

**Libraries, Parks, Recreation, and Planning**

**Agency Performance: Office of Planning**

**TESTIMONY OF SHERIDAN KALORAMA NEIGHBORHOOD COUNCIL ON  
THE NEED FOR REFORM OF ZONING REGULATIONS FOR CHANCERIES IN  
RESIDENTIAL NEIGHBORHOODS**

**IN THE ZONING REGULATION REVISION EFFORT**

**February 9, 2012**

**Good morning, Mr. Chairman and members of the Committee. My name is Marie Drissel and I am an Executive Board Member representing the Sheridan Kalorama Neighborhood Council, a 50 year organization with 200 dues-paying members and a long history of involvement in issues relating to the location of chanceries in residential areas.**

**The boundaries of Sheridan Kalorama are roughly Massachusetts Avenue, Florida, Connecticut and Rock Creek Park. Our concern, in brief, is that, as a result of what is a misinterpretation of the Foreign Missions Act, the Zoning Regulations and recent past practice dealing with chancery locations, Sheridan-Kalorama has an inappropriate concentration of these uses—which are office uses, not residential.**

**Though they often appear residential, chanceries are really office buildings. Over the years, chanceries have crowded out and endangered the future viability of our neighborhood. Beginning nearly 10 years ago, we engaged with the Office of Planning to express our concerns, and to develop a proposed revision of the Zoning Regulations that would have protected this historic residential character. A Petition to Amend the Zoning Map filed by SKNC was tabled by the**

Zoning Commission until OP could devise new regulations to achieve these goals. At the end of a series of meetings, OP staff suggested that, while they were supportive of our desires, given the importance and magnitude of the changes, we should wait and incorporate them into the broader revision of the Zoning Regulations. We have patiently waited for revised regulations that would address our concerns, yet the proposed regulations released as part of the comprehensive zoning rewrite so far fall far short of the changes we discussed. We are before you today to request that the Council, which has been very supportive in the past on this issue, support us in expressing a desire to OP that the revisions we have been waiting for will not be left on the cutting room floor.

Most people, when discussing the buildings which house diplomatic missions, use the word “embassy” to denote all the various functions that are part of these missions: ambassadorial residences, cultural performances, and various office functions, including visa processing, trade, cultural, military and other types of attaché functions. In zoning parlance, however, the term “embassy” refers solely to the ambassador’s residence. Buildings housing all other consular or diplomatic functions are referred to as “chanceries”. For smaller countries, the same building might house both the ambassador as well as diplomatic offices, but in the District of Columbia, there are a very large number of chanceries.

With two small exceptions chanceries are the ONLY purely office use which has been permitted in low density residential zones. There is a good reason for outlawing office buildings in these zones: offices, particularly diplomatic offices, generate parking demand for the staff, visitors and massive deliveries of mail, office equipment and supplies.

Changes made to former residential structures to make them secure and suitable as offices are expensive, making unlikely that the buildings will ever revert back to residential use. Chanceries are generally used only during work hours, leaving large stretches of a neighborhood dark at night and on weekends without “eyes on the street” to provide a sense of security. When chanceries are used in the evening, it is to host receptions and events that generate more parking demand from the guests, just as residents are returning home looking to park. There have been several cases of chanceries paving over green space in the front and rear of their buildings to suddenly operate small parking lots. Some chanceries have been left to decay or poorly maintained becoming a blight on the neighborhood. We must acknowledge that the State Department’s Office of Foreign Missions, which formerly largely turned a deaf ear to neighbors’ complaints, has done a much better job of trying to reach solutions to this derelict property issue.

There are constraints on the District’s ability to deal directly with this situation, and they mainly derive from the Foreign Missions Act, legislation adopted by Congress in 1982 to represent the federal interest. The Act declares several zones in which chanceries are permitted to locate as a matter of right. These include commercial, special purpose, and mixed-use zones. But they may also locate in some low-density residential zones, designated with a Diplomatic (D) Overlay or not, if approved through a process somewhat similar to a special exception application, with a few important differences, which strengthen the role of the federal representatives in the process minimizing the traditional concerns about land use impacts that are held by District representatives on the Board of Zoning Adjustment, sitting as the Foreign Missions Board of Zoning Adjustment or “FMBZA”.

(I have provided more detail about these in Appendix B of this testimony.)

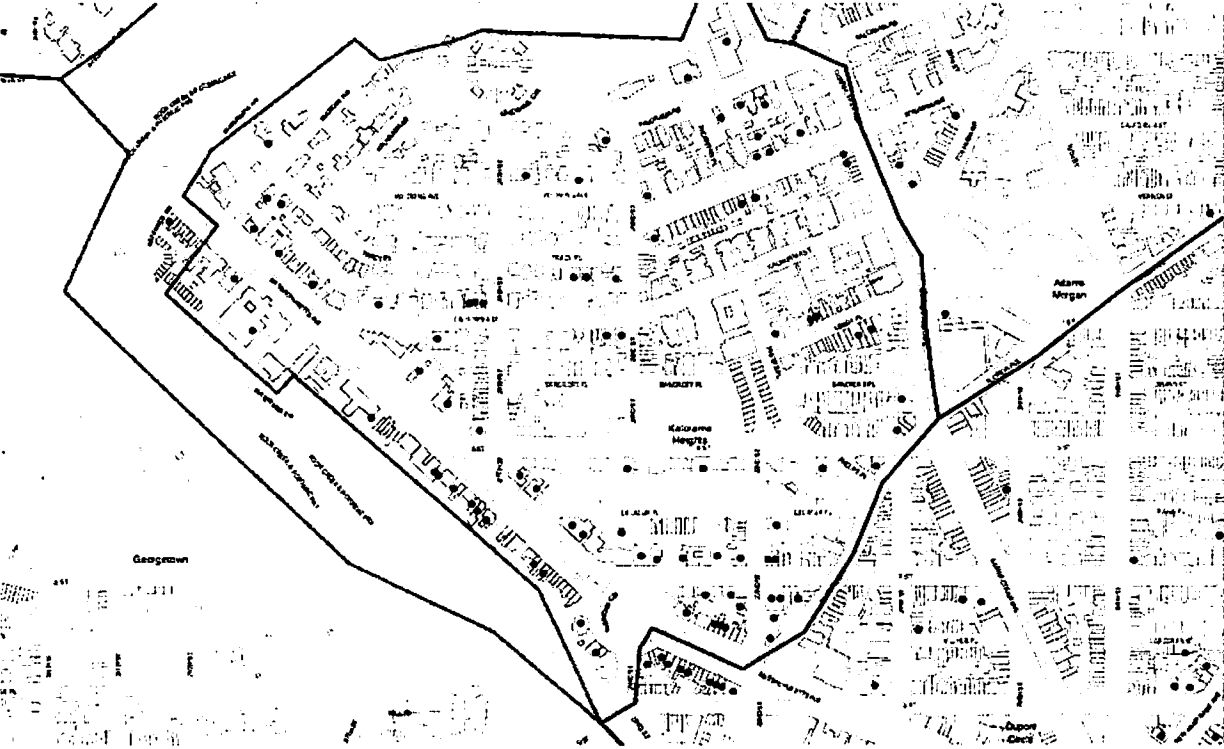
The heart of the issue is how the Diplomatic Overlay (“D Overlay”) is defined and applied to low-density residential areas. Though not specified in the Foreign Missions Act, the methodology that was utilized by NCPD and OP staff when the D Overlay was originally defined gives free rein to locate a chancery, even in the lowest density residential areas, if there are existing churches, schools, institutions or other uses which are not strictly residential, including other embassies or chanceries, located in the same square. Not only does this penalize neighbors who have welcomed these institutional uses, or been predated by them, but, as you can imagine, it is a recipe for further crowding out the last vestiges of residential character. The greater concentration of institutional uses in a square, often the greater likelihood that a chancery will want to locate there. SKNC has advocated, and we had thought OP supported, an alternative approach that would have recognized legitimate existing institutional uses but made sure to exclude from the calculation uses such as churches, public schools and libraries which are permitted as a matter of right in residential zones, so that the “institutional character” of a square is not overstated. This approach has not been in the draft text of the Zoning Regulations being circulated now as part of the comprehensive rewrite. We are also concerned because the current draft zoning regs seem to relax historic preservation protections (very important to an historic district like ours), and it permits a chancery to locate in a building formerly used as a chancery (up to three years before), without a hearing before the Board.

**Not only is the comprehensive rewrite a perfect opportunity for the District to tighten up these regulations and take a stronger position in defense of low-scale residential neighborhoods, but recent actions by current and former State Department officials have demonstrated an interest in limiting the potential for degradation of Washington's historic residential areas. In addition, in a recent FMBZA case, the retired State Department official primarily charged with dealing with foreign missions for close to thirty years conceded that the Foreign Missions Act had never intended to permit the location of chanceries in the type of low-density neighborhoods that have been considered fair game by the FMBZA. Finally, as you know, the State Department has claimed more than 50 acres of Walter Reed, with the intention to build a new chancery center. Tightening up restrictions on chanceries locating in low-density residential areas will help make sure that the Department of State has tenants for this new area.**

**SKNC has asked the Office of Planning to utilize the opportunity of the comprehensive zoning rewrite to revise the D Overlay, and to modify the process by which chanceries locate in neighborhoods like ours. We believe this is consistent with the 2006 Comprehensive Plan, the 1982 Foreign Missions Act, and Home Rule. We urge the Council to impress on the Office of Planning that retention of low-scale residential neighborhoods and strengthening the municipal interest in this federal process is of paramount importance. Let us not fail to take advantage of this unique opportunity.**

# Appendix A. Map from NCPC Showing Chancery Locations

The National Capital Planning Commission indicates that there are over 169 foreign missions in the city, with over 483 facilities. Here is a portion of their map, showing the boundaries of Sheridan Kalorama and the chancery locations within our neighborhood.



## Appendix B. Initial Analysis of Draft Proposed Zoning Regulations Dealing with Chanceries

The proposed new Zoning Regulations contain many changes to the regulations for chanceries, on the negative and the positive sides.

### Unfavorable Changes:

1. If a chancery is in existence as of October 1, 1982, another chancery can be substituted without seeking any permission from the BZA, unless it has been vacant for more than three years. SKNC had asked that any change in chanceries must be approved de novo by the Board.
2. For a historic property, the Board must find that “any demolition, alteration, or new construction will retain and enhance the property and *encourage its adaptation for current use,*” and for properties in a historic district, “the Board must find that any alterations or new construction are compatible with the character of the historic district.” This appears to be a retreat from the current language, “To ensure compatibility with historic landmarks and historic 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.” In addition, current regs specifically require that applications that involve changes to historic properties be referred to the Historic Preservation Review Board and/or US Commission of Fine Arts. The proposed regs do not require this step at all, and have the Board making that determination, without any requirement to confer with HPRB.
3. The new regs say that for properties in “R” zones (low-density residential zones), the “Board shall first determine, through active certificates of occupancy, submitted by the Application, that at least one-third (1/3) of the R zoned land area of the square within which the proposed use is located is occupied by the following use categories:
  - (1) Chancery;
  - (2) Educational;
  - (3) Large Scale Government;
  - (4) Local Government;
  - (5) Health Care;
  - (6) Institutional; or
  - (7) Office”

SKNC had asked that *non-residential uses which are permitted as a matter of right in residential neighborhoods, such as public and charter schools, churches, health clinics, private clubs and museums, not be counted as justifying the location of chanceries, which are essentially commercial office uses.*

4. Instead of relying on an ad hoc use of the 1/3 – 2/3 method of determining which squares are suitable for chanceries, which leaves squares in any area of the city vulnerable to having a chancery, should a charter school come to a square that already has a large church, for example,

there is the possibility for an alternative approach. Given the recent admission by the State Department's primary foreign missions expert for thirty years that the Foreign Missions Act required the determination of eligible chancery locations to be made solely by the Zoning Commission, this is an opportunity for the Zoning Regulations to provide for the Commission to make a determination of which low-density residential areas might be suitable for chanceries by drawing and adopting a new Diplomatic Overlay zone, and abandoning the 1/3 – 2/3 test entirely. Currently the proposed regulations eliminate the D Overlay and open virtually any area to be considered for a chancery use, if at least 1/3 of the property in the square is one of the six uses listed above.

### **Favorable Changes**

- 1. The burden of proof that an application meets the criteria is explicitly placed on the Applicant to demonstrate, including a requirement that non-residential uses for the 1/3 – 2/3 test be documented by the submission of current certificates of occupancy. While not necessarily changing the process, the explicit charge to the Applicant to have to bear the burden of proof that the proposed chancery is consistent with all the criteria is an improvement to the current regs. However, the fact that the Foreign Missions Board of Adjustment is slanted toward federal control, and that the standard is not "to approve" but merely "not to disapprove", there is still weak protection of District neighborhoods.**
- 2. The Applicant must submit detailed information at the time of the application, and then submit any traffic reports at least 30 days before the hearing, with any additional information required to be submitted no less than 21 days in advance of the hearing. It is good that the community will have at least 30 days to review the traffic report. However, the regs do not require DDOT to analyze and comment on the report. In addition, all public agencies are supposed to submit their reports at least one week in advance, so that only allows three weeks for OP and DDOT, if it chooses to comment, to review the report and do their own analysis, and provides only one week for the community to be able to view those reports.**