

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 16620-A of The Embassy of the Republic of Azerbaijan, pursuant to 11 DCMR § 1002 of the Foreign Missions Act, to allow the construction of a security fence in the TSP/NO/R-1-A District at premises 2741 34th Street N.W. (Square 2122, Lot 27).

HEARING DATES: October 27, 2015¹ and November 10, 2015
DECISION DATE: November 10, 2015

NOTICE OF FINAL RULEMAKING

and

DETERMINATION AND ORDER

The Board of Zoning Adjustment (“Board”), pursuant to the authority set forth in § 306 of the Foreign Missions Act, approved August 24, 1982 (96 Stat. 283; D.C. Official Code, § 6-1306 (2012 Repl.)) and Chapter 10 of the Zoning Regulations of the District of Columbia, Title 11 DCMR, and after a public hearing on November 10, 2015, hereby gives notice that it took final action not to disapprove the application of The Embassy of the Republic of Azerbaijan (“Applicant”) to allow the construction of a security fence in the TSP/NO/R-1-A District at premises 2741 34th Street, N.W. (Square 2122, Lot 27) (the “Subject Property”).

In Order No. 16620, the Board determined not to disapprove the application of The Embassy of the Republic of Azerbaijan (“The Applicant”) to locate a chancery at the Subject Property, subject to nine conditions.

In Application No. 16620-A, the Applicant proposes to install a five-foot wrought iron gate and connecting fencing on the 34th Street, N.W. frontage along portions of the property line. The proposed security fence would connect to the existing fencing on the property line along 34th Street, N.W. in front of the building restriction area to complete the fencing around the property. The Applicant proposes no alterations to the existing structure on the property.

A notice of proposed rulemaking was published in the *D.C. Register* on September 11, 2015 (62 DCR 12485), and notice of the hearing was also published in the *D.C. Register* on September 11,

¹ The hearing was postponed on October 27, 2015 administratively.

2015 (62 DCR 12405).

Pursuant to § 406(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. 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.

The Department of State determined that favorable action on this application would fulfill the international obligation of the United States to facilitate the Republic of Azerbaijan in acquiring adequate and secure premises to carry out their diplomatic mission. (Exhibit 31.)

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 Subject Property is not designated as a historic landmark nor is it located within a historic district.

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 agrees with the findings reached by the Office of Planning ("OP") (Exhibit 34) and the D.C. Department of Transportation (Exhibit 35) that the Subject Property is adequately served by sufficient on-site parking and public transportation services. The proposed security fence would not alter the Embassy's existing on-site parking.

The Department of State, after consulting with the Federal agencies authorized to perform protective services, determined that there exist no special security requirements relating to parking in this case. (Exhibit 31.)

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.

After consulting with Federal agencies authorized to perform protective services, The Department of State determined that the subject site and area are capable of being adequately protected. (Exhibit 31.)

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

OP, on behalf of the Mayor of the District of Columbia, determined that not disapproving this application is in the municipal interest and is generally consistent with the Comprehensive Plan for the Nation's Capital and the Zoning Regulations. (Exhibit 34.)

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

The Department of State determined that there is a federal interest in this project. Specifically, the Department of State acknowledged the Republic of Azerbaijan's generous assistance in accommodating security requirements for the U.S. Embassy in Baku. Such 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 31.)

ANC 3C Recommendation

The Board is required under § 13(d) of the Advisory Neighborhood Commission Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001)) to give great weight to the issues and concerns raised in the written report of the affected ANC which is ANC 2B. The ANC submitted a resolution indicating that at its regularly scheduled, duly noticed public hearing on October 19, 2015, with a quorum present, the ANC voted to recommend approval of the application. (Exhibit 32.) The ANC indicated that the resolution was approved by voice vote, and accordingly a vote count was not given in the report. The Board's decision to not disapprove the Application is consistent with the ANC's resolution.

Based upon its consideration of the six criteria discussed above, and having given great weight to the ANC, the Board has decided not to disapprove this application.

As a result, the Applicant will be permitted to construct a five-foot wrought iron gate and connecting fencing on the 34th Street, N.W. frontage along portions of the property line as shown on **Exhibit 9** at premises 2741 34th Street, N.W.

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

Vote of the Board of Zoning Adjustment taken at its public hearing on November 10, 2015, to Not Disapprove the application:

VOTE: **3-0-2** (Marnique Y. Heath, Frederick L. Hill, and Peter G. May to Not Disapprove; Marcel C. Acosta not participating; and 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.

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: January 27, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

APPROVAL OF THIS 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. THE APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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.