



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



April 9, 2010

Mr. Neil Albert
Deputy Mayor and City Administrator
1350 Pennsylvania Avenue, NW, Suite 521
Washington, D.C. 20004

Dear Mr. Albert,

Over the past few years, ANC 6A has reviewed dozens of development proposals that require approval from two or more of the following entities: the Historic Preservation Office (HPO), the Zoning Administrator/Board of Zoning Adjustments (ZA/BZA), and DDOT's Office of Public Space (DDOT-OPS). In each of these instances, the city directed applicants to seek approvals in the following order: historic preservation, zoning, and public space.

Our ANC believes that the current order of approvals is deeply flawed because:

- 1) HPO often approves projects without knowledge or consideration of zoning or public space issues. Applicants often find out about these issues only after they have spent months seeking HPO approval. In addition, HPRB has approved designs that cannot be built without zoning relief and public space permits.
- 2) Applicants request ZA/BZA approval for projects which rely on the use of public space, but for which the applicant had not received a public space permit.
- 3) DDOT-OPS approves public space applications that have no corresponding public benefit because the agency does not want to stop developments that have already received HPO and ZA/BZA approval.
- 4) A denial of an applicant's public space application after HPO and/or ZA/BZA approval can cause unexpected delays, cost increases and other additional burdens that would be avoided by requiring applicants to apply for public space permits before HPO and BZA/ZA review.

In order to solve these problems, we respectfully request the City Government alter the approval process to follow the following order: public space, zoning, and historic preservation. Although this would be the formal approval chain, the Applicant would be encouraged to have informal discussions with the ZA or Office of Zoning and HPO during the project's design and development.

Some of the many examples we have encountered are outlined below. These examples illustrate the problems with the current approval system and how the system we propose would alleviate these problems:

701 10th St NE. In this case, the applicant submitted plans to DCRA for a 2 unit flat on a corner lot without alley access that showed two parking spaces on private land with driveway/curbcut access from the street. However, the applicant had not obtained a public space permit for the curbcut and driveway from DDOT-OPS. DCRA issued building permits and the building was constructed before the applicant applied to DDOT-OPS for a driveway and curbcut. When DDOT-OPS received the public space application, they approved the curbcut and driveway over the unanimous opposition of the ANC. We believe that DDOT-OPS's approval of such a curbcut and driveway was not consistent with customary DDOT standards.

We further believe DDOT's decision to approve the applicants request was biased by the fact that a denial could have placed a heavy burden on the owner and at the very least, delayed use of the property. Denial of the request by DDOT would have necessitated that the owner apply retroactively for a zoning variance from parking requirements for a flat in an R-4 zone. Had the BZA then denied the variance, the owner would have had to retrofit the building as a single family home or demolish the structure. If one believes the owner acted in good faith, it would seem unfair to subject the owner to that risk.

Requiring the applicant to first obtain a public space permit would have allowed DDOT to appropriately evaluate the merit's of the curbcut application before a structure had been constructed on the site.

1137 C St NE. In this case, the applicant proposed expanding an existing 2-story 2-unit property in the historic district to a 3-story 5-unit structure with 100% lot occupancy. In addition, the applicant proposed integrating a 3-car garage that would require additional curb-cuts from 12th St NE.

The case was first reviewed by the Historic Preservation Office, where the staff did not advise the applicant that variances would be required for the lot occupancy and creation of a multi-unit building or that public space permits would be required for the curb-cuts. The case went through several months of review by HPO and our ANC before the applicant understood the difficulty in obtaining the variances and abandoned the project.

In the approval system proposed by ANC 6A, the applicant would be aware that variances and public space permits would be required at the beginning of the project and could have made a more informed decision about whether he should pursue the necessary approvals.

1101 D St. NE. The applicant in this case owns a corner lot and wanted to construct a 6-foot high fence to enclose public space for use as a private side yard. HPO was the first body to consider this case and approved the design of the fence but did not address the public space issues in their report. In its application to DDOT's Public Space Committee (PSC), the applicant emphasized HPO's approval of the fence and the PSC later approved the use of public space largely based on the HPO's approval.

In the approval system proposed by ANC 6A, the PSC would be the first to consider the application and would be more apt to deny the request because of the lack of public benefits or at least require a shorter, open fence as specified in the public space regulations. In this system, HPO would have the opportunity to further refine the design of the fence after PSC approval.

140 14th St NE. Brown Memorial A.M.E proposes to expand their church, which is located in the Capitol Hill Historic District. In this case, the HPRB recommended and approved a design that necessitates building on public parkland. Brown must now make requests to DDOT-OPS and the National Park Service. If use of land is denied, as is recommended by ANC 6A, the design approved by HPRB will be voided. Brown AME will then have to apply once again to HPRB for approval of an amended design.

Our ANC fears that the DDOT and the NPS will find it difficult to deny a public space request for a project that has received HPO approval of the burden it places on the applicant - It will take addition time to get approval for the project and necessitate redesigning the building expansion plans.

In the approval system proposed by our ANC, the public space component would be considered first. The steps of the process required for approval would be known to the applicant before hand, without the threat of a delay due to a second HPRB review if the use of public space is denied. The DDOT and the NPS could fairly review the public space permit without being biased the prior HPRB approval or considerations of the burden a negative decision places on the applicant.

1400 Maryland Ave. NE. In this case, the applicant proposes to construct a gas station on a corner lot and incorporate an area of public space into their business that is almost equal to the size of the lot owned by the applicant. The applicant originally requested the BZA approve site plans for a proposal that included signage, curbcuts, driveways, and extensive pavement of public space for which no public space permit had been granted. ANC 6A opposes proposed uses of public space and requested a delay in the BZA case, so that the DDOT-OPS can first rule on the use of public space.

Had BZA considered the case first, as was initially planned, it would have been asked to make a ruling that relied on the assumed availability of public space whose use had not yet been granted by the DDOT-OPS. In that event, if DDOT-OPS decided to deny the request for a public space permit, the BZA's decision would have been made mute. That would have cause unexpected delays for the applicant. Additionally, ANC 6A fears that if BZA had approved the proposed use, the DDOT-OPS would be biased by a positive BZA ruling and thus would be unable to fairly rule on the request for a public space permit.

In the approval system proposed by our ANC, the PSC hearing for public space would have automatically come before the BZA hearing. It would guarantee that BZA made its decision on a set of facts, not on hypothetical conditions unresolved at the time of BZA's decision. It would potentially shorten the time required to resolve the case and lessen the risk of placing additional, yet avoidable, burdens on the applicant.

Letter to Mr. Neil Albert

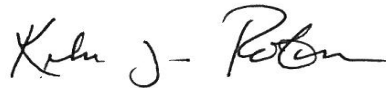
Page 4

When formulating this recommendation, our ANC investigated how other similar cities handled the approval process. We found that Baltimore, Boston and Philadelphia all required zoning approval be obtained before their equivalents to the Historic Preservation Office can consider the case.

The cases outlined in this letter clearly show the problems associated with the current process of receiving approvals from historic preservation, zoning and public space. Our ANC strongly urges the District Government to require public space approval before zoning or historic issues are addressed, and to also require zoning approval before historic preservation issues addressed. This system would benefit the applicant because the zoning and public space issues would be evident earlier in the process. It would also benefit District residents because it would be more likely that public space applications would be granted only when there was a compelling public benefit and HPO would only consider projects that had received zoning approval.

In close, as this challenge crosses three city agencies, we are seeking your assistance to implement a change to the administrative process for securing permits. Please note that we brought this matter to the attention of your predecessor in December of 2008, but, to date, have received no response. As this is our second request for assistance and as this proposed administrative direction requires no change in law or regulation, we look forward to timely review of our request by the end of June 2010, in accordance with D.C. Code §1-309.10(h)(1).

On behalf of the Commission,

A handwritten signature in black ink, appearing to read "Kelvin J. Robinson". The signature is fluid and cursive, with the first name "Kelvin" and last name "Robinson" clearly legible.

Kelvin J. Robinson
Chair, Advisory Neighborhood Commission 6A

cc. Adrian Fenty, Mayor
Tommy Wells, Councilmember, Ward 6
Linda Argo, Director DCRA
Gabe Klein, Director DDOT
David Maloney, State Historic Preservation Officer
Matt LeGrant, Zoning Administrator
Harriet Tregoning, Director, Office of Planning