

May 5, 2015

VIA HAND DELIVERY

Chairman Lloyd Jordan
Foreign Missions Board of Zoning Adjustment
441 4th Street NW, Suite 210S
Washington, DC 20001

RECEIVED
U.S. OFFICE OF ZONING
2015 MAY -5 PM 1:00

Re: FMBZA Case No. 19013 – Vatican Embassy – Applicant’s Prehearing Statement

Dear Chairman Jordan and Members of the Board:

Enclosed please find one original and 20 copies of the Applicant’s prehearing statement in the above-referenced case. The Applicant is requesting approval of a security fence for an embassy. This case is scheduled for a public hearing on May 19, 2015.

Should you or your staff have any questions, please do not hesitate to contact me.

Sincerely,



Cary R. Kadlecek

Enclosures
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BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 19013
EXHIBIT NO. 30

Board of Zoning Adjustment

CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2015 a copy of the attached letter and enclosures was delivered via U.S. Mail or email to the following:

Karen Thomas
D.C. Office of Planning
1100 4th Street SW, Suite E650
Washington, DC 20024
karen.thomas@dc.gov

Ryan Westrom
District Department of Transportation
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Washington, DC 20003
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Advisory Neighborhood Commission 3C
P.O. Box 4966
Washington, DC 20008


Cary Kadlecek

**BEFORE THE FOREIGN MISSIONS BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Application of the Apostolic Nuncio of the Holy See
ANC 3C

Case No. 19013
Hearing Date: May 19, 2015

PRE-HEARING STATEMENT OF THE APPLICANT

This is the pre-hearing statement for the application of the Apostolic Nuncio of the Holy See ("**Embassy of the Vatican**" or "**Embassy**") for the review of plans to erect a security fence. The property that is the subject of this application is 3339 Massachusetts Avenue NW (Square 2122, Lots 6, 16, 17, 20, 21, 804, & 809) (the "**Property**"). The Property is included in the D/NO/TSP/R-1-A Zone District.

I. NATURE OF RELIEF SOUGHT

The Embassy requests that the Foreign Missions Board of Zoning Adjustment (the "**FMBZA**" or the "**Board**") not disapprove the alteration of an embassy to allow the erection of a security perimeter fence.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to review the application pursuant to Section 1002 of the Zoning Regulations (11 DCMR § 1002) and Section 206 of the Foreign Missions Act (22 U.S.C. §4306(b)(2)(B), also codified as D.C. Code § 6-1306). The Property may be altered for the existing Embassy, subject only to disapproval of the Board in accordance with the criteria set forth in 22 U.S.C. § 4306(b)(2)(B) (also stated in 11 DCMR § 1001).

III. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

The Property is generally in the Woodland Normanstone/Embassy Row neighborhood of Ward 3. It is irregularly shaped and contains approximately 110,050 square feet of land area. The Property is roughly bounded by Fulton Street to the north, Massachusetts Avenue to the south, the Embassy of Finland to the east, and 34th Street to the west. Across Massachusetts Avenue to the south is the Naval Observatory. Further north across Fulton Street is parkland. Areas further to the west are primarily residential uses or foreign missions. Many other foreign missions are nearby along Massachusetts Avenue.

The Property is improved with one main building at the southeast corner. Another smaller building is located at the northwest corner of the building, and yet another small building is located at the north side of the Property. A garage and a small surface parking are located at the western side of the Property. A semi-circular driveway with two curb cuts on Massachusetts Avenue services the Property and the front of the main building. Another driveway with a curb cut on 34th Street also services the Property.

As shown on the site plan attached as Exhibit A, the landscaped area between the front drive and the sidewalk edge is public parking. The front property line, set back from the Massachusetts Avenue sidewalk approximately 25 feet, runs through the front driveway. The property line along 34th Street is the sidewalk edge, but a building restriction line is 15 feet back from the property line.

The Property and the public parking are improved with large amounts of landscaping at its northwestern and northern sides. Multiple trees line the front (south) side Property, some of which are in the public parking. Four large mature linden trees are located just east of the

sidewalk on Massachusetts Avenue. Between the linden trees and the driveway are approximately 15 mature boxwoods. Just west of the sidewalk along 34th Street are multiple other types of mature trees, and mature hedges line the sidewalk edge. A small fence is currently located just behind the hedges along 34th Street.

IV. PROPOSED PROJECT

Because of security concerns, the Embassy proposes to construct a fence around the Property. Indeed, the Embassy's security concerns are real, and recent threats of attack against the Vatican are a very serious consideration for all of its diplomatic posts, including in the United States. (See news article attached as Exhibit B.) In addition, the Embassy experiences regular protests and expects that they could increase in frequency and aggression. These protests coupled with legitimate threats that create a heightened need for security that previously did not exist. According, the Embassy plans to construct the proposed fence on the advice of the U.S. Secret Service, which recommended the proposed fence and its specifications.

The Embassy carefully selected the location of the fence based on the Embassy's security concerns; aesthetic interests; and consultation with the ANC and arborists. The site plan of the fence is shown in Exhibit A.

The fence generally will follow the edge of the public parking along its south side along Massachusetts Avenue, but the fence will not interrupt or obstruct the pedestrian right-of-way on the sidewalk because it will be set back from the sidewalk edge by 18 inches. In addition, there will be three recessions in the fence line on Massachusetts Avenue: two will be in the location of the existing driveways, and one will be for pedestrians. These recessions will allow cars to pull out of the sidewalk while waiting for the access gates to open. Similarly, the pedestrian entrance

will be recessed to allow pedestrians to stand out of the sidewalk while awaiting entrance through the gate. The fence will be in this location near the sidewalk edge to maintain a sufficient distance of approximately 35 feet between the fence and the driveway where cars escorting dignitaries stop to pick up and unload passengers. Locating the fence along the property line or at the driveway edge could compromise the security of such cars and passengers stopped in the driveway because protestors/attackers could get within a few feet of the cars and passengers. Such placement of the fence also would be close enough to allow objects to be easily thrown at the main building and would create a closed-in and prison-like appearance. In addition, the proposed fence location was agreed upon by the ANC, in consultation with two arborists. This carefully-selected location will prevent damage to the linden trees, which do not draw many nutrients from roots close to the sidewalk. Finally, at the corner of Massachusetts Avenue and 34th Street, the fence will be recessed at an angle to prevent any obstruction of site lines around the street corner.

For the rest of the fence, it will be on the Embassy's property. Along 34th Street, the fence will be set back from the property line (sidewalk edge) by three (3) feet and will replace the existing fence in the same location. The fence will be behind a row of existing hedges that will obscure its view. One recession on 34th Street will be in the location of the existing driveway that will allow cars to pull out of the sidewalk while awaiting the entrance gate to open. At the rear (north) of the Property, where there is a significant grade change downward toward Fulton Street, the fence will be at the top of the grade and recessed significantly (approximately 25 to 100 feet) from the rear property line. For most of the eastern side of the Property, the fence will follow the property line.

The fence will be black in color stone columns on the Massachusetts Avenue and 34th Street frontages. Elevation illustrations and design specifications of the fence are attached in Exhibit C. For all locations, the fence will be six (6) feet tall. Parts of the fence also will be black chain link, but those portions will not be visible to the public. However, all portions of the fence that will be adjacent to or visible from public streets will be open with narrow black iron bars that will not create an overly imposing or obstructive appearance. Each automobile entrance will be flanked by two stone columns. The color of the columns will be as close as possible to the stone color on the main building. In total, there will be six columns: four on Massachusetts Avenue and two on 34th Street. Along north side of the Property, the fence will be chain link but will be on significantly higher grade and recessed back from the street. The chain link also will be obscured by vegetation and otherwise will not be visible.

V. THE EMBASSY ALTERATION SHOULD NOT BE DISAPPROVED

Section 1001 of the Zoning Regulations establishes the six criteria upon which the Board must base its determination regarding the alteration of an embassy. In considering the application, the Board must balance the interests set forth in the criteria.

A. International Obligation of the United States

The Office of Foreign Missions of the U.S. Department of State (“OFM”) submitted a diplomatic note and accompanying letter, attached as Exhibit D, stating its approval of the proposed fence and authorizing filing of this application. Subsequently, the OFM submitted its comments (Exhibit 29 of the record) regarding the Embassy’s proposed fence. The OFM stated that the fence would fulfill the international obligation of the United States, that the fence will enhance the ability of federal agencies to ensure protection of the Embassy, and that there is a

federal interest in the installation of the proposed fence because of the necessity of cooperation with the Embassy to ensure safe U.S. diplomatic facilities abroad.

B. Historic Preservation

The Property is in the Massachusetts Avenue Historic District. The Embassy consulted with the Historic Preservation Office about the security fence prior to the public hearing and did not receive any comments. As stated in the project description, the proposed alternation is only the construction of a security fence that is open, attractive, and compatible with the building on the Property, and with the surrounding Historic District. Therefore, there will be no adverse impact on the Historic District.

C. Adequacy of Parking

This section is not applicable. The proposed alteration will not affect the number of employees at the Property, the use on the Property, or any other factor that could affect parking. The existing parking inventory will remain.

D. Security

The U.S. Secret Service recommended the security fence with the minimum specifications proposed. Also, the OFM comments indicate that the federal government supports security enhancements to foreign missions in the United States, including this fence. The OFM also indicated that the fence will enhance the ability of federal agencies to better protect the Embassy.

Furthermore, the Embassy selected the location of the fence largely out of its own security concerns. Protesters and threats against the Vatican are legitimate concerns, and the Embassy must protect dignitaries, particularly from the Vatican, arriving at the Property. The fence along Massachusetts Avenue must be separated from the driveway by a distance sufficient that the Embassy, its employees, and its visitors feel safely separated from threats. It is also

important that protestors and attackers perceive a secure facility with sufficient separation. Not creating a perceived “front yard” onto which protestors/attackers could enter and get close to the driveway and the building is extremely important to the security of the Embassy. The Embassy has the same concern for the side along 34th Street, which is the Embassy’s property. It does not want to “invite” protestors onto its property by recessing the fence any further.

E. The Municipal Interest

Approval of the security fence is not inconsistent with Sections 1001 and 1002 of the Zoning Regulations, and it will be in the municipal interest. The proposed fence and its location will be compatible with the surrounding uses and will not have an adverse impact on the surrounding area. Because the Property and the surrounding area are within the Diplomatic Overlay District, the most common land use is for foreign missions. The diplomatic status of these properties results in certain municipal interests different from usual commercial or residential owners. One such different interest is heightened security, so security fences are pervasive throughout the neighborhood.

In fact, the placement of security fences and other improvements in the public space (public parking) up to the sidewalk edge is a common condition in the vicinity of the Property. The Embassy of Finland, right next door, has large retaining walls extending into public space near the sidewalk, as shown in Exhibit E. More importantly, as shown in the attached maps and photographs in Exhibit F, within one mile of the Property along Massachusetts Avenue, there are at least five foreign missions with security fences over 42 inches tall in public space that are adjacent to the sidewalk. Indeed, at least two of these – the Embassies of South Africa (3101 Massachusetts Ave.) and Turkey (2525 Massachusetts Ave.) – were approved by the FMBZA.¹

¹ FMBZA Orders 17886 and 15427, respectively.

The Vatican Embassy's proposed fence is similar to the placement and size of the other nearby security fences, and in some cases, like for South Africa, it is smaller. Thus, the Embassy is not proposing anything not already deemed to be within the municipal interest or compatible with the neighborhood.

From a land planning perspective, the proposed fence is consistent with the objectives of the Diplomatic Overlay Zone. The public parking is not part of an active right-of-way, and the proposed fence will not interfere with use of the sidewalk. Placement of the fence too close to the main building will detract from the historic character of the main building, which is not consistent with aesthetic planning objectives. No nearby uses will be impacted because the proposed fence will not be aesthetically objectionable, the fence will not obstruct light or air, and no additional uses will be introduced on the Property.

The Embassy recognizes the importance of the preserving the trees on the Property and in the public parking. Because the fence will be close to some of the trees, the Embassy has hired an arborist as a consultant to devise a tree protection plan that will minimize any risk of damage to the trees from the construction of the fence. This plan was developed in consultation with the ANC, and Restore Mass. Ave. and its arborist. The plan includes protective measures during installation, placement of the fence to ensure minimal impact on roots, and limiting the number of posts in the ground to avoid roots. The tree protection plan is attached as Exhibit G.

F. The Federal Interest

In accordance with the Land Use Element of the Comprehensive Plan and the Foreign Missions Act, the location of foreign missions should be in reasonable proximity to other foreign missions. It is particularly appropriate for this Embassy to remain an area with other chanceries, but remaining in this location necessitates increased security; thus, the proposed security fence is

necessary. As described in its comments in Exhibit 29 of the record, the U.S. Department of State finds that approval of the proposed fence promotes the federal interest.

VI. EXHIBITS

EXHIBIT A	Property and Fence Site Plan
EXHIBIT B	News Article about Security Threats to Vatican
EXHIBIT C	Elevations and Specifications of Fence
EXHIBIT D	Dept. of State Diplomatic Note and Letter
EXHIBIT E	Photo of Public Space Improvements for Embassy of Finland
EXHIBIT F	Maps of and Photos of Other Security Fences in Vicinity
EXHIBIT G	Tree Protection Plan

VII. CONCLUSION

For all of the above reasons, the Applicant requests that the Board does not disapprove of the Applicant's plans for alteration of an embassy.

Respectfully submitted,
GOULSTON & STORRS, PC


Allison Prince


Cary Kadlecek