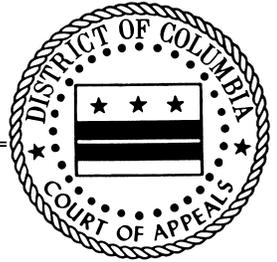


NO. 24-CV-0759



Clerk of the Court
Received 06/25/2025 04:33 PM
Filed 06/25/2025 04:33 PM

**DISTRICT OF COLUMBIA
COURT OF APPEALS**

MASSACHUSETTS AVENUE HEIGHTS CITIZENS ASSOCIATION,

Petitioner-Appellant,

v.

D.C. BOARD OF ZONING ADJUSTMENT,

Respondent-Appellee.

On Appeal from the Superior Court for the District of Columbia
Case No. 2023-CAB-002455

**AMICUS BRIEF FOR THE UNITED STATES OF AMERICA IN SUPPORT
OF APPELLEE**

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INTEREST OF THE UNITED STATES

This case concerns Section 4306 of the Foreign Missions Act (FMA), which governs the “location, replacement, or expansion of chanceries in the District of Columbia.” 22 U.S.C. § 4306(a). The United States has a strong interest in ensuring the correct application of this statute, given the potential consequences for our foreign relations with foreign states as well as the potential impact on the reciprocal treatment of the United States in other nations.

Moreover, there is a strong federal interest in the Embassy of the Republic of Kosovo’s ability to maintain its chancery location. Kosovo’s partnership is important to U.S. efforts to promote regional stability and security. Effective U.S. engagement with this key partner requires that Kosovo has safe, functional, and local representational space in Washington, D.C. Kosovo’s current and appropriate representation in Washington reflects its standing as a sovereign state. This amicus brief is filed pursuant to District of Columbia Court of Appeals Rule 29(a)(1) and 28 U.S.C. § 517.

STATEMENT OF THE ISSUE

The Foreign Missions Act (FMA), 22 U.S.C. § 4306, requires the Board of Zoning Adjustment (Board) to consider six statutory factors when deciding whether to disapprove a foreign state’s application to locate a chancery in a residential area that is “zoned medium-high or high density,” or in any other area

that “includes office or institutional uses,” regardless of how the area is formally zoned. *Id.* § 4306(b)(2), (d). Here, the Board concluded that the Embassy of Kosovo’s chancery application satisfied the factors set out in the FMA. The questions presented are:

1. Whether the Board erred by failing to consider factors outside the FMA in determining whether to disapprove Kosovo’s chancery application.
2. Whether the Board erred by declining to impose conditions on its non-disapproval of Kosovo’s chancery application.

STATEMENT OF THE CASE

A. Statutory Background

In 1982, Congress enacted the Foreign Missions Act (FMA) to ensure the “secure and efficient operation” of “foreign missions” both domestically and abroad. 22 U.S.C. § 4301. The Act provides the Secretary of State “broad authority over foreign missions.” *Palestine Info. Office v. Shultz*, 853 F.2d 932, 936 (D.C. Cir. 1988); *see also* 22 U.S.C. § 4301(c). At the time of enactment, Congress was particularly concerned that federal interests were not being given sufficient weight by local officials determining the benefits to be accorded to foreign missions. S. Rep. No. 97-329, at 1-2 (1982), *as reprinted in* 1982 U.S.C.C.A.N. 714-15, 716.

The FMA creates a “comprehensive scheme for the fair and expeditious decision of issues relating to foreign chanceries in the District of Columbia.” *Embassy of the People’s Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 310, 316 (D.C. 1987). In doing so, Congress intended to “rectify certain problems inherent in the then-existing procedures for resolving issues relating to chanceries in the District of Columbia.” *Id.* at 314-15; *see also* S. Rep. No. 97-329, at 1-3, 1982 U.S.C.C.A.N. 714-16. With respect to the location of chanceries, the Act provides that a chancery “shall ... be permitted to locate— (A) in any area which is zoned medium-high or high density residential, and (B) 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, subject to disapproval by the District of Columbia Board of Zoning Adjustment in accordance with this section.” 22 U.S.C. § 4306(b)(2). “Any determination concerning the location of a chancery under” this subsection “shall be based solely on the following criteria:”

- (1) The international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation’s Capital;
- (2) Historic preservation, as determined by the Board of Zoning Adjustment;
- (3) The adequacy of off-street or other parking and the extent to which the area will be served by public transportation to reduce parking requirements;

- (4) The extent to which the area is capable of being adequately protected, as determined by the Secretary of State, after consultation with Federal agencies authorized to perform protective services;
- (5) The municipal interest, as determined by the Mayor of the District of Columbia; and
- (6) The Federal interest, as determined by the Secretary.

Id. § 4306(d). “Provisions of law” other than § 4306 “applicable with respect to the location, replacement, or expansion of real property in the District of Columbia shall apply with respect to chanceries only to the extent that they are consistent with this section.” *Id.* § 4306(j).

The FMA also provides a process for determining the location, replacement, or expansion of chanceries. It requires foreign missions wishing to locate in an eligible area to “file an application with the Board of Zoning Adjustment.” 22 U.S.C. § 4306(c)(1). The Board must then assess the application and issue a “final determination ... not later than six months after the date of the filing of an application.” *Id.* § 4306(c)(3).

B. Factual Background and Prior Proceedings

1. In September 2022, the Embassy of Kosovo filed an application to convert an existing single-family dwelling located at 3612 Massachusetts Avenue N.W. into a chancery. JA 117. Kosovo’s application described the relevant area as “mixed-use.” JA 137, 139 (original mixed-use explanation); JA 180-84, 189-90 (updated explanation). The application also examined the six FMA criteria,

explaining how each was satisfied. JA 140-41. Kosovo accordingly requested that the Board not disapprove its application.

Local and federal entities filed letters supporting Kosovo's application. The Office of Planning, writing on behalf of the Mayor of the District of Columbia, "recommend[ed] that the [Board] not disapprove the Embassy of Kosovo's request ... to establish a chancery at 3612 Massachusetts Avenue, N.W." JA 253 (emphasis omitted). Specifically, the Mayor found that the proposed chancery does not raise concerns for the municipal interest because its "use would not be detrimental to the public good, and would not be contemplated to bring substantial harm to the privacy and use of enjoyment of neighboring property." JA 257. The D.C. Department of Transportation likewise noted its support, though it recognized "minor" transportation and parking concerns. JA 250-51. It accordingly expressed its support for the application subject to certain conditions, which Kosovo agreed to implement. JA 250-52, 309-10, 404. The D.C. Department of Transportation then filed an updated memorandum stating that, as a result, it had "no objection to the approval" of Kosovo's chancery application. JA 316-17.

The State Department also supported Kosovo's application. In doing so, the Department emphasized the various federal interests that would be served by allowing Kosovo to establish its chancery. Specifically, the State Department stated that (1) not disapproving Kosovo's application would "fulfill the

international obligation of the United States to facilitate the provision of adequate and secure premises for the Government of the Republic of Kosovo in Washington”; (2) “there exist no special security requirements relating to parking” and the area can be “adequately protected”; and (3) there is a federal interest in securing Kosovo’s chancery because Kosovo has been “helpful in addressing the United States’ land use needs in Pristina, Kosovo.” JA 260-61.

A neighborhood association, the Massachusetts Avenue Heights Citizens Association (Association), opposed the chancery application, as did several individual neighbors and the Advisory Neighborhood Commissioner. The Association argued that the Board “should disapprove the Kosovo Application” because the relevant area “is not mixed-use and instead low-density residential” and that Kosovo’s application contained various “uncurable” deficiencies. JA 321, 330-36. Alternatively, the Association requested that the Board require Kosovo to meet with all interested parties and agree to “reasonable mitigation measures,” although the Association did not list any specific conditions it sought to impose. JA 336-38. Various neighbors likewise submitted letters to the Board voicing their opposition to Kosovo’s chancery application for much the same reasons as the Association. JA 381-400.

After holding three hearings to address comments both in favor of and against Kosovo’s chancery application, the Board issued a final decision not

disapproving the application. JA 427. The Board began by assessing the relevant area and ultimately concluded that it was mixed-use. JA 424. The Board then analyzed the FMA's factors and concluded that all six statutory criteria had been met. JA 424-27. Relevant here, the Board found that allowing the chancery would be in the municipal interest, given the Office of Planning's determination on behalf of the Mayor, as well as Kosovo's agreement with D.C. Department of Transportation to resolve preexisting issues with the property. JA 425-26. And because it concluded that Kosovo's application satisfied the FMA, the Board declined to impose any conditions on its decision. JA 426 n.7.

2. The Association filed a petition for review of the Board's decision in the D.C. Superior Court. JA 5. According to the Association (JA 38-39), the Board's approval was arbitrary and capricious because it was inconsistent with D.C.'s Comprehensive Plan—a “high-level guide that sets a positive, long-term vision for the District of Columbia,” including “policies and actions that set priorities for the District's land use, public services, infrastructure, and capital investments.” Office of Planning, DC.gov, *Comprehensive Plan*, <https://perma.cc/L3W9-TAV8> ; JA 40-50. The Association also claimed that the Board abused its discretion by not properly considering the Association's request for conditions on its non-disapproval of Kosovo's application. JA 51.

The Superior Court largely rejected these arguments. Relevant here, the court explained that “the Comprehensive Plan does not bind the [Board’s] determinations” and that “whether [the Board’s] determination did contravene the Comprehensive Plan is immaterial, insofar as the [Board] is only subject to the procedures established by the Foreign Missions Act.” JA 112-13. The court further found that the Board had sufficiently considered the FMA’s six criteria and that the Board’s “reliance on the Office of Planning’s recommendation” was not “in any way contrary to the law.” JA 115 (emphasis omitted). For these reasons, the Superior Court rejected the Association’s claims that the Board’s decision not to disapprove Kosovo’s chancery application was arbitrary or capricious or unsupported by substantial evidence. JA 115. The court did not address the Association’s contention that the Board improperly failed to consider imposing conditions on its non-disapproval. *See* Association’s Br. 37.

The Association now appeals to this Court.

ARGUMENT

THE BOARD’S DECISION WAS NOT LEGAL ERROR

The Board’s decision to not disapprove Kosovo’s chancery application comports with the FMA, which provides the exclusive process for reviewing chancery applications. As this Court recognized in *Embassy of the People’s Republic of Benin v. District of Columbia Board of Zoning Adjustment*, the FMA

was enacted to “rectify certain problems inherent in the then-existing procedures for resolving issues relating to chanceries in the District of Columbia.” 534 A.2d 310, 314-15 (D.C. 1987). Congress was particularly concerned that “the District’s zoning and planning authorities failed to give sufficient weight to the national government’s interest in foreign affairs in making decisions regarding the benefits to be accorded foreign missions in the District.” *Id.* at 315 (footnote omitted); *see also* S. Rep. No. 97-329, at 1-3, 1982 U.S.C.C.A.N. 714-16. For that reason, the FMA requires the Board’s review of a chancery application to be based exclusively on six factors, which balance local and federal interests. *Benin*, 534 A.2d at 319-20; *see also* 22 U.S.C. § 4306(d).

The Board acted pursuant to its statutory directive when it considered recommendations from federal and municipal authorities, as well as comments from neighbors, and concluded that Kosovo’s chancery application satisfied all six FMA factors. The Association’s arguments that the Board failed in considering D.C.’s Comprehensive Plan, and that the Board should have imposed conditions on the chancery permit, contravene the text and aims of the FMA.

A. The Board’s decision not to disapprove the application comported with the FMA.

1. Under the FMA, a “chancery shall ... be permitted to locate” in a mixed-use area “subject to disapproval by the District of Columbia Board of Zoning Adjustment in accordance with this section.” 22 U.S.C. § 4306(a)(2)(B). The

Board's determination "shall be based solely on" the six statutory criteria. *Id.* § 4306(d). The statutory factors ensure "that in deciding issues relating to the location and operation of foreign missions, the local and federal interests [are] appropriately balanced." *Benin*, 534 A.2d at 315-16.

The Board's decision to not disapprove Kosovo's chancery application rested on its analysis of the six FMA factors. The Board analyzed each factor independently, relying on recommendations from the Office of Planning, Department of Transportation, and Secretary of State, while also considering opposing statements from the Association as well as individual neighbors. With respect to the federal interest, the Board recognized that the Department of State had concluded that Kosovo's chancery would serve important federal interests, including U.S. diplomatic interests. JA 260-61, 424. The Board further found, in line with the Department of State's submission, that declining to disapprove Kosovo's chancery application serves the international obligations of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the nation's capital. JA 424.

With respect to the municipal interest, the Board acted pursuant to the FMA when it relied on the Office of Planning's memorandum to conclude that "approving the application was in the municipal interest." JA 425. That memorandum, submitted on behalf of the Mayor, stated that Kosovo's proposed

chancery “would not be detrimental to the public good, and would not be contemplated to bring substantial harm to the privacy and use [or] enjoyment of neighboring property.” JA 257. Furthermore, the Board found that Kosovo had sufficiently addressed concerns regarding its application, including by agreeing to an expedited schedule to address the Department of Transportation’s concerns, and “agree[ing] to implement some of the recommended conditions” proposed by plaintiffs. JA 426 & n.7.

2. The Association contests the Board’s analysis on the basis that it “contravenes the Comprehensive Plan.” Association’s Br. 31. In doing so, the Association overstates the Comprehensive Plan’s role in determining the municipal interest. The Plan provides guidance as to particular policies aimed at improving Washington D.C.’s neighborhoods. Office of Planning, *supra*; *see also Tenley & Cleveland Park Emergency Comm. v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 337-38 (D.C. 1988). It has no binding legal effect on the Board’s review of chancery applications, which the Association concedes is governed exclusively by the FMA. Association’s Br. 31; *see also Benin*, 534 A.2d at 319.

Under the FMA, the “municipal interest” is “determined by the Mayor of the District of Columbia.” 22 U.S.C. § 4306(d). The Superior Court correctly concluded that “whether [the Board]’s determination did contravene the

Comprehensive Plan is immaterial, insofar as the [Board] is only subject to the procedures established by the Foreign Missions Act.” JA 112-13.

Perhaps recognizing as much, the Association instead quibbles with the Office of Planning’s recommendation. Association’s Br. 32. But the fact that the Association disagrees with the Office of Planning’s assessment does not mean that the Board legally erred by relying on it, as the FMA directs it to do. 22 U.S.C. § 4306(d)(5).

B. The Board did not err by declining to impose conditions outside the six FMA factors on Kosovo’s chancery permit.

The Board did not err by declining to impose any conditions on the chancery permit. In its Notice of Final Rulemaking and Determination Order, the Board explained that “the Office of Planning determined that approval of the application will be in the municipal interest without recommending any conditions.” JA 426 n.7. The Board correctly determined that conditions would therefore be inappropriate given that the FMA provides the sole criteria for the Board’s determination of chancery applications. *Benin*, 534 A.2d at 316; *see also* JA 424-26, 426 n.7.¹ Moreover, the imposition of unnecessary conditions might encourage reciprocal treatment for United States missions globally.

¹ The Association asserts that the real reason the Board declined to impose conditions was because it mistakenly thought it lacked jurisdiction to impose enforceable conditions. Association Br. 37-38. To the contrary, both in the Notice

Continued on next page.

The Association nevertheless contends that the Board erred by failing to impose any conditions, pointing out that the Board has conditioned its approval in other cases. Specifically, the Association claims that conditions were necessary to “serve the municipal interest.” Association Br. 39-41.

But the recommendation of the Office of Planning was not subject to any conditions, JA 253, and the Department of Transportation likewise had no objections to the application after Kosovo agreed to remedy its concerns, JA 404, 426 n.7. Given the “municipal interest” determination by relevant municipal authorities, the Board did not err in declining to impose any conditions of approval.

The Association’s suggestion (Br. 41) that the Board should have imposed conditions outside the six FMA factors would undermine “Congress’ intent that the provisions of the FMA should exclusively govern the location and expansion of chanceries in the District [of Columbia].” *Benin*, 534 A.2d at 319; *see also* 22 U.S.C. § 4306(d), (e). The Association cites 22 U.S.C. § 4306(b)(3) as purported authority to impose additional conditions, but that provision does not authorize the Board to impose individualized conditions on a chancery permit that are not related to the six FMA factors. Because Kosovo’s proposal already satisfied the statutory criteria, the imposition of additional conditions would be at best a needless

of Final Rulemaking and throughout the proceedings, the Board and its members repeatedly said that they could not impose conditions *unconnected to the six FMA criteria*. JA 426 n.7, 494, 523, 525, 556-57.

impediment and at worst an inappropriate effort to restrict the activities of foreign missions beyond the exclusive factors enacted by Congress.

CONCLUSION

The Board did not err in not disapproving Kosovo's chancery application and in declining to order conditions on the chancery permit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2025, I electronically filed the foregoing brief with the District of Columbia Court of Appeals using the online e-filing system. Service will be accomplished on all parties through that system.

s/ Sharon Swingle

SHARON SWINGLE

ADDENDUM

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22 U.S.C. § 4306.....A1

22 U.S.C. § 4306

(a) Section as governing location, replacement, or expansion

The location, replacement, or expansion of chanceries in the District of Columbia shall be subject to this section.

(b) Acceptable areas; limitations and conditions

(1) A chancery shall be permitted to locate as a matter of right in any area which is zoned commercial, industrial, waterfront, or mixed-use (CR).

(2) A chancery shall also be permitted to locate—

(A) in any area which is zoned medium-high or high density residential, and

(B) 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,

subject to disapproval by the District of Columbia Board of Zoning Adjustment in accordance with this section.

(3) In each of the areas described in paragraphs (1) and (2), the limitations and conditions applicable to chanceries shall not exceed those applicable to other office or institutional uses in that area.

(c) Filing of application with Board of Zoning Adjustment; publication of notice; public participation; final determination

(1) If a foreign mission wishes to locate a chancery in an area described in subsection (b)(2), or wishes to appeal an administrative decision relating to a chancery based in whole or in part upon any zoning map or regulation, it shall file an application with the Board of Zoning Adjustment which shall publish notice of that application in the District of Columbia Register.

(2) Regulations issued to carry out this section shall provide appropriate opportunities for participation by the public in proceedings concerning the location, replacement, or expansion of chanceries.

(3) A final determination concerning the location, replacement, or expansion of a chancery shall be made not later than six months after the date of the filing of an application with respect to such location, replacement, or expansion. Such determination shall not be subject to the administrative proceedings of any other agency or official except as provided in this chapter.

(d) Criteria for determination

Any determination concerning the location of a chancery under subsection (b)(2), or concerning an appeal of an administrative decision with respect to a chancery based in whole or in part upon any zoning regulation or map, shall be based solely on the following criteria:

(1) The international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation's Capital.

(2) Historic preservation, as determined by the Board of Zoning Adjustment in carrying out this section; and in order to ensure compatibility with historic landmarks and 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.

(3) The adequacy of off-street or other parking and the extent to which the area will be served by public transportation to reduce parking requirements, subject to such special security requirements as may be determined by the Secretary, after consultation with Federal agencies authorized to perform protective services.

(4) The extent to which the area is capable of being adequately protected, as determined by the Secretary, after consultation with Federal agencies authorized to perform protective services.

(5)The municipal interest, as determined by the Mayor of the District of Columbia.

(6)The Federal interest, as determined by the Secretary.

(e)Consistency of regulations, proceedings, and other actions; review and comment by National Planning Commission

(1)Regulations, proceedings, and other actions of the National Capital Planning Commission, the Zoning Commission for the District of Columbia, and the Board of Zoning Adjustment affecting the location, replacement, or expansion of chanceries shall be consistent with this section (including the criteria set out in subsection (d)) and shall reflect the policy of this chapter.

(2)Proposed actions of the Zoning Commission concerning implementation of this section shall be referred to the National Capital Planning Commission for review and comment.

(f)Rule-making nature of proceedings

Regulations issued to carry out this section shall provide for proceedings of a rule-making and not of an adjudicatory nature.

(g)Compliance with District of Columbia building and related codes

The Secretary shall require foreign missions to comply substantially with District of Columbia building and related codes in a manner determined by the Secretary to be not inconsistent with the international obligations of the United States.

(h)Approval of Board of Zoning Adjustment or Zoning Commission not required

Approval by the Board of Zoning Adjustment or the Zoning Commission or, except as provided in section 4305 of this title, by any other agency or official is not required—

(1)for the location, replacement, or expansion of a chancery to the extent that authority to proceed, or rights or interests, with respect to such location,

replacement, or expansion were granted to or otherwise acquired by the foreign mission before October 1, 1982; or

(2)for continuing use of a chancery by a foreign mission to the extent that the chancery was being used by a foreign mission on October 1, 1982.

(i)Membership on Zoning Commission and Board of Zoning Adjustment

(1)The President may designate the Secretary of Defense, the Secretary of the Interior, or the Administrator of General Services (or such alternate as such official may from time to time designate) to serve as a member of the Zoning Commission in lieu of the Director of the National Park Service whenever the President determines that the Zoning Commission is performing functions concerning the implementation of this section.

(2)Whenever the Board of Zoning Adjustment is performing functions regarding an application by a foreign mission with respect to the location, expansion, or replacement of a chancery—

(A)the representative from the Zoning Commission shall be the Director of the National Park Service or if another person has been designated under paragraph (1) of this subsection, the person so designated; and

(B)the representative from the National Capital Planning Commission shall be the Executive Director of that Commission.

(j)Application of other laws

Provisions of law (other than this chapter) applicable with respect to the location, replacement, or expansion of real property in the District of Columbia shall apply with respect to chanceries only to the extent that they are consistent with this section.