

Memorandum

2015 MAY 12 PM 3:47

TO: District of Columbia Zoning Commission

FROM: *JL* Joel Lawson, Associate Director Development Review

DATE: May 12, 2015

SUBJECT: FMBZA 19013 –Application of the Apostolic Nuncio of the Holy See, pursuant to 11DCMR § 1002 and §206 of the Foreign Missions Act

I. RECOMMENDATION

The Office of Planning acknowledges the legitimate need for a security fence with gates for this property, and recommends that the BZA **not disapprove** the installation of a perimeter security fence at the Apostolic Nuncio in the D/NO/TSP/R-1-A District; subject to the Board's consideration of issues for the portion of the fence within public space along Massachusetts Avenue, noted in the review of §1001.5 of this report.

OP staff reached out to legal counsel for the applicant prior to the FMBZA hearing to discuss an alternative location for the Massachusetts Avenue portion of the security fence, but a request to meet with the applicant was declined.

II. LOCATION AND SITE DESCRIPTION

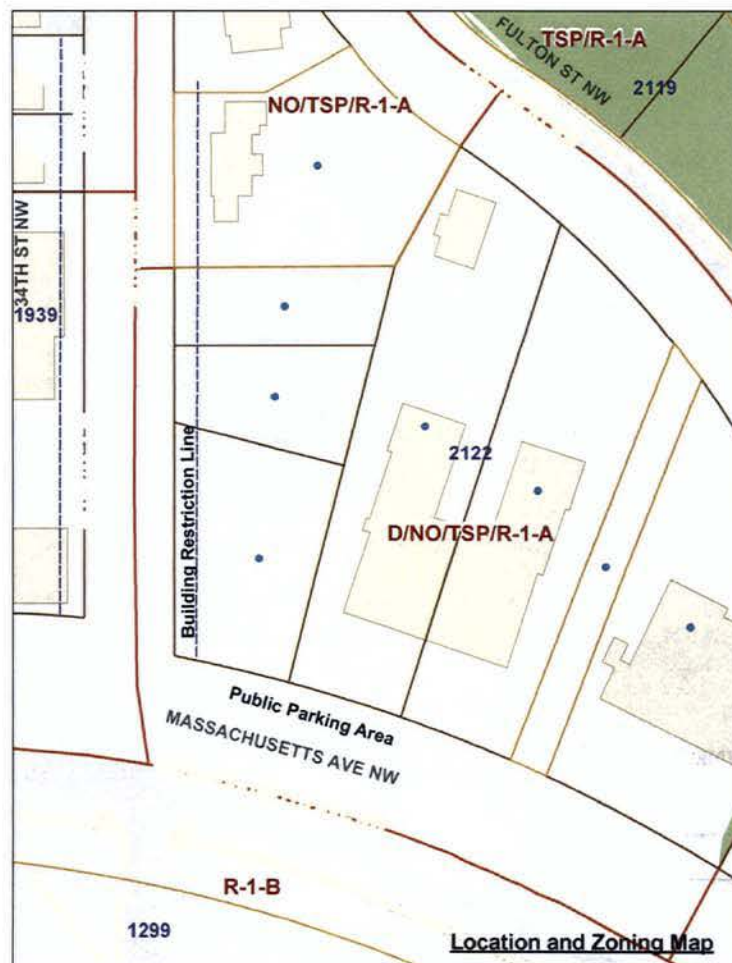
Address	3339 Massachusetts Ave, N.W.
Legal Description	Square 2122, Lot 6,16,17,20,21,804, & 809
Ward	3, ANC 3C
Lot Characteristics	Flat, irregularly-shaped, landscaped and partially wooded lots
Zoning	The subject property and properties within the square are in a Residential (R-1-A) zone district with Mixed-Use Diplomatic (D), Naval Observatory (NO) and Tree and Slope Protection (TSP) overlay districts.
Existing Development	The property is developed with a main three-story structure and two smaller accessory structures within a generous landscaped setting, currently used as an embassy/chancery. A garage and surface parking are located on the west side of the lot with access from 34 th Street, although there is also a circular drive from Massachusetts Avenue to the building front entrance. The embassy/chancery use is permitted in this zone.

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 19013

EXHIBIT NO. 32

Adjacent Properties	Abutting the subject property to the north is Fulton Street, across from the south boundary of the Normanstone Park. Surrounding development consists of the Embassy of Finland to the east, and 34th Street and the Embassy of Norway to the west. The Naval Observatory is across Massachusetts Avenue to the south.
Surrounding Neighborhood Character	The surrounding neighborhood is a mix of single-family detached homes and foreign missions. The property is located on Massachusetts Avenue, one of the premier avenues of the city. Its character is defined by stately residences and embassies lining a generously landscaped and tree-lined boulevard.
Public Space	The property is at the corner of two roadways: Massachusetts Avenue to the south and 34 th Street to the west. In front of this property, Massachusetts Avenue's 160 foot right-of-way width includes a 10-foot set aside for sidewalk and a 45-foot set aside as "public parking", the area of right-of-way between the sidewalk and property line regulated as park land. 34 th Street has a public right-of-way width of 60 feet, and 15-foot building restriction lines on either side, making the total effective width of right-of-way regulated as public space, ninety-feet. Along this property, there is a 10-foot set side as sidewalk and 15 feet of parking regulated as parkland.



III. APPLICATION-IN-BRIEF

The Embassy proposes the installation of a six-foot tall wrought iron fence¹ with six stone columns on the Massachusetts and 34th Street frontages, and a black chain-link fence along portions of the north and east property lines. The fence would follow the east and north property lines, enter the building restriction area along 34th Street, and would enter public space along its south edge along Massachusetts Avenue. The fence would be recessed in the locations of the three driveways, two on Massachusetts Avenue in the area of the circular driveway and one off 34th Street before continuing around the property. Currently there is no embassy fencing or gates on the property. The chain link portion of the fence would not be visible from public space.

IV. REGULATORY REQUIREMENTS

Zoning

The property falls within a D/NO/TSP/R-1-A District. Section § 201 1 (m) of the current Zoning Regulations allows chancery uses in existence on September 22, 1978. Sections 350 1 and 1001.1 allow expansion of chanceries in the R-1-A subject to Foreign Missions Board of Zoning Adjustment (FMBZA) disapproval.

Public Space

The BZA has authority to approve the use of public space when it is hearing a related chancery application. While most of the fence is on private property, its location along Massachusetts Avenue is within public space and along 34th Street it is within a building restriction area. The Massachusetts Avenue right-of-way and building restriction area along 34th Street is subject to DCMR Title 24: Public Space and Safety limits for height of fences in public space to 42 inches (24-103 Public Parking Wall, Wickets, and Fences).

As part of its review, the Board is required to evaluate the application within the six factors set forth in the Foreign Missions Act (FMA).

V. OFFICE OF PLANNING ANALYSIS

Compliance with § 1001

Expansion of an existing chancery use in a D overlay district is subject to the following criteria:

“1001 1 The Board shall consider 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 to the Director of the Office of Zoning dated April 24, 2015, (Exhibit 29) the U.S Department of State’s Foreign Mission Office states “. .that favorable BZA action would fulfill the international obligation of the United States to facilitate the provision of adequate and secure premises by the Apostolic Nunciature for its diplomatic mission in Washington ”

This criterion has been addressed.

¹ Sheet L-6 Perimeter Fencing Character Details in the submitted plans

1001 2 The Board shall consider historic preservation, as determined by the Board in carrying out this section

No changes to the existing structure which may be contributing to the Massachusetts Avenue Historic District would be made.

1001.3 To ensure compatibility with historic landmarks and historic districts, substantial compliance with District and federal regulations governing historic preservation shall be required with respect to new construction and to demolition of or alteration to historic landmarks

The Historic Preservation Office (HPO) has no objection or concerns regarding the proposed fencing HPO recognizes the embassy's programmatic need for security, and believes the layout of these new elements is appropriate as shown

1001 4 The Board shall consider 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 any special security requirements that may be determined by the Secretary of State, after consultation with federal agencies authorized to perform protective services

This is not applicable, in this instance as no alteration would be made to affect the existing on-site parking The Department of State's Office of Foreign Mission also stated that "there exist no special security requirements relating to parking in this case "

1001 3 The Board shall consider 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 referenced letter from the Deputy Assistant Secretary states " the subject site and area are capable of being adequately protected "

This criterion has been addressed

1001 5 The Board shall consider the municipal interest, as determined by the Mayor

The Office of Planning, on behalf of the Mayor, finds the proposed perimeter fence, the main portion of which would be located on the subject property, would not be contrary to the Zoning Regulations, and no relief from any provision would be required

However, the proposed fence along Massachusetts Avenue and 34th Street exceeds the typically permitted height limit for fences in public space or building restriction areas. DC Municipal Code designates and regulates these areas as park land ² Relief, typically by the Public Space Committee, is required from *DCMR Title 24 Public Space and Safety* for fences in these areas that exceed 42 inches in height.³

The majority of the security fence as proposed (see Attachment II) is on private property. However, where it runs parallel to 34th Street, the fence is proposed to be

² DC Code Title 9 – Transportation §9-1201 06 Portion of streets may be set aside as parks And § 9-203 05 Area between property line and building restriction line

³ DCMR 24 Public Space and Safety 24-103 Public Parking Walls, Wickets, and Fences DCMR 24 Public Space and Safety also includes 42" height limits on walls and hedges to maintain open views along streets and avenues

located three feet from the back of the sidewalk, behind hedges, and within a building restriction area. Along Massachusetts Avenue, the fence is proposed to be in public space. The fence's visual impact along Massachusetts Avenue, where the embassy is set back more than 80 feet from the curb, is notable. In this location, the fence impacts the view corridor along the Avenue, where it is proposed to be eighteen inches from the back of the sidewalk. While the fence along 34th Street also requires a waiver from regulations, its location behind landscaping mitigates its impact on public space.

The proposed security buffer (the distance between the proposed fence and the building) along Massachusetts Avenue also exceeds the 50-foot security setback for Level IV facilities, recommended by the U.S. Department of Homeland Security's Interagency Security Committee (ISC) and adopted in August 2013.⁴ Foreign embassies and consulates in the United States are identified as Level IV facilities. The embassy main building is 35 feet from the property line and more than 80 feet from the curb, leaving a generous amount of set back from the building to where a security fence providing the security buffer could be located. A security fence pulled back closer to the property line, as far as 38 feet from the curb, would maintain the 50 distance from the embassy and be more consistent with the intent of public space regulations - see alternative fence location, Attachment III, developed by OP Staff. Historic Preservation Review staff indicated that they do not object to the alternative location. OP contacted the representative of the applicant to request a meeting to discuss the alternative, but the request was declined.

The FMBZA and Public Space Committee have approved over-height fences along Massachusetts Avenue prior to this request, but these fences are concentrated in another section of the Avenue and do not establish a precedent for security fences along the Avenue in its entirety. A survey of over height fences conducted by the Office of Planning along Massachusetts Avenue between Dupont Circle and Wisconsin Avenue found that previously approved over-height fences are clustered between S Street NW and Rock Creek Park, an area with a separate identity and character than the section of the Avenue west of Rock Creek Park (Attachment IV). The site conditions at these properties are also different with security fences at the back of the sidewalk and only 35 to 40 feet from buildings, less than the ISC's recommended 50 feet from embassies and consulates. Also notable is the location of security set back 30 feet from curb along Massachusetts Avenue for the British Embassy and Observatory Circle that maintains a more open character similar to what is being requested at the Vatican Embassy.

The Department of Transportation's Urban Forestry Administration reviewed the application and recommends that, to ensure the health of the trees in public space, the fence along Massachusetts Avenue should be relocated as far from existing trees as possible, a location that is more consistent with the one being recommended by the Office of Planning.

⁴ The Risk Management Process for Federal Facilities. An Interagency Security Committee Standard. August 2013 1st Edition

The Office of Planning, therefore, has no concerns with the proposed design, materials, or height of the proposed security fence and gates, but concludes that it would be made more consistent with District interests in maintaining the open character along Massachusetts Avenue and maintaining the health of street trees by placing the fence up to 38 feet back from the curb. This would also satisfy U.S. Department of Homeland Security criteria and embassy needs for the standard 50 foot security buffer between the fence and the building.

1001 6 The Board shall consider the federal interest, as determined by the Secretary of State

The Department of State's letter indicates that a favorable decision on this application would serve the federal interest.

VI. COMMENTS OF OTHER DISTRICT AGENCIES

The District Department of Transportation (DDOT) would submit its report under separate cover.

COMMUNITY COMMENTS

The Applicant's representative has stated that the applicant met with the ANC 3C to discuss the fence installation. The ANC's report will be submitted under separate cover. No other community comments have been submitted to the record at the time of writing of this report.

Attachment I Location and Zoning Map and Proposed Fencing Plan
 II Alternative Fence Location (As Proposed by OP)
 III Simulated Sketches IV Map of Over Height Fences on Massachusetts Avenue

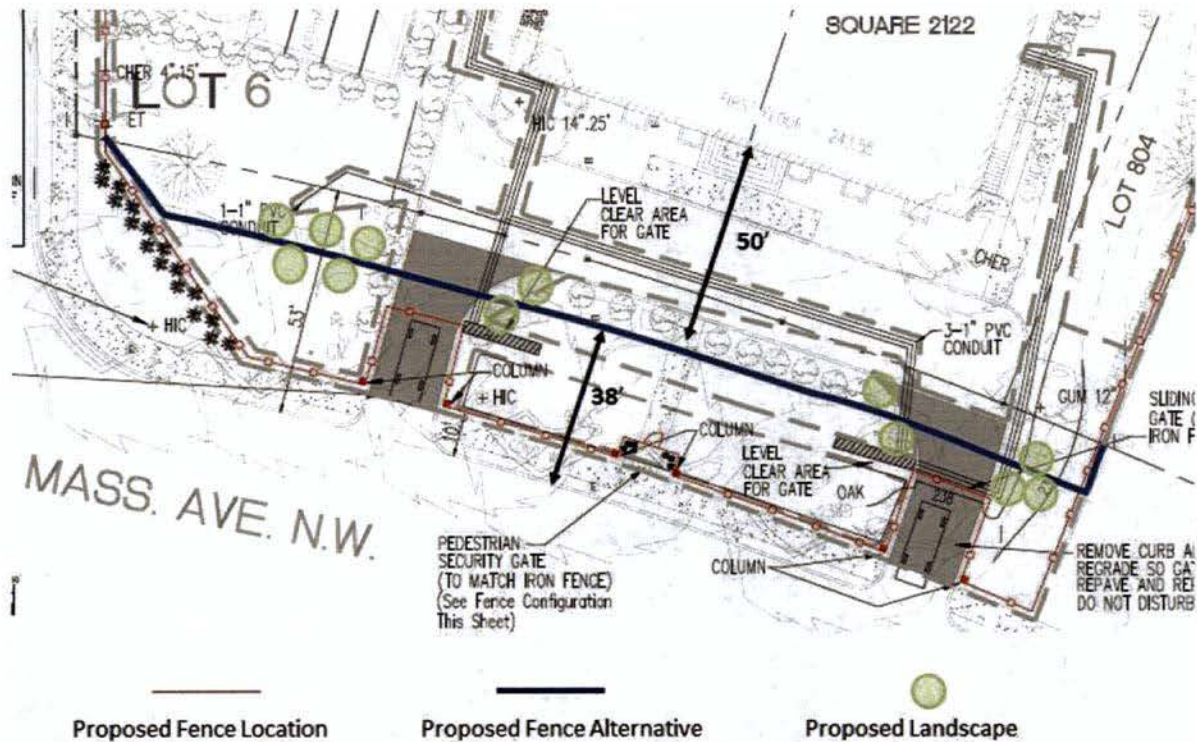
JL/Karen Thomas
Case Manager



Location and Zoning Map

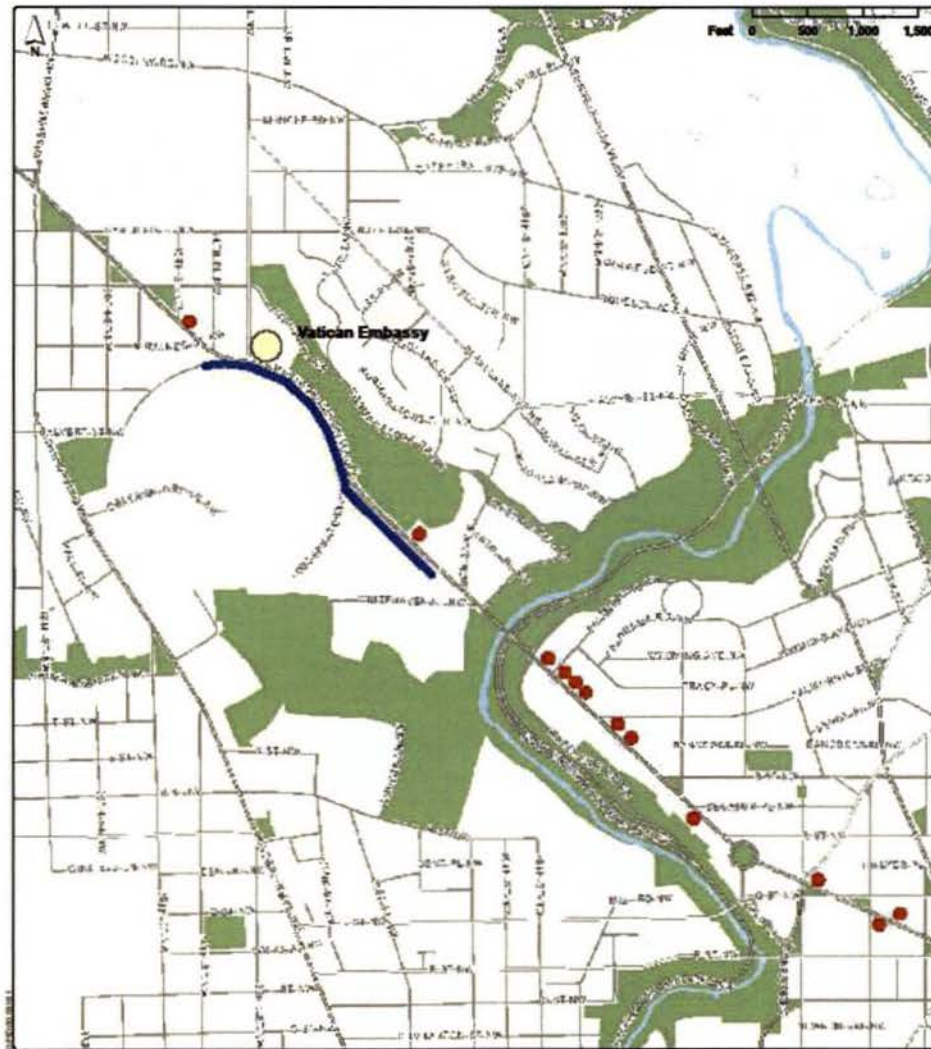
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Attachment II – Potential Alternative Fence Location



Attachment III – Simulated Sketches



Attachment IV – Over Height Fences on Massachusetts Avenue**Fences Along Massachusetts Avenue NW**

Office of Planning – May 5, 2015
Government of the District of Columbia

This map was created for planning purposes from a variety of sources. It is neither a survey nor a legal document. Information provided by other agencies should be verified with them where appropriate.



Overheight Fences at Back of Sidewalk



Overheight Fences/Security Behind Sidewalk