NEIGHBORS OF 2741 34TH STREET, N.W.
WASHINGTON, D.C. 20008-2716

Board of Zoning Adjustment
441 4th Street, N.W., Suite 210
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DISTRICT OF COLUMBIA

October 16, 2000

Response to the Statement of the Embassy of Azerbaijan in Support of its Application To Establish a Chancery at 2741 34th Street, N.W. In an R-1-A District (BZA Application No. 16620)

Dear Commissioners:

The files of the Board of Zoning Adjustment include an unsigned and undated (but time stamped October 4, 2000) Statement of the Embassy of Azerbaijan in support of its application pursuant to Section 206 of the Foreign Missions Act (22 U.S.C. §4306) and Chapter 10 of the Zoning Regulations to establish a chancery at **2741 34th Street**, N.W. (BZA Application No. 16620), a three-bedroom single family residence. The Embassy purchased **2741 34th Street** without first seeking any determination with respect to its intended use of the property in a manner not permitted in an R-1-A District.

We are neighbors of 2741 34th Street who oppose the invasion of our residential neighborhood by a business. We file our response to correct mischaracterizations, contained in the Statement of the Embassy as well as in statements submitted by the Department of State, of (i) the intended scope of Section 206 of the Foreign Missions Act and (ii) our neighborhood.

Our letter makes the following points:

1. Contrary to the assertions in the Embassy's Statement, Section 206(b)(2) of the Foreign Missions Act, as interpreted by the Board in *Application No. 14820,* does not authorize foreign chanceries to invade low density residential areas..... 2

2. Contrary to the assertions in the Embassy's Statement, our neighborhood, including the portion within the Diplomatic Overlay, is essentially residential..... 4

3. The proposed chancery will impose additional business type strains, on our neighborhood, which is already burdened by the proximity of the Diplomatic Overlay: 5

4. The NCPC staff letter submitted by the Embassy is not supported by the history or current status of our neighborhood, and its conclusion is inconsistent with the Federal Element of the Comprehensive Plan for the National Capital. 6

5. The statement as to the Federal interest by the Department of State is strained and contains curious omissions. 8

BZA
Case No. 16620
Exhibit No. 43

Board of Zoning Adjustment
District of Columbia
CASE NO.16620
EXHIBIT NO.43

1. **Contrary to the assertions in the Embassy's Statement, Section 206(b)(2) of the Foreign Missions Act, as interpreted by the Board in Application No. 14820, does not authorize foreign chanceries to invade low density residential areas.**

   Section 206 of the Foreign Missions Act provides that:

   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)** and

   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, 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 Section 206.

The Embassy and the Department of State, in its memorandum "PROPER INTERPRETATION OF FOREIGN MISSIONS ACT SECTION 206(B)(2)(B)", focus at great length on the phrase permitting chanceries to locate "in any other area, determined on the basis of existing uses, including but not limited to any area zoned *mixed use diplomatic* or special purpose" in Section 206(b)(2)(B). We do not dispute the plain meaning of the statute. The Board of Zoning Adjustment has already recognized that Section 206(b)(2)(B) gives it authority to examine the true facts. *Application No. 14820; Decided September 13, 1988 (*John G. Parsons, Charles R. Norris and Carrie L. Thornhill voting to disapprove the proposed location of a chancery in an R-5-B residential zone).

Applicant and the Department, however, go further. They jump to the conclusion that low density residential neighborhoods are basically fair game, particularly along any border with another zoning district. That is plainly wrong. The legislative history clarifies that Section 206(b)(2), read as a whole, does not grant *carte blanche* for chanceries to of Section 206(b)(2) invade low density residential areas:

> Section 206(b)(2) permits chanceries, upon application, to locate, as at present, in areas zoned **medium-high or high-density** residential [we are **low density** residential], as well as in other areas which include office and institutional uses, including mixed-use diplomatic and special purpose districts. All locations within these areas are subject to disapproval under the District of Columbia zoning process as provided in this section. **This subsection will not permit chanceries to be located in any area which is essentially a residential use area**. [emphasis supplied] Joint Explanatory Statement of the Committee of Conference House Rep. 97-693 (1982).

The legislative history makes clear that Section 206(b)(2) does not permit chanceries to be the spearhead of an effort to undermine low density residential areas. That includes low density residential neighborhoods that have compatible related uses such as schools, churches and home offices; those types of uses are not "institutional" for

the purposes of Section 206(b)(2)(B). The "including but not limited to" phrase in Section 206(b)(2) is aimed at areas that may be nominally zoned low density residential but where an accumulation of special exceptions has basically changed the character of the neighborhood.

2741 34th Street is zoned R-1-A. So are Square 1939 (outside the Diplomatic Overlay) and Square 1941, which are adjacent to **2741 34th Street**. Furthermore, as we will shoe below, even where the Diplomatic Overlay borders the strictly R-1-A zoning, the uses are largely residential in Square 2122. In *Application No. 14820,* the Board recognized that, in applying Section 206(b)(2(B), the first step was to define properly the area to be considered in evaluating "existing uses":

> The larger area which surrounds the immediate area of the application is marked by particularly closely drawn zone district boundary lines. For that reason, under certain literalistic readings of the word "area," the area in which the proposed chancery would be located could arguably be extended to include the immediately adjacent SP-1 zone district or the reasonably proximate C-2-A zone **[In Application No. 14820, the relevant Square was divided into several different zones. In our situation, read part of Square 2122 is zone R-1-A and the rest is zoned R-1-A with the addition of the Diplomatic Overlay].** But the engrafting of such zone districts onto the area of consideration would also engraft onto the area the mater-of right or special exception offices which are located in those zones. These mixed-use and office zones, and the included office uses, should not be merged with a residentially-zoned area which both the Zoning Commission and the Congress have legislatively determined to warrant a different treatment.
>
> The Board finds particular support for this approach in that Congress itself in Sec. 5-1206, treats various zone districts as discrete classes of areas, which warrant different treatment. In applying the Congressional statue, it is reasonable for the Board to accord the R-1-A through R-5-B areas [In Application No. 14820, the proposed chancery was to be located in an R-5-B zone] the full measure of protection which the Congressional legislation contemplates.

(Order Disapproving *Application No. 14820*; John G. Parsons, Charles R. Norris and Carrie L. Thornhill voting to disapprove).

The soundness of the Board's reasoning is quite apparent. Any zoning system must have borders where one zone abuts another. Thus there must be lines where commercial zones abut residential zones or where the Diplomatic Overlay abuts purely residential areas. If, in applying Section 206(b)(2)(B), the Board were to take into consideration areas in another zone, there would be constant creep. If 2741 34th Street can be turned into a chancery today, then tomorrow a second country can use the same logic to petition to turn 2740 34th Street (directly across the street from **2741 34th Street)** into a chancery and the day after that a third country can seek to install a chancery at 3400 Fulton Street (diagonally across the street from **2741 34th Street**).

We believe that the Board should adhere to the precedent that it set in deciding *Application No. 14820.*

2. Contrary to the assertions in the Embassy's Statement, our neighborhood, including the portion within the Diplomatic Overlay, is essentially residential.

Square 2122, where **2741 34th Street** is located, and the adjacent Squares 1939 and 1941 are essentially residential. Both Square2122 and 1939 are partially within the Diplomatic Overlay. Square 2122 has the following lots, beginning with 2741 34th Street and going south on **34th Street** and then east on Massachusetts Avenue:

(1) Lot 27 – **2741 34th Street** – a three-bedroom single family detached residence, the proposed site of the chancery. *(Zoned R-1-A; not in the Diplomatic Overlay)*

(2) Lot 809 – 2735 34th Street – a single family detached residence that is used as a single family residence (it belongs to the Apostolic Nunciature; see discussion below). *(Zoned R-1-A not in the Diplomatic Overlay)*

(3) Lot 21 – an essentially vacant lot that provides additional open space and gardens for the residence of the Apostolic Nuncio. *(In the Diplomatic Overlay)*

(4) Lot 20 – another essentially vacant lot that also provides open space and gardens for the residence of the Apostolic Nuncio. *(In the Diplomatic Overlay)*

(5) Lot 6 – another essentially vacant lot that also provides open space for the residence of the Apostolic Nuncio. *(In the Diplomatic Overlay)*

(6) Lots 17, 16 and 804 – the residence of the Apostolic Nuncio. *(In the Diplomatic Overlay)*

(7) Lot 29 – the Finnish chancery, the only non-residential use in the Square. The Finnish chancery is also the *only* commercial use in the Square. It was constructed after the establishment of the Diplomatic Overlay. *(In the Diplomatic Overlay)*

(8) Lot 13 – parkland belonging to the Federal government. *(In the Diplomatic Overlay)*

(9) Lot 800 – additional parkland belonging to the Federal government. *(In the Diplomatic Overlay)*

In contrast to the assertions of the Embassy, the most important thing to note is that the residence of the Apostolic Nuncio, even though within the Diplomatic Overlay, is essentially a residence. Archbishop Montalvo, the current Apostolic Nuncio, is the representative of the Holy See to the Roman Catholic Church in the United States. His functions are therefore largely religious (and religious uses are recognized as being consistent with residential zoning). As a consequence of the establishment of diplomatic relations between the United States and the Holy See in the 1980's, he also enjoys the

diplomatic status of an ambassador (the diplomatic representatives of the Holy See are styled as Nuncios rather than Ambassadors).

Accordingly, the residence of the Apostolic Nuncio (the Apostolic Nunciature) is the equivalent of an embassy. Embassies are not businesses uses. Embassies are recognized in the District's zoning regulations and in the Foreign Missions Act as residences and, therefore, are permitted uses in areas zoned as residential. We have made inquiry in the last week as to the current uses of the Apostolic Nunciature and have been told that, indeed, it is in fact used principally as a residence. One of us visited the Apostolic Nunciature and observed the layout of the ground floor; the space is largely laid out as residential space with large drawing rooms and no evidence of desks although we do understand that there is an office located in the back of the building. District zoning regulations recognize the right of a resident to maintain a home office in his house without changing the residential character of his house for purposes of the zoning regulations. Doctors and dentists throughout the residential areas of the District maintain their offices in their houses; that is not treated as business or institutional use. Accordingly, the Apostolic Nunciature is properly classified as a residence. We also note that the Holy See does not conduct commercial business relations. The Holy See is a small enclave within the city of Rome; its realm is the spiritual, not the commercial. Commercial activities are conducted with Italy and, in Washington, with the Italian consulate not the Holy See.

Accordingly, when viewing the Embassy's Exhibit, which purports to "color-code" the various uses in Square 2122, all the area comprising Lots 6, 17, 16 and 804 should be colored "pink" for residential rather than "yellow" as suggested by the Embassy. Furthermore, 2732 34th Street in Square 1939 should also be colored "pink" rather than "yellow"; until recently it was occupied as a residence by a couple, who also had a religious mission. The only office/institutional uses are the Finnish Chancery (which also operates illegally as a party house in the evenings, but is located in the Diplomatic Overlay) and the Norwegian Chancery (which is also in the Diplomatic Overlay). The Norwegian Embassy should not, however, be colored "yellow" as it is a residential use under the Foreign Missions Act and therefore properly marked "pink" in the Embassy's color scheme. It should also be noted that the Belgian Chancery in Square 2119 is a grandfathered use that dates from before the District's crackdown on the indiscriminate invasion of residential neighborhoods by chanceries.

3. **The proposed chancery will impose additional business type strains, on our neighborhood, which is already burdened by the proximity of the Diplomatic Overlay:**

   (A) **By increasing the number of occupants of 2741 34th Street above reasonable occupancy levels for single-family houses:**

2741 34th Street is a three-bedroom house. The Embassy now proposes to install 15 employees, up 50 % from the original ten discussed with the neighborhood in May of this year. Fifteen occupants of a single-family house is wholly inappropriate in a low density residential

neighborhood. Furthermore, the Chancery was only recently established. In all likelihood, the size of the staff will grow in the future, further increasing the excess number of occupants of **2741 34th Street.** If the number of employees can change 50% that quickly, how long will the other promises last? Particularly when counsel for the Embassy takes it upon herself to disparage the residential character of our neighborhood to the local newspaper, *The Northwest Current*?

(B) **By creating traffic and parking problems in our neighborhood:**

Although the Embassy has suggested that its employees would arrive in groups in an Embassy van, we doubt that arrangement will persist as employees live in more and more different neighborhoods. Consequently, we expect that there will be more traffic and pressure on parking spaces, even before considering the impact of business visitors to the Chancery or the probable growth in the size of the Chancery staff. **2741 34th Street** cannot accommodate parking for the number of cars that can reasonably be expected to be associated with the operation of the Chancery.

(C) **By adversely changing the residential character of our neighborhood:**

Our neighborhood is already under pressure from unwanted diplomatic intrusions. We suffer with the Liberian Embassy, which looks like the final redoubt of the losers in the recent Liberian civil war. We are burdened by the nonconforming, but grandfathered, Belgian Chancery and chancery activities folded into the Norwegian Embassy. We endure floods of cars valet parked in our neighborhood for the illegal, but tolerated, "rent-a-chancery" parties of the Finnish Chancery that is located down Massachusetts Avenue in the Diplomatic Overlay. Further intrusions will seriously undermine the residential character of the neighborhood.

The District Government has recently undertaken measures to reduce traffic on 34th Street and its extension, Reno Road. Introducing new business uses on 34th Street will impede the district's efforts to maintain the residential character of our neighborhood.

4. The NCPC staff letter submitted by the Embassy is not supported by the history or current status of our neighborhood, and its conclusion is inconsistent with the Federal Element of the Comprehensive Plan for the National Capital.

The Embassy included as an Exhibit to its Application a most peculiar letter dated June 21, 200, from a member of the staff of the National Capital Planning Commission to the Department of State. The letter "clarifies" a letter previously sent by NCPC to the

Department of State. The previous letter is not included in the Embassy's filing; it apparently pointed out to the Department of State the obvious fact that **2741 34th Street** is not within the Diplomatic Overlay. The June 21, 2000, letter states that the a "staff field investigation shows, however, that the area in which the chancery use is proposed [**2741 34th Street**] meets the original standards used by the Commission to determine areas eligible for chancery locations under Section 206(b)(2)(B) of the Foreign Missions Act.

No reason is given as to why this staff member felt called upon to conduct a "staff field investigation" or to write the letter. Surely it was not *sua sponte.* Moreover, the conclusion is not supported by any explanation as to what the "staff field investigation" showed that permitted this staff member to reach his conclusion.

A casual examination of the Zoning Maps will show that, all along Massachusetts Avenue, the Diplomatic Overlay routinely bisects individual Squares. That is the case for Square 1939 adjacent to Square 2122. It is also the case for the Squares adjacent to 30th Street and Massachusetts Avenue (otherwise zone R-1-A) and the Squares at Belmont Road and Massachusetts Avenue (otherwise zone R-1-A) and on California Street and Massachusetts Avenue (otherwise zoned R-1-B). Apparently, NCPC originally concluded that the appropriate approach to the Diplomatic Overlay was to divide up individual residential Squares, allowing a portion of them to be used for chancery purposes while at the same time reserving the rest of those Squares for strictly residential use.

Thus the division of Square 2122, in which **2741 34th Street** is located, between a portion reserved strictly for residential use and a portion in which chanceries were permitted was, to quote the June 21, 2000, letter from the NCPC staff member, "the original standard used by the Commission to determine areas eligible for chancery locations".

The Federal element of the Comprehensive Plan for the National Capital, prepared pursuant to Section 4(a) of the National Capital Planning Act of 1952,as amended, and Section 206 of the Foreign Missions Act, puts the matter this way:

> 2. Massachusetts Avenue, NW. The existing concentration of Chanceries, and Combined Chancery/Embassies in the are along Massachusetts Avenue, NW, between Scott Circle and 35th Street, should be retained as a unique area for diplomatic facilities in the National Capital. The existing character of the area should be preserved and its qualities enhanced. **Existing smaller buildings should be retained in residential use where practicable.** [Emphasis supplied]

It is needless to say eminently practicable to keep **2741 34th Street** in residential use. That is the only permitted use if the Board disapproves of the pending Application.

The question perhaps remains as to what a "staff field investigation" could show a reason to reach another conclusion. The answer is absolutely nothing that would be relevant. The only change in Square 2122 since the Diplomatic Overlay was instituted is the construction of the Finnish Chancery *in the Diplomatic Overlay.* We should not be surprised to learn that a country took advantage of the chancery use permitted by the Diplomatic Overlay. That was what the "original standard" called for. But the principle of the Board's decision in *Application No. 14820* assures that the permitted zoning in one zone is not use as a lever to pry apart the zoning in an adjacent zone.

Perhaps the NCPC staff member did not have time to review NCPC official policies.

5. The statement as to the Federal interest by the Department of State is strained and contains curious omissions.

Section 206(d) of the Foreign Missions Act specifies that the decision of the Board shall be based solely upon specified criteria of which one is the Federal interest as determined by the Secretary of State. Under Section 206(d), we cannot question the determination made by the Department of State; it is to be taken as a fact that it is in the Federal interest for the Board not to disapprove of the Application. Of course, that is true of all applications under Section 206 of the Foreign Missions Act. Under Section 205 of the Foreign Missions Act, the Department can disapprove of an acquisition of real property by a foreign mission. Nevertheless, the Foreign Missions Act gives the decision making power to the Board not to the Department. The Board necessarily must decide on the weight to be given to the determination in making its decision.

The Department of State has submitted a letter dated October 6, 2000, indicating that the "Azerbaijan Government has strongly and effectively supported the Department's efforts to obtain appropriate and secure facilities for our Embassy in Baku". The letter indicates that the Department's efforts included resort to the Azerbaijani courts. The background materials supplied by the Department point out that Article 21 of the Vienna Convention to which the United States and Azerbaijan are parties includes the following provision:

> (1) The receiving State shall either facilitate the acquisition on its territory, *in accordance with its laws,* by the sending State of Premises necessary for its mission or assist the latter in other way in obtaining accommodations in some other way: ..." [Emphasis supplied]

The letter goes on to state that the Embassy "has waited seven years for the **right** to purchase a chancery property [Emphasis supplied]". Given the strong support of the Azerbaijani government for the Department's efforts in Baku, we can understand the desire of the Department to provide reciprocal support to the Embassy, even beyond its legal obligation to do so.

But so far as we know, there have been properties located on Massachusetts Avenue within the Diplomatic Overlay for sale on a regular basis throughout the last seven years. Furthermore, throughout this period the Department of State has controlled a large tract of land at Van Ness Street and Reno Road behind the University of the District of Columbia for use solely for the purpose of locating embassies and chanceries. If the Embassy had purchased any of those properties with the approval of the Department at any time during those seven years (approval of the Department is required under Section 205 of the Foreign Missions Act before a foreign mission may acquire real property in the United States), the United States would have carried out its legal obligations under the Vienna Convention. At the approximate time that the Embassy must have purchased **2741 34th Street**, several properties were for sale within the Diplomatic Overlay on the Massachusetts Avenue corridor. A number of the properties for sale this Spring now appear to have been sold. Others have come on the market and are currently for sale in the blocks between Sheridan Circle and the Korean Chancery. If

the Embassy had sought or were currently to seek to purchase any of those properties and the Department approved that purchase, the Department could fulfill its legal obligations under the Vienna Convention.

We are at a complete loss to understand why the Embassy has had to wait for "seven years for the **right** to purchase a suitable property". It surely has nothing to do with the availability of properties that are deemed suitable for chanceries in the District. But the obligation of the Department under the Vienna Convention is only to facilitate the acquisition on its territory *in accordance with its laws*. The use of **2741 34th Street** as a chancery is **not** in accordance with our laws as laid out in the Board's decision in *Application No. 14820.*

Very truly yours,

Name Representative of the Neighbors of 2741 34th Street	2804 34th Street N.W. Address
Name Representative of the Neighbors of 2741 34th Street	2814 34th St NW Address
Name Representative of the Neighbors of 2741 34th Street	2814 34TH ST N.W Address
Name Representative of the Neighbors of 2741 34th Street	2740 34th St NW Address