

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, D.C. 20005

NOTICE OF FINAL RULEMAKING

ELECTRIC TARIFF NO. 06-1, IN THE MATTER OF THE POTOMAC ELECTRIC
POWER COMPANY'S RESERVED DELIVERY CAPACITY SERVICE RIDER, P.S.C.
OF D.C. NO. 1

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice of its final rulemaking action, taken in Order No. 14124, to approve the tariff of the Potomac Electric Power Company, ("PEPCO" or "Company")¹.

2. In its filing, PEPCO proposes to offer Reserved Delivery Capacity Service ("RDCS") to a specific customer that has requested this service, as well as to future requesting customers. PEPCO asserts that RDCS essentially provides a dedicated, redundant delivery service to electric customers from an alternative distribution substation, thereby offering premium reliability to customers.² Specifically, PEPCO proposes to amend the following tariff pages:

ELECTRICITY TARIFF, P.S.C.-D.C. No. 1
Thirtieth Revised Page No. R-1
Thirtieth Revised Page No. R-2
Thirtieth Revised Page No. R-2.1
Original Page No. R-43
Original Page No. R-43.1

3. PEPCO avers that RDCS requires that an additional cost be paid by the requesting customer. PEPCO contends that the proposed charges are appropriate because the alternate delivery facilities in place beyond the service connection to serve the Reserved Delivery customer's portion of the load are the equivalent of those in place to serve a full requirements customer with the same total load characteristics.³ PEPCO states the major elements of this proposal are as follows:

a) RDCS would generally be required for customers that desire reserved capacity from an alternate substation on the Company's delivery system. Switching to the alternate source of supply is under the manual or automatic control of the customer.

¹ *Electric Tariff No. 06-1, In the Matter of the Potomac Electric Power Company's Reserved Delivery Capacity Service Rider, P.S.C. Of D.C. No. 1 ("ET 06-1")*, filed July 28, 2006, (PEPCO tariff).

² *ET 06-1*, PEPCO tariff at 1.

³ *Id.* at 2.

b) The customer is required to make a "Contribution in Aid of Construction" ("CIAC") for any additional facilities required to provide RDCS.

c) The monthly charges for Schedule "RDCS" are based on the full delivery service billing determinants applied to the normally applicable tariff. A table of discounts will be applied to the total amount calculated to reflect the fact that certain costs recovered through the standard rate are not incurred for RDCS.

d) The applied discount will depend on whether the customer has made a CIAC to be served by new facilities, or is served through existing facilities.⁴

4. The Commission issued a Notice of Proposed Rulemaking which was published in the *D.C. Register* on August 25, 2006.⁵ On September 25, 2006, the Washington Metropolitan Area Transit Authority ("WMATA") filed a Notice of Objection to PEPCO's Proposed Tariff Application.⁶ On October 10, 2006, PEPCO filed reply comments stating that WMATA authorized it to state that WMATA withdraws its objections to the Commission's approval of the tariff.⁷ By Order No. 14124, the Commission addressed all comments and approved PEPCO's proposed tariff. This tariff amendment will become effective upon the date of publication of this Notice of Final Rulemaking in the *D.C. Register*.

⁴ *Id.* at 1-2.

⁵ 53 *D.C. Register* 7048-7049 (August 25, 2006).

⁶ *ET 06-1*, Notice of Objection of the Washington Metropolitan Area Transit Authority to Application of the Potomac Electric Power Company for Authority to Impose Reserved Delivery Capacity Service Rider Tariff Charge ("WMATA Objection"), filed September 25, 2006.

⁷ *ET 06-1*, Reply Comments of the Potomac Electric Power Company ("PEPCO Reply"), filed October 10, 2006.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17481 of the Republic of Hungary, pursuant to 11 DCMR § 1002, to permit the renovation and expansion of a chancery in the R-5-D and R-1-A Zone Districts, at premises 2950 Linnean Avenue, N.W. (a/k/a Spring of Freedom Street) (Square 2231, Lot 6) and approval for a chancery use at premises 3900 Shoemaker Street, N.W. (Square 2231, Lot 3)

NOTICE OF FINAL RULEMAKING

AND

DETERMINATION AND ORDER

The Board of Zoning Adjustment (Board), pursuant to the authority set forth in section 206 of the Foreign Missions Act (FMA), approved August 24, 1982 (96 Stat. 283; D.C. Official Code § 6-1306 (2001))("FMA § 206"), 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 Republic of Hungary (Applicant) for the renovation and expansion of its existing embassy at premises 2950 Linnean Avenue and the approval for chancery use at 3900 Shoemaker Street.

PRELIMINARY MATTERS

The Application

On January 18, 2006, the Applicant filed a chancery application with the Board. Pursuant to 11 DCMR § 3134.7, the application was accompanied by a letter from the United States Department of State certifying that the Applicant had complied with the FMA and that the application could be submitted to the Board.

Notice of Proposed Rulemaking

Notice of the filing of the application and a notice of proposed rulemaking were published in the *D.C. Register* on February 3, 2006, (53 DCR 682). 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 January 19, 2006, the Office of Zoning provided notice of the filing of the application to the District of Columbia Office of Planning ("OP"), ANC 3F, in which the subject property is located, the Single Member District member for ANC 3F07, the D.C. Councilmember for Ward 3, the District Department of Transportation ("DDOT"), the District of Columbia Historic Preservation Review Board, and the United States Department of

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State¹. The Office of Zoning scheduled a public hearing on the application for April 11, 2006, and mailed a copy of the notice of hearing to the Applicant, ANC 3F, and all property owners within 200 feet of the subject property. Notice of the hearing was also published in the *D.C. Register* on January 27, 2006 (53 DCR 549) and posted in the Office of Zoning. In addition, on March 24, 2006, the Applicant posted notice on the property in plain view of the public in accordance with 11 DCMR § 3113. The notice given to the public complied with the requirements of 11 DCMR § 3134.9.

Request for Party Status

The Board received a request for party status filed by Dr. Bernard Sussman, a residential neighbor of the existing chancery building (Exhibit 24). Dr. Sussman later withdrew the request, so there was no need for official action by the Board. In any event, FMA § 206 (f) required that the regulations governing chancery applications were to specify that the proceedings would be conducted as rulemaking, rather than adjudication. Thus, 11 DCMR § 3134.3 provides that no person has standing as a party in a chancery application. However, under § 3134.12 of the Regulations any person may appear at the hearing and present evidence, testimony, or argument. Dr. Sussman appeared at the hearing and testified that he did not oppose the application, so long as the Applicant provided adequate landscaping to buffer his property.

Absence of NCPC Representative from Hearing

Counsel for the State Department noted that the Executive Director of the National Capitol Planning Commission (NCPC) was not present at the public hearing, and suggested that NCPC's presence might be required under the FMA § 206 (i)(2)(B)). That provision provides that when the Board hears a chancery application, the NCPC representative shall be its Executive Director. However, nothing in the FMA prevents the Board from hearing an application in the NCPC member's absence, regardless of the application being heard, so long as the Board has a quorum with the members then present.

The Board also concludes that the NCPC Executive Director properly voted on the application even though she was absent from the hearing, because she reviewed the hearing record. Under § 3105.15 of the Board's Rules of Practice and Procedure, Board member may vote on an application if she has read the transcript and reviewed the record of the proceeding. It is true that § 3134, which establishes procedures for hearing chancery application, does not specifically allow for participation by an absent BZA member. However, § 3134 incorporates the more general Board rules that apply to all applications filed under Chapter 31. Therefore, general rules, such as the one contained

¹ Counsel for the State Department claimed that he had not received the formal referral from the Office of Zoning. Therefore, he was given additional time to submit the Department's written report.

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in § 3105.15, should apply to chancery applications, provided they do not conflict with more specific requirements under § 3134 or the FMA.

Alleged Ex Parte Communications

The Board also considered an issue raised by Mr. Frank Winstead, an ANC Commissioner who was designated as an ANC representative. Mr. Winstead asserted that Mital Gandhi, an ANC Commissioner who had written in support of the application (Exhibit 29), had an *ex parte* conversation with the Board's Chairman, Geoffrey Griffis. Mr. Griffis stated from the dais that Mr. Gandhi had contacted him by telephone, but Mr. Gandhi only asked the Chairman how to file a letter with the Board. The Chairman further indicated that he told Mr. Gandhi to send it by e-mail and fax to the Office of Zoning. Thus, the communication was neither substantive nor invited, and did not affect Chairman Griffis' ability to remain impartial.

Government Reports

OP and the State Department submitted favorable reports on the application (Exhibits 28 and 36).

ANC Report

ANC 3F submitted a resolution stating that it did not oppose the renovation of the existing chancery on Lot 6, but that it opposed the proposed building on Lot 3 (Exhibit 27) because it does not conform to the use, rear yard and side yard setbacks for an R-1-A zone district, or with the lot occupancy, impervious surface and tree removal provisions of the Forest Hills Tree and Slope Overlay.

Persons in Support

As explained above, Dr. Bernard Sussman was treated as a person in support of the application.

Persons in Opposition

The Forest Hills Citizens Association testified in opposition to the application, stating that the conversion of the former single family dwelling to chancery use would set a dangerous precedent and that the building does not comply with the Forest Hills Tree and Slope Overlay (See also Exhibit 32).

Closing of the Record

The record closed on April 11, 2005, at the conclusion of the public hearing on the application except for additional material requested by the Board during the public hearing.

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Post-Hearing Submissions

The Board accepted the State Department report addressing the application's compliance with criteria under the FMA, and a letter in support from the Czech Embassy (Exhibits 36 and 35). The Board also accepted the submissions from the Applicant, including: new elevations and renderings showing the additional landscaping and information about the proposed green roof for the new consulate building, revised landscape plans showing additional buffering for the park, a storm water management plan, and a revised site plan showing adjustments to accommodate the storm water management systems and revised landscape plans (Exhibit 37). The Board did not accept an additional submission from the Forest Hills Citizen Association, because, unlike the other post-hearing submissions, it was not requested from the Board and the hearing record had been closed.

THE PROPOSED PROJECT AND CHANCERY LOCATION

The properties that are the subject of this application are located in Square 2231, at 3900 Shoemaker Street, N.W. ("Lot 3") and 2950 Linnean Avenue, N.W. ("Lot 6") (collectively, the "Property"). Square 2231 is bounded by Tilden Street, Linnean Avenue, and Shoemaker Street. The Property is located just west of Rock Creek Park, near the intersection of Beach Drive and Pierce Mill Road. Lot 3 has a land area of 8,249 square feet, and Lot 6 has a land area of 38,749 square feet. Lot 6 is improved with an existing two-story chancery building constructed by the Applicant in the mid-1970's. Lot 3 is improved with a two-story structure that was originally constructed as a residence but has been owned and used by the Hungarian Embassy as housing since approximately 1977. Lot 3 abuts Lot 6 on two sides and abuts public streets on the other two sides. It does not abut any private property that is not owned by the Republic of Hungary.

Lot 6 is a re-subdivision of smaller lots zoned R-5-D pursuant to a Planned Unit Development that approved chanceries for the governments of Czechoslovakia, Hungary, Indonesia, and Poland (See ZC Order No. 70, BZA Order No. 11889, and ZC Order No. 106). The remainder of the square, including Lot 3, is located in the R-1-A Zone District. The R-1-A portion of the property is not located in the Diplomatic Overlay Zone. Lot 6 has been owned and used by the Republic of Hungary for approximately 35 years, and Lot 3 has been owned and used by the Republic of Hungary for approximately 30 years. Lot 3 also is subject to the provisions of the proposed Forest Hills Tree and Slope Overlay.

The Applicant proposes to use Lot 3 as a consulate and living and office space for embassy staff. It was uncontested during the hearing that, notwithstanding Lot 3's R-1-A zoning, there are numerous diplomatic and institutional uses in the area. The properties located in Square 2231 are almost entirely devoted to diplomatic or institutional uses. In addition to the Embassy of the Republic of Hungary, Lots 800, 801, and 802 are owned by the Embassy of the People's Republic of China and are used as the China Education

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Office. One property, located at 2400 Tilden Street, N.W. and owned by Dr. Bernard Sussman, is used as a single family dwelling.

The immediately surrounding area includes numerous diplomatic and institutional uses. The Embassy of the Czech Republic and the Residence of the Czech Ambassador are located just across the street from the Property at 3900 Spring of Freedom Street, N.W. The Embassy of the Republic of Indonesia is located west of the Property between Tilden Street and 29th Street. The Embassy of the State of Kuwait is located further west at 2940 Tilden Street, N.W. The Embassy of the Republic of Zaire is located across Tilden Street from the Property at 4001 Linnean Avenue. Hillwood Museum is located further north at 4155 Linnean Avenue, NW. The Embassy for the Kingdom of the Netherlands is located across from Hillwood at 4200 Linnean Avenue, N.W. The Levine School of Music is located a few streets away at 2801 Upton Street. Rock Creek Park, with its facilities, is located directly to the east of the Property.

The Applicant plans to demolish the existing building on Lot 3 and to construct a new building that will feature residential units for embassy staff as well as consulate space. The consulate will be located in this building for security reasons. The representative of the Republic of Hungary testified that under guidelines that govern the chanceries of members of the European Union, consulates need to be located in a building that is separate from the main chancery building. The consulate is a very low-intensity use. It is open only 3 hours daily, from 10 a.m. to 1 p.m., Monday through Friday. It receives only 8 to 10 visitors per day, most of whom are Americans. The visitors to the consulate currently use the only secure entrance into the chancery. This is not an ideal situation from a security standpoint. The new building will provide an entirely separate entrance for consulate visitors. This property will primarily be devoted to continuing residential use.

The Applicant proposes to renovate and expand its existing chancery building on Lot 6. The renovation of the existing chancery building will include renovation of the interior and exterior of the building. A minor, 500 square foot addition will create a ceremonial entrance to the building. The building will feature two floors and a basement, all of which will be devoted to office use associated with a chancery. The Applicant proposes to demolish the existing two-story building on Lot 3 and to replace it with a coordinating building that will serve as a consulate with living and office space for embassy staff. The consulate use will be located on the lower level, and four residential units will be located on the upper two levels. A tunnel located completely below grade will connect the renovated chancery building with the new consulate building. The consulate currently is located in the existing chancery building and visitors must use the only secure entrance into the building to access the consulate. The Embassy of the Republic of Hungary needs to relocate the chancery's consulate functions to a separate building in order to improve

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security for embassy employees. The Project will provide a separate building and entrance for visitors to the consulate.

The Project also will relocate the existing chancery building's HVAC system, which currently is located on the portion of the roof closest to the only adjoining residential property. The Applicant proposes to relocate the HVAC system within the rooftop architectural embellishment above the new ceremonial entrance at the southern end of the building. The HVAC systems for both the existing chancery building and new consulate building will be consolidated at this location. In addition, the HVAC system will be recessed within a well that will be treated with an acoustical finish that will absorb sound. These measures will result in an approximately 10 decibel decrease in noise when compared with existing equipment.

The Applicant designed the proposed landscaping to preserve many existing trees, and the Applicant will plant several new trees. The trees to be removed generally are evergreen trees nearing the end of their estimated life span, and they will be replaced with deciduous trees. The existing chain link fence will be removed and replaced with a new seven-foot ornamental metal fence that will enclose the perimeter of the property. Along the portions of the property abutting Linnean Avenue and Shoemaker Street, the perimeter fence will be enhanced with shrubbery.

DETERMINATION

I. Jurisdiction

Subsection 1002.1 of the Zoning Regulations states in part:

To locate, replace, or expand a chancery in an R-5-D, R-5-E, or SP District or in the D Overlay District ... application shall be made to the Board of Zoning Adjustment.

The Zoning Regulations contain no other provision authorizing an application to locate, replace, or expand a chancery in areas not identified in this subsection. While lot 6 is zoned R-5-D and therefore meets the above criteria, lot 3 meets none. That does not mean that the BZA is without jurisdiction to consider the application for that property, however, it must first determine whether the area is generally suitable for chancery uses. *See Application of the Embassy of the Republic of Azerbaijan*, No. 16620 (December 21, 2000) (R-1-A property); *Application of the Defense Procurement Division on behalf of the Coordination Council for North American Affairs*, No.14820, September 23, 1988 (R-5-B property).

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II. The General Suitability of Lot 3 in Square 2231 for Chancery Use

Lot 3 in Square 2231 is an appropriate location for chancery use. It was uncontested during the hearing that Square 2231 as well as the surrounding area is primarily characterized by diplomatic and institutional uses. Lot 3 is practically surrounded by the existing Embassy of the Republic of Hungary; it abuts the Embassy to the north and the west. It abuts Linnean Avenue to the south. The Embassy of the Czech Republic is located directly across Linnean Avenue from Lot 3. To the east, Lot 3 abuts Shoemaker Street. Rock Creek Park is located directly across Shoemaker Street from Lot 3.

The area also includes other institutional uses such as the Hillwood Museum and the Levine School of Music. The Office of Planning agrees that Lot 3 is an appropriate location for chancery use.

The ANC did not support the use of Lot 3 for chancery use. It argued that the property is not appropriate for chancery use because it is zoned R-1-A where only single family detached dwellings are permitted. In addition, the ANC contended that the United States has already fulfilled its responsibility under the FMA by providing a chancery to the Republic of Hungary on Lot 6, and the conversion of a single family dwelling to a multi-family and consulate use would set a troubling precedent in the neighborhood. The Board has considered the arguments of the ANC, but does not find them persuasive. As set forth above, given the predominately institutional character of the neighborhood, the fact that the Republic of Hungary has owned and used Lot 3 for over 30 years, and the fact that Lot 3 abuts the existing chancery on two sides, the Board does not find the ANC's advice persuasive.

III. The Proposed Project and Use Should not be Disapproved

The FMA § 206 (d) establishes six exclusive criteria upon which the Board must base its determination regarding the specific merits of a particular chancery location. As will be explained below, the Board has determined that the Project should not be disapproved because it meets all of these criteria

A. International Obligation of the United States

As stated by the State Department and OP, favorable action on the application will fulfill the international obligation of the United States to facilitate the acquisition of adequate and secure facilities by the Republic of Hungary for its diplomatic mission in the Nation's Capital.

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B. Historic Preservation (as determined by the BZA)

The Property is not located in an historic district and it is not an historic landmark. Accordingly, District and federal regulations governing historic preservation are not applicable in this case.

C. Adequacy of Parking (subject to such special security requirements as may be determined by the Secretary)

The Embassy of the Republic of Hungary has operated on the Property for over 30 years with little adverse impact on parking. This application contemplates only an expansion in facilities, and the Applicant does not anticipate an increase in employees, clients, or special events.

For chancery use in the R-5-D Zone, § 2101.1 requires one parking space for every 1,200 square feet of gross floor area devoted to chancery use. The renovated chancery building on Lot 6 will include 22,700 square feet of gross floor area, which results in a parking requirement of 19 spaces for that building. As shown on the Plans, the Project will include 23 parking spaces in an underground garage beneath the renovated chancery building. This leaves four extra parking spaces for use by the residents of the new building on Lot 3. The new building on Lot 3 does not provide any parking spaces on its lot. There is no prescribed parking requirement for chancery use in the R-1-A Zone District. However, the maximum parking requirement for residential uses in the various residential zones is one per dwelling unit. The small building on Lot 3 features four dwelling units, and there are four additional spaces provided in the parking garage for the renovated chancery building.

The consulate will be open to the public on weekdays during the hours of 10 a.m. to 1 p.m., which will limit the parking demand arising from visitors. The consulate receives only approximately 8-10 visitors daily. Additional spaces can be provided in the driveway of the renovated chancery building with access from Shoemaker Street. The Republic of Hungary also has the option to reserve diplomatic parking spaces on the street in front of the chancery, and street parking is available for the approximately five to ten visitors that the chancery receives per day. This number of spaces can more than satisfy the requirements of the employees and visitors of the chancery. The driveway parking will be used only for the drop-off and/or short term parking of visitors to the chancery.

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D. The Extent to which the Area is Capable of being Adequately Protected (as determined by the Secretary)

The Department of State has determined that the Property is capable of being adequately protected.

E. The Municipal Interest (as Determined by the Mayor)

The Office of Planning, on behalf of the Mayor, has determined that approval of the project will be in the municipal interest. The proposed consulate on Lot 3 and the expansion of the existing chancery on Lot 6 are compatible with surrounding uses and will not have an adverse impact on the surrounding area. The Project includes the installation of a new underground sand filter that will improve storm water management for the site and the downstream environment. The existing chancery building is unattractive and does not complement the Property's location adjacent to Rock Creek Park. The existing building on Lot 3 is dilapidated and unattractive. The Project will re clad the existing chancery building with pre-patinated copper and Italian ceramic tile. The new consulate building has been designed to coordinate with the existing chancery building in order to provide a more uniform appearance.

The Project will not have an adverse impact on nearby residential uses. The Project has been designed to minimize any impact on the only nearby residential property, which is located at 2400 Tilden Street. The owner of that property testified during the hearing that he does not oppose the application. The expansion has been concentrated to the south of the Property to minimize any impact on that residence. The proposed chancery expansion will provide adequate parking for its employees and visitors, and they will not compete with neighbors for available street parking.

F. The Federal Interest, (as determined by the Secretary)

The Department of State has determined that approval of this application would serve the federal interest because the Government of Hungary has consistently been supportive of the United States Embassy in Budapest in its diplomatic property needs.

IV. Zoning Conformity

The proposed new consulate building does not technically conform to all of the provisions of the proposed Forest Hills Tree and Slope Overlay ("FH/TSP") and ANC 3 F has expressed its opposition to the application on this basis. For the reasons stated below, the Board does not find the ANC's advice to be persuasive.

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Because the building will not be a residence few of the proposed restrictions of the FH/TSP would apply. The maximum lot occupancy under FH/TSP is 30%. The new consulate will provide a lot occupancy of 38%. The maximum impervious surface coverage under FH/TSP is 50%. The new consulate will feature a slightly higher impervious surface coverage of 55%. The plan the Applicant originally filed showed an impervious surface coverage of 65% on Lot 3. The Applicant has since revised the plan to reduce the impervious surface coverage by 10%. In addition, in order to comply with the spirit of the FH/TSP and to reduce the potential for water runoff and erosion, the Applicant has agreed to provide a green roof for the new consulate building. It will be a true green roof that will be planted with grass or other plant material. The FH/TSP allows a maximum of three trees with a circumference of 30-75 inches to be removed, and no tree located within 25 feet of any building restriction line may be removed.

The Applicant will not technically meet the tree removal restrictions. The Applicant plans to remove only two trees on Lot 3. One will have a circumference of 40 inches, and the other has a circumference of 33 inches. The Applicant does not meet the restrictions of FH/TSP because both trees are located within 25 feet of a building restriction line and because the two trees comprise approximately 33% of the circumference inches of trees on Lot 3. However, the Applicant has made an effort to save as many trees as possible and to plant ample replacement trees. The Applicant relocated the entrance to the building to preserve an existing mature elm tree. An existing Saucer magnolia will be relocated instead of removed. The Applicant will add numerous new trees, including Legacy Sugar Maple trees, evergreen magnolias, several smaller trees, and an evergreen hedge. The purpose of the proposed FH/TSP overlay is to preserve and enhance the park-like setting of the designated neighborhoods and properties adjacent to streams and parks, by regulating alteration or disturbance of terrain, destruction of trees, and ground coverage of permitted buildings and other impervious surfaces. The project substantially complies with FH/TSP, and Applicant has made extensive revisions to the plans in order to comply with the purpose of the overlay. These include adding the green roof, preserving existing trees, planting new trees, and reducing the impervious surfacing by 10%.

The new consulate building deviates from the off-street parking, rear yard, and side yard requirements of the R-1-A Zone and ANC 3 F has expressed its opposition to the application on this basis. For the reasons stated below, the Board does not find the ANC's advice to be persuasive.

The new consulate building proposed for Lot 3 does not provide any off-street parking spaces on site because the parking for that building will be located in the main parking garage. Providing parking on the site could jeopardize the security of the chancery and also lead to an increase in the amount of impervious surfacing on the site. The four

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residential units will be reserved exclusively for staff members who work on-site at the adjacent renovated chancery building. Employees residing in and using the consulate building will have access to parking in the garage located adjacent to the site in the chancery building on Lot 6. Because of the small numbers of persons who will visit the building and its limited hours of operation, the reduced parking will not negatively affect the neighborhood. The west side yard will be 6'5", which is less than the 8 feet required, and the rear yard will be 7'8" instead of the required 25 feet. The rear yard and side yard are reduced in order to preserve existing trees, comply with building restriction lines, and provide adequate square footage for the consulate and residential uses. The side yard and rear yard reductions will not adversely affect any neighboring properties because the affected property is owned by the Applicant.

The renovated chancery building on Lot 6 also will require minor deviations from the requirements of the R-5-D Zone. The existing chancery building currently has a non-conforming side yard of 7'4". This side yard will be reduced by 5 inches with the recladding of the building's exterior. This slight reduction will not be detrimental to the adjacent property, which is vacant, open space used in connection with the Republic of China's Education Center. The Applicant also requested a minor deviation from the roof structure setback requirements, if necessary. The roof structure will be housed in an architectural embellishment that will not be set back from the south. The Board finds that providing the setback would give the embellishment a disjointed appearance and that the lack of setback will not adversely affect any property owner or the zone plan.

In sum, the Board concludes that the deviations requested by the Applicant will not be detrimental to the neighborhood.

Accordingly, it is hereby **ORDERED** that this application is **NOT DISAPPROVED**.

Vote of the Board of Zoning Adjustment constituted in accordance with the Foreign Missions Act taken at its special public meeting on May 9, 2006, not to disapprove the application:

VOTE: **4-0-1** (Geoffrey H. Griffis, Patricia Gallagher, Ruthanne G. Miller and John G. Parsons to not disapprove, Curtis L. Etherly, Jr. not present, not voting)

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT

FINAL DATE OF ORDER: DEC 01 2006

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UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

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.

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.

SG