

 RECEIVED D.C. OFFICE OF ZONING	ADVISORY NEIGHBORHOOD COMMISSION 3C GOVERNMENT OF THE DISTRICT OF COLUMBIA CATHEDRAL HEIGHTS • CLEVELAND PARK MASSACHUSETTS AVENUE HEIGHTS MCLEAN GARDENS • WOODLEY PARK
Single Member District Commissioners 01-Lee Brian Reba, 02- Gwendolyn Bole, 03-David Valdez 04- Vacant, 05- Margaret Siegel, 06-Carl Roller 07- Victor Silveira, 08-Catherine May, 09-Nancy MacWood	P O Box 4966 Washington, DC 20008 Website http://www.anc3c.org Email all@anc3c.org

ANC 3C Resolution No. 2015-021
Regarding DDOT Public Space Application to Install a Fence for the
Vatican Embassy, located at 3339 Massachusetts Avenue, NW

Whereas, on April 20, 2015 ANC3C passed resolution 2015- 016 objecting to the placement of any fence greater than 42” in public space and objecting absolutely to the placement of a fence closer than 18 inches from the curb along Massachusetts Avenue; and

Whereas, at the time of the Resolution the ANC did not have access to the reports of the Department of Transportation (“DDOT”) Urban Forestry Administration (UFA) nor the report of the Office of Planning (“OP”) and sought the best compromise available at that time to preserve the integrity of the trees and streetscape along Massachusetts Avenue; and

Whereas, the Department of Transportation’s Urban Forestry Administration report (attached) recommends that, to ensure the health of the trees in public space, the fence along Massachusetts Avenue should be located as far from existing trees as possible; and

Whereas, the Office of Planning Report (attached) concludes that the fence 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; and

Whereas, placing the fence 38 feet back from the curb would also satisfy U.S. Department of Homeland Security criteria and embassy need for the standard 50 foot security buffer between the fence and the building:

Be It Therefore Resolved that ANC3C supports the conclusions of the DDOT and OP reports and finds that the placement of the fence at 38 feet from the curb is more consistent with the ANC concern for the health of the trees and for maintaining the park like nature of the avenue; and

Be It Further Resolved that if agreement cannot be reached that approval be postponed in order that the Nunciature and city agencies may continue to work together to find a solution that serves both the Nunciature’s interest in having a security fence and the District’s interest in maintaining the health of the trees, access to public parking, and the park like setting of the avenue; and

Be It Further Resolved that the Chair, the Commissioner of ANC3C08 or their designee are authorized to represent the Commission on this matter.

BOARD OF ZONING ADJUSTMENT
 District of Columbia
 CASE NO. 19013 CASE NO.19013
 EXHIBIT NO. 37 EXHIBIT NO.37

Attested by

A handwritten signature in black ink, appearing to read 'Carl Roller', written in a cursive style.

Carl Roller

Chair, on May 18, 2015

This resolution was approved by a voice vote, on May 18, 2015 at a scheduled and noticed public meeting of ANC 3C at which a quorum (a minimum of 5 of 9 commissioners) was present

RECEIVED
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2015 MAY 20 AM 11:51

Memorandum

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

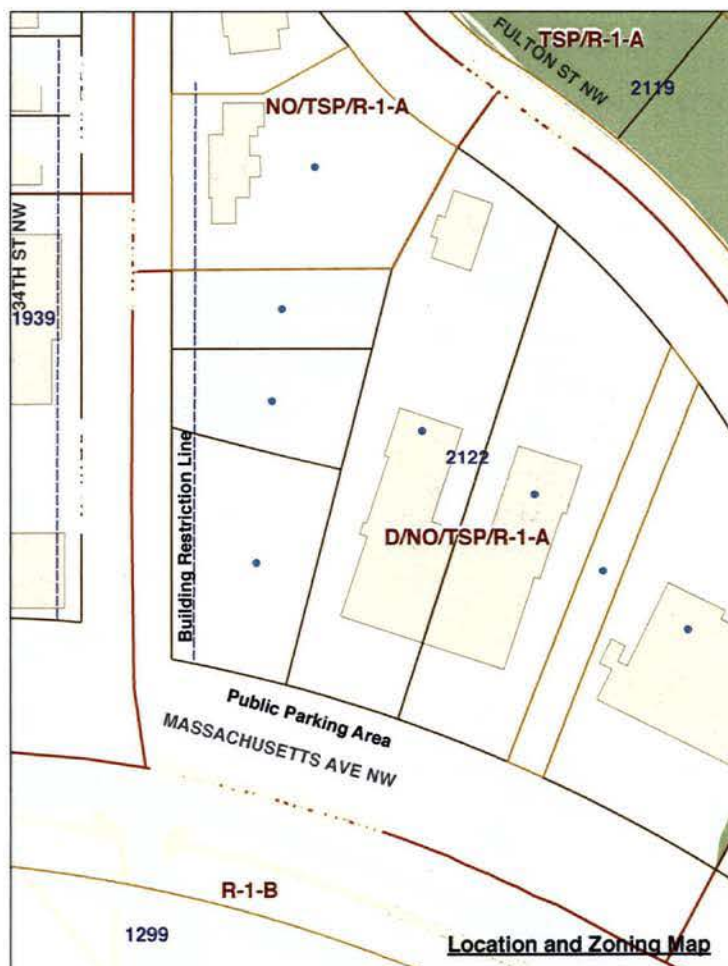
The Office of Planning acknowledges the legitimate need for a security fence with gates for this property, and recommends that the BZA **not disapprove** the installation of a perimeter security fence at the Apostolic Nuncio in the D/NO/TSP/R-1-A District, subject to the Board's consideration of issues 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.

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

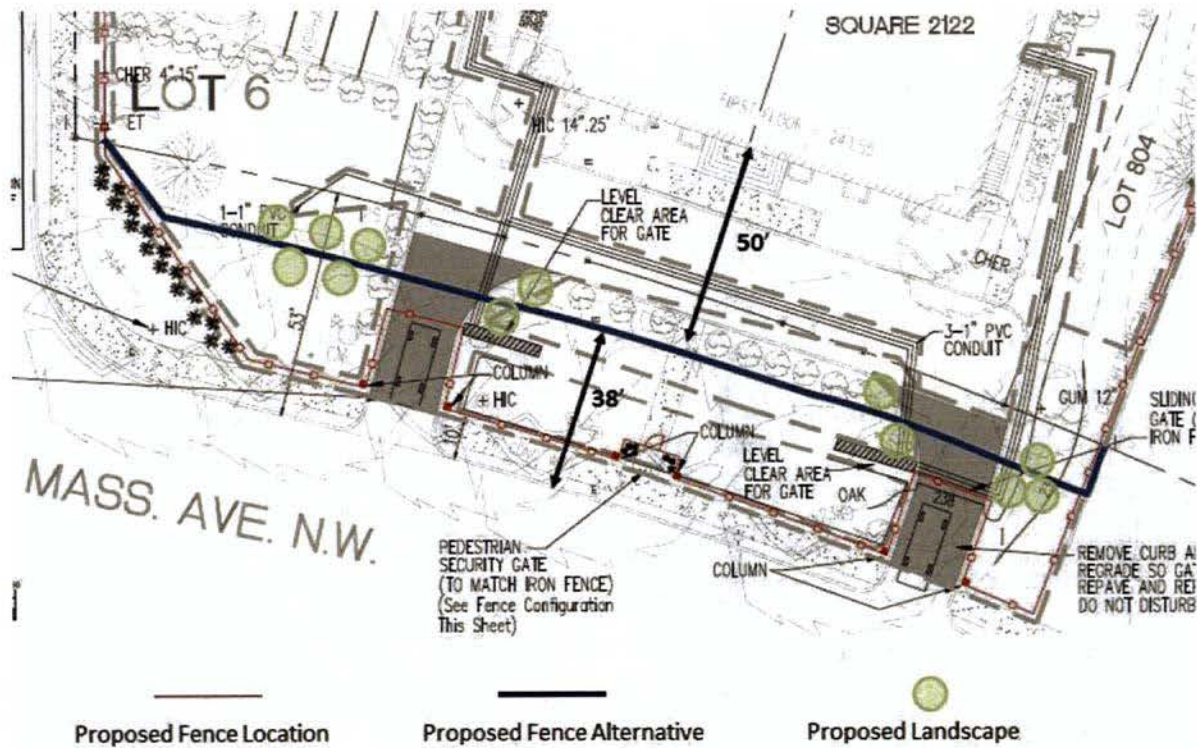
JL/Karen Thomas
Case Manager



Location and Zoning Map

[illegible]

Attachment II – Potential Alternative Fence Location



Attachment III – Simulated Sketches



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

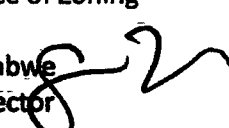
**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF TRANSPORTATION**



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

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*

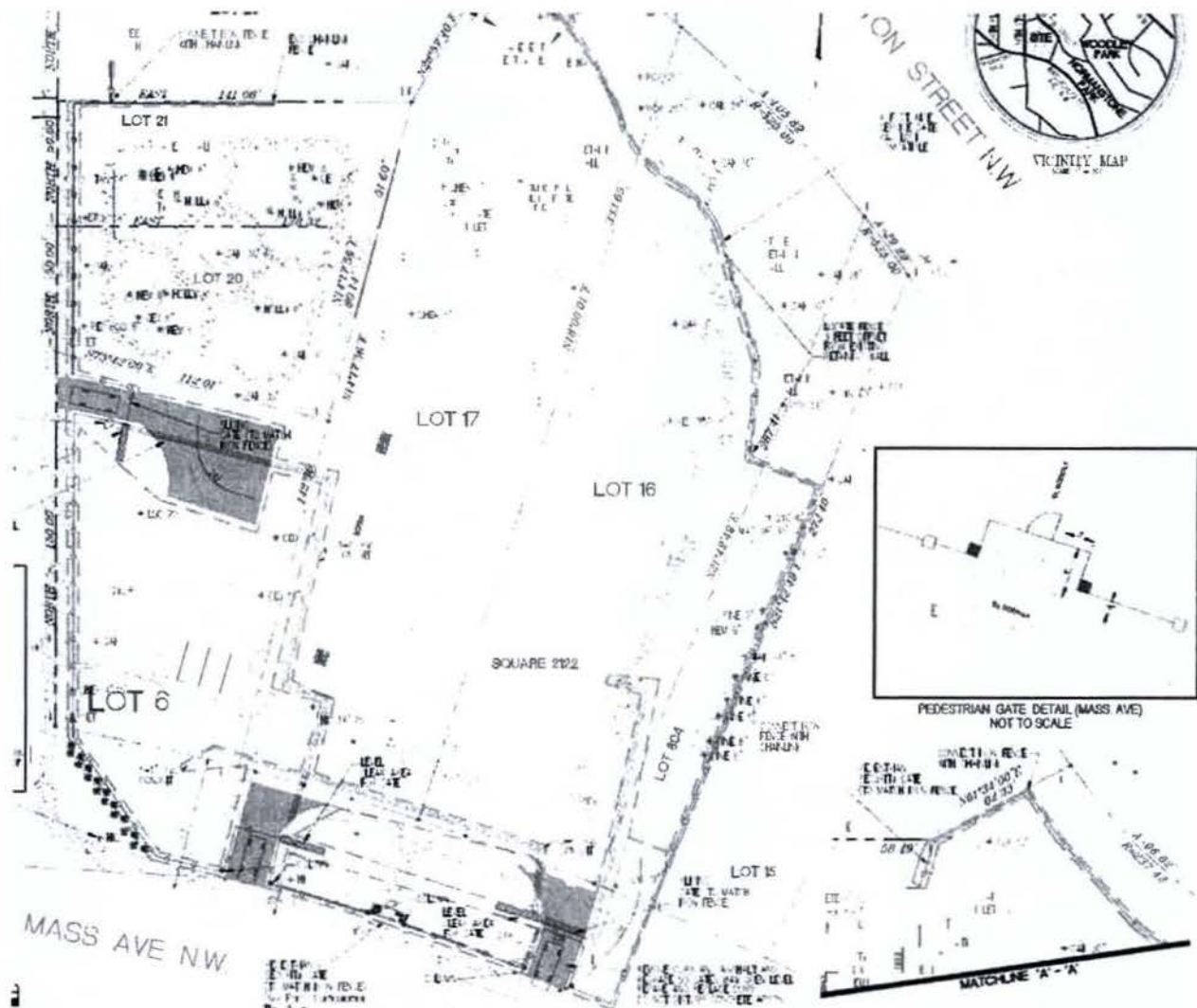


Figure 1. Fence Installation Plan (Source: Embassy)

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