



District of Columbia Government
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. Simpon-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."

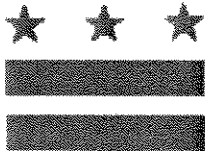
Because DDOT has not specified a formal procedure for appealing its administrative decisions, ANC 6A has been forced to quickly assemble this appeal. We are still investigating aspects of DDOT's decision and the applicability of DCMR, so we ask that you continue to suspend the permit so that we can supplement 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, (202) 423-8868

3 Enclosures



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Washington, DC 20002



Attachment #1

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

From: Joseph Fengler <fengler6a02@yahoo.com>
To: "Simpson-Mason, Ann (DDOT)" <ann.simpson-mason@dc.gov>
Cc: "Wiktor, Denise (DDOT)" <Denise.Wiktor@dc.gov>; "Amaya, Juan (DDOT)" <Juan.Amaya@dc.gov>; "Jackson, Tyrone (DDOT)" <Tyrone.Jackson@dc.gov>; "Simpson-Mason, Ann (DDOT)" <ann.simpson-mason@dc.gov>; ANC 6A Open <anc-6a@yahoogroups.com>; "Pourciau, Michelle (DDOT)" <Michelle.Pourciau@dc.gov>; "Crews, Bill (DCRA)" <Bill.Crews@dc.gov>; "Colon, Jose (DDOT)" <Jose.Colon@dc.gov>; "Delfs, Christopher (DDOT)" <Christopher.Delfs@dc.gov>; Tommy Wells (home) <wellsthos@aol.com>; Dru Tallant <dtallant@aol.com>; Karina Ricks <karina.ricks@dc.gov>; Linden Neighbors <LindenNeighbors@yahoogroups.com>
Sent: Tuesday, December 19, 2006 8:01:51 AM
Subject: Re: 701 10th ST NE\New driveway

Acting Associate Director Simpon-Mason,

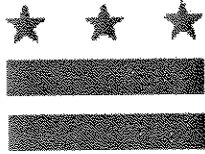
Thank you for taking the time to answer our request. Let me say upfront, the decision is deeply disappointing. When you have the time today, I would like to accept your offer for a conversation on this issue. In preparation for that phone call, here are the questions I wish to discuss.

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 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?



Attachment #1

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?

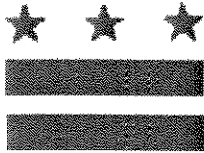
Fourth, the decision to not suspend the application and refer the matter to the Public Space Committee gives the impression that DDOT does not value public input or transparency. Our ANC provided a letter to DDOT that was approved in a public meeting in February. In good faith, we followed up with the 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



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Attachment #1

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
(202) 423-8868

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

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

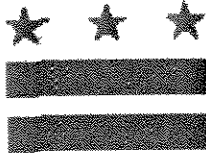
Dear Commissioner Fengler:

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



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Washington, DC 20002



Attachment #1

DDOT/PSMA
2000 14th Street, NW, 7th Floor
Washington, DC 20009
Ann.Simpson-Mason@dc.gov

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

From: "Delfs, Christopher (DDOT)" <Christopher.Delfs@dc.gov>
To: "Crews, Bill (DCRA)" <Bill.Crews@dc.gov>; "Marcou, Matthew (DDOT)" <Matthew.Marcou@dc.gov>; "Booker, Lewis (DDOT)" <lewis.booker@dc.gov>
Cc: Cody Rice (6a03) <rice6a03@verizon.net>; "Colon, Jose (DDOT)" <Jose.Colon@dc.gov>; "Etzkorn, Lars (DDOT)" <lars.etzkorn@dc.gov>; "Jones, Peter (EOM)" <Peter.Jones@dc.gov>; Joseph Fengler <fengler6a02@yahoo.com>; "Rogers, Eric (DCRA)" <Eric.Rogers@dc.gov>
Sent: Friday, March 10, 2006 1:28:28 PM
Subject: Update on 701 10th Street, NE

Hi Bill,

Jose and I finally connected on the phone and were able to clear up the status of the public space applications.

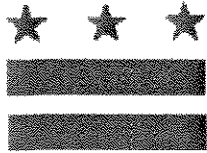
The projection of the english basement entryway has already been approved by the Public Space Permitting Office. While some part of the entranceway does project into public space, it was deemed in line with the character and configuration of existing areaways on the same street.

With regards to the driveway curb cut, an approval decision has not yet been made. 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.

As soon as a final decision has been made, I or someone from Public Space would be happy to let you know the outcome.

Best regards,
Chris

Christopher Delfs
Ward 6 Transportation Planner
The Reeves Center
2000 14th Street NW , 7th Floor
Washington , DC 20009
Tel. (202) 671-1598



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Attachment #2

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

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

To: Joseph Fengler <fengler6a02@yahoo.com>

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

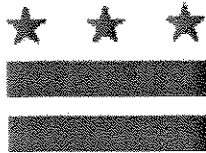
Sent: Monday, December 11, 2006 5:24:54 PM

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



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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 10th 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.

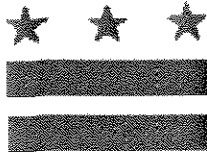
Section 200.2, 200.3 and 200.4 of Title 24 of the DCMR require that all Public Space applications to be referred to the Public Space Committee and that “no permit for use of public space shall be issued without Committee approval.” In this case a public space permit was issued in error because it was 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 10th (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 3rd 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



Attachment #3

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.

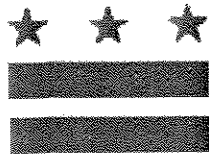
4. The proposed curb-cut would eliminate public green space. Approximately 100 sq. feet of green space will be eliminated between the sidewalk and the curb for no public benefit.
5. Traffic entering and exiting the proposed curb-cut creates a safety risk for children in the neighborhood including going 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."

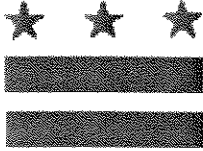
H. The revocation of the public space permit causes no hardship to the developer, but the public has no recourse for the encroachment onto public space.

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.¹

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

¹ 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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Attachment #3

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 10th 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