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

Board of Zoning Adjustment
441 4th Street, N.W., Suite 210
Washington, D.C. 20001

October 24, 2000

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

When the meeting adjourned on *Application No. 16620*, we indicated that there were several matters that had come up in the course of the presentation by the Embassy of Azerbaijan and the Department of State as to which we wished to offer our immediate views. The Secretary of the Board indicated that the time to be allotted to us when the hearing resumes would be very brief in comparison to the 3 hours consumed by the Embassy and the Department of State. We, therefore, thought it best to put our immediate thoughts in writing so as to expedite the balance of the hearing. We will make our principal points at the hearing on October 24, 2000.

Reciprocity. Deputy Assistant Secretary of State Strickler gave us a look at the very real difficulties the United States faces in safeguarding American missions in foreign countries. To assist the United States the Government of Azerbaijan turned over five properties including two apartment buildings to provide a 100-foot security perimeter for an existing United States Embassy in Baku (even though, as he indicated, this new Department policy is generally applied only to new structures). Furthermore, Mr. Strickler stated that the original application (*Application No. 16589*) of the Embassy was withdrawn because negotiations in Baku had not been completed last June. That might explain why there was not a letter from Mr. Strickler in the file for *Application No.16589.*" As Mr. Mlotek let us know last Tuesday, he is never late. On occasion he just is not there.

Let us be very clear. We believe the United States should always be prepared to play diplomatic hardball. As hard as necessary to win. And when the United States wins, the United States obviously has to be gracious in victory. Reciprocity is in order.

But the right kind of reciprocity. As Mr. Strickler pointed out, 100-foot setbacks are "difficult" to achieve in Washington. Using Mr. Strickler's formulation, it should be "difficult" to subvert residential neighborhoods. The Department should not try to reciprocate by moving a business into our residential neighborhood. As Mr. Mlotek has

BZA
Case No. 16620
Exhibit No. 54

Board of Zoning Adjustment
District of Columbia
CASE NO.16620
EXHIBIT NO.54

said on another occasion about another place, the Georgetown Flea Market "has no place in a residential neighborhood". *The Washington Post,* p. B4 (September 4, 2000). So the Department cannot put the Chancery next to Mr. Mlotek.

But the principle is really very simple — you would not try to "reciprocate" by grabbing someone else's property to give to your benefactor. The Department should not do that either. We would like the Department to reciprocate with its own assets, not our neighborhood. The Congress gave the Department the International Center at Van Ness and Reno Road for the express purpose of locating chanceries. The Department should have used the International Center for the Azerbaijanis.

The Interest of the United States. Living in the neighborhood, we knew the Apostolic Nunciature as a very quiet residence. Counsel for the Embassy and the Department had a different view. We suggested to Mr. Jackson that everyone might be better informed if Mr. Jackson found out what the Apostolic Nunciature was in fact used for. Mr. Jackson apparently took us up on our suggestion. He did not, however, advise us of his plan.

Mr. Mlotek says that Mr. Jackson grievously erred in failing to tell Mr. Mlotek of his proposed visit. Except, of course, it turns out that Mr. Mlotek did know about the proposed visit. Mr. Jackson told Ms Giordano and Ms. Giordano told Mr. Mlotek.

As a result of the visit, Mr. Mlotek anticipates serious repercussions in relations between the Holy See and the United States. Furthermore, the diplomats at the Apostolic Nunciature are, in Mr. Mlotek's words, "very naïve" and unable to answer difficult questions of "District land use and zoning", such as:

Do people live here?

Do you have bedrooms?

Do you have a living room?

Do you have a dining room?

Do you have a kitchen?

Do you have a chapel?

Do you have offices?

We understand that the people to whom Mr. Jackson spoke told him that the Apostolic Nunciature was established as a *residence* in1931.

On the other hand, Mr. Mlotek does not believe that similar questions from counsel for the Embassy are too difficult for naïve diplomats.

This sounds like the Queen of Hearts in *Alice in Wonderland.* But there is a darker side to this argument.

Mr. Mlotek said that for Mr. Jackson to "use that information [the information in his report to the Board] against the interest of the United States government" was "totally out of bounds". Perhaps, he made that remark in the heat of a rhetorical moment. But it should not go unanswered.

The Foreign Missions Board of Zoning Adjustment is a Federal Board that sits pursuant to a Federal statute. The Foreign Missions Act gives the Board authority to grant relief to the Embassy provided that the necessary showing can be made as to "*existing uses*". The Foreign Missions Act appoints the Board, not the Department, to decide what are "*existing uses*"; furthermore, the Act imposes a duty on the Mayor of the District to advise the Board as to the "Municipal Interest".

It is profoundly and directly in the interest of the United States that the Board be able to obtain all information and expert opinions relevant to the matters on which it must rule.

It is likewise in the interest of the United States that those who report to the Board not be subject to any restraint on their ability to gather relevant information for the Board or to any censorship of the information that they gather or their expert opinions with respect to that information.

To suggest otherwise is not in the interest of the United States.

Institutional Uses. Counsel for the Embassy suggested that our neighborhood is teeming with *institutional uses*. *Institutional uses* is the critical phrase used in Section 206(b)(2)(B) of the Foreign Missions Act; no one is even pretending that there are office buildings in the neighborhood.

Counsel mentions the Naval Observatory, which is the *residence* of the Vice President. She mentions the grandfathered Belgian Chancery, which the National Capital Planning Commission did not include in the Diplomatic Overlay. She even mentions the National Cathedral and its associated schools and their athletic fields.

She does not mention the definition given to institutional uses by the National Capital Planning Commission in drafting the Diplomatic Overlay:

"Institutional Use", for purposes of Section 206(b)(2(B) of the Foreign Missions Act, means a non-residential use (other than retail and personal service establishments, offices, and industrial uses) such as colleges and universities; museums; non-profit art galleries; public libraries; private clubs; hospitals, sanitariums, clinics and health care facilities for more than 16 persons. **Institutional use does not include churches or other places of worship** [that is to say the Cathedral]**; pre-schools; kindergartens; elementary and secondary schools** [that is to say St. Albans School, National Cathedral School and

Beauvoir School]; **police and fire stations; utilities; community centers; cemeteries; and playgrounds, outdoor swimming pools. athletic fields; or other outdoor facilities.** [Emphasis supplied]

Note that "embassy" means the official residence of the ambassador; embassies are also not "institutional uses" though they do bring to a neighborhood some of the burdens of diplomatic missions. The Holy See calls its embassy the Apostolic Nunciature; it calls its ambassador the Apostolic Nuncio. The difference in nomenclature does not change a residence into an institution.

With the correct definition of "institutional uses", counsel for the does not have sufficient "institutional uses" in the greater neighborhood, let alone in Square 2122. We attach as **Exhibit A** the same map that counsel for the Embassy submitted of Square 2122 and the adjacent Squares with the color coding corrected to reflect properly the actual uses.

Saturation. Mr. Mlotek gave us to understand that the Department "counseled" the Embassy away from an alternative site in the Kalorama area in the Diplomatic Overlay because that area was "saturated". Our neighborhood, which abuts the Diplomatic Overlay; has:

- the *Finnish Chancery* (in the Diplomatic Overlay and all by itself saturating neighborhood parking outside the Diplomatic Overlay),
- the *Belgian Chancery* (outside the Diplomatic Overlay; built before there were any controls on chancery intrusions into residential neighborhoods and thus grandfathered),
- the *Norwegian Chancery* (also built before there were any controls on chancery intrusions into residential neighborhoods; now in the Diplomatic Overlay),
- the *Norwegian Embassy* (in the Diplomatic Overlay; a residence but diplomatic nevertheless),
- the *Apostolic Nunciature* (in the Diplomatic Overlay; a residence but diplomatic nevertheless),
- the *Liberian Embassy* (outside the Diplomatic Overlay; a residence but diplomatic nevertheless and in a shocking state of disrepair),
- the *Nepalese Embassy* (outside the Diplomatic Overlay; a residence but diplomatic nevertheless),
- the *Cape Verde Embassy* (outside the Diplomatic Overlay; a residence but diplomatic nevertheless),

- the *Seychelles Embassy* (outside the Diplomatic Overlay; a residence but diplomatic nevertheless),
- the *Iranian compound* (outside the Diplomatic Overlay; a residence but diplomatic nevertheless and rented out by the Department of State) and
- the prospect of still more chanceries in the parts of the Diplomatic Overlay adjacent to our neighborhood that today are residential and tomorrow may very well turn into chanceries.

What is saturation?

Mr. Mlotek sees our neighborhood as a fresh field to flood.

We see a neighborhood that is already soaking wet.

The Federal Element of the Comprehensive Plan for the National Capital specifically provides that the existing character of our neighborhood "should be preserved and its qualities enhanced. *Existing smaller buildings should be retained in residential use where practicable.*" National Capital Planning Commission, COMPREHENSIVE PLAN FOR THE NATIONAL CAPITAL, 137 (Item 2. Massachusetts Ave, NW, Chancery Facilities, Policies) (1989) [Emphasis supplied].

The Proper Interpretation of "Area" in the Foreign Missions Act. I think that Mr. Jackson has amply demonstrated that Square 2122 does not have the necessary one-third "office or institutional" uses (excluding diplomatic uses that are residential) t0 permit a chancery to invade the Square. That assumes, of course, that the proper measure of "area' under Section 206(b)(2)(B) of the Foreign Missions Act is the normal zoning "Square". I believe, however, that, under the circumstances, that is far too broad an interpretation of "area". If the Board adopts that interpretation, or is misread by the Department as having adopted that interpretation, then the Board will be hearing many, many more cases like this one and the result for the District's neighborhoods will be disastrous. .

Our Exhibit B shows that the National Capital Planning Commission recommendation for the Diplomatic Overlay included, in the case of Square 2122, the Square immediately adjacent to it, Square 1939, and the next Square west on Massachusetts Avenue, a "split" in each Square. The part facing Massachusetts Avenue was included in the Diplomatic Overlay. The rest of each Square was left strictly residential.

NCPC did operate with a general operating principle of one-third office or institutional use being sufficiently generally to cause a Square to be designated as part of

the Diplomatic Overlay. But that was not its only principle. It also deliberately encouraged diplomatic use along the major avenues and streets of the District but at the same time protected the adjacent residential areas.

And the diplomatic use has taken place. The Finnish Chancery was built after the Diplomatic Overlay was put in place on Massachusetts Avenue by destroying a handsome Georgian mansion that had previously been used as a single-family residence.

Because roughly a third to almost a half of each of our three Squares was designated as part of the Diplomatic Overlay, we can see that, in time, if those Squares are treated as the relevant "area" under the Foreign Missions Act, the Diplomatic Overlay will eventually creep out and absorb the Squares in their entirety. That is what is going on in this case. That is something that NCPC said it did not want to have happen. It specifically said that the smaller houses along the Massachusetts Avenue corridor were to be maintained as *residences*.

This is not a problem of three isolated Squares. Exhibit B shows the same division of Squares at Massachusetts Avenue and 30th Street, at Massachusetts Avenue and Belmont Road and at Massachusetts Avenue and California Street.

This is not a problem of Massachusetts Avenue. NCPC's official map of the Diplomatic Overlay shows that the approach of split Squares is a District-wide approach. The Department thoughtfully makes the map available to foreign missions as a pocket insert to short booklet entitled "Real Property Acquisitions" and emblazoned with the Great Seal of the United States. Sixteenth Street Northwest from just above Massachusetts Avenue all the way out to Shepard Street is mapped with split Squares. Connecticut Avenue is similarly mapped from O Street Northwest all the way out to Livingston Street.

This split-Square zoning is, of course, not a concept unique to the Diplomatic Overlay. For example, in Georgetown, the immediate area of Squares facing Wisconsin Avenue is zoned commercial. Part of this can be seen on our Exhibit B. For Mr. Mlotek, a resident of Georgetown on 34th Street, that means that commercial establishments, including chanceries, cannot invade his neighborhood. The Board has already decided that matter in a very firm manner.

In *Application No. 14820*, a chancery attempted to invade the residential part of a Square that also had parts zoned commercial and SP-1. Those parts had, naturally, "office and institutional uses". The Department argued that, under the Foreign Missions Act, there were "existing office and institutional uses" in the "area", that is to say, the Square, and therefore a chancery should be permitted to locate in the residentially zoned

part of the Square. In 1988, the Board correctly saw that this approach would completely undermined the careful zoning that had divided the permitted uses of Squares that had one side facing a commercial avenue. Mr. Mlotek is personally safe.

The Board should now make clear that the reasoning in *Application No. 14820* applies equally to the division of Squares between completely residential zoning and residential zoning with a Diplomatic Overlay. To do otherwise would lead to a most anomalous result — a residential neighborhood that abuts a commercial zone is protected from invasions by chanceries, as well as other commercial uses but a residential neighborhood that abuts the Diplomatic Overlay is fair game for the Department.

Negotiations with the Neighborhood. We believe that the Board should adhere to the plain R-1-A zoning of our neighborhood. We believe that would be best for the neighborhood. We believe that is what the Federal Element of the Comprehensive Plan calls for. We also believe that permitting a Chancery to invade a residential neighborhood is emphatically not what the Foreign Missions Act authorized. We further believe that any major departure from the Comprehensive Plan should not be undertaken in an *ad hoc* fashion.

But that said, I do want to respond to Mr. Mlotek's statement, on several occasions last week, that the Embassy had attempted to negotiate with the neighborhood. At least so far as we are concerned, that is not correct. At the reception given by the Ambassador last May, I spoke directly to counsel for the Embassy and suggested that a use agreement might be a way out of the immediate dilemma for the Embassy. I also suggested that counsel prepare a draft. In subsequent conversations with the Chairman of our ANC, I asked her to repeat my suggestion to counsel. The first time there was any suggestion that the idea might be seriously entertained was contained in the statement filed on October 4, 2000, by the Embassy.

Last May we were, of course, talking about 10 employees, not 15. My recollection is also that I specifically mentioned, among other things, that any such agreement should provide only for use by the Azerbaijanis; that is precluding a sale of the property *as a chancery* to another country and providing that **2741 34th Street** would not be eligible for any further hearing under the Foreign Missions Act. In addition, use as a chancery should only be for a temporary period, perhaps for six months or a year, until such time as the Ambassador obtains the second building about which he spoke at the hearing. As counsel to the Embassy graciously, and accurately, noted, the neighborhood told the Ambassador in May that we would welcome him as the occupant of the new Embassy. And having learned of his extended family at the hearing, we would welcome them also. We do not believe that the Embassy's suggestion is

Enforcement Problems. Mr. Mlotek indicated at the hearing that the Department of State's interest in enforcement is somewhat country specific. Apparently, he already watches the Cubans like a hawk. For other countries, the Department's approach is more, shall we say, "tolerant". We already suffer from any unwarranted degree of tolerance.

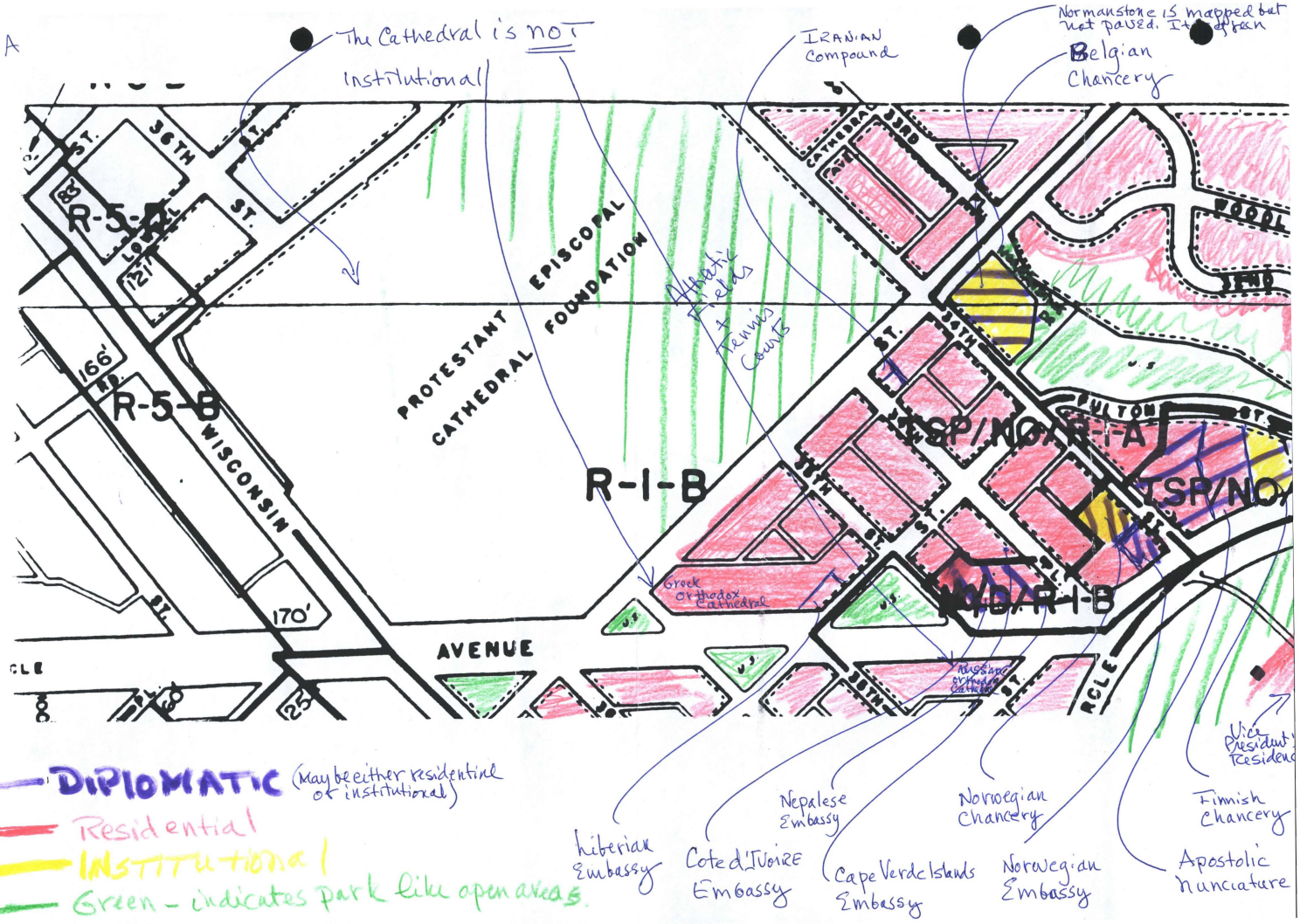
At the Embassy's reception last May, we pointed out to Mr. Mlotek that the Finnish Chancery seemed to be being rented out on a semi-commercial basis. As we told Mr. Mlotek, one of the neighbors had in fact attended a "rent-a-chancery" party there given by an outside organization. Mr. Mlotek categorically indicated that the practice was illegal. We thought something might, therefore, be done about the practice.

But nothing has been done that we can see. Somethings are just not illegal enough to do anything about, even, it appears, after a six-month opportunity to find a solution. Mr. Mlotek may sometimes be a guest at the Finnish Chancery. He may not, however, be on the "guest" list for their "extracurricular" functions. If, for example, he had driven on 34th Street at 10 o'clock in the evening on Thursday, October 12, 2000 (instead of 2 o'clock in the afternoon of the day of the Million Family March), he would have found 34th Street and Fulton Street completely parked up. Apparently paying guests at the Finnish Chancery are not eligible to use its own onsite, underground parking. So after 10 o'clock in the evening, the valet parking attendants started laying down patches of rubber as they took the cars back down Massachusetts Avenue.

Mr. Mlotek's suggested we extend residential permit parking to a later hour. That is an option that we are going to have to explore. The Department does not appear to be helping on this matter. As a result, we have little confidence that the Department will help on other issues and, therefore, are leery of agreements that depend on Mr. Mlotek for enforcement.

Mr. Mlotek's only clients are the foreign missions. That is all right; somebody should be their advocate. It just means that we and other residents in the District should not be required to look to him to be the judge in his own client's case. We should be able to look to independent tribunals, such as the Board and the Office of Zoning.

Exhibit A


The Cathedral is NOT Institutional
IRANIAN Compound
Normanstone is mapped but not paved. It has been
Belgian Chancery
PROTESTANT EPISCOPAL CATHEDRAL FOUNDATION
Athletic Fields + Tennis Courts
R-5-A
R-5-B
R-1-B
SP/NC/R-1-A
WISCONSIN
AVENUE
Greek orthodox Cathedral
Russian orthodox Cathedral
Vice President's Residence
DIPLOMATIC (may be either residential or institutional)
Residential
INSTITUTIONAL
Green - indicates park like open areas
Liberian Embassy
Cote d'Ivoire Embassy
Nepalese Embassy
Cape Verde Islands Embassy
Norwegian Chancery
Norwegian Embassy
Finnish Chancery
Apostolic Nunciature

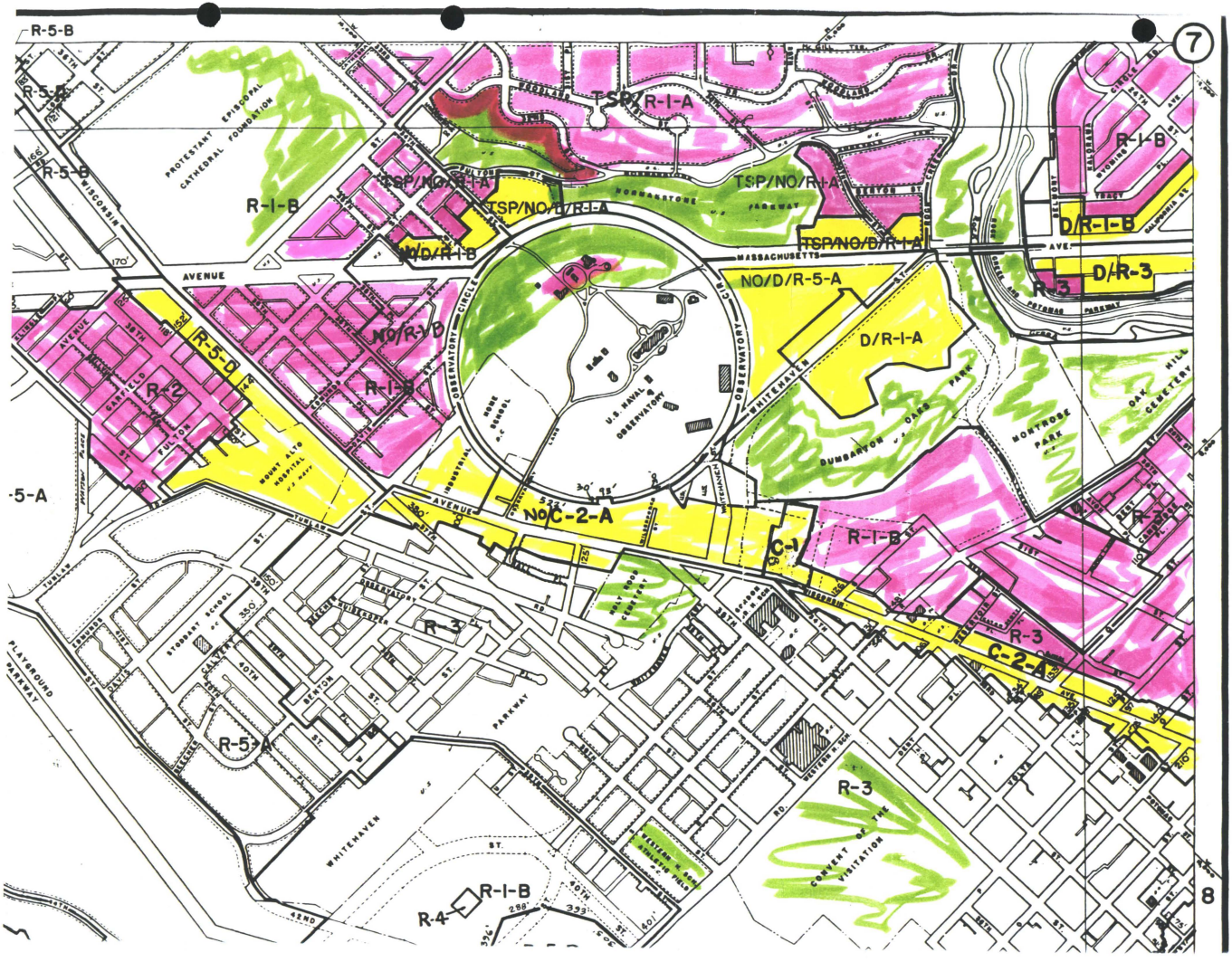


Exhibit B

Diplomatic Overlay + Commercial in Yellow