

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Revised Notice of Final Rulemaking and Order No. 18131-A in Application No. 18131 of the Embassy of the People’s Republic of China. The application is pursuant to 11 DCMR § 1002, to permit the construction of a new chancery and embassy staff residential building, as a replacement for an existing chancery and embassy staff residential building in the R-1-B and R-5-D Districts at premises 2300-2310 Connecticut Avenue, N.W. (Square 2526, Lot 197).

REVISED NOTICE OF FINAL RULEMAKING

and

DETERMINATION AND ORDER

The Board of Zoning Adjustment (“Board”), pursuant to the authority set forth in § 206 of the Foreign Missions Act, approved August 24, 1982 (96 Stat. 283; D.C. Official Code § 6-1306) (2008 Repl.) (“FMA”), and Chapter 10 of the Zoning Regulations of the District of Columbia, (11 DCMR), and after having held a public hearing, hereby gives notice of the adoption of its determination to not disapprove the application of the Embassy of the People’s Republic of China (“Applicant”) to permit the construction of a new chancery and embassy staff residential building, as a replacement for an existing chancery and embassy staff residential building, in the R-1-B and R-5-D Districts at premises 2300-2310 Connecticut Avenue, N.W. (Square 2526, Lot 197).

The Board's original Notice and Order was published in the February 11, 2011 edition of the *District of Columbia Register*. The Board subsequently became aware that the Notice and Order did not fully describe the scope of the public space improvements requested by the Applicant, all of which the Board intended not to disapprove. In order to ensure that there is no ambiguity concerning the extent of the authorization intended, the Board is issuing this revised order. No other changes have been made to the original Notice and Order.

A notice of proposed rulemaking was published in the August 20, 2010 edition of the *D.C. Register* (57 DCR 7807). No comments were received in response.

Pursuant to § 206(d) of the Foreign Missions Act, D.C. Official Code § 6-1306(d), the Board’s consideration of chancery applications is based exclusively upon the six factors delineated in that

provision. For certain of these factors, the provision also indicates who is to make the relevant finding. Those factors and the relevant findings are as follows:

1. The international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation's Capital.

As recommended by the Secretary of State, the Board finds that favorable action on the application will fulfill the international obligation of the United States to facilitate the acquisition of adequate and secure premises by the Government of the People's Republic of China for its diplomatic mission in the Nation's Capital. (Exhibit 38, Letter from U.S. Department of State.)

2. Historic preservation, as determined by the Board of Zoning Adjustment in carrying out this section; and in order to ensure compatibility with historic landmarks and 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.

The Board must first determine whether there has been substantial compliance with applicable historic preservation regulations. While "substantial compliance" is not defined in the FMA or the Zoning Regulations, in *Sheridan-Kalorama Historical Ass'n. v. Christopher*, 49 F.3d 750, 311 U.S. App. D.C. 16 (D.C. Cir. 1995), the United States Court of Appeals for the District of Columbia Circuit noted that "'compliance' with these laws is not as much a matter of meeting any specific standard as it is of submitting the proposal to the appropriate regulatory body or bodies for review and comment," 49 F.3d at 759, 311 U.S. App. D.C. at 25. In that case, the court found substantial compliance through the referral of the application to the Mayor's Agent for Historic Preservation. At present, the Mayor has made the Director of the Office of Planning ("OP") his agent for carrying out his historic preservation responsibilities and, as noted, notice of this application was provided to the OP, which stated that the State Historic Preservation Officer, located within OP, had no concerns with the Applicant's proposal. (Exhibit 35, OP Report.)

Further, the United States Commission of Fine Arts, which has authority to review this application pursuant to the Shipstead-Luce Act, approved May 16, 1930 (46 Stat. 366; D.C. Official Code § 6-611.01), has reviewed and approved the concept design for the Applicant's proposed new embassy and chancery residential building. (Exhibit 52.)

Therefore, substantial compliance has occurred.

3. 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 such special security requirements as may be determined by the Secretary of State, after consultation with Federal agencies authorized to perform protective services.

The Applicant's proposed new building will provide 154 below-ground parking spaces when 58 are required by the Zoning Regulations. The building will also provide 69 bicycle parking

spaces, and is well-served by public transit. Several Metrobus lines service Connecticut Avenue and Calvert Street, within a five minute walk to the site. The site is also 0.4 miles south of the Woodley Park Metrorail station and 0.6 miles north of the Dupont Circle Metrorail station. Therefore, the Board finds that adequate parking and public transportation exist to service the expanded residential/chancery use.

After consultation with Federal agencies authorized to perform protective services, the Secretary of State has determined that there exist no special security requirements relating to parking in this case. (Exhibit 38.)

4. 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.

After consultation with Federal agencies authorized to perform protective services, the Secretary of State has determined that, after the installation of the proposed security fence, which has an average height of approximately nine feet, six inches, the subject property and area are capable of being adequately protected. (Exhibit 38.)

5. The municipal interest, as determined by the Mayor.

The Director of OP, on behalf of the Mayor of the District of Columbia, has determined that favorable action on this application is in the municipal interest and is consistent with the Comprehensive Plan. (Exhibit 35.)

Specifically, as a result of this determination, the Applicant will be permitted to demolish the building at 2300 Connecticut Avenue, which is a non-contributing resource to the Sheridan-Kalorama Historic District. The building at 2310 Connecticut Avenue is a contributing resource to the Historic District, and the Applicant will be permitted to remove all its interior structural elements while retaining the north and east façades and a portion of the south façade, and incorporating them into a new building on the site. The new building will incorporate both residential and chancery office uses.

In addition, the Applicant will be permitted to include in the project the various public space features shown on the plans submitted in this application (Exhibit 31-C, as revised by Exhibit 48), including but not limited to new sidewalks and planter areas, tree box modifications, the repaving of Belmont Road adjacent to the site for primary vehicular and truck access to the site, as well as knee walls, retaining walls, security fences, and fence piers ranging from approximately eight and one-half feet to approximately 12 feet in height, plus the entrance canopy, curb cuts, bicycle racks, a circular drive, and spherical bollards - all in the public space.

6. The Federal interest, as determined by the Secretary of State.

Pursuant to Annex I of the *Agreement Between the Government of the United States of America*

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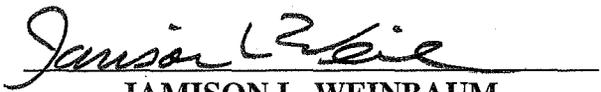
and The Government of the People's Republic of China on the Conditions of Construction of Diplomatic and Consular Complexes in the People's Republic of China and the United States of America, signed August 20, 2009, the Government of the People's Republic of China is not obligated to grant the necessary approvals for the construction of a planned annex to the Chancery of the U.S. Embassy in Beijing until after the Board has determined not to disapprove this application. Further, both the Government of the People's Republic of China and the cities of Beijing and Guangzhou have, in the recent past, assisted and favorably approved the zoning and land-use requests of the U.S. Embassy and the Consular Post in Guangzhou. Therefore, the Secretary of State has determined that a favorable decision on this application would serve the Federal interest. (Exhibit 38.)

Having considered and balanced the above factors, it is hereby **ORDERED** that this application (pursuant to Plans - Exhibit 31-C, as revised by Exhibit 48) is **NOT DISAPPROVED**.

Vote of the Board of Zoning Adjustment taken at its public meeting on December 14, 2010, Not to Disapprove the application:

VOTE: **4-0-1** (Meridith H. Moldenhauer, Nicole C. Sorg, Peter G. May, and Marcel C. Acosta Not to Disapprove; No other Board member member (vacant) participating)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

ATTESTED BY: 
JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: MAY 18 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.

APPROVAL OF THIS 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. THE APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED

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AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
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As Director of the Office of Zoning, I hereby certify and attest that on May 18, 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, 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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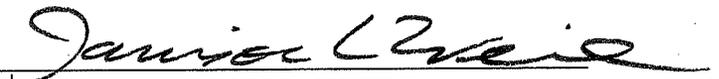
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