

# Record of Appeal for Public Space Permit for 701 10<sup>th</sup> St NE

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# **Exhibit 1**



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Advisory Neighborhood Commission 6A-02  
815 F Street, NE  
Washington, DC 20002



Ms. Michelle Pourciau, Director  
District Department of Transportation  
Frank D. Reeves Municipal Center  
2000 14th Street, NW 6th Floor  
Washington, DC 20009

Re: Application for public space permit for 701 Tenth Street, NE

Director Pourciau:

Attached is an appeal of DDOT's decision to grant a public space permit for a curb-cut and driveway at 701 Tenth Street NE. This appeal is in response to Acting Associate Director Ann Simpson-Mason's decision on December 18, 2006, to deny our request to suspend the permit and refer the issue to the Public Space Committee by stating her continued support of the staff decision to approve the permit. I feel compelled to make this appeal directly to you because Ms. Simpson-Mason has not returned my phone call or answered the questions posed in response to her support for the staff's decision (see attachment #1).

As a side note, another reason we asked for this matter to be referred to the Public Space Committee was to provide us the time to complete our research. Your department failed to notify our Commission that the permit was issued in a timely manner. While the letter from Mr. Juan Amaya is dated November 8, 2006, it was not sent to our Commission until Monday, December 11, 2006 (see Attachment #2).

Despite the lack of timely notification, we have done the best we can to complete an initial review based on the facts as we understand them. Accordingly, we have new information that justifies a decision to suspend the permit and refer this issue to the Public Space Committee for a more thorough review. Specifically, I am requesting this appeal be referred to the Public Space Committee in accordance with Title 24, Section 200.2, 200.3 and 200.4 of the District of Columbia Municipal Code.

The proposed 25' driveway and 31' curb-cut will likely be the largest curb-cut in the Capitol Hill area and is completely out of character and scale with the pedestrian-friendly streets and sidewalks in our community. Furthermore, the approved curb-cut is more than twice as wide as the curb-cut that was proposed in the public space application and presented to ANC 6A.

As outlined in the appeal, this permit should not have been granted because:

- 1) The permit was issued in error because it violated sections of Title 24 of DC Municipal Regulations;
- 2) The permit was issued in error because it violates DDOT guidelines;
- 3) The permit should be revoked on grounds that the developer has already violated the conditions of the permit and DC municipal regulations;
- 4) The curb-cut is not in the public's interest and eliminates more public parking spaces than



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- are recovered in private parking spaces;
- 5) The granting of the permit was unfair because others in similar position were denied a curb-cut;
  - 6) ANC 6A was not afforded its great weight in the decision;
  - 7) DDOT failed to take into account the concerns of TPPA (highlighted in Attachment 1);
  - 8) The developer should seek alternative relief for the zoning parking requirements; and
  - 9) The developer should not be rewarded with exclusive use of public space when there have been current and prior violations of public space regulations.

DDOT would not be liable to the developer if it revoked the public space permit for 701 Tenth Street NE. The building was constructed before any public space permit was granted, so the owner assumed the risk that it lacked the proper permits. Also, the developer does not have a valid building permit to construct the parking pad or curb-cut. Furthermore, neither the parking pad nor the curb-cut are shown on the construction plans and neither is mentioned in the building permit.

Finally, Title 24 Section 207 of DCMR forbids the owner of the property to hold the city liable for the revocation of public space privileges. Section 207.4 states "The use of any space is temporary, and the user acquires no right, title, or interest in the space he or she is permitted to use." Furthermore, Section 207.6 states, "The Director may require any space to be vacated upon demand, and its use discontinued. In either case, the permittee has no recourse against either the United States or the District for any loss or damage occasioned by any requirement to vacate or discontinue use of any public space."

Because DDOT has not specified a formal procedure for appealing its administrative decisions, ANC 6A has been forced to quickly assemble this appeal. We are still investigating aspects of DDOT's decision and the applicability of DCMR, so we ask that you continue to suspend the permit so that we can supplement our appeal until close of business on January 9, 2007. The complete draft of our appeal can be found at attachment #3.

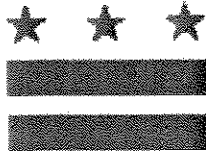
Please note that we appreciate DDOT's and its employees' stewardship of public space. Moreover, we recognize the hard work that its employees do every day to review requests for use of public space. However, in this case, it appears that the developer may have obscured certain details that prevented DDOT from affording this case the attention it required. We hope that, by bringing your attention to those details now, you will be able to make a more thorough and balanced review of this application.

Sincerely,

Joseph Fengler, Commissioner 6A-02  
[fengler6a02@yahoo.com](mailto:fengler6a02@yahoo.com), (202) 423-8868

3 Enclosures

## **Exhibit 2**



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Attachment #3

## MEMORANDUM OF APPEAL

To: Michelle Pourciau  
Director  
District Department of Transportation

From: Joseph Fengler, Commissioner, ANC 6A-02

Date: December 21, 2006

**Re: Application for public space permit at 701 10<sup>th</sup> St., NE**

ANC appeals the public space permit allowing a curb-cut at 701 Tenth Street, NE, and requests that you refer this matter to the Public Space Committee for the following reasons:

### **A. The permitted curb-cut violates several District of Columbia Municipal Regulations.**

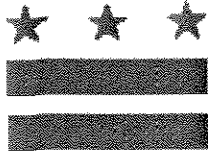
Section 200.2, 200.3 and 200.4 of Title 24 of the DCMR require that all Public Space applications to be referred to the Public Space Committee and that “no permit for use of public space shall be issued without Committee approval.” In this case a public space permit was issued in error because it was issued without the approval of the Public Space Committee.

### **B. The permitted curb-cut violates DDOT guidelines.**

DDOT regulations require that there be 60 feet between the intersection and a curb-cut (DDOT Design and Engineering Manual § 34.3.1). However, in the permit order, DDOT allowed the applicant to construct a driveway up to 25 feet in width, which means that there is only approximately 55 feet between the intersection and the curb-cut. In addition DDOT guidelines require that driveways have a minimum of 8 feet of clearance from the interior lines between private properties (DDOT Design and Engineering Manual § 31.4.3.1), while in this case the driveway directly abuts the neighboring property. Thus, the current permit was issued in error.

### **C. The permit can be revoked because the developer is already violating its conditions.**

The permit states “All work must comply with all District regulations and statutes. Voilation [sic] of any District regulations or statue may result in the revocation of this permit.” The permit allows construction of a driveway that is a maximum of 25 feet wide. However, the developer has already poured concrete for a driveway that is 25’9” wide. This additional width violates the express limitation on the permit. It also violates the condition that construction “must follow approved site plan without deviation” there is no site plan and no construction permit for a driveway. In addition, this permit is not posted at the site in violation of the condition that “This permit must be on site at all times.” In addition, the developer has on numerous occasions

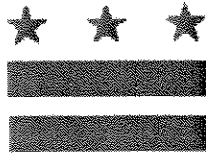


### Attachment #3

violated the condition of “No crossing of sidewalk with trucks.” In spite of the above violations, this driveway, as constructed, lacks the 6 foot wide pedestrian island required of all driveways that are more than 25 feet wide. (DDOT Design and Engineering Manual § 31.4.3.1). Lastly, the developer has violated Sections 110.2, 110.4 and 110.6 of Title 24 of DCMR during the construction of the structure.

#### **D. Granting the curb-cut and construction of a driveway results in detriment to the public with no corresponding benefit.**

1. The curb-cut would eliminate 3 public parking spaces in return for only 2 private parking spaces. In the letter to ANC 6A explaining the approval of the curb-cut permit, DDOT claimed that there was a public benefit because 1 public parking spot was being exchanged for 2 private parking spots and that this would help alleviate parking pressures. However, it is impossible that such a wide curb-cut would eliminate only 1 public parking spot. Because the permitted curb-cut is 28 feet wide (25 feet + two 18" flairs), and Title 18 Section 2405.2(a) of DCMR requires 5 feet of clearance on either side of a private driveway, a total of 38 feet of eligible parking will be removed. Thus, the curb-cut alone will eliminate 2 public on-street parking spaces (conversations with TSA put the minimum length of a parking space at 18 feet). Furthermore, the location of the curb-cut means that there is only approximately 12 feet of legal parking space between the curb-cut and the stop sign at the intersection of G and 10<sup>th</sup> (Title 18 Section 2405.2(d) prohibits parking 25 feet from a stop sign). Because this 12 feet of space is insufficient to accommodate a legal parking spot, a 3<sup>rd</sup> parking spot will be eliminated because of the location of the curb-cut. Thus, the curb-cut will eliminate 3 parking spots while, according to the construction drawings, the developer will provide only 2 parking places. This block is already a high-volume parking block, and its proximity to the rapidly-developing H Street Corridor will only increase that volume. The result is that a new curb-cut will exacerbate the parking problem in the immediate area, and results in a net loss to the public with no corresponding benefit.
2. The proposed curb-cut would invite illegal parking on public space. The proposed parking spaces are approximately 20 feet deep and wholly contained on private property. However, the driveway on public space between the sidewalk and the parking spots is approximately 15 feet deep, and the distance from the curb to and the end of the sidewalk is approximately 14.5 feet. Our experience with other curb-cuts in the neighborhood is that people tend to park 2 cars deep even though the second car is parked on public space. In this case, the second car will likely be partially parked on the sidewalk and obstruct pedestrian traffic. Our experience has been that people parking on public space (including sidewalks) are rarely or likely NEVER ticketed by DDOT or MPD.
3. Granting permission for a driveway contradicts DDOT’s Context Sensitive Design Guidelines. Specifically, the DDOT Context Sensitive Design Guidelines (“DDOT



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CSDG”) require the project to be “in harmony with the community, and it preserves environmental, scenic, aesthetic, historic, and natural resource values of the area . . . .”(DDOT CSDG at page 4). We cannot identify ANY other examples of double-wide curb-cuts on Capitol Hill meant to service a single family home or flat in a R-4 residential district. The proposed driveway is not in harmony with any of these aspects and no other property in this block has such a curb-cut or driveway. Moreover, this driveway and the open parking lot to which it leads are a stark, anomalous contradiction to the rhythm, pattern and density of predominately historic row houses in the 700 block of 10th Street and the 1000 block of G Street, NE. Similarly, the driveway is not consistent with the surrounding land use and neighborhood requirements (DDOT CSDG at page 8) or with the existing community’s values, which prioritize pedestrian traffic, existing aesthetics and the density of historic row houses over the presence of vehicular right-of-ways and parking lots.

4. The proposed curb-cut would eliminate public green space. Approximately 100 sq. feet of green space will be eliminated between the sidewalk and the curb for no public benefit.
5. Traffic entering and exiting the proposed curb-cut creates a safety risk for children in the neighborhood including going to and from the Sherwood Recreation Center. This point was made in the original ANC request to deny the permit and was never addressed by DDOT in its decision to grant the curb-cut. While the curb-cut is more than 200 feet from the entrance of the recreation center, we are concerned that this street will have an above average pedestrian volume of children WALKING to the recreation center not playing in front of the house.

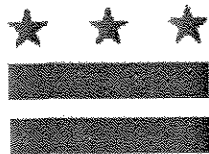
#### **E. Granting this application while denying others is unfair to similarly situated residents.**

Many homes on the same square do not have alley access nor do they have on-site parking. Even in similar cases where homes without alley access have requested a curb-cut, DDOT has denied the application. For example, DDOT denied a curb-cut for 1019 Constitution Avenue, NE in 2003 in a case where ANC 6A took no position. By granting a curb-cut for this property, DDOT creates the impression that it favors the private interests of certain developers over the public interest and the interests of nearby residents.

#### **F. DDOT’s prior review failed to take into account the community’s input.**

In February 2006, the community, through ANC 6A, unanimously registered its opposition to the curb-cut (7-0). There in no indication that the ANC's decision was given consideration much less the great weight regarding it is entitled to for this proposal because NONE of the issues raised in ANC 6A’s letter were properly addressed in DDOT's decision. DDOT’s issuance of this curb-cut was only by a mechanical application of the guidelines without consideration of the ANC’s position. In addition, ANC 6A was never notified or consulted when the size of the curb-





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cut was increased from 12 feet to 25 feet. Public support or opposition to a curb-cut should be important factor in DDOT's decision to issue a public space permit for a curb-cut. We believe that DDOT must show an overriding public interest in granting a curb-cut if the ANC opposes it.

#### **G. DDOT's prior review failed to take into account TPPA's input.**

PMSA granted the public space permit despite the objections of TPPA. In a March 2006 email from Chris Delfs, TPPA's position was "ANC 6A is opposed to the proposed driveway curb cut; their reasons are outlined in the attached resolution letter. After reviewing the case, I tend to agree with the ANC."

#### **H. The revocation of the public space permit causes no hardship to the developer, but the public has no recourse for the encroachment onto public space.**

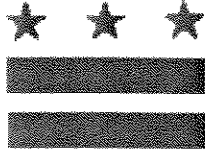
According to the DC zoning regulations, the construction of a flat requires 1 on-site parking space. However, the developer may seek a variance to the parking requirement. It is likely that the developer in this case would be granted a variance because the property's lack of alley access would qualify under Section 3103 of the zoning code for hardship.<sup>1</sup>

#### **I. Granting this public space permit rewards the developer for his wrongdoing.**

This developer demolished the entire brick paver sidewalk along almost the entire length of the G Street side of the lot. The sidewalk has remained in this deplorable condition for over 1 year. During that time, this developer occupied, fenced in and driven heavy machinery over public space without a permit. Now, the developer has constructed a tremendous parking pad that encroaches on public space, that is not in the original construction permit application, and that exceeds the maximum size specified on the face of the permit. DDOT has issued numerous citations against this developer for its violations of public space regulations. Nonetheless, DDOT proposes to grant the developer permission to construct a curb-cut even though the developer has not corrected any of these existing violations. DDOT's course of action creates no

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<sup>1</sup> Section 3103 reads "[w]here, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Official Code §§ 6- 641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, Title 11 District of Columbia Municipal Regulations upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map."



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incentive for this developer or any other to protect public space, and actually rewards Kevin Concrete Construction for its wrongdoing.

### Conclusion

DDOT's decision to grant the curb-cut at 701 10<sup>th</sup> Street NE violates DC Municipal regulations, DDOT's own standards, does not serve the public interest and is directly contrary to the objections of those that are most directly connected to the area, namely neighborhood residents and various community stakeholders such as ANC 6A, and TPPA. Furthermore, the developer has already violated the conditions of the permit and has other avenues available to comply with the parking requirements in the zoning code.

We ask that DDOT to refer this case to the Public Space Committee so that it can be reviewed more intensively and be heard in a public forum.

If you have further questions, please do not hesitate to contact me at 202 423-8868 or fengler6a02@yahoo.com. Thank you for your consideration.

By: Joseph Fengler, Commissioner, ANC 6A-06

Dated: December 21, 2006  
Washington, DC

## **Exhibit 3**

-----Original Message-----

From: Joseph Fengler

Sent: Thu 12/21/2006 1:18 PM

To: Michelle Pourciau (DDOT DIR)

Cc: [anc6c@yahoogroups.com](mailto:anc6c@yahoogroups.com); ANC 6A Open; Linden Neighbors; Sherwood Park Neighborhood

Subject: [anc-6a] Re: [anc6c] Re: Appeal of DDOT permit for 701 10th Street NE dated December 21, 2006

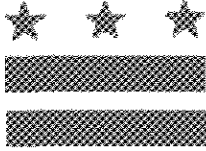
Director Pourciau,

I have made an error of omission. Throughout the document, it states that I, as an ANC Commissioner, am making the appeal. However, in the third attachment it states the ANC is making the appeal. In the preparation of the document, I decided not to wait until January 2007 meeting for an ANC 6A to consider this action. Accordingly, I failed to correct the last attachment. However, I am attaching the initial February 14, 2006, letter that the ANC did send outlining its objections to the proposed curb cut.

Holiday regards,

Joe

## **Exhibit 4**



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January 9, 2007

Emeka C. Moneme  
Acting Director  
District Department of Transportation  
2000 14th Street, NW  
6th Floor  
Washington, DC 20009

**Re: Appeal of public space permit (701 10<sup>th</sup> St., NE)**

Director Moneme:

This letter and the attached Exhibits supplement my appeal as the commissioner for SMD 6A02 of the permit allowing Yvette Strickland (“Contractor”) to construct a driveway and related curb cut in public space at 701 10<sup>th</sup> St., NE (“Permit” and “Property,” respectively). I previously notified DDOT that a supplement to the appeal would be filed by January 9, 2007, after I received and reviewed the administrative record for this permit, and DDOT did not object to or deny that request.

On the basis of a review of the agency record and its prior objections, I request and recommend that DDOT revoke this Permit for the reasons stated in its Memorandum of Appeal and for the reasons below:

**I. DDOT granted the Permit on the basis of grossly incorrect information.**

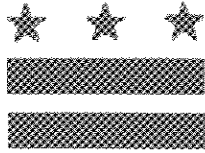
DDOT granted the Permit on the basis of incorrect measurements. All but one of the distance measurements in the administrative record were apparently taken on-site. Inexplicably, the only measurement for which DDOT relied on estimates from an electronic database instead of on-site measurements was the one for the distance from 10<sup>th</sup> Street, NE, to the edge of the proposed driveway. On the basis of this electronic estimate, DDOT concluded that the 10<sup>th</sup> Street, NE, intersection was “Approx. 70’ from start of proposed driveway.”<sup>1</sup>

DDOT’s electronic estimate is grossly incorrect. The Contractor’s own Surveyor’s Plat shows that a 24-foot wide driveway will be somewhere between 30 ft. 11 in. and 47 ft. 8 in. from the intersection.<sup>2</sup> The actual measured physical distance from the intersection to the edge of the permitted driveway is, at most, 57 feet.<sup>3</sup> In either case, the distance from the intersection to the

<sup>1</sup> See Exhibit A, attached. DDOT’s electronic approximation shows the driveway overlapping the neighboring property, which results in a greater distance between the intersection and proposed driveway.

<sup>2</sup> See District of Columbia Office of the Surveyor, Plant for Building Permit of Square 959 Lot 37 (June 30, 2005) (signed July 28, 2005). If measured according to the scale on the plat, the distance is 30 ft. 11 in. If measured according to the distances written on the plat, the distance is, at most, 47 ft. 8 in.

<sup>3</sup> See Exhibit B (Diagram of Actual Measurements at 701 10<sup>th</sup> St., NE, enclosed).



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driveway is substantially less than DDOT's electronic estimate of 70 feet. This difference is significant because any one of the shorter distances prevents the Contractor from being able to construct a driveway that complies with DDOT's requirements, as I explain in section II below.

Also, DDOT granted the Permit on the basis of incorrect information about the uniqueness of the Property. Specifically, DDOT stated that the Property's lack of alley access was a basis for granting the permit.<sup>4</sup> The administrative record states that "Everyone else has access to off street parking through the alley but not 701 10<sup>th</sup> St., NE."<sup>5</sup> However, this assertion is entirely wrong. The lack of alley access is not unique to the Property. In the same block as the Property, ten (10) lots lack alley access.<sup>6</sup> The lack of alley access is not a unique feature, so it should not be a reason for granting the Permit.

Finally, DDOT's claim that the driveway will cause a "net gain of one parking space (off the street parking)" is incorrect.<sup>7</sup> There is no evidence in the record to reflect that DDOT considered the gain or loss of public parking before it granted the Permit. To the contrary, the administrative record reflects that DDOT never counted the existing number of parking spaces, never discussed the required minimum dimensions of parallel parking spaces, never measured the effect that the installation of the driveway would have on the space available for parallel parking in light of the required minimum clearances from crosswalks, stop signs and the driveway itself. In fact, as I stated in my prior communications, the driveway causes a net loss of parking space because of the configuration of the intersection, crosswalk, stop sign, driveway and the required minimum clearances from each of those elements.

## **II. It is impossible to build a 25-foot driveway that complies with DDOT's requirements at the Property.**

The edge of any driveway must be a minimum of 60 feet from an intersection.<sup>8</sup> In addition, in DDOT's consideration of the Permit application, DDOT's Traffic Services Administration ("TSA") determined that, in this case, "[t]he driveway must be a minimum of 25 feet [wide] so that both vehicles could move freely by each other" in the proposed two-car driveway.<sup>9</sup> However, at the Property, the actual distance from the intersection at 10<sup>th</sup> St., NE, to the furthest

<sup>4</sup> See Letter from Juan Amaya, Citywide Supervisor, District Department of Transportation, to Joseph Fengler, Chair, ANC 6A (Nov. 8, 2006).

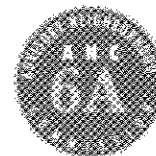
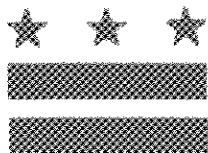
<sup>5</sup> Exhibit C (photo with comment that "Everyone Else has access to off street parking through the alley but not 701 10<sup>th</sup> Street).

<sup>6</sup> In the 700 block of 10th St., NE, house numbers 701,703,705,709 all lack alley access. In the 1000 block of G Street, NE, 1000,1002,1004,1020,1022,1024 all lack alley access.

<sup>7</sup> See Letter from Juan Amaya, Citywide Supervisor, District Department of Transportation, to Joseph Fengler, Chair, ANC 6A (Nov. 8, 2006).

<sup>8</sup> DDOT Design & Engineering Manual at § 31.4.3.1.

<sup>9</sup> See Exhibit D, Trey Dickerson, District Dept. of Transp., Traffic Services Administration, "Response from Trey Dickerson in May 2006 – TSA," (May 2006).



edge of the property line is only 82 ft. Therefore, any driveway that is 25 feet wide necessarily will fall within 60 feet of the intersection.<sup>10</sup> In short, it is impossible for *any* two-car driveway at the Property to comply with both TSA's requirements and DDOT's Design and Engineering Manual.

### III. DDOT failed to give ANC 6A's objection "great weight."

By statute, DDOT must give ANC 6A's objection "great weight during the deliberations" by the agency.<sup>11</sup> In addition, DDOT's "written rationale of the decision" must "articulate with particularity and precision the reasons why the Commission does or does not offer persuasive advice under the circumstances" and "must articulate specific findings and conclusions with respect to each issue and concern raised by the Commission. Further, the government entity is required to support its position on the record."<sup>12</sup>

In this case, DDOT failed to give ANC 6A's recommendation great weight, failed to articulate specific findings and conclusions for each issue that ANC 6A raised, and failed to support that position on the record. ANC 6A objected to the Permit on several grounds.<sup>13</sup> The record reveals that DDOT's deliberations and factfinding did not extend to the specific objections that ANC 6A raised. In over 56 pages of documents that comprise the record, DDOT mentioned ANC 6A's objection to the Permit only once before notifying ANC 6A that it approved the application.<sup>14</sup> From the record, it is clear that DDOT never asked its administrations to address ANC 6A's recommendation. At best, DDOT provided ANC 6A with conclusory denials of ANC 6A's findings and never made a record of deliberations or findings to contradict ANC 6A's findings.<sup>15</sup> In short, DDOT could not have given ANC 6A's objections great weight because DDOT never considered them before deciding to approve the Permit. Moreover, DDOT failed to satisfy its statutory obligations to the ANC because its rationale for approving the permit is based on grossly incorrect facts and is otherwise devoid of support in the record.

### IV. The Contractor has failed to comply with the conditions of its Permit.

DDOT states on the face of the Permit that the "contractor shall use all signs shown on approved traffic control plan – failure to do so will result in revocation of this permit."<sup>16</sup> From the time the

<sup>10</sup> The calculation is as follows: 82 feet less 25 feet is 57 feet.

<sup>11</sup> D.C. Code § 1-309.10(d)(3)(A).

<sup>12</sup> *Id.*

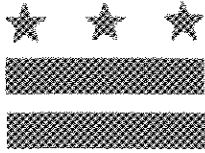
<sup>13</sup> See Letter from Joseph Fengler, Chair, ANC 6A, to José Colón, Lead Civil Engineering Technician, Public Space Permits and Records Branch, DDOT (Feb. 14, 2006).

<sup>14</sup> Response from Chris Delfs in march 2006 – TPPA.

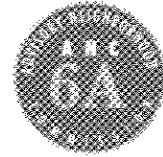
<sup>15</sup> See Letter from Juan Amaya, Citywide Supervisor, District Department of Transportation, Joseph Fengler, Chair, ANC 6A (Nov. 8, 2006).

<sup>16</sup> DDOT Permit No. PA-14677 (Nov. 17, 2006).





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Contractor began to illegally occupy public space until now, the Contractor has failed to heed the laws, regulations and conditions governing the use of public space.<sup>17</sup> As a result, DDOT has every right and reason to revoke the Permit.

#### V. Conclusion

DDOT notified the Contractor that the Permit "is revocable at any time at the discretion of MPD and DDOT."<sup>18</sup> For the reasons stated in this letter and my previously submitted Memorandum, I request and recommend that DDOT to exercise its authority and revoke this Permit.

Thank you for your consideration. I look forward to your decision.

Sincerely,

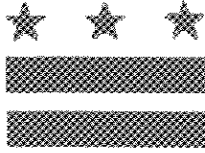
Joseph Fengler  
Single Member District 6A-02 Commissioner

enclosures

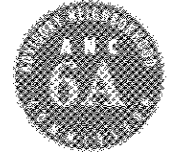
---

<sup>17</sup> In December 2006, DDOT informed residents that it had issued citations against the Contractor for its use of public space without a permit. Also, the Contractor has apparently failed to comply with its approved Traffic Control Plan and the Permit. Specifically, on January 8, 2007, a resident complained to DDOT's Office of Infrastructure Oversight that the Property was not in compliance with the signage requirements in its Traffic Control Plan despite ongoing occupation of and construction in public space, and that the size of the driveway exceeded 25 feet by 6 to 9 inches.

<sup>18</sup> *Id.*

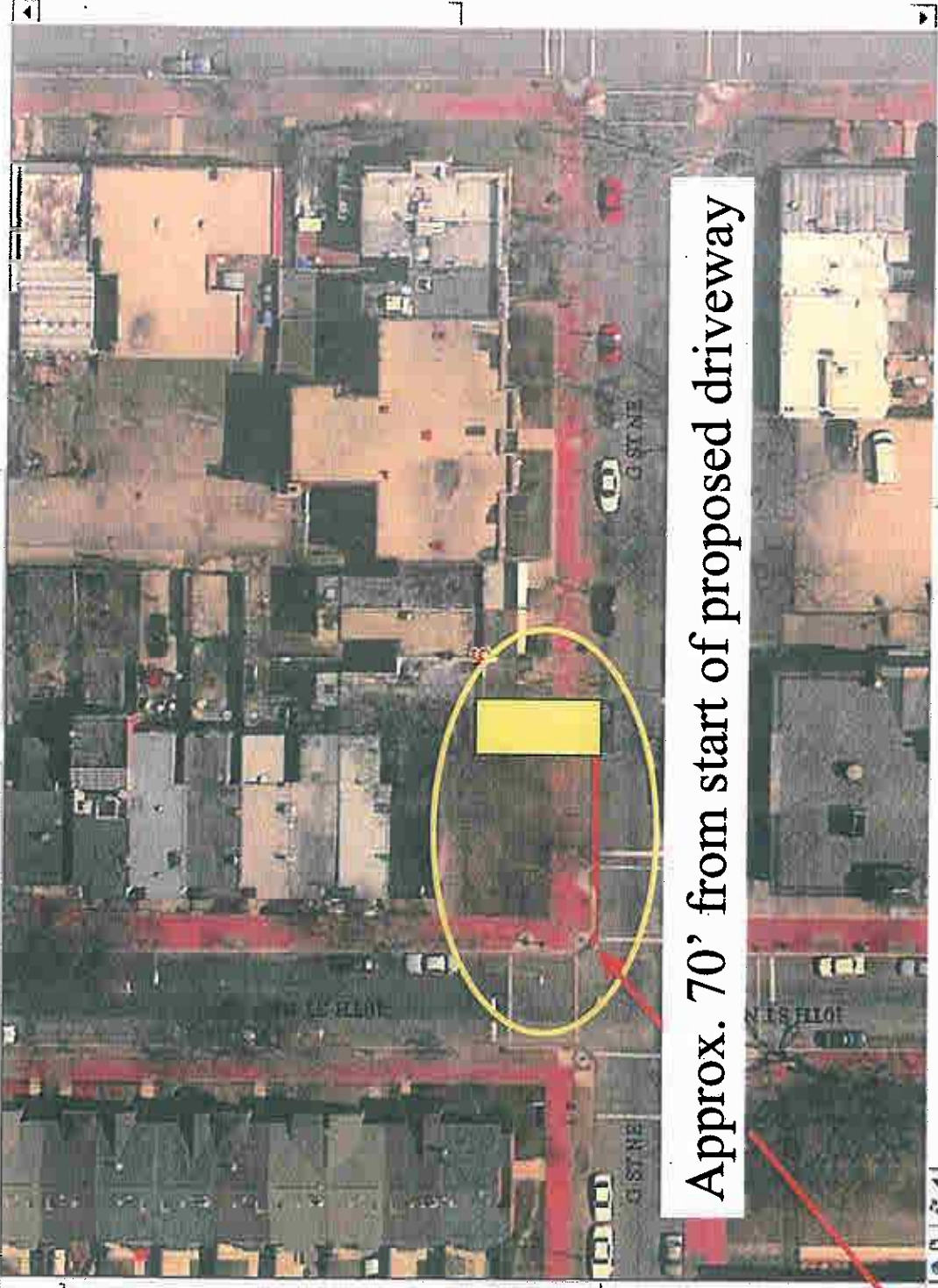


District of Columbia Government  
Advisory Neighborhood Commission 6A-02  
815 F Street, NE  
Washington, DC 20002



**Exhibit A**

30% 1:523



Approx. 70' from start of proposed driveway

**Layers**

- Pictometry Orthophoto ta
- RGB**
  - Red: Layer\_1
  - Green: Layer\_2
  - Blue: Layer\_3
- 2002 Wards
- Street Centerlines
- Street Functional Classific
- Property Squares
- Street Names
  - Streets\_1200\_Gry
  - Streets\_3000\_Gry
  - Streets\_6000\_Gry
  - Streets\_9000\_Gry
  - Streets\_12000\_Gry
  - Streets\_15000\_Gry
  - Streets\_24000\_Gry
  - Streets\_28800\_Gry
  - Streets\_42000\_Gry
- DC Basemap Group
  - District Boundary
  - District Quadrants
  - Buildings
  - Roads

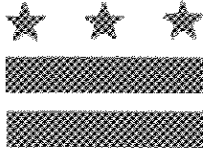
Display Selection Source Map Book

Drawing 10 A B I U

1314505.54 448783.43 Feet

Segment: 3.78522 Total: 70.296987 Feet



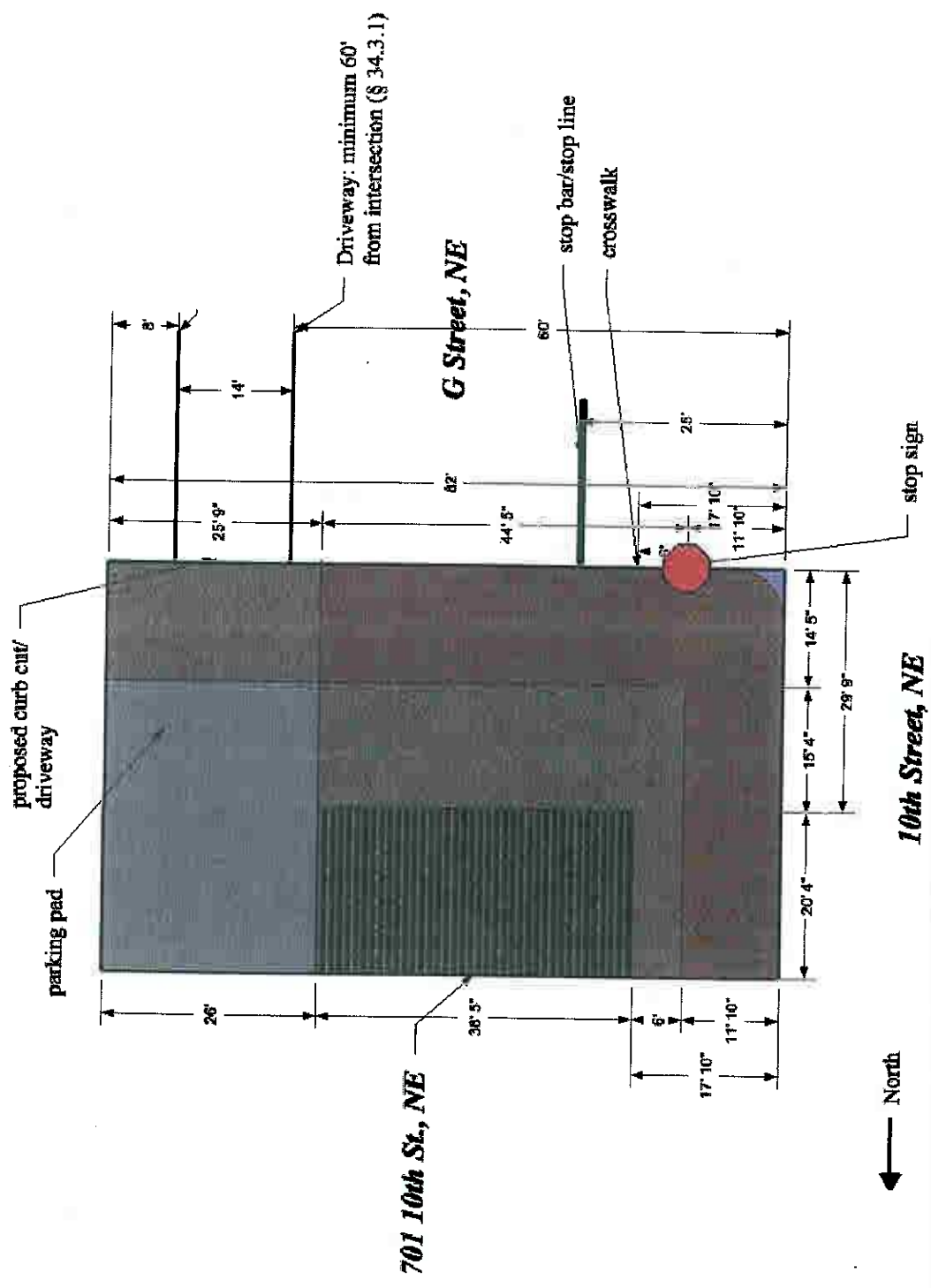


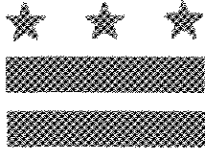
District of Columbia Government  
Advisory Neighborhood Commission 6A-02  
815 F Street, NE  
Washington, DC 20002



**Exhibit B**

DIAGRAM OF ACTUAL MEASUREMENTS  
AT 701 10TH ST., NE





District of Columbia Government  
Advisory Neighborhood Commission 6A-02  
815 F Street, NE  
Washington, DC 20002



**Exhibit C**



This is what the alley looks like on that square. Everyone else has access to off street parking through the alley but not 701 10<sup>th</sup> Street.



**Exhibit D**



**Response from Trey Dickerson in May 2006 - TSA**

Jose,

Please accept my apology for not getting with you in a timely manner. I did have a chance to look at 701 10<sup>th</sup> Street NE (proposed driveway). If this driveway is for a two car parking space, then a 12 foot driveway entrance cut would not be acceptable. The driveway must be a minimum of 25 feet so that both vehicles could move freely by each other. If there any other questions please let me know. Thanks

Trey

**Response from Trey Dickerson in November 2006 prior to issuing permit – TSA**

Jose,

I've made a site visit and reviewed the photos you sent to me concerning 701 10<sup>th</sup> Street NE, which were very helpful. In review of this driveway, Traffic Services reviewed it to see if it was in compliance with the following:

- All driveways must be flush with the grade of the sidewalk when crossing the entire sidewalk area.
- Residential driveways should have a minimum 12 feet width within the public area.
- Driveway entrances should have a maximum radius of 6 feet.
- All driveway radii must be located within the public space adjacent to the property applying for driveway and not within neighbor's public space.
- No driveway of any entrance or exit to an intersection shall be closer than 60 feet to a street intersection as measured from the intersection of the curb lines extended.
- On the approach direction to an intersection the driveway edge line must be located a minimum of 60 feet from the point of intersection of two streets.
- A driveway shall be a minimum of 12 feet in width and a maximum width of 25 feet.
- All driveways shall not be less than 12 feet in width for one-way traffic and 24 feet for two-way traffic.

In accordance with Traffic Services requirements for driveways, we have no objection with this proposed driveway. If there any questions please let me know. Thanks

Trey

(D)

## **Exhibit 5**

December 13, 2006

Mr. Juan Amaya, Citywide Supervisor  
District Department of Transportation  
2000 14<sup>th</sup>, NW, 5<sup>th</sup> Floor  
Washington, DC 20009

Re: 701 Tenth St., NE

Dear Mr. Amaya,

The Stanton Park Neighborhood Association (SPNA) represents the residents in the area bounded by Second Street, Tenth St, East Capitol, and H Street in the Northeast Sector of the District of Columbia. SPNA works to improve the quality and vitality of our neighborhood, and coordinates its efforts with ANC 6A and 6C to achieve those goals. We write today to express our outrage at the installation of an unwarranted curb cut and illegal public space parking at 701 Tenth St., NE.

Our understanding of this regrettable project is as follows. The Applicant misled DCRA in filing a building permit application that claimed existence of off-street parking where in fact none existed. The Applicant could have been granted permission to build a two-unit building. Thus, the Applicant has already been improperly enriched by fraudulently obtaining permission to construct a three-unit structure. The Applicant has created not only a driveway in public space, but has also created an additional parking space in public space. Your largess is simply unacceptable: it unconscionably rewards illegal behavior. Does DDOT/Public Space intend to charge an annual fee to the Condo Board of 701 Tenth St. for parking in public space as it does when commercial activities utilize public space for a private benefit? Is it now DDOT policy to facilitate free private parking on public space?

Your November 8, 2006 letter states: “. . . we have three enforcement offices (MPD, OIO, and parking enforcement) that stand ready to provide assistance and/or services to the residents of the District of Columbia to prevent and enforce illegal parking.” Your assertion is seriously misguided. In fact, it is nearly impossible to get a car ticketed for parking in public space. I can recount for you hundreds of addresses in my neighborhood alone where illegal public space parking is routine. In many instances illegal public space parking is by both residents and non-residents who utilize the available illegal parking for convenience and to avoid changing their car registration. In one particular

instance, the neighborhood has been trying to get enforcement at 801 East Capitol. In that case, the owners made specific representations to the Historic Preservation Review Board that illegal public space parking would not occur. Despite those representations, three vehicles are routinely parked in public space at that location. At 701 Tenth St., is it your position that the concrete poured in public space will not be used, and if used, the vehicles will be ticketed?

The scant justification cited for approval in your November 8, 2006 letter would allow hundreds of houses in the Stanton Park neighborhood alone to qualify for a curb cut and off-street parking. DDOT was well aware that ANC 6A had voted unanimously to oppose this, yet you elected to over-ride the voice of the community to provide a private benefit at public expense. We strongly encourage you to rescind your approval, and by copy of this letter request an investigation into the Applicant's representations to DCRA on this project. We also urge you to caution the owner not to sell these units until this matter is resolved.

Sincerely,

Drury Tallant, Co-Chair  
SPNA Land Use Committee

Cc: The Honorable Sharon Ambrose, Ward 6 Council Member  
The Honorable Carol Schwartz, Chair, DC Public Works Committee  
Ms. Denise Walker, Public Space Manager (DDOT)  
Ms. Ann Simpson-Mason, Public Space Associate Director (DDOT)  
Dr. Patrick Canavan, Director, DCRA  
Mr. Joseph Fengler, Chair ANC6A

# **Exhibit 6**



District of Columbia Government  
Advisory Neighborhood Commission 6A  
Box 75115  
Washington, DC 20013



February 14, 2006

José L. Colón, Lead Civil Engineering Technician  
Public Space Permits and Records Branch  
District Department of Transportation  
941 North Capitol Street, NE  
Washington, DC 20002

Re: Public Space Application (701 10<sup>th</sup> Street, NE)

Dear Mr. Colón,

At a regularly scheduled and properly noticed meeting on February 9, 2006, our Commission voted 7-0-0 (with 4 Commissioners required for a quorum) to object to the above referenced application to occupy public space for the purpose of constructing a new driveway.

The curb cut and driveway would occupy 360 square feet of public space behind three residential units in a new infill building on the corner of 10<sup>th</sup> and G Streets, NE.

The ANC's objection is based on the following findings: 1) the proposed curb cut would eliminate at least one existing public parking space in return for only two private spaces; 2) traffic entering and exiting the proposed curb cut may create a safety risk for children going to and from the Sherwood Recreation Center; 3) the proposed curb cut would eliminate public green space (an existing tree was already taken out during construction); and 4) the proposed curb cut would invite illegal parking on the public space (including the sidewalk it crosses).

Please note that Commissioner Rice of our ANC has contacted your office on two occasions to request an extension of the ANC response period due to the holiday schedule. Neither of his phone calls were returned. In the future, we would appreciate the courtesy of a response.

Respectfully yours,

Joseph Fengler  
Chair, Advisory Neighborhood Commission 6A

cc: Lars Etkorn, Public Space Administrator (DDOT)

# **Exhibit 7**

Response from Chris Delfs in March 2006 – TPPA

Hello Public Space Team,

There have been a number of emails traveling back and forth with the ANC, and I suspect more than one conversation going on. So...I just wanted to lay out my two cents on behalf of TPPA, hopefully make things a little less confusing, and then let Surface Permitting make the final determination.

ANC 6A is opposed to the proposed driveway curb cut; their reasons are outlined in the attached resolution letter. After reviewing the case, I tend to agree with the ANC. If approved, the District would be giving up public space for a driveway serving a small parking lot for only two cars. While there **are minimal traffic impacts**, we would lose public sidewalk, a public parking space, and a little green space for a net gain of one parking space.

In addition, it is my understanding after speaking with Jose, that the English basement "projection" has already been approved. I'll communicate our status to the ANC since they have been asking (about both the basement and the driveway).

One last thought: should PSMA decide to approve the curb cut, could we require an **amenity like a couple new trees or the like**. Supposedly, the contractor pulled out a tree to facilitate access to the site.

If you have any questions, please let me know.

Best regards,  
Chris



# **Exhibit 8**

----- Original Message -----

From: Joseph Fengler <[fengler6a02@yahoo.com](mailto:fengler6a02@yahoo.com)>

To: "Simpson-Mason, Ann (DDOT)" <[ann.simpson-mason@dc.gov](mailto:ann.simpson-mason@dc.gov)>

Cc: "Wiktor, Denise (DDOT)" <[Denise.Wiktor@dc.gov](mailto:Denise.Wiktor@dc.gov)>; "Amaya, Juan (DDOT)" <[Juan.Amaya@dc.gov](mailto:Juan.Amaya@dc.gov)>; "Jackson, Tyrone (DDOT)" <[Tyrone.Jackson@dc.gov](mailto:Tyrone.Jackson@dc.gov)>; "Simpson-Mason, Ann (DDOT)" <[ann.simpson-mason@dc.gov](mailto:ann.simpson-mason@dc.gov)>; ANC 6A Open <[anc-6a@yahoogroups.com](mailto:anc-6a@yahoogroups.com)>; "Pourciau, Michelle (DDOT)" <[Michelle.Pourciau@dc.gov](mailto:Michelle.Pourciau@dc.gov)>; "Crews, Bill (DCRA)" <[Bill.Crews@dc.gov](mailto:Bill.Crews@dc.gov)>; "Colon, Jose (DDOT)" <[Jose.Colon@dc.gov](mailto:Jose.Colon@dc.gov)>; "Delfs, Christopher (DDOT)" <[Christopher.Delfs@dc.gov](mailto:Christopher.Delfs@dc.gov)>; Tommy Wells (home) <[wellsthos@aol.com](mailto:wellsthos@aol.com)>; Dru Tallant <[dtallant@aol.com](mailto:dtallant@aol.com)>; Karina Ricks <[karina.ricks@dc.gov](mailto:karina.ricks@dc.gov)>; Linden Neighbors <[LindenNeighbors@yahoogroups.com](mailto:LindenNeighbors@yahoogroups.com)>

Sent: Tuesday, December 19, 2006 8:01:51 AM

Subject: Re: 701 10th ST NE\New driveway

Acting Associate Director Simpson-Mason,

Thank you for taking the time to answer our request. Let me say upfront, the decision is deeply disappointing. When you have the time today, I would like to accept your offer for a conversation on this issue. In preparation for that phone call, here are the questions I wish to discuss.

First, there appears to be a lack of internal coordination within DDOT. When our ANC sent the letter stating our opposition to the curb cut on February 14, 2006, we followed up directly with our Ward 6 Transportation Planner, Mr. Christopher Delfs. After a few weeks of e-mail exchanges, it became clear that our concerns were valid. Noteworthy to highlight is one e-mail exchange on March 10, 2006, where Mr. Delfs states: "The Transportation Policy and Planning Administration (TPPA) shares some of the concerns you have described in your ANC 6A resolution letter on the subject, and I have expressed these to our Public Space Permitting Office."

**Question: How are the concerns of the Ward 6 Transportation Planner and TPPA concerns accounted for in the decision making process for a curb cut?**

Second, our Commission's objection was based on our community's observation on the pedestrian use of that corner. It goes without stating; but apparently it needs reinforcement – we live here. In this case, we understand the traffic challenges presented by Sherwood Recreation Center, the House of Ruth (which provides services for women in need) and the Capitol Hill Towers retirement community.

**Question: How is the ANC's great weight accounted for in the decision making process for an administratively approved curb cut?**

Third, there seems to be a communication break down in the Public Space Manager's office. While our ANC sent a letter to Public Space Permits and Records Branch on February 14, it took nine months to receive an official response. Then, that response was not forwarded to our Commission until one month later as it was lost in the system.

**Question: How do you track Commission input to ensure that letters are answered and that official correspondence is provided and mailed?**

Fourth, the decision to not suspend the application and refer the matter to the Public Space Committee gives the impression that DDOT does not value public input or transparency. Our ANC provided a letter to DDOT that was approved in a public meeting in February. In good faith, we followed up with the Ward 6 Transportation Planner to express our concerns. We have e-mails indicating that our concerns were valid. DDOT takes nine months to respond and fails to send the letter to our ANC for close to one month. Based on that, as well as the initial concerns in our letter, we request the permits be suspended and the matter referred to the Public Space Committee for further review. A process our community feels works and has demonstrated time and again the ability to weigh community concerns versus developer interests.

Question: Aside from validating what we believe is an incorrect decision, what does DDOT have to lose from referring this to an establish, public process that would allow the ANC – as well as Stanton Park Neighborhood Association – from presenting the issues and discussing the community's concerns?

Fifth, it looks as if DDOT uses the approach that approving public space encroachment is allowed as long as the application meets the dimensions of the regulations. This seems to be backwards. Public space encroachment should not be allowed just because it can. The permanent loss of public space should require a significant community reason. It should be more than just accommodating a private developer to have additional parking at the expense of one public parking space. Curb cuts and parking spaces are very valuable and far exceed the cost of planting a few trees and greener as offsetting compensation to the public. Moreover, initial DDOT comments simply infer that the Metropolitan Police Department and Parking Enforcement can handle any illegal parking that takes place on the public space as a result of his curb cut. Again, this simply states that challenges caused by the curb cut are not DDOT's problem, so approval is acceptable.

Question: What is the community value proposition DDOT uses when considering the permanent loss of public space?

Even your response provided below fails to address the most basic development challenge in our community – density. While it is understandable that DDOT may not clearly understand how adding multiple units on a street, that has predominately single family homes, is a threat to our city, our Commission does. This decision not to refer this to the Public Space Committee for review has been made in a bureaucratically justified vacuum where any dissenting view point – whether from DDOT's own Ward 6 Transportation Planner or the community – is dismissed for official expediency.

In close, I look forward to your phone call. My hope is that you will be able to answer the questions above in a manner that will alleviate our concerns that there is more thought to the loss of public space than has been on display in this particular case.

Regards,

Joseph Fengler, Commissioner ANC 6A-02  
[fengler6a02@yahoo.com](mailto:fengler6a02@yahoo.com)  
(202) 423-8868

# **Exhibit 9**

Director Moneme,

Congratulations on your appointment to DDOT. While I hesitate to forward this issue to you on your second day on the job, our Commission is requesting that you rule on our appeal in the attachment. As you can see from the e-mail below, we sent this to your predecessor on December 21, 2006. Unfortunately, we did not hear from her prior to her departure and service as Director.

**Issue:** DDOT staff approved a curb cut for 701 Tenth Street, NE over the objections of ANC 6A. As the proposed curb cut (actually located on the 1000 block G Street, NE) is one block outside the historic district, the application was not required to go through the Public Space Committee. As a result, the DDOT staff simply applied the regulations to the application -- examples: "Is the curb cut 60 feet from the corner?" and "Is the curb cut the proper length?" Accordingly, once those questions were answered satisfactorily, DDOT staff approved the application. Our Commission believes the hurdle to provide land access across a public space (sidewalks) should have a higher burden.

**Action requested:** We are requesting that the permit be suspended and referred to the Public Space Committee for review and resolution (please see attachment the details and DC Municipal regulations that support this request). To be forthright, our request is even more complicated now that the contractor has completed the curb cut. However, as outlined in our attachment, we still believe this request is warranted given the circumstances around the application and the execution of the curb cut.

**Why take this action?** Our Commission has been working with the Public Space Committee on curb cuts for the past several years. We believe this committee has an inherent understanding of the value of public space and has demonstrated a balanced approach with dealing with this requests. It also provides a formal process and avenue for community members, associations and ANCs to submit their views and remarks. It is a transparent process where the decisions are made in a public meeting.

**Public Space Committee recommendation:** We believe this specific instance underscores a larger challenge - The disposal of curb cut applications in a residential zoned districts that are outside of the historic districts. We understand that DDOT is currently reviewing the operations and jurisdiction of the Public Space Committee. We would strongly encourage that you take this opportunity to fold all curb cut application requests in residential zoned districts under the jurisdiction of the Public Space Committee. We believe that decisions regarding the city's disposition of public space should be very transparent and provide adequate opportunity for community input.

We have been working with our Ward Six Transportation Manager, Mr. Christopher Delfs, since February 2006. While I will admit that I have some bias on the outcome, I believe he will be able to provide any background information required. We would welcome your decision on our appeal request, as well as your thoughts on our Public Space recommendation, before Thursday, January 11, 2006 -- our next Commission meeting.

Warm regards,

Jospeh Fengler, ANC Commissioner 6A-02

# **Exhibit 10**





# **Exhibit 11**



GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DISTRICT DEPARTMENT OF TRANSPORTATION



Office of Public Space  
Management Administration  
November 8, 2006

Joseph Fengler, Chair  
Advisory Neighborhood Commission 6A  
Box 75115  
Washington DC 20013

Dear Mr. Fengler:

Re: Public Space Application (701 10<sup>th</sup> Street NE.)

Thank you for your response and objections to the curb cut permit application at the above location. The Advisory Neighborhood Commission views and comments were given great weight and taken into consideration. This letter is to inform you that the permit application was approved.

Please be advised that the decision was based on the following reasons:

- There is no alley access
- Reviews from other administrations within the Department of Transportation indicate no public safety issues.
- The net gain of one parking space (off street parking)

A concern was also expressed that the proposed curb cut will invite illegal parking on the public right away; however, we have three enforcement offices (MPD, OIO and Parking enforcement) that stand ready to provide assistance and/or service to the residents of the District of Columbia to prevent and enforce illegal parking. We will also require that the contractor plant several trees to make up for the green space that will be lost as a result of construction of the driveway.

Again I would like to thank you for your comments. Please feel free to contact me at 202 535 2209

Sincerely,



Juan Amaya  
Citywide Supervisor  
District Department of Transportation

cc: Denise Wiktor, Public Space Manager (DDOT)  
cc: Ann Simpson-Mason, Public Space Associate Director. (DDOT)

# **Exhibit 12**

From: "Simpson-Mason, Ann (DDOT)" <[ann.simpson-mason@dc.gov](mailto:ann.simpson-mason@dc.gov)>  
To: Joseph Fengler <[fengler6a02@yahoo.com](mailto:fengler6a02@yahoo.com)>  
Cc: "Wiktor, Denise (DDOT)" <[Denise.Wiktor@dc.gov](mailto:Denise.Wiktor@dc.gov)>; "Amaya, Juan (DDOT)" <[Juan.Amaya@dc.gov](mailto:Juan.Amaya@dc.gov)>; "Jackson, Tyrone (DDOT)" <[Tyrone.Jackson@dc.gov](mailto:Tyrone.Jackson@dc.gov)>; "Simpson-Mason, Ann (DDOT)" <[ann.simpson-mason@dc.gov](mailto:ann.simpson-mason@dc.gov)>; ANC 6A Open <[anc-6a@yahoogroups.com](mailto:anc-6a@yahoogroups.com)>; "Pourciau, Michelle (DDOT)" <[Michelle.Pourciau@dc.gov](mailto:Michelle.Pourciau@dc.gov)>; "Crews, Bill (DCRA)" <[Bill.Crews@dc.gov](mailto:Bill.Crews@dc.gov)>; "Colon, Jose (DDOT)" <[Jose.Colon@dc.gov](mailto:Jose.Colon@dc.gov)>; "Delfs, Christopher (DDOT)" <[Christopher.Delfs@dc.gov](mailto:Christopher.Delfs@dc.gov)>  
Sent: Monday, December 18, 2006 3:30:39 PM  
Subject: RE: 701 10th ST NE\New driveway

Dear Commissioner Fengler:

As the Acting Associate Director of the Public Space Management Administration, this is to advise you that I agree with the staff decision to approve the permit issued for 701 10th Street, NE. The driveway will be 18' wide and there is a 20' deep parking pad on private property. The driveway is approximately 60' to 62' from the intersection and will be constructed to DC Standards. The Recreation Center is nearly 300' away from the proposed driveway and it is not on the same street. The Department finds no safety issues with the driveway.

Your concern about the loss of green space will be addressed since the applicant has been instructed to plant a new tree and landscape around the premise with grass and shrubs.

After a careful review of all the comments received on this application and giving great weight to the ANC's concerns, I support our decision and will recommend to Director Pourciau that we not suspend approval. I would happy to discuss this further if you have any questions, please email or give me a call at 671-0493.

Ann Simpson-Mason  
Acting Associate Director  
Public Space Management Administration  
DDOT/PSMA  
2000 14th Street, NW, 7th Floor  
Washington, DC 20009  
[Ann.Simpson-Mason@dc.gov](mailto:Ann.Simpson-Mason@dc.gov)

# **Exhibit 13**

----- Original Message -----

From: "Wiktor, Denise (DDOT)" <[Denise.Wiktor@dc.gov](mailto:Denise.Wiktor@dc.gov)>

To: Joseph Fengler <[fengler6a02@yahoo.com](mailto:fengler6a02@yahoo.com)>

Cc: "Amaya, Juan (DDOT)" <[Juan.Amaya@dc.gov](mailto:Juan.Amaya@dc.gov)>

Sent: Monday, December 11, 2006 5:24:54 PM

Subject:

<<701 10th.pdf>>

Found the letter in the outbox. It got held, I think confused with another ANC letter. I apologize.

Denise

---

Denise L. Wiktor  
Public Space Manager  
District Department of Transportation  
941 N. Capitol Street NE  
Washington, DC 20002  
(202) 535-2699-main number  
(202)535-2221--facsimile