



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



October 21, 2008

Catrina Felder, Coordinator
Public Space Committee
Department of Transportation
7th Floor
941 North Capitol Street NE, 20002

RE: Request to specially set the public space hearing for 1400 MD Ave Ltd Empire Leasing Inc

Dear Ms. Felder,

Advisory Neighborhood Commission 6A (ANC 6A) is requesting the public space hearing for the application by 1400 MD Ave Ltd Empire Leasing Inc to be specially set because of the case's uniqueness and complexity. ANC 6A is making this request in anticipation of the filing by 1400 MD Ave Ltd Empire Leasing Inc because we share the applicant's desire for the case to be heard promptly and without the need to continue it over several hearing dates.

ANC 6A's motion to specially set this case is attached along with 3 supporting exhibits which include:

- Exhibit A – DDOT's preliminary analysis of the case and its decision to postpone the originally scheduled hearing due to the incomplete application and unprecedented nature of the public space request
- Exhibit B- Letter from Councilmembers Cheh, Wells and Brown opposing the applicant's public space request
- Exhibit C – Letter from ANC 6A documenting prior public space violations at the site.

We respectfully ask the Public Space Committee to dispose of this motion in a timely manner so that our Commission and the applicant can adequately prepare their respective cases.

Sincerely,

Terres (Drew) Ronneberg, Chair
ANC 6A Economic Development and
Zoning Committee and designated
representative for this case before the Public Space Committee



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cc. Ann Simpson-Mason, Public Space Committee, chair
Juan Amaya, DDOT
Lewis Booker, DDOT
Chris Delfs, DDOT
Lennox Douglas, DCRA
Chris Sheehan, Office of Planning
Erica Easter, Executive Office of the Mayor
Richard Aguglia, Hunton and Williams
Monte Edwards, Stanton Park Neighborhood Association
Gary Peterson, Capitol Hill Restoration Society
Ryan Velasco, ANC 6C

**BEFORE THE PUBLIC SPACE COMMITTEE
OF THE DISTRICT OF COLUMBIA**

Application of _____)
1400 MD Ave Ltd Empire Leasing Inc.)
08-XX

PSC Case No. _____

**MOTION OF ADVISORY NEIGHBORHOOD COMMISSION 6A
TO SET THIS CASE SPECIALLY**

Advisory Neighborhood Commission 6A (ANC 6A) respectfully requests the Public Space Committee to set this case specially by scheduling a 2 to 3 hour hearing. If this amount of time cannot be accommodated in the Public Space Committee's normal schedule, ANC 6A respectfully ask that an evening hearing be scheduled to accommodate the large numbers of ANC 6A citizens who plan to attend the hearing to voice their concerns about the applicant's request for public space.

JUSTIFICATION FOR SETTING THE CASE SPECIALLY

The applicant is proposing to build and operate a gas station and convenience store at 1400 Maryland Ave NE. As currently proposed, and as analyzed by DC Office of Planning, the gas station will operate on a parcel of public space (7,240 SF) that is nearly equal to the size of the applicant's private lot (7,262 SF). The gas station will necessarily require the use of public space for curbcuts, driveways, signage, and fuel traps, as well as extensive paving of public space to permit vehicle circulation. In fact, the need for public space is so integral to the applicant's plan that the business will not be able to operate at the proposed size and scale without granting the applicant its requested public space permit.

At the anticipated hearing, ANC 6A will argue that the committee should not grant applicant its requested public space permit because:

1. The request is unprecedented in its size and scope;
2. The public harm resulting from the use of public space for a gas station greatly outweighs the public benefit;
3. Granting this public space request will set a dangerous precedent that private landowners are able to use extensive parcels public space solely because it aids their business;
4. Granting this public space application will violate the City Council's approved 2007 comprehensive plan,
5. The application compromises the H Street Strategic Development Plan's and the City's Great Streets Initiative's objective of creating pedestrian friendly streetscapes
6. The application violates Public Space Regulations and DDOT policies; and
7. The applicant has been cited for public space violations at the site, and that the site's poor upkeep has lead to two condemnation proceedings against the applicant.

ANC 6A is requesting that this case be set specially to allow time for the applicant and the ANC to present their respective cases; for DDOT and the Office of Planning to provide necessary context and recommendations; and for the submission of exhibits, presentations by expert witnesses, and witness cross-examination.

CONCLUSION

WHEREFORE, ANC 6A respectfully requests the Public Space Committee to specially set the hearing so that all interested parties may be heard and may present to the Committee all relevant facts, plans, and regulations.

Respectfully submitted,

ANC 6A

By: 

Terres (Drew) Romneberg, Chair
ANC 6A Economic Development and
Zoning Committee and designated
representative for the case before the Public Space Committee.

October 21, 2008

Exhibit A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DISTRICT DEPARTMENT OF TRANSPORTATION



Transportation Policy & Planning

September 4, 2008

Richard Aguglia
Hunton and Williams, LLP
1900 K Street NW
Suite 1200
Washington DC 20006

RE: Public Space Uses at 1400 Maryland Avenue NE

Dear Mr. Aguglia,

The District Department of Transportation (DDOT) would like to thank your project team for participating in our Public Space Preliminary Design Review Meeting (PDRM) program. This letter is intended to serve as a follow-up to the PDRM held July 24, 2008, as well as an update regarding the evaluation of Public Space Application #40122.

During the PDRM, DDOT staff identified various elements of the development proposal that would require further analysis and information, including a Traffic Impact Study. DDOT understands that the Applicant (1400 Maryland Ave, Ltd) has secured a transportation consultant to undertake a study, and appreciates this attention to safety and traffic circulation issues that have been raised. During the PDRM and in subsequent conversations, DDOT has also noted that the proposed use of public space is unusual in both its use of a substantial amount of ground area and its relationship to the site functionality.

From the plans it is apparent that the proposed uses of the right of way are a critical element of the operations of the service station. After speaking with our Public Space Policy Branch and reviewing case histories, it is clear that permitting a service station to assume public right of way essential to the operations of the business *would be a departure from agency policy*. In the case of 1400 Maryland Avenue, the Applicant has proposed the paving of public space on both Maryland Avenue and 14th Street to serve vehicles that park at gasoline pumps and circulate around the facility.

Under Title 24 of the District of Columbia Municipal Regulations (DCMR), all permits issued for the use of public space are subject to the review and decision of the Public Space Committee (PSC). It is not uncommon for the PSC to hear matters that include complex or unusual uses of public space. And all applications that include parking in public space are referred directly to the PSC for its consideration. Given the issues related to this public space application, the entire case will be referred to the PSC for review. In order for DDOT staff to conduct our final review and comments for the Public Space Committee, the Applicant must submit a final site of plans and the

required traffic impact study. The application must include all proposed uses of public space and provide sufficient information for reviewers to provide complete and substantive comments. Based upon the PDRM and subsequent analysis, staff will review the site plans and traffic impact study with the following goals in mind:

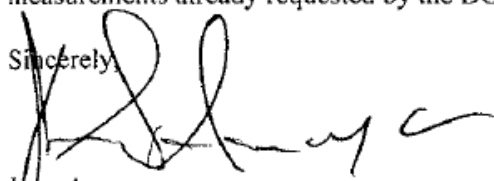
- The proposed service station should use little to no public space for private business activities such as parking, queuing, and circulation. (That which is used for these activities may be subject to rental fees pursuant to Chapter 2 of Title 24 of the DCMR);
- The site should maintain a safe and continuous sidewalk network along Maryland Avenue and 14th Street and otherwise maximize pervious landscaping in the public rights of way;
- The curb cuts should be reduced in width to comply with DDOT Design and Engineering standards;
- The safety of the pedestrian walkway proposed at the northwest corner of the site should be improved (perhaps by closing the adjacent curb cut and/or relocating the pathway).

In line with previous correspondence, the scope of the Traffic Impact Study should include:

- Trip generation analysis for AM and PM peak periods
- Internal circulation plan, including turning diagrams and vehicle paths through the site
- Ingress / egress routes and turning movements to / from the proposed access points
- Consideration of a right-in / right-out restriction at the driveway off Maryland Avenue
- Consideration of the closure of the northernmost curb cut on 14th Street bordering the alley

Finally, please make sure the final site plans show all relevant dimensions and facilities above and below ground, including but not limited to: any and all below-grade vaults, storage tanks, or other projections, tree planting zones, sidewalks, internal drive aisles between sidewalks and private lot lines, spaces between the gasoline pumps and property lines, and any other measurements already requested by the DC Office of Planning.

Sincerely,



Juan Amaya
Acting Public Space Manager

Exhibit B



COUNCIL OF THE DISTRICT OF COLUMBIA
THE JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20004

TOMMY WELLS
Councilmember - Ward 6
Chairperson
Committee on Human Services

Committee Member
Health
Public Services and Consumer Affairs
Economic Development

September 16, 2008

Honorable Mayor Adrian Fenty
1350 Pennsylvania Ave., NW
Washington, DC 20008

Re: Opposition to Shell Oil Public Space Permit Application

Dear Mayor Fenty:



We are writing jointly to oppose any grant of public space by the District of Columbia Public Space Committee for a gasoline station to be established at 1400 Maryland Avenue, NE. While we support encouraging a wide variety of economic development in the District, it must be done with the highest consideration for community needs and resident concerns about the impact the business will have upon the community, especially when the business wishes to encroach on the public space to the extent proposed here. Not only is there no need in this community for an additional gas station or convenience store, but given their lot size and configuration, Shell's request for public space is not nominal, it is substantial. Public space will in fact, comprise the majority of their site under their current plans. Allowing use of public space for private business enterprises should serve a community need, be supported by the community and produce substantial benefits for the neighborhood; all of which this proposal fails to do. As such, this application is widely opposed by the citizens of this community because it is inconsistent with character the community is working so hard to establish and maintain, risks adversely impacting residents and also threatens to undermine the District's substantial investments in revitalizing the H Street, NE area.

Please consider the following additional points of concern:

- This application fails the test of public space regulation provisions 200.2(a) and 200.3 as there are other, better alternative uses for this public space. Utilizing an online petition, the community came together to voice their overwhelming support for outdoor seating at a garden center, or restaurant or café or even a play space for a daycare center at this location. It is important to note that these suggested uses provide economic development that is consistent with the character of the District's gateway avenues, the Great Streets program in


and their concomitant threats on residential real estate coupled with the lack of need for the products and services offered by a gas station make this project unnecessary and problematic for this area and as such, we respectfully request that your office oppose this proposal as strongly as we do.

Sincerely,



Tommy Wells,
Councilmember, Ward 6

Kwame Brown
Councilmember, At Large



Mary M. Cheh
Councilmember, Ward 3

Cc: Neil Albert, Deputy Mayor for Planning and Economic Development
Ann Simpson-Mason, Chair, Public Space Committee
Frank Seales, Jr., Interim Director, DC Department of Transportation

Exhibit C



Advisory Neighborhood Commission 6A
P.O. Box 75115
Washington, DC 20013



December 14, 2005

Dan Tangherlini, Director
District Department of Transportation
2000 14th Street NW
Washington, DC 20009

Re: Carlink Inc. at 1400 Maryland Ave. NE

Dear Mr. Tangherlini:

We are requesting your assistance in ensuring that DDOT pursue enforcement, without delay, of a violation issued September 28, 2005 for occupying public space without a permit. Carlink Inc., a used car lot at 1400 Maryland Ave. NE, applied for a public space permit to occupy the grounds adjacent to their property in order to open a car rental business. The applicant failed to appear at the scheduled Public Space Committee hearing on September 22, 2005. Consequently, the application was closed and referred to the Office of Infrastructure Oversight for enforcement. It is important to note that our Commission unanimously opposed this application.

In a letter dated October 14, 2005, Mr. Lamont Regester, Chief of Infrastructure Oversight, provided notice to Carlink that violation was issued on September 28, 2005, for occupying public space without a permit. Specifically, the letter notified Carlink that their failure to remove the fence would initiate fines of up to \$300 per day for violating the public space.

Mr. Tyrone Jackson of the Office of Infrastructure Oversight informed our Commission on October 4, 2005, that a street maintenance crew would be removing the fence shortly. When that failed to happen, we make another inquiry and were told by e-mail on November 15, 2005, that this would happen within two to three weeks. Again, when that failed to transpire, we again requested a date for the fence removal. On November 30, 2005, Mr. Jackson informed us that Charles Stewart, in Street Maintenance, was reporting that the enforcement action would not take place until after January 1, 2006, due to preparations for the snow season and the holidays.

Adding to our consternation, Mr. Stewart subsequently told us that no fines have been levied as apparently the owner of the business is unreachable. If fines had been levied as required by law, the amount owed to the city would total about \$20,000. To put that in perspective, that is equal to our annual operating budget for our Commission. We refuse to accept that by merely being unreachable makes illegal action permissible. We fail to understand why fines are not attached to the property as an unpaid lien. We treasure our public space and request your immediate intervention to ensure the fence is removed, cars towed, and fines levied as required by law.

The public space in question is in the single member district represented by Commissioner Marc Borbely. If you have any questions, please contact him at (202) 544-2447 (home), (202) 557-1083 (cell), or by e-mail at borbely@anc6a06.us. We look forward to your response.

On behalf of the Commission,

Joseph Fengler
Chair, Advisory Neighborhood Commission 6A