

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18136 of the Government of the United Arab Emirates, pursuant to 11 DCMR § 1002, to permit the renovation and expansion of an existing embassy building for chancery use in the D/R-3 District at premises 2406 Massachusetts Avenue, N.W. (Square 2507, Lot 52).

NOTICE OF FINAL RULEMAKING

and

DETERMINATION AND ORDER

The Board of Zoning Adjustment (“Board” or “BZA”), 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 Government of the United Arab Emirates (“Applicant”) to permit an addition to, and renovation and conversion of, an existing vacant embassy building into a chancery annex, in the D/R-3 Zone District, at premises 2406 Massachusetts Avenue, N.W. (Square 2507, Lot 52). The Board’s decision also includes its determination not to disapprove relief from strict compliance with §§ 400.7(b), 411.3, 403.2, 2001.3(a), (b)(1), 2101.1, and 2117.4 of the Zoning Regulations (11 DCMR).

Specifically, as a result of this determination, the Applicant will be permitted to convert the former ambassador’s residence, now vacant, into a chancery annex, housing an entrance lobby, office uses, and conference rooms. This determination will also permit the Applicant to add a rear addition to the subject building. The addition will be set away from the rear of the existing building, leaving an open garden court between the existing building and the addition. The addition will be connected to the original building by two corridors, one at each end of the addition, and one of which is essentially a bridge, connecting only the second and third floors of the two parts of the building. The addition will be minimally visible from Massachusetts Avenue, but exterior renovation work on the existing building will restore it to its original appearance.

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The existing building is nonconforming under several aspects of the Zoning Regulations, including height and lot occupancy. These nonconformities would trigger the need for relief from 11 DCMR § 2001.3(a) and (b)(1), which control additions to structures already nonconforming for lot occupancy and “use and structure requirements,” respectively.

Further, the construction of the addition will cause noncompliance with other Zoning Regulations. The addition will increase the lot occupancy of the building from 41% to 64%, causing noncompliance with 11 DCMR § 403.2, which mandates a maximum lot occupancy of 40% in this R-3 Zone. The building will have two roof structures, when only one is permitted by § 411.3, and neither of these roof structures will be set back from all exterior walls a distance equal to its height above the roof, as required by § 400.7(b). Also, as discussed below, the Zoning Regulations would require 17 parking spaces based on the floor area of the building with addition, while 10 spaces will be provided. The number of spaces permitted is ultimately to be determined by the Board pursuant to § 2101.1, so no specific zoning relief would be necessary to permit a diminution to 10 spaces, but relief would be necessary to permit the spaces to be reached via an elevator, when § 2117.4 requires direct accessibility via a private driveway.

A notice of proposed rulemaking was published in the August 27, 2010 edition of the *D.C. Register* (57 DCR 7938). No comments were received in response.

Pursuant to § 206(d) of the FMA, 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 United Arab Emirates for its diplomatic mission in the Nation's Capital. (Exhibit 29, 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 subject building, constructed in 1912, is in the Massachusetts Avenue Historic District and is a contributing building thereto.

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The Board must 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 that it was “sufficient” for the BZA “to submit [the] proposal to the HPRB and to consider that body’s advice in making its final determination regarding the proposal.” *Id.*

However, that appeal did not involve an instance where the United States Commission of Fine Arts (“CFA”) has jurisdiction over a project. The CFA has jurisdiction over this project pursuant to the Shipstead-Luce Act, approved May 16, 1930 (46 Stat. 366; D.C. Official Code § 6-611.01). Therefore, in this case, both § 6(b) of the Historic Landmark and Historic District Protection Act of 1978 (the “HP Act”), effective March 3, 1979 (D.C. Law 2-144; D.C. Official Code § 6-1105 (b)), and § 316 of Subtitle 10-C of the DCMR (Historic Preservation) require referral to the CFA in all instances, and allow for a discretionary referral to the Historic Preservation Review Board (“HPRB”). Accordingly, this application was referred to the CFA, which reviewed and approved the concept design for the Applicant’s proposal. (Exhibit 37.)

Notice of this application was also provided to the Office of Planning (“OP”) which provides administrative support for the HPRB. OP advised the Board that HPRB, which OP described in its report as the State Historic Preservation Officer, had no concerns with the Applicant’s proposal. (Exhibit 31, OP Report.)

The Board considers the actions of the CFA and the HPRB as their recommendations that the Board has concluded that historic preservation concerns have been satisfied.

The Board considered this advice and, for the following reasons, agreed.

Section 6 of the HP Act, effective March 3, 1979 (D.C. Law 2-144; D.C. Official Code § 6-1105) provides that no building permit to alter a property located in a historic district may be issued unless its issuance is necessary in the public interest, or that failure to issue the permit will result in unreasonable economic hardship to the owner. The term “necessary in the public interest” is defined to mean “consistent with the purposes of this subchapter as set forth in § 6-1101(b) or necessary to allow the construction of a project of special merit.” § 3 (10) of the HP Act, as codified at D.C. Official Code § 6-1102 (10).

The Board finds that the proposed alterations are consistent with the relevant purposes set forth at D.C. Official Code § 6-1101 (b), which are:

- (A) To retain and enhance those properties which contribute to the character of the historic district and to encourage their adaptation for current use; and

- (B) To assure that alterations of existing structures are compatible with the character of the historic district.

As noted, the addition will be minimally visible from Massachusetts Avenue, and the exterior renovation work on the existing building will restore it to its original appearance.

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 proposal will provide 10 below-ground parking spaces when 17 are required by the Zoning Regulations. The parking spaces will be accessed by an automobile elevator, but because only chancery employees will be parking in these spaces, there will not be repeated in-and-out traffic, and this elevator is a sufficient means of access. Within the below-grade garage there will also be space for 10 bicycles and a locker and shower area to facilitate bicycle use. The existing semi-circular driveway in the front of the building provides space for short-term parking and for drop-off and pick-up without interrupting traffic flow on Massachusetts Avenue. There is adequate public transportation in the immediate area, with five Metrobus lines running along Massachusetts Avenue, and the Dupont Circle Metro Station approximately five blocks away. The Applicant is also proposing to run a shuttle between its main chancery at International Place and the subject property. Those employees who do not take public transit and cannot park on the subject property will be directed to drive to, and park at, the main chancery and to take the shuttle. In addition, the Applicant will institute a Traffic Management Plan which includes measures to help limit automobile traffic to the subject property. Therefore, the Board finds that adequate parking and public transportation exist to service the 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 29.)

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 the subject property and area are capable of being adequately protected. (Exhibit 29.)

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

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Comprehensive Plan, including permitting certain deviations from strict compliance with the Zoning Regulations, which are set forth in the OP Report at page 3. (Exhibit No. 31.)

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

Both the Government of the United Arab Emirates and the Emirates of Abu Dhabi and Dubai have, in the recent past, assisted and favorably approved the zoning and land-use requests of the U.S. Embassy and its consular post in Dubai. Therefore, the Secretary of State has determined that a favorable decision on this application would serve the Federal interest. (Exhibit 29.)

Having considered and balanced the above factors, it is hereby **ORDERED** that this application, pursuant to Exhibit 30A, Architectural Plans and Elevations, is **NOT DISAPPROVED**.

Vote of the Board of Zoning Adjustment taken at its public meeting on January 25, 2011, 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 (vacant) participating)

BY 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: **FEB 10 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.

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.

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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.

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.

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As Director of the Office of Zoning, I hereby certify and attest that on FEB 10 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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