).

Criteria 5 -- The Municipal Interest (as Determined by the Mayor)

The Office of Planning, on behalf of the Mayor, has determined that approval of the project will be in the municipal interest. As noted above, OP found that the proposed use would generally be compatible with the surrounding uses and area, and noted that the proposed project includes various public space improvements adjacent to the property. Also, as discussed with respect to criteria no. 3, the parking at the proposed chancery use will be adequate. Although OP did note DDOT's concerns with respect to pedestrian safety along 16th Street, OP testified that it was satisfied with the Applicant's proposal to locate removable bollards at the two existing circular driveway entrances on 16th Street. The bollards (depicted on the Applicant's revised site plan) will preclude vehicles from crossing the public space and entering the driveway at all times when the bollards are in place, thereby ensuring pedestrian safety. The bollards will be removed only to provide a more secure entrance for visiting dignitaries.¹ The State Department representative testified that in those instances, there will be federal protection at the driveway entrances.

Criteria 6 -- The Federal Interest (as determined by the Secretary)

The State Department has determined that approval of this application would serve the federal interest because the Spanish Government and the City of Madrid have assisted with the zoning and land-use needs of the U.S. Embassy in Madrid and its consular post in Barcelona. This cooperation allowed the State Department to successfully complete a perimeter security upgrade in Madrid and will allow a similar security upgrade that is planned in Barcelona.

Public Space Improvements.

The public space improvements described above would normally be considered by the Public Space Committee. However, in *Application No. 17886 of the Republic of South Africa*, 56 DCR 2295 (2009), the Board concluded that it had the "jurisdiction to consider the proposed uses of public space that are intrinsically related to other aspects of a chancery application pursuant to the FMA". *Id. at 2298*. At the request of the Applicant, and with the concurrence of DDOT, the

¹ The Board considered imposing a condition regarding placement of the bollards. However, given the Applicant's representations (including the bollards depicted on the site plan), and OP's statement of approval, the Board finds that the FMA criteria relating to the municipal interest will be satisfied without a condition.

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Board has reviewed the proposed public space improvements that are part of this application, finds them to be appropriate, and accordingly, includes them as part of its determination in this application.

Accordingly, it is hereby **ORDERED** that this application is **NOT DISAPPROVED**.

Vote of the Board of Zoning Adjustment constituted in accordance with the Foreign Missions Act taken at its special public meeting on February 10, 2009, not to disapprove the application.

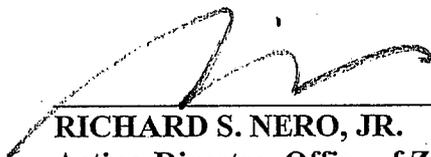
This Notice of Final Rulemaking and Determination and Order were **ADOPTED** by the Board of Zoning Adjustment at its public meeting on February 10, 2009.

VOTE: 5-0-0 (Ruthanne G. Miller, Marc D. Loud, Mary Oates Walker, Peter G. May, and Marcel A. Acosta, all voting to not disapprove)

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: MAY 01 2009

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.

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

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

SG

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 **MAY 1, 2009**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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