

PUBLIC HEARING--March 17, 1965

Appeal #8123 Mrs. Leo B. ^{Shoib} Morris, owner, on behalf of the Government
of Niger, appellants.

The Zoning Administrator District of Columbia, appellee.

On motion duly made, seconded and unanimously carried the following Order was entered on March 24, 1965:

ORDERED:

That the appeal to transfer a chancery from Ecuador to the Government of Niger at 2204 R St. N.W., lot 17, square 2512, be denied.

From the records and the evidence adduced at the hearing, the Board finds the following facts:

(1) Appellant's property, which is located in the R-3 District, has a frontage of 25 feet on the south side of R Street, with depths of 91.74 feet and 102.44 feet and extends to a 15-foot wide public alley in the rear. The lot contains 2,432 square feet of land and is improved with a row house which was erected and designed as a single-family residence.

(2) Appellant's counsel (her son) testifying for appellant, stated that much of the adjacent neighborhood property is used for chancery and office purposes. The zoning of the property and of the adjacent neighborhood is R-3.

(3) Dr. Mohamed Shoaib, from Pakistan, an official of the International Bank for Reconstruction and Development, occupied the building from the Spring of 1957 until the latter part of 1959 as a tenant of the owner. There is no evidence that Dr. Shoaib was affiliated with the Pakistan Embassy and the official Blue Book published by the Department of State does not list the name of Dr. Shoaib during the years 1957, 1958 and 1959.

(4) From the latter part of 1959 until the Spring of 1961 the premises were rented to the Government of Iran which used them as a chancery, without applying for Board of Zoning Adjustment approval for such use, as was required by the Zoning Regulations in force at the time (Section 3101.40).

(5) In the Spring of 1961 the Government of Ecuador became a tenant and utilized the premises as a chancery until December 31, 1963. This occupancy

was also established without applying to the Board of Zoning Adjustment for permission to utilize the property as a chancery.

(6) From December 1963 until the present time the building has been vacant and available for rent or sale to anyone for any purpose.

(7) Evidence adduced at the hearing indicated that the Government of Ecuador had nineteen employees and that the present applicant, the Government of Niger, would have nine employees including four with diplomatic status.

(8) There is parking space provided on the property for four automobiles.

(9) There was objection to the granting of this appeal registered at the public hearing.

OPINION:

As the Board has found, on the evidence, that Dr. Shoaib was not officially connected with the Pakistan Embassy or used the premises for chancery purposes, it must conclude that his occupancy of the premises did not establish a chancery use prior to May 12, 1958 when the new Zoning Regulations were adopted which required Board of Zoning Adjustment approval for the establishment of a chancery use.

Further, the use of the premises by either Iran and Ecuador was not a legal use, as the premises did not have nonconforming chancery status and Board of Zoning Adjustment approval was never sought or given.

Section 4 of the October 13, 1964 amendment to the Zoning Act provides for the transfer of a chancery use from one government to another but only when the transferer's use was in accordance with applicable law at the time of enactment of the Act. On that date the property had been vacant for many months and a chancery use could be established there then, or at the date of the hearing, or at this time, only by a showing of foreign office or chancery use prior to May 12, 1958 and continuing with the uses by the Governments of Iran and Ecuador. No such showing has been made.

The appeal must therefore be denied.

Mr. Scrivener: I concur in the denial of the appeal not only on the basis of the reasons given in the majority opinion, but also for the reason that it is apparent that on the date of hearing of the appeal the building was not "being used by a foreign government" as required by Section 4 of the statute.

Mr. McIntosh concurs with Mr. Scrivener's statement.