

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 509

Case No. 84-7

February 9, 1987

(Foreign Missions - Map)

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on February 27, and March 6, 13, & 27, 1986. At those hearing sessions, the Zoning Commission considered a proposal to amend the Zoning Regulations and Zoning Map of the District of Columbia, pursuant to Section 9101 of the Zoning Regulations. The public hearing was conducted in accordance with the provisions of Chapter 5 of the Rules of Practice and Procedure before the Zoning Commission.

On August 24, 1982, the President of the United States approved the Foreign Missions Act; (Title II, Public Law 97-241, 96 Stat. 286, August 24, 1982). Among its provisions, the Act regulates the location, replacement or expansion of chanceries and international organizations in the District of Columbia. The Foreign Missions Act became effective on October 1, 1982.

The Foreign Missions Act establishes specific areas where chanceries are to be permitted as a matter-of-right. The Act further establishes areas where chanceries are to be permitted subject to disapproval by the Board of Zoning Adjustment (BZA) in accordance with six specific criteria.

District and Federal Government agency staffs cooperated in numerous meetings and discussions over several months to attempt to resolve issues about the impact and interpretation of the Act. The city and federal authorities substantially agreed on the interpretation of the majority of the provisions of the Foreign Missions Act.

The Act provides that the Zoning Regulations in effect at that time would continue to apply with respect to chanceries only to the extent that they were consistent with Section 206 of the Act; see Section 206(j). Because some portions of the Zoning Regulations were not consistent with Section 206 relative to the regulation of chanceries and international organizations, the Zoning Commission pursuant to a hearing process and by Z. C. Order No. 400, dated May 16,

1983, amended the Zoning Regulations and Map to implement portions of the Foreign Missions Act. That action, excluding various conforming amendments, provided the following:

- a. Adopted new definitions of chancery and international organization identical in substance to those in the Foreign Missions Act;
- b. Permitted chanceries to be as a matter-of-right in the W, CR, C, CM, and M Districts;
- c. Permitted chanceries subject to disapproval by the BZA in R-5-C, R-5-D, SP, and D overlay Districts;
- d. Permitted international organizations as a matter-of-right in W, CR, C-2-B, C-2-C, C-3, C-4, and C-5 Districts, and as a special exception in SP Districts;
- e. Permitted existing chanceries in R-1 through R-5-B Districts to continue without expansion.

The key portion of the Foreign Mission Act which was not implemented at that time was Section 206 (b) (2) (B). Section 206(b) (2) (B) permits chanceries, subject to BZA disapproval, "in any other area, determined on the basis of existing uses, which includes office or institutional uses, including but not limited to any area zoned mixed-use diplomatic or special purpose,".

The District of Columbia Office of Planning (OP) took the position that the determination of "any other area, determined on the basis of existing uses" was a complex matter, for which zoning regulations should be adopted after careful analysis and negotiation.

Subsequently, on December 1, 1983, the National Capital Planning Commission (NCPC) amended the Foreign Missions and International Agencies Element of the Comprehensive Plan, for the purpose of conforming that element to the provisions of the Foreign Missions Act, and to provide planning and policy guidance to the Zoning Commission and the BZA.

The subject case was initiated by the Zoning Commission on April 9, 1984, to consider amendments to the Zoning Regulations and Zoning Map to further implement the Foreign Missions Act, and in particular, Section 206 (b) (2) (B). The proposal that was advertised for public hearing included the following:

- a. Permit an existing chancery in R-1 and less restrictive districts (effectively R-1 through R-5-B) to continue and to expand on its existing site as of December 1, 1983, subject to disapproval by the Board of Zoning Adjustment;

- b. Make a conforming internal amendment in the Zoning Regulations; and
- c. Propose changes to the Zoning Map with the Diplomatic (D) Overlay District.

The District of Columbia Office of Planning, by memorandum dated February 24, 1986 and by testimony presented at the public hearing, supported the proposal and outlined the following as methodology that was used by the NCPC and the OP to further implement the Foreign Mission Act:

- a. Various methods were explored to delineate the areas provided for in Section 206(b)(2)(B). A city square was used as the area unit for analysis purposes. One method was based on the number of existing office and institutional uses located in a square without consideration to the size of the use. Another method was based on the square footage of existing land uses in a city square as recorded in the data inventory in the District's computer system called MAGIS. After considerable testing of both methods, the square footage of existing uses in the MAGIS system was selected, since it provided a uniform set of data and took into account the size of the land uses in a square.
- b. Since the existing Diplomatic Districts are considered appropriate for chancery locations under the Act, and consist of mixed-use squares containing office, institutional and residential and other uses, it was determined that the average mixed-use ratio in the squares in existing Diplomatic Districts should be used as the guide for identifying other squares throughout the city that would qualify under Section 206(b)(2)(B) of the Act.
- c. Using the District's MAGIS computer data, the average mixed-use ratio for the city squares containing lots zoned "Diplomatic" was found to approximate a ratio of 2/3 residential-type land uses and 1/3 office, institutional and other land uses. This ratio is based on the relationship of land uses within individual squares within the Diplomatic Districts.
- d. The mixed-use ratio was then applied to city squares zoned R-1-A through R-5-B to identify squares that equalled or exceeded the ratio. Additionally, each of those squares was analyzed to ensure that it contained an existing office or

institutional use. The squares that met these tests were determined to be consistent with the provisions of Section 206(b)(2)(B) of the Act, and included as chancery areas subject to disapproval by the Board of Zoning Adjustment.

- e. Existing chancery facilities which are currently located in squares which do not meet the 2/3-1/3 mixed use test should be permitted to remain to avoid causing displacement and relocation problems. However, they should only be permitted to expand on their existing property. Accordingly, the sites of such chanceries are deemed to be qualifying areas under section 206(b)(2)(B) of the Foreign Missions Act. Such expansion would be subject to disapproval by the Board of Zoning Adjustment in accordance with the Act.

The U.S. Department of State (State), by written submission dated February 27, 1986 and by testimony presented at the public hearing, indicated that it does not believe that foreign chanceries have an absolute right to locate in any District area they may choose. State argues that the Act requires the BZA to accept applications for chancery uses in all Section 206(b)(2)(B) areas, not just those zoned mixed-use diplomatic or special purpose. Further, the Section 206 (b)(2)(B) determination is to be made by BZA, based solely on the six criteria set out in the Act. The Act leaves this responsibility to the BZA, not to NCPC or the Zoning Commission. NCPC and the Commission have their statutory roles with respect to the zoning maps and regulations, but all actions regarding chanceries must be consistent with Section 206.

State opposed the use of a square as the determination of an "area". An additional objection to the proposal is the failure to grant to chanceries the equal treatment required by Section 206(b)(3) for all Section 206(b)(2)(B) areas. Among other things, State argues that these two provisions require chanceries to be treated the same as nonprofit organizations under Sub-paragraph 3101.412 of the Zoning Regulations.

As to this latter construction, it is critical to remember that a chancery applicant would, in all cases, have to meet the criteria of Section 206(d) of the Act, as determined by the BZA, not State. In addition, if the chancery applicant were attempting to obtain some variance or special exception under the standard zoning regulations, that applicant would also have to meet the requirements set out in those provisions, to the satisfaction of BZA. This is consistent with State's position that in addition to the rights granted by the Act, a foreign government has the right to apply for a change in zoning, for a PUD, or for a variance, if it is willing to comply with all requirements governing such applications.

The Executive Director of NCPC, by statement dated March 6, 1986 and by testimony presented at the public hearing, indicated that, in addition to the implementation of Section 206 (b) (2) (B) of the Act, the case also proposes amendments to the text of the Zoning Regulations which would allow for the reconstruction or expansion of chanceries in R-1 through R-5-B Districts on their sites as they existed on December 1, 1983, subject to BZA disapproval. Currently, chanceries existing on September 22, 1978, can continue as permitted uses on these sites, but cannot expand or be reconstructed. The proposal to amend the text of the Zoning Regulations is consistent with the following provision of the Foreign Missions and International Organizations element:

". . . existing Chanceries and combined Chancery/Embassies not located within areas designated on Diagram No. 1 are deemed described in Section 206(b) (2) (B) of the Foreign Missions Act and may be retained and expanded on their existing sites subject to disapproval by the Board of Zoning Adjustment."

The Executive Director indicated that the NCPC task force on Foreign Missions determined that a "square" should define an "area" primarily because of the logistic capacity to locate and manage the development of a square, based on municipal records. He concluded that the proposed amendments to the text and map of the Zoning Regulations are not inconsistent with the Comprehensive Plan and constitute a further step in the implementation of the Foreign Missions and International Organizations element of the Plan.

Advisory Neighborhood Commissions - 1D, 2A, 2B, 2E, 3C, 3D, 3E, 3G, and 5A, by testimony presented at the public hearing and by letters, statements, and resolutions submitted in the record, opposed the proposal to rezone with the "D" overlay various squares that were located in their neighborhoods.

The ANC's set out the following reasons to oppose the proposal:

- a. Expansion of existing chanceries in R-1 through R-5-B Districts was not the intent of Congress, in enacting the Foreign Missions Act;
- b. The various squares in the respective ANCs, that were included in the rezoning proposal, did not qualify for rezoning, based on the actual existing uses in those squares;
- c. At least one ANC believed that its neighborhood is overburdened with chancery uses, and additional chanceries would preclude the opportunity to preserve some of the City's finest homes;

- d. There is an abundance of office space available elsewhere in the City where chanceries can locate as of right;
- e. The location and expansion of chanceries is eroding the character of residential neighborhoods, and is contrary to the city's housing policy;
- f. The criteria that were used to identify qualifying squares, were questionable and inappropriate; and
- g. Many squares that were proposed for rezoning are presently experiencing traffic and parking problems.

City Councilmembers David A. Clarke, Polly Shackleton, John A. Wilson, and Betty Ann Kane, by letters and by testimony presented at the public hearing opposed the permission of chanceries in residential neighborhoods.

Nineteen civic organizations and approximately twenty-two individuals, by letters and by testimony presented at the public hearing opposed the proposal for the various reasons that were previously identified.

These community groups presented detailed field observations about specific squares which they felt should have been excluded from the advertised list, given the land use character of each square. The neighborhoods represented included Sheraton-Kalorama, Dupont Circle, Georgetown, Potomac Palisades and Woodley Park. The community testified regarding the negative impacts that result from chancery locations in residential areas. Other concerns that were raised included the following:

- a. Demonstrations and the adversities associated therewith; e.g., noise and security;
- b. Threat of terrorist attacks; and
- c. Construction associated with security concerns.

Before the conclusion of the public hearing, the Zoning Commission requested OP to run a modified MAGIS computer program which included only those lots outside of the R-1-A through R-5-B Districts, and exclude any commercial or D zoned portions of the squares. The Zoning Commission also requested OP to perform the MAGIS computer analysis previously performed for the Foreign Missions Task Force of the NCPD, but to apply the land use formula to the residentially-zoned portions of squares zoned at least partially R-1-A through R-5-B, as well as to the entire squares in those zones.

OP, by memorandum dated May 8, 1986, indicated that the program searched all of the squares in the city having at least one lot zoned R-1-A through R-5-B and identified those in which the residential land uses comprised less than 66 percent of the total land area in those zones; (less than 66 percent residential is the equivalent of more than 34 percent nonresidential, as was done in the original run for the NCPD Task Force). As a result, 152 squares were printed out meeting this criterion. Of these, 43 coincided with squares on the list of 163 squares contained in the notice of public hearing.

OP, by memorandum dated June 27, 1986, indicated that a field check of the remaining 43 squares that MAGIS identified as meeting the "1/2 - 2/3 formula" in only the R-1-A through R-5-B portions of the squares, resulted in 17 squares remaining eligible to receive the D overlay rezoning.

A notice of proposed rulemaking was published in the D.C. Register on September 5, 1986 (33 DCR 5505). As a result of that notice, comments were received from the Woodley Park Community Association (WPCA), City Councilmembers Clarke, Shackleton and Kane, the Mayor of the District of Columbia, and the Citizens Planning Coalition (CPC).

WPCA, the Councilmembers, and the CPC opposed that part of the proposal which would permit existing chanceries as of December 1, 1983 in the R-1-A through R-5-B Districts to expand, subject to BZA disapproval.

The Mayor indicated his inclination not to support that provision of the proposal that permits the above-mentioned expansion of chanceries. He requested the Corporation Counsel to evaluate the notice of proposed rulemaking regarding its legal interpretation and make its findings available as soon as possible.

The Zoning Commission is mindful of its responsibility to conclude the implementation of the portion of the Foreign Missions Act, which was not implemented by Z.C. Order No. 400.

The Zoning Commission concurs with the position of the Office of Planning, as revised, in its memorandum of June 27, 1986.

As to the concerns of the Department of State and others, regarding new chanceries that want to locate in the R-1-A through R-5-B Districts being able to apply directly to the BZA for review, the Zoning Commission concludes that it was not the intent of Congress to require that the BZA consider such applications without the guidance of the Zoning Commission which this rulemaking will provide. No explicit provision

to that effect is found in the Act, and a congressional bar on a Zoning Commission role should not be lightly inferred. Indeed, to the contrary, the Act in several places explicitly refers to Zoning Commission action under the Act.

Moreover, the Commission is persuaded that the mapping of the areas will be beneficial to the State Department and foreign governments, because the degree of certainty which will result will allow them to plan more effectively.

As to the concern of State regarding the use of a "square" as an "area", the Commission concludes that defining an area as a square is a reasonable and logistically manageable manner of implementing the Act.

As to the concerns of the ANCs and others regarding the methodology that was used to identify squares that qualify for rezoning, the Commission believes that the alternative methodology that was included in the OP memorandum dated June 27, 1986, represents an appropriate, fair, and balanced mechanism to further implement Section 206 (b) (2) (B) of the Act.

As to the concern of the ANCs and others regarding the negative spin-off effects of chanceries in residential areas; e.g., noise, security problems, potential terrorist attacks, demonstrations, or traffic and parking problems, the Commission is mindful of both the international and diplomatic role that is played by the District of Columbia, and the concerns of the residents of the City. The Commission believes that its decision in this case strikes a reasonable balance in addressing the interests of all persons concerned.

The proposed action of the Zoning Commission to amend the Zoning Regulations and Zoning Map was referred to the National Capital Planning Commission (NCPC), under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC, by report dated October 2, 1986, found that the proposed amendments would not adversely affect the Federal Establishment or other Federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital subject to:

- a. Adoption by NCPC of proposed Modification 86-2 which amends Diagram No. 1, "Chancery Facility Locations Permitted Pursuant to Section 206(b)(2)(B) of the Foreign Missions Act," of the Foreign Missions and International Organizations element of the Comprehensive Plan; and

b. Inclusion of the following institutional properties which were advertised in the Zoning Commission's Notice of Public Hearing in the Diplomatic (D) Overlay District as part of the proposed zoning map amendment:

1. University of the District of Columbia
2. Gallaudet College
3. Holy Cross Academy (Howard University Dunbarton Campus)
4. Providence Hospital
5. National Children's Center
6. Catholic Sisters College
7. Catholic University
8. Georgetown University
9. Mount Vernon College
10. Holy Name College
11. Franciscan Monastery
12. Hadley Memorial Hospital
13. Hillwood Estate
14. Boy's Club of Washington
15. Dumbarton Oaks
16. Greater S.E. Community Hospital

NCPC also requests that the Zoning Commission consider including the following squares into the D Overlay District. These squares meet the new formular applied by the Zoning Commission to squares shown on NCPC's adopted Diagram No. 1.

- a. Square 5329 - bounded by 50th Street, 51st Street, Ayers Place and Central Avenue, S.E.; and
- b. Squares 2711 and 2712 - bounded by 14th Street, 15th Street, Gallatin Street, and Piney Branch Road, N.W.

NCPC will study the proposed rule to clarify whether existing chanceries which are located in "essentially residential use areas" may or may not be expanded or reconstructed on their current sites. The NCPC, therefore, requests an extension of fifteen (15) days to consider this text amendment.

The Chairman of NCPC, by letter dated October 10, 1986, indicated that the Foreign Missions Task Force completed its review and made its recommendation to the Executive Committee. Consequently, the NCPC was satisfied with the proposed text amendments to the Zoning Regulations.

The Executive Director of NCPC, by memorandum dated October 10, 1986, circulated a proposal to modify the Foreign Missions and International Organizations element of the

Comprehensive Plan for the National Capital. The proposal recommends that a number of city squares be deleted from Diagram No. 1 and the boundaries of certain institutional properties be more clearly defined. Additionally, the following squares which meet the criteria applied by the Zoning Commission are proposed to be retained or added to Diagram No. 1:

- a. Square 5329 - bounded by 50th Street, 51st Street, Ayers Place and Central Avenue, S.E. Forty (40) percent of the square is occupied by an institutional use (public library); and
- b. Squares 2711 & 2712 - bounded by 14th Street, 15th Street, Gallatin Street, and Piney Branch Road, N.W. These squares are occupied by the Maharishi College Administration Building.

On November 3, 1986, at its regular monthly meeting, the Zoning Commission considered the report of the NCPC, and the comments that were received as a result of the publication of the notice of proposed rulemaking.

The Commission concurs with the observation of the NCPC that the proposed action of the Zoning Commission inadvertently omitted the inclusion of certain institutional properties.

The Commission determined that the request of the NCPC to include the rezoning of Squares 2711, 2712 and 5329 was beyond the scope of the advertised proposal of the subject proceeding. The Commission, however, determined that there was merit in the request, and initiated action to consider the rezoning of the above-mentioned squares in a separate proceeding. (That proceeding later became identified as Z.C. Case No. 86-25.)

On December 8, 1986, the Acting Executive Director of the Zoning Secretariat informed the Commission that in his opinion, pursuant to the Administrative Procedure Act, the Commission would have to publish an amendment to the notice of proposed rulemaking to include the institutional properties that were erroneously omitted in the original notice of proposed rulemaking.

An amendment to the notice of proposed rulemaking was published in the D.C. Register on December 19, 1986 (33 DCR 7874). As a result of that publication, the Commission received comments from the Woodley Park Community Association, the Residential Action Coalition, the Dupont

Circle Citizens Association, and Councilmember James E. Nathanson.

On February 9, 1987, at its regular monthly meeting, the Zoning Commission considered these comments, and determined that it would reopen its consideration of the case, and not limit its discussion to the list of institutional properties that were included in the amendment to the notice of proposed rulemaking.

At that meeting, the Director of the Office of Planning informed the Commission of a meeting between the District of Columbia and the National Capital Planning Commission Foreign Missions Task Force regarding the expansion of the existing chanceries on their property as of December 1, 1983, in the R-1 through R-5-B zone districts, also known as "outliers."

As to the concerns of the ANCs and others regarding the expansion of "outliers," the Commission recognizes the potential for adverse effects from the expansion of such chanceries.

The Commission believes that it is prudent and would be in the best interest of the Federal and District Governments to defer final action at this time on the text amendment component of this case, to allow the District and the NCPC task force a further opportunity to address the "outlier" chancery issue, in light of the comments which were generated by the rulemaking proposal.

The Zoning Commission believes that the proposed amendments to the Zoning Map are in the best interests of the District of Columbia, are consistent with the intent and purpose of the Zoning Act, and are not inconsistent with the Foreign Missions Act nor the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby orders APPROVAL to amend the Zoning Map as follows:

Change the Zoning Map of the District of Columbia. Map the following areas with the Diplomatic (D) Overlay District:

A. The following institutional areas:

1. American University
2. University of the District of Columbia
3. Gallaudet University
4. Howard University (Main Campus)
5. Holy Cross Academy

- (Howard Univ. Dunbarton Campus)
6. Sibley Hospital
 7. Providence Hospital
 8. Washington Hospital Center
 9. National Lutheran Home
 10. Lisner Home
 11. Trinity College
 12. National Childrens Center
 13. Catholic Sisters College
 14. Catholic University
 15. Georgetown University
 16. Mount Vernon College
 17. Holy Name College
 18. Franciscan Monastery
 19. Hospital for Sick Children
 20. Hadley Memorial Hospital
 21. Hillwood Estate
 22. Boys Club of Washington
 23. Dumbarton Oaks
 24. Presbyterian Home
 25. Columbia Hospital for Women
 26. Greater S.E. Community Hospital, and

B. The following areas:

1. Square 302 - The entire square shall be rezoned from R-5-B to D/R-5-B;
2. Square 1370 - That portion of the square zoned R-1-B shall become D/R-1-B;
3. Square 2522 - The entire square shall be rezoned from R-1-B to D/R-1-B;
4. Square 2527 - That portion of the square zoned R-1-B shall become D/R-1-B; and
5. Square 2902 - The entire square shall be rezoned from R-4 to D/R-4.

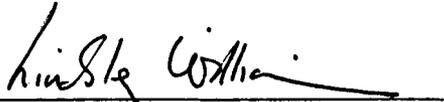
Vote of the Commission taken at the meeting on July 14, 1986: 5-0 (George M. White, Maybelle T. Bennett, John G. Parsons, and Patricia N. Mathews, to approve as revised and Lindsley Williams, to approve by absentee vote).

This order was adopted by the Zoning Commission at its regular monthly meeting on November 3, 1986, by a vote of

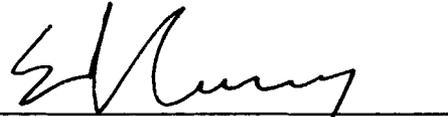
3-2 (John G. Parsons, George M. White, and Patricia N. Mathews, to adopt - Maybelle T. Bennett, and Lindsley Williams, to oppose).

On February 9, 1987, at its regularly monthly meeting, the Zoning Commission reconsidered its decision of November 3, 1986, deferred final action on the text amendment component of the case, and adopted this order by a vote of 4-0 (Patricia N. Mathews, Maybelle T. Bennett, John G. Parsons, and Lindsley Williams, to adopt as amended - George M. White, not voting, not having participated in the discussion).

In accordance with Section 4.5 of the Rules of Practice and Procedure before the Zoning Commission of the District of Columbia, this order is final and effective upon publication in the D.C. Register, that is on 24 APR 1987.



LINDSLEY WILLIAMS
Chairman
Zoning Commission



EDWARD L. CURRY
Acting Executive Director
Zoning Secretariat