

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19091 of the Embassy of the Kyrgyz Republic, pursuant to 11 DCMR § 1002, to allow a rear deck at an existing chancery in the D/R-3 District at premises 2360 Massachusetts Avenue, N.W. (Square 2507, Lot 50).

HEARING DATE: September 22, 2015
DECISION DATES: September 22, 2015 and February 23, 2016

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 (“FMA”), approved August 24, 1982 (96 Stat. 283; D.C. Official Code § 6-1306, and Chapter 10 of the Zoning Regulations of the District of Columbia (11 DCMR), hereby gives notice of the adoption of its determination not to disapprove the application of the Embassy of the Kyrgyz Republic (the “Applicant”) to allow a rear deck addition to an existing chancery at property located in the D/R-3 zone district at 2360 Massachusetts Avenue, N.W. (Square 2507, Lot 50) (the “subject property”).¹

PRELIMINARY MATTERS

The Application

On July 17, 2015, the Applicant filed a chancery application with the Board. (Exhibit 1.) Pursuant to 11 DCMR § 3134.7, the application was accompanied by a letter from the United

¹ A referral memorandum from the Office of the Zoning Administrator in this proceeding stated the need for a special exception pursuant to § 1002.1 to allow the conversion of an existing one-family dwelling into a chancery in D/R-3 and a variance from § 403.2 to allow a deck and patio extension in excess of the maximum permitted lot occupancy. (*see* Exhibit 2.) However, since the chancery use was previously established at the subject property (*see* Application No. 17543 (order issued January 24, 2007)), the Board considered the requested relief as a chancery application. *See Embassy of the People's Republic of Benin v. D.C. Bd. of Zoning Adjustment*, 534 A.2d 310, 318 (D.C. 1987) (Foreign Missions Act “exclusive procedure available to [chanceries] to obtain a special exception.”)

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States Department of State certifying the Applicant had complied with § 205 of the Foreign Mission Act (22 USC § 4305) and that the application could be submitted to the Board. (Exhibit 26.)

Notice Procedures

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).) On July 29, 2015, the Office of Zoning provided notice of the filing of the application to the United States Department of State (Exhibit 17) and to the District of Columbia Office of Planning (Exhibit 13), Advisory Neighborhood Commission (“ANC”) 2D, whose boundaries encompass the subject property (Exhibit 14), the Single Member District member for ANC 2D02 (Exhibit 15), the District Department of Transportation (Exhibit 16), and the Councilmember for Ward 2 (Exhibit 18). The Office of Zoning scheduled a public hearing on the application for September 22, 2015 and mailed a copy of the notice of hearing to the Applicant (Exhibit 22), ANC 2D (Exhibit 23), and the owners of all property within 200 feet of the subject property (Exhibits 24-25) as well as to the Department of State (Exhibit 19), the National Capital Planning Commission (Exhibit 20), and the Commission of Fine Arts (Exhibit 21). Notice of the hearing was published in the *D.C. Register* on August 7, 2015 (62 DCR 10669) and September 4, 2015. (62 DCR 12047.) In addition, the Applicant posted notice on the property in plain view of the public in accordance with 11 DCMR § 3113. (Exhibit 30.)

Notice of Proposed Rulemaking

After the September 22, 2015 hearing and decision, the Board learned that a Notice of Proposed Rulemaking had not been published in the *D.C. Register* for this application, as is required by D.C. Official Code § 2-505. A Notice of Proposed Rulemaking was subsequently published on January 15, 2016 in order to meet this requirement. (63 DCR 659.) Accordingly, the record was reopened to allow for a 15-day comment period. During this time, no public comments were submitted to the record. On February 23, 2016, the Board reopened the record for further deliberations on this application to address any comments filed in response to the Notice of Proposed Rulemaking. As no public comments were received, the Board made a motion to rescind its prior vote and again voted to not disapprove the application.

The Subject Property

The property that is the subject of this application is located at 2360 Massachusetts Avenue, N.W. (Square 2507, Lot 50), within the R-3 zone district and the Mixed Use Diplomatic (D) overlay district. The Applicant has owned the property since 2005 and was permitted to establish a chancery at the subject property in 2007. *See* Application No. 17543 (order issued January 24, 2007). The Embassy of the Kyrgyz Republic is a diplomatic mission with six diplomats, including the ambassador, and two administrative staff members.

The Applicant's Proposal

In this application, the Applicant proposes to construct a rear deck addition to the chancery building. According to the Applicant, a retaining wall was needed to address a potential risk of erosion at the rear of the subject property, which abuts a wooded area off of Rock Creek and Potomac Parkway. The Applicant proposes to construct a deck, 14 feet by 25 feet, over the retaining wall to increase the useful space at the embassy for official and diplomatic events. The proposed deck will increase the lot occupancy at the subject property from 59.6% to 73.4%, above the maximum 60% permitted as a matter of right.

DETERMINATION

Pursuant to § 406(d) of the Foreign Missions Act, D.C. Official Code § 6-1306(d), a determination by the Board concerning the location of a chancery must be based exclusively on the following six criteria:

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;
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;
3. The adequacy of off-street or other parking to 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;
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;
5. The municipal interest, as determined by the Mayor of the District of Columbia; and
6. The federal interest, as determined by the Secretary of State.

The Board concludes that the application should not be disapproved because it satisfies all of these criteria.

Criterion 1 -- International Obligation of the United States

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By letter dated August 17, 2015 from its Office of Foreign Missions, the U.S. Department of State indicated that favorable action on the application will "...fulfill the international obligation of the United States to facilitate the acquisition of adequate and secure premises for the Government of the Kyrgyz Republic in Washington." Moreover, "a proper deck" would ensure that the rear of the property is "adequate and secure." (Exhibit 29.)

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

The subject property is located in the Sheridan-Kalorama Historic District and within the jurisdiction area of the Commission of Fine Arts. At the public hearing, the Applicant described communication with the staff of the Historic Preservation Office at the Office of Planning, who referred the Applicant to the Commission of Fine Arts ("CFA"), and the Applicant's submission of documents to CFA on September 3, 2015. (Hearing Transcript of September 22, 2015, p. 8-9.) The Board concludes that the Applicant has substantially complied with applicable historic preservation regulations. The Board notes that the consent calendar report for the meeting of the Commission of Fine Arts on September 17, 2015 indicates that CFA had no objection to the issuance of a permit for the Applicant's proposed retaining wall at the rear of its chancery building as shown on materials submitted by the Applicant and dated September 4, 2015. The Board concurs that no historic preservation basis exists for it to disapprove this application.

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

The Board finds that the Applicant's proposal to construct a rear deck addition to an existing chancery does not alter the zoning requirement for parking at the subject property and notes that, by memorandum dated September 8, 2015, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 31.) The State Department determined that "there exist no special security requirements related to parking in this case." (Exhibit 29.)

Criterion 4 -- The Extent to which the area is capable of being adequately protected (as determined by the Secretary)

After consultation with federal agencies authorized to perform protective services, the State Department "...determined that the subject site and area are capable of being adequately protected." (Exhibit 29.)

Criterion 5 -- The Municipal Interest (as determined by the Mayor)

The Board concludes that favorable action on this application is in the municipal interest and is consistent with the Comprehensive Plan, noting that, by memorandum dated September 15, 2015, the Office of Planning recommended that the Board not disapprove the application. (Exhibit 32.) The planned rear deck will be a relatively small addition to the Applicant's

building that will improve its use as a chancery by enlarging the space available for diplomatic functions. Although lot occupancy will increase slightly above the percentage allowed as a matter of right, the rear yard at the subject property will remain compliant with zoning requirements, at 39 feet where a minimum of 20 feet is required. The Board does not find that the deck addition would adversely affect the use of neighboring property.

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

The Board concludes that the State Department has determined that a favorable decision on this application would serve the federal interest. The Department of State determined that “there is a federal interest in this project,” noting that the “Government of the Kyrgyz Republic has generously assisted with the United States’ zoning and permit needs required for the construction of a new U.S. chancery facility in Bishkek, Kyrgyzstan (which is scheduled to be completed in October)” and that “[s]uch cooperation was essential for successfully achieving the Federal Government’s mission of providing safe, secure, and functional facilities for the conduct of U.S. diplomacy and the promotion of U.S. interests worldwide.” (Exhibit 29.)

III. Great Weight

The Board is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d), to give great weight to the issues and concerns raised in the written report of the affected Advisory Neighborhood Commission. In this proceeding, ANC 2D voted 2-0, at a public meeting on September 8, 2015, with a quorum present, “to support the Applicant’s application to allow construction of a deck and patio extension in excess of the maximum allowable lot occupancy.” ANC 2D supported the relief requested because “the work will result in protecting the structure and land from the risk of erosion due to its location on a hill, and because the deck [will be] on the back of the property, facing the park, and thus will not detract from the historic character of the street or neighborhood.” (Exhibit 35.) The Board finds that the ANC has not raised any issues or concerns inconsistent with the Board’s decision in this proceeding.

For the reasons discussed above, the Board finds that the application of the Embassy of the Kyrgyz Republic to allow a rear deck addition to an existing chancery in the D/R-3 zone district at 2360 Massachusetts Avenue, N.W. (Square 2507, Lot 50) satisfies the applicable requirements of the Foreign Missions Act. Accordingly, it is hereby **ORDERED** that this application is **NOT DISAPPROVED, SUBJECT TO APPROVED PLANS AT EXHIBIT 5.**

Vote of the Board of Zoning Adjustment constituted in accordance with the Foreign Missions Act taken on February 23, 2016 to rescind its prior vote on September 22, 2015, and not to disapprove the application:

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VOTE: 4-0-1 (Marnique Y. Heath, Frederick L. Hill, Peter G. May - by absentee vote, and Marcel C. Acosta - by absentee vote, voting Not to Disapprove; one Board seat vacant).

BY THE BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: March 3, 2016

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 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.

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