

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 509-A

Case No. 84-7

(Foreign Missions - Text
Amendment)

December 11, 1989

and

February 12, 1990

The Zoning Commission initiated this rulemaking proceeding in 1984 to consider the adoption of amendments to the text and map of the Zoning Regulations that would implement the Foreign Missions Act (Public Law 97-241, Title II, 96 Stat. 282, August 24, 1982), which is codified as D.C. Code, Sec. 5-1201 through 5-1213) (1988) (the "Act"). The particular provision of the Act that is the subject of this proceeding is D.C. Code Sec. 5-1206(b)(2)(B), which provides that a chancery shall be permitted to locate in any area, "determined on the basis of existing uses, which includes office or institutional uses," but would not otherwise meet the criteria of the Act for chancery location. (Emphasis on the plural form added.)

By Order No. 509, the Commission adopted amendments to the Zoning Map to include in the Diplomatic Overlay (D) District the areas of the District that meet the criteria of Sec. 5-1206(b)(2)(B).

The notice of proposed rulemaking that preceded the adoption of Order No. 509 was published on September 5, 1986 (33 DCR 5505). As then proposed, the Zoning Regulations would have been amended to allow the expansion of existing chanceries that are located in R-1 through R-5-B Districts, but not in an area that includes existing office or institutional uses other than the existing chancery. Hereafter in this Order, the Commission will refer to such chanceries as "outlier" chanceries, to reflect the fact that they are outside the areas that the Act designates for the location of chanceries.

In response to that notice, the Woodley Park Community Association, Councilmembers Clarke, Shackleton, and Kane, the Citizens Planning Coalition, and Mayor Barry opposed the proposed amendment that would have allowed such expansion. The reasons submitted for the opposition were: (1) a chancery is an office use that is not compatible with residential uses; (2) the Foreign Missions Act does not

require the Zoning Commission to allow the expansion of outlier chanceries,, nor does it even permit such expansion: and (3) the Act provides a sufficient number of reasonable locations for chanceries. A number of Advisory Neighborhood Commissions had expressed similar concerns at earlier stages of the Commission's consideration of the outlier issue.

Because of these comments, the Zoning Commission requested the Office of Planning and the National Capital Planning Commission ("NCPC") to review the outlier issue further, and in light of the comments, At the conclusion of the review, this Commission determined at a meeting on November 16, 1987, not to allow the expansion of outlier chanceries, but to allow existing outlier chanceries to remain as permitted Uses, and to be replaced on-site under certain limited circumstances. The Commission directed the Zoning Secretariat staff to prepare a draft proposed rule, and submit it to the Commission for review. The draft was reviewed and approved by the Commission at its meeting on September 11, 1989.

For the reasons that are set forth below, the Zoning Commission has determined that it is not reasonable-to allow outlier chanceries to expand.

The Zoning Commission does not agree with the view of NCPC, as set forth in the Foreign Missions and International Organizations Element of the Comprehensive Plan, that existing outlier chanceries are deemed areas described in Sec. 5-1206(b) (2) (B), and for that reason may be not only retained on their existing sites, but also expanded, subject to disapproval by the Board of Zoning Adjustment,

Granted, it is literally true that one Pot constitutes an " area " of land, but this literal truth is not sufficient, in the Zoning Commission's view, to constitute a sound basis for interpretation of the Foreign Missions Act, or for set-tiny planning and zoning goals and policies. The Zoning Commission believes that the Congress used the word "area" to indicate an area of sufficient size to have significance and import for the purposes of land use regulation. This is clearly how the word "area" is used generally in Sec., 5-1206. And this view of the Commission is confirmed by the Congressional reference to pluralities of "'existing uses" and or "'office or institutional uses"', Lest it be thought that this Commission capriciously embraces a literal reading of the plural form, while it rejects a Literal. reading of "area," we interject a reminder that in Order No, 509 the Commission recognized that a single institution, if of sufficient scale, would be mapped as an area that meets the criterion of Sec. 5-1206(b) (2) (B). However, the Commission will not attribute to the Congress an intention to treat a lot on which a chancery is located as having the same impact as a large university or hospital.

Moreover, in Sec. 5-1206(h) (2), the Congress explicitly addressed the continuing use of a chancery, This Commission would expect similarly explicit Congressional Language if Congress had intended that any existing outlier chancery could expand. This Commission believes that by not so providing, in legislation that provided comprehensively and generously for the Location of chanceries, the Congress also intended, and reasonably so, to provide greater certainty about the protection of residential areas from chancery location and expansion.

As presented to the Zoning Commission, the contrary view is clearly in the nature of a legal analysis, rather than a statement of planning goals and policy. D.C. Code Sections 1-244, 1-245, and 1-2003, which provide for the adoption of the Comprehensive Plan, do not direct that the Plan shall include the legal positions of persons that seek to persuade this Commission of the merit of those positions.

For the above reasons, the Zoning Commission is not persuaded by NCPC's conclusion that one Lot, on which one chancery is located, constitutes an area that includes office or institutional uses pursuant to Sec. 5-1206 (b)(2)(B). The Commission also rejects the suggestion that an unsound legal analysis is improved by being incorporated into an element of the Comprehensive Plan. This surely cannot be, Accordingly, the Zoning Commission rejects the argument that it is bound to implement a particular legal analysis that has been favored by inclusion in the Comprehensive Plan, but which has no independent persuasive force .

The Zoning Commission transmitted the proposed amendments to NCPC on September 13, 1989, and published a notice of proposed rulemaking on September 22, 1989 (36 DCR 6789).

Comments that were submitted timely, that is by November 6, 1989 , generally supported the proposed amendment, Advisory Neighborhood Commissions 1D and 3C submitted written comments in support,

The Embassy of Switzerland expressed opposition to the restriction on expansion, no-tiny the adjacent Maret School, which it cited as on institutional use that would be allowed to expand . The Commission notes that by application of legal advice of the Deputy Corporation Counsel, Community Development Division, dated April 8, 1.988, the Board of Zoning Adjustment would have the authority and obligation, upon appropriate application, to determine whether the chancery of the Embassy of Switzerland is located in an area that contains office or institutional uses. The Commission believes that this process would allow the Embassy sufficient opportunity to receive consideration of any future proposed expansion. The Commission is not. persuaded

that a possible relocation is a hardship that generally justifies expansion of outlier chanceries, all of which are located in residential areas. The Act provides the opportunities for chancery relocation that Congress determined to be appropriate. The Commission agrees with Congress that on-site expansion, in addition, is not warranted in areas that are essentially residential.

By letter dated October II, 1989, NCPC transmitted its funding that the prohibition on the expansion of existing outlier chanceries would be inconsistent with the Comprehensive Plan and contrary to the federal interest. The NCPC analysis is predicated upon the provision in the Foreign Missions Element that the site of one existing outlier chancery is deemed an area that includes office or institutional uses. For the reasons that are set forth at length above, the Zoning Commission does not agree with this analysis. NCPC also suggests that, because the Zoning Regulations allow certain office and institutional uses, that is, non-profit organizations and universities, to locate and expand in residential areas, the Zoning Regulations, to comply with D.C. Code Sec. 5-1206(b)(3), must allow the expansion of an existing outlier chancery in any residentially-zoned area. This analysis overlooks the circumstance that Sec. 5-1206(b)(3) does not apply to residential zone districts generally, but only to those areas within such districts that include existing office or institutional uses. This Commission has concluded that one chancery on one lot is not such an area.

The prohibition on the expansion of outlier chanceries and the reasons set forth in this Order reflect and comport with the issues and concerns that a number of Advisory Neighborhood Commissions expressed.

The Commission concludes that the proposed amendment to the Zoning Regulations is in the best interest of the District of Columbia, is in accord with the Foreign Missions Act, and is not inconsistent with the Comprehensive Plan for the National Capital in any respect that would be contrary to the District Charter.

In consideration of the foregoing reasons, the Zoning Commission hereby orders APPROVAL of the following amendment to the Zoning Regulations:

1. Permit an existing chancery in R-1 through R-5-B Districts to continue or to be replaced, subject to certain conditions; and prohibit the expansion of an existing chancery in R-1 through R-5-B Districts, by substituting the following for Paragraph 201.3. (m):

201.1(m) Chancery existing on September 22, 1978;

Provided, that the following requirements shall be met:

- (1) After February 23, 1990, the continued use of the chancery shall be limited to the government that lawfully occupied the chancery on that date;
- (2) No additional or accessory structure may be constructed on the lot that is occupied by the chancery;
- (3) There shall be no expansion of the exterior walls, height, bulk, gross floor area, or any portion of any existing building or structure that is used as a chancery;
- (4) If an existing building or structure that is used as a chancery is destroyed by fire, collapse, explosion, or act of God, the building or structure may be reconstructed;
- (5) The reconstruction that is authorized by paragraph (4) of this sub-section shall not be subject to the requirements of chapter 20 of this title; and
- (6) The reconstruction that is authorized by paragraph (4) of this sub-section shall be limited to the chancery site as it existed on February 23, 1990.

Vote of the Zoning Commission on proposed action at the meeting on September 11, 1989: 3-0 (Maybelle Taylor Bennett and John G. Parsons to approve proposed action to amend the Zoning Regulations; George M. White to approve proposed action by proxy vote; and Tersh Boasberg and Lloyd D. Smith, not voting, not having participated in the proceeding.)

Vote of the Zoning Commission at the meeting on December 41, 1989: 3-1 (Maybelle Taylor Bennett and Lloyd D. Smith to approve adoption of the final order; George M. White to approve by proxy; John G. Parsons opposed; and Tersh Boasberg not voting, not having participated in the case) .

This order was revised and adopted by the Zoning Commission at the meeting on February 12, 1990, by a vote of 3-0 (Maybelle Taylor Bennett, John G. Parsons, and Tersh Boasberg to approve; George M. White and Lloyd D. Smith not present, not voting).

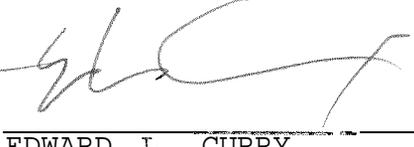
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In accordance with 11 DCMR 3028, this Order is final and effective upon publication in the D.C. Register, that is, on

~~FEB 23 1990~~



MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission



EDWARD L. CURRY
Executive Director
Zoning Secretariat

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