

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



**Application No. 20887 of the Government of the Kingdom of the Netherlands**, pursuant to 11 DCMR Subtitle X, Chapter 2, to permit a new three-level parking structure in the same location as and replacing an existing three-level parking structure at an existing chancery in the R-8 zone at premises 4200 Linnean Avenue, N.W. (Square 2049, Lots 807, 808).

**HEARING DATE:** May 10, 2023  
**DECISION DATE:** May 10, 2023

**NOTICE OF FINAL RULEMAKING**  
**and**  
**DETERMINATION AND ORDER**

The Board of Zoning Adjustment, pursuant to the authority set forth in § 206 of the Foreign Missions Act, approved August 24, 1982 (96 Stat. 273; D.C. Official Code § 6-1306 (2012 Repl.)) and Chapter 2 of Subtitle X of the Zoning Regulations of the District of Columbia (Title 11 of the District of Columbia Municipal Regulations), and after having held a public hearing on May 10, 2023, hereby gives notice that it took final action not to disapprove the application of the Government of the Kingdom of the Netherlands (“Applicant”) to permit a new three-level parking structure in the same location as and replacing an existing three-level parking structure at an existing chancery in the R-8 zone at 4200 Linnean Avenue, N.W. (Square 2049, Lots 807, 808) (the “subject property”).

A notice of proposed rulemaking was published in the February 3, 2023 edition of the D.C. Register (70 DCR 1858). The Office of Zoning scheduled a public hearing on the application for May 10, 2023 and provided written notice to the public more than 40 days in advance of the public hearing in accordance with Subtitle Y § 402.1. On January 20, 2023, the Office of Zoning referred the application to the United States Department of State, the National Capital Planning Commission, the National Park Service, the District of Columbia Office of Planning (“OP”), the District Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 3F (whose boundaries encompass the subject property), the Single Member District Commissioner for ANC 3F03, the Office of Advisory Neighborhood Commissions, the Historic Preservation Office, the Department of Buildings, and the Councilmember for Ward 3 as well as the Chairman of the Council and the at-large members of the D.C. Council. On January 20, 2023, the Office of Zoning provided notice of the public hearing on the application to the Applicant, ANC 3F, and to the owners of all property within 200 feet of the subject property. Notice was also provided to the

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District of Columbia  
CASE NO.20887  
EXHIBIT NO.33

**BZA APPLICATION NO. 20887**  
**PAGE NO. 2**

Department of Public Works, Metropolitan Police Department, Fire and Emergency Medical Services Department, Department of Parks and Recreation, Department of Energy and the Environment, and DC Water. In addition, the Applicant posted notice on the subject property in plain view of the public in accordance with Subtitle Y § 402.3, and notice of the hearing was published in the February 3, 2023 edition of the *D.C. Register* (70 DCR 1659).

**THE APPLICATION**

The application was filed on January 17, 2023, accompanied by a letter from the United States Department of State certifying the Applicant had complied with § 205 of the Foreign Mission Act (22 USC § 4305) and that the application could be submitted to the Board. The application sought approval of a new parking structure and the temporary use of public space on nearby streets during the construction period.

The subject property is an irregularly shaped parcel with a lot area of 186,236 square feet, and has been owned by the Applicant and used for ambassador's residence and chancery purposes since the early 1960s. The Applicant proposed to replace the existing parking structure that was built in 1961 with a new three-level parking structure containing 78 vehicle parking spaces—slightly fewer spaces than the 81 spaces provided in the existing structure—and 11 long-term bicycle parking spaces. Construction of the parking structure will facilitate improvements to pedestrian and ADA access, provide for a green roof, and increase opportunities for onsite storm water retention.

The chancery at the subject property is housed in a three-story structure containing approximately 70,000 square feet of gross floor area. The new parking structure, built on the site of the existing parking structure at the rear of the chancery building, will have three levels of vehicle parking connected by an internal ramp accessible from a single point of entrance that, given the sloping topography of the subject property, will be at the upper level of the structure. The three levels will be connected by a central pedestrian walkway and stair leading to an entrance plaza into the chancery building. The parking structure will have a partial roof to provide weather protection for employees and visitors, along with opportunities for stormwater capture and solar energy production. The roof level will contain a green roof, which visually will appear as an extension of the adjacent landscape, and approximately 150 solar panels. The new parking structure will not be readily visible from neighboring properties because of its low profile, topographical changes at the site, and vegetation on and surrounding the subject property. The landscape plan for the proposed garage structure will consist primarily of low maintenance, drought-tolerant plantings.

In requesting approval of the new parking structure, the Applicant noted that the new construction would not fully comply with zoning requirements. According to the Applicant, the new parking structure and existing buildings at the subject property would likely be regulated as multiple buildings on a single lot of record in a residential zone under Subtitle C § 305, and the new parking structure will not meet the side yard requirements on the north or south side of the structure or the rear yard requirement on its west side. The Board's review under Subtitle X § 201.8 may encompass any relief needed from zoning requirements. See, e.g., Application No. 17972

**BZA APPLICATION NO. 20887**  
**PAGE NO. 3**

(Kingdom of Sweden by the National Property Board of Sweden, on behalf of the Embassy of Iceland; order issued November 13, 2009) at 3; see also *Embassy of the People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 310, 316–18 (D.C. 1987).

The Board's review under Subtitle X § 201.8 also encompasses any aspects of a chancery application pertaining to public space. (Subtitle X § 203.7; see also Application No. 18242 (Embassy of the Republic of Serbia; order issued October 24, 2011) at 4 n.3.) In this case, the Applicant did not propose any new permanent public space improvements or permanent modifications to existing public space improvements but sought approval of temporary improvements within public space for staging and storage during construction. The Applicant proposed the temporary use of the public space adjacent the subject property along the west side of Upton Street, N.W. and Linnean Avenue, N.W (an area estimated at 10 feet wide by 150 feet long) for parking, deliveries, materials storage, and construction staging, along with other potential temporary construction-related components.

The Applicant noted that the topography and tree coverage of the subject property, as well as the continual use of the existing chancery and deputy ambassador's residence, limited the area available to store temporary construction elements on-site and hindered access by large delivery vehicles to the location of the new parking structure. The Applicant will determine the final plan and schedule for use of the public space in coordination with DDOT and ANC 3F as well as the general contractor ultimately selected for the project, and will fully restore the public space after completion of construction.

**MIXED-USE DETERMINATION**

The subject property is located in the Forest Hills Tree and Slope Protection Residential House zone R-8, which is a low-density residential zone as defined in Subtitle X § 200.2; see also Subtitle A § 202.1(a). For applications requesting to locate, replace, or expand a chancery in a low- to medium-density residential zone, the Board must first determine that the proposed location is in a "mixed-use area" on the basis of existing uses. (Subtitle X §§ 201.3-201.7.) For purposes of this determination, the "area" must be the area that the Board determines most accurately depicts the existing mix of uses adjacent to the proposed location of the chancery, which may be the square within which the property is located or other bounds as determined by the Board. (Subtitle X § 201.4; see also Subtitle Y § 301.6.) An area is automatically considered "mixed-use" if more than 50 percent of the zoned land within the area is devoted to non-residential uses. (Subtitle Y § 201.5.)

The subject property is located in the eastern portion of Square 2049, which is bounded by Linnean Avenue and Upton Street to the east and south and Soapstone Valley Park to the north; the western edge of the square extends to Connecticut Avenue at the northwest corner. Square 2049 contains approximately 2,037,912 square feet of land area, of which 66 percent is devoted to non-residential uses. The non-residential uses include the Howard University Law School, located on approximately 19.6 acres immediately to the west of the subject property, and the Levine School of Music, occupying approximately 4.5 acres directly to the south.

The Board concludes that Square 2049 accurately depicts the existing mix of uses adjacent to the subject property.<sup>1</sup> Because the existing non-residential uses in Square 2049 occupy more than 50 percent of the square's land area, the Board determines that the area is mixed-use and thus meets the requirement of Subtitle X § 201.3 for consideration of the chancery application consistent with the criteria provided in the Foreign Missions Act, also found in Subtitle X § 201.8 of the Zoning Regulations. (Subtitle X § 201.6.)

**FOREIGN MISSIONS ACT CRITERIA**

Pursuant to § 206(d) of the Foreign Missions Act, D.C. Official Code § 6-1306(d), the Board must consider six enumerated criteria when reviewing a chancery application and must base its decision solely on the six criteria. The provision further dictates who is to make the relevant finding for certain factors. The factors and relevant findings are as follows:

**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.**

In a letter dated February 7, 2023, the Department of State determined that favorable action on this application would fulfill the international obligation of the United States to facilitate the Embassy of the Kingdom of the Netherlands in acquiring adequate and secure premises to carry out their diplomatic mission. (Exhibit 25.) The Office of Planning also recommended approval of the application. (Exhibit 27.) As recommended by the Secretary of State and the Office of Planning, the Board finds that favorable action on the application will fulfill the international obligation of the United States to facilitate the acquisition of adequate and secure premises by the Government of the Kingdom of the Netherlands for its diplomatic mission 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.**

The Applicant and the Office of Planning, which includes the Historic Preservation Office, indicated that the subject property is not located within a historic district and that the existing buildings at the subject property have not been designated historic landmarks. (Exhibit 27.) Based on the evidence and testimony in the record, the Board finds that this criterion has been met.

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<sup>1</sup> In light of the location of the subject property at the eastern edge of its square, the Applicant also evaluated the existing uses of zoned lots adjacent to the subject property in the squares immediately north, south, and east of the subject property (Squares 2238, 2239, 2244, 2245, and 2246) as well as the existing uses in the eastern portion of Square 2049. The Applicant calculated that approximately 68 percent of this larger area, which contains approximately 3,370,516 square feet of land area, is presently devoted to non-residential uses. In agreeing with the Applicant that the application met the requirement of showing a "mixed-use area," the Office of Planning considered the larger area. However, OP did not dispute the Applicant's assertions that Square 2049 "most accurately depicts the existing mix of uses" and also satisfied the 50-percent threshold for a determination of a mixed-use area.

**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 of State, after consultation with federal agencies authorized to perform protective services.**

The Board concurs with DDOT's conclusion that the number of vehicle parking spaces provided at the subject property will be adequate to accommodate the parking needs of the chancery's staff and visitors. The new parking structure will provide vehicle parking in excess of the minimum requirement of 34 spaces stated in the Zoning Regulations, with 78 spaces in the new parking structure as well as approximately 14 parking spaces located elsewhere on the subject property, for a total of 92 off-street vehicle parking spaces. Eleven long-term bicycle spaces are also included in the proposal.

The subject property is located approximately 0.75 miles east of the Van Ness – UDC Metrorail station (Red line) on Connecticut Avenue, which is also served by Metrobus routes. Bicycle facilities in the area include nearby Capital Bikeshare stations and bike lanes. The Applicant did not anticipate that the new parking structure would result in additional events or employees at the site over current levels.

The Department of State, after consulting with the Federal agencies authorized to perform protective services, determined that there are no special security requirements related to parking in this case. (Exhibit 25.) Based on this finding and determination, and the evidence in the record, the Board concludes that this criterion has been met.

**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.**

The Department of State, after consulting with the Federal agencies authorized to perform protective services, determined that the subject site and area are capable of being adequately protected. (Exhibit 25.)

**5. The municipal interest, as determined by the Mayor.**

The Office of Planning, on behalf of the Mayor of the District of Columbia, determined that approval of the application would be in the municipal interest. (Exhibit 27.) Though the project will not meet zoning requirements with respect to the number of buildings per lot or side and rear yard setbacks, OP determined that the new parking structure will not compromise the privacy and enjoyment of neighboring property or create any adverse impacts on the surrounding neighborhood, noting that the size of the subject property, its topography, and the location of the parking structure in the interior of the site will avoid the creation of undue impacts on light and air to neighboring properties. OP noted that the addition of stormwater controls as an element of the

new parking structure will be a benefit to the neighborhood by reducing runoff into the natural resources and creeks of the Forest Hills neighborhood.

The Office of Planning also found the Applicant's request for approval of the temporary use of public space on nearby streets during the construction period consistent with the municipal interest. OP noted DDOT's lack of objection to the Applicant's proposal, including the temporary need to use nearby public space, and noted that the temporary staging of construction materials for a small area on a public street is not unusual for construction projects throughout the District and would be managed as required by DDOT's permissions.

**6. The federal interest, as determined by the Secretary of State.**

The Department of State determined that there is federal interest in this project. Specifically, the Department of State acknowledged the Government of the Kingdom of the Netherlands' assistance in addressing the United States' land use needs in The Hague, Netherlands. The Department of State also noted that "[s]uch cooperation was essential for successfully achieving the Federal Government's mission for providing safe, secure, and functional facilities for the conduct of U.S. diplomacy and the promotion of U.S. interests worldwide." (Exhibit 25.)

**Great weight.**

The Board is required under § 13(d) of the Advisory Neighborhood Commission Act of 1975, effective March 26, 1976 (D.C. Law 1-58; D.C. Official Code § 1-309.10(d); Subtitle Y § 406.2) to give great weight to the issues and concerns raised in the written report of the affected ANC, which in this case is ANC 3F. The ANC submitted a report dated March 30, 2023, indicating that at its duly noticed public hearing on March 21, 2023, with a quorum present, ANC 3F had no objection to the project as proposed and that it did "not have any concerns regarding the proposed project, nor the temporary use of public space during construction for storage and staging." (Exhibit 22.) For the reasons discussed above, the Board agrees with the ANC that the application should be approved.

Based upon its consideration of the six criteria discussed above, and having given great weight to the affected ANC, the Board has decided not to disapprove the application. Accordingly, it is hereby **ORDERED** that the application is **NOT DISAPPROVED** subject to the plans shown at Exhibit 3.

**VOTE: 3-0-2**

(Frederick L. Hill, Marcel C. Acosta, and Peter G. May to NOT DISAPPROVE; Lorna L. John not present, not voting; one Board seat vacant.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**BZA APPLICATION NO. 20887**  
**PAGE NO. 7**

**ATTESTED BY:**

  
**SARA A. EARDIN**  
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** June 2, 2023

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

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.