

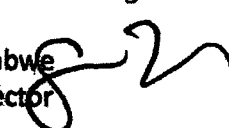
**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF TRANSPORTATION**



d. Policy, Planning and Sustainability Administration

MEMORANDUM

TO: Sara Bardin
Director, Office of Zoning

FROM: Samuel Zimbabwe 
Associate Director

DATE: May 12, 2015

SUBJECT: FMBZA Case No. 19013 – Vatican Embassy

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 19013
EXHIBIT NO. 33

RECEIVED
U.C. OFFICE OF ZONING
2015 MAY 13 AM 9:00

PROJECT SUMMARY

The Apostolic Nuncio of the Holy See (the "Embassy") seeks review of plans to allow construction of a security fence along the existing Embassy at premises 3339 Massachusetts Avenue NW (Square 2122, Lots 6, 16, 17, 20, 21, 804, and 809) (the "Property"). The proposed security fence is six feet tall, with brick columns adjacent to the lead walk and driveways. The fence will surround the Property, with placement between the sidewalk and the property line along Massachusetts Avenue and just behind the property line along 34th Street.

SUMMARY OF DDOT REVIEW

DDOT is committed to achieving an exceptional quality of life in the nation's capital by encouraging sustainable transportation and preserving the District's public space. As one means to achieve this vision, DDOT works through the zoning process to ensure that impacts from new proposals are in fitting with DDOT's policy and standards.

The purpose of DDOT's review on a Foreign Missions Board of Zoning Adjustment (FMBZA) case is to assess the impacts of the proposed action on the District's public space and transportation network. After an extensive review of the case materials submitted by the Embassy, DDOT finds.

Proposed Design Findings

- The proposed security fence encroaches into the District's public space by approximately 43 feet along Massachusetts Avenue and approximately 10 feet into the Building Restriction Line (BRL) area along 34th Street;
- The Embassy already encroaches on this area, having placed a portion of their circular driveway in public space,

- While the Embassy cites examples of other locations that have been allowed to encroach, they do not note locations that have met District regulations,
- Some existing trees in the public space are missing from the proposed site plan, and
- The currently proposed location is not optimal for preservation of the trees' health or respect for the public space, thus a fence outside the trees' root zones, for instance at the property line, but at minimum, located as far from the trees' trunks as possible is preferable.

Recommendations

- DDOT recommends that the fence be located approximately 38 feet behind the curb, leaving 50 feet between the fence and the Embassy building, and preserving a greater portion of the public space as publicly accessible, allowing for better chance of tree preservation, while still meeting the Embassy's security needs.
- If this cannot be agreed to, DDOT suggests the FMBZA continue this case to allow further dialogue, which could lead to a fence location that would be more appropriate for this prominent corner location. At a minimum, the DDOT Urban Forestry Administration's guidance below should be included in any conditional approval for this project.
- To further that subsequent discussion, if necessary, DDOT requests additional information from the Embassy to more specifically understand the range of allowable fence locations for security purposes

Continued Coordination

The Applicant is expected to continue to work with DDOT on the following matters:

- Final design of the security fence location and layout, and
- Coordination during construction with the DDOT ward arborist to cooperate towards saving of all existing trees

ANALYSIS

Design and layout of the proposed improvement, which includes public realm design, plays a critical role in determining a proposed action's impact to the District. While transportation impacts can change over time, the site layout will remain constant throughout the lifespan of the improvement, making site design a critical aspect of DDOT's development review process. Accordingly, new projects must provide a safe and welcoming pedestrian experience, enhance the public realm, and serve as positive additions to the community. The portion of the public right of way (ROW) behind the sidewalk zone is designated for public parking, an area to be maintained as park-like, to help maintain the character of the District's avenues. Public space regulation does not allow fences greater than 42" in height within this zone.

The Embassy proposes a six-foot tall security fence along their property, partially in public space, at the intersection of Massachusetts Avenue and 34th Street NW. The fence was located, per the Embassy, to provide the requisite level of security and to preserve the trees present in the public space. The proposed fence installation plan is shown in *Figure 1*.



Figure 1. Fence Installation Plan (Source: Embassy)

Site Layout

This Property is located at the northeast corner of the intersection of 34th Street and Massachusetts Avenue NW, with a circular driveway on Massachusetts Avenue and another driveway entrance on 34th Street. There are four vehicular parking spaces accessed from the 34th Street entrance, and vehicles also park on the circular driveway. The circular driveway encroaches approximately five feet into public space, which is not allowed per District code. Primary pedestrian access is via the lead walk from the Massachusetts Avenue sidewalk.

The fence is proposed to be set back from the Massachusetts Avenue sidewalk edge by 18 inches. This will place it within the public parking area of Massachusetts Avenue. On the 34th Street side the fence is approximately five feet behind the sidewalk, encroaching into the BRL area. There are three recessions in the Massachusetts Avenue side fence line, two for the driveways and one at the lead walk, to allow cars or pedestrians to clear the sidewalk area while waiting to enter.

Security

According to the application from the Embassy, the U.S. Secret Service recommended a security fence with the specifications proposed. The Department of State's input on this fence (supplied as Appendix D of the Embassy's submittal) does not, however, provide any clear parameters for the security fence. Furthermore, it states that it approves the project "with the understanding that the Embassy will comply with local building codes and regulations, and will obtain all necessary permits from the Government of the District of Columbia." The fence as proposed does not meet District or DDOT codes and regulations. The fence is proposed at six-feet in height and some distance from the Embassy building and driveway. District code, as outlined in *DCMR Title 24: Public Space and Safety*, allows for a fence up to 42 inches tall in public space.

Precedence of other embassy fences that exceed 42 inches and are within the public space have been cited. However, the character of Massachusetts Avenue in this location differs from the Property. Additionally, precedence also exists for embassies or consulates with a fence behind the property line, such as the newly proposed fence for the Bahrani ambassador's residence or the British Embassy right down Massachusetts Avenue.

DDOT would be amenable to working with the Embassy to place a fence that meets their security needs, even if this were located in portions of public space. However, the currently proposed location does not seem to represent a location that seeks to compromise between the public space impacts and the security concerns. The U.S. Department of Homeland Security's Interagency Security Committee (ISC) recommends a 50-foot security setback for facilities such as the Embassy, which DDOT would suggest as a starting point for this proposal. This would allow the fence to be setback approximately 38 feet from the curb, significantly further back within the public parking zone, and further from the trees.

Streetscape and Trees

Consideration for the large existing trees has been made, which the Embassy, the local ANC, and the District desire to maintain. The Embassy states that the fence as located minimizes the potential impact on the existing trees as they draw more of their nutrients from the non-street side. DDOT conducted a site review with the ward arborist, and disagrees that the proposed fence location is optimal for the trees. A fence outside the trees' root zones, for instance at the property line, but at minimum, located as far from the trees' trunks as possible is preferable.

While great concern for the trees has been highlighted, and it seems was necessary to receive ANC support for this project, DDOT is concerned about the tree health based on the currently proposed fence location. Further, there are some public space trees that appear to be missing from the plan, which could also be impacted. Finally, there are tree impacts along almost the entire fence line, though some of this is on private property.

Guidance from DDOT's Urban Forestry Administration (UFA) for FMBZA consideration is as follows.

1. Embassies are treated as a governmental entity regarding private property trees, and are exempt from the Special Tree requirements for trees on private property.
2. Whereas trees in the public parking or BRL area, although under the care and maintenance of the abutting property owner, are subject to the Special Tree requirements.

3. This plan shows that all public space or BRL trees will remain and be protected, with no removals anticipated; therefore, fines will be levied at \$100 per inch circumference should they be damaged by the proposed work.
4. The contracted arborist must be ISA Certified and have experience with protecting trees in an urban environment.
5. The contracted arborist's name, license and contact information should be provided as part of the permitting process.
6. The contracted arborist must oversee the installation of tree protection measures prior to starting work. Tree protection measures may include, but not be limited to: wood or chain link fencing, root protection matting, and mulch layers.
7. The contracted arborist must provide routine inspections to ensure that the protection measures remain in place throughout the work, removing only at the end of the project.
8. The contracted arborist must be onsite during the fence layout to include excavations for post/column footers and inspect all roots greater than 2" diameter to be cut. Root pruning should be performed by the ISA Certified Arborist.
9. All work within the drip line shall be performed using hand tools or equipment that will not damage tree roots, trunks, or canopies. The drip line is defined as the ground area under the canopy.
10. If a tree in public space requires removal and is 55" or greater in circumference, then the contractor or property owner must apply for a Special Tree removal permit and pay \$35 per inch circumference.
11. An additional tree on 34th Street should be planted. It would need to be an understory tree because of the pole OH/guy wires. The tree would have to be at least 15 ft. from the utility pole and 20 ft. from the cherry tree to the south.

SZ/rw