

MINUTES
ANC 6A Transportation & Public Space (TPS) Committee Meeting
Capitol Hill Towers, 900 G Street NE
Monday, October 21, 2019 at 7:00 pm

I. Meeting called to order at 7:04 pm.

II. Introductions

- A. Committee members in attendance: Chair Elizabeth Nelson, Jeff Fletcher, Maura Dundon, Caitlin Rogger, Marc Brumer
- B. Commissioners in attendance: Amber Gove (6A04), Brian Alcorn (6A08), Mike Soderman (6A03)

II. Announcements

The ANC 6A Commissioners accepted the TPS recommendations with respect to proposing locations for micromobility corrals near H Street NE. Ms. Nelson entered these through the on-line tool.

III. Old Business

- A. Maintaining public access to pocket parks.
This was a continuation of a discussion begun in September 2019. Residents have reported not feeling comfortable accessing specific pocket parks (Federal reservations) in ANC 6A.

Ms. Nelson noted that ANC 6A has already established its position that these are public amenities to be enjoyed by all [2014 & 2015 letters posted on ANC6A.org website]; the purpose of this discussion is to identify what steps the ANC can take to encourage that. While most pocket parks are freely enjoyed and not at issue, there are some where there are psychological or physical barriers that make them less welcoming.

At the September 2019 TPS meeting, some attendees expressed confusion about the difference between “public parking” (typically, front yards) and Federal reservations (“pocket parks”). This distinction is relevant because, while homeowners do not (in most cases) have title to the area between their property lines and the sidewalk, the Parking Act of 1872 and subsequent regulations, allows them to use them as their “front yards” per limitations set by the regulations. This is not true of Federal reservations.

Co-Chair Elizabeth Nelson introduced Beth Purcell, a member of the Public Space & Environment Committee of the Committee of 100 on the Federal City, to provide background on both Federal reservations and “public parking”. She provided the following information:

Federal Reservations: The L'Enfant Plan's street angles created triangles at intersections, under Federal jurisdiction. These Federal reservations now generally function as small public parks, although a few have been used for some other public purpose. In the 1970s, the Federal government transferred administrative jurisdiction to District government, generally for transportation purposes or comprehensive plan purposes. However, the Federal government retains title to these parcels. These jurisdiction transfers can be found on the DC

Office of Surveyor' website, searching by reservation number. For example, administrative jurisdiction over Reservation 266 was transferred for transportation purposes to District in 1972.

Public Parking: By the Civil War, the width of L'Enfant Plan streets turned out to be too wide to be maintained at public expense, so Congress created parking, moving the curb 10 to 20 feet into the street, and using this new non-street space for trees and grass (hence the term 'parking'). Title to these spaces is retained by the District government, although residents are allowed to fence and landscape them, with some limitations - unlike reservations where a permit is required.

Parking and reservations are different, as the District Department of Transportation (DDOT) has recognized in Departmental Order No. 1-2014, dated April 30, 2014, and its Second Proposed Rulemaking. Excerpts from these documents appear at the end of these minutes. The District government owns parking; Federal government owns reservations. Persons living adjacent reservations do not have an expectation of private enjoyment of these spaces.

Ms. Nelson then introduced Steve Kehoe, a former DDOT public space policy analyst who was one of the principal architects of the proposed DDOT public space regulations pertaining to DDOT-controlled Federal reservations and was working in that capacity at that time of the re-landscaping of Reservation 266. He provided the following information:

On May 12, 2015 DDOT issued a legal opinion superseding a previous - and flawed - ruling (from 2013) that focused on the limitations that DDOT is subject to under Federal law, regulations and District law when issuing a public space permit for improvements on a Federal reservation that was transferred jurisdictionally from the National Park Service to the District. The gist of this legal opinion is that a Federal reservation transferred to the District may not be treated as public parking and that no public space permit for improvements on a Federal reservation can be issued to the exclusion of the general public. Therefore, the March 12, 2013 permit issued for the improvements to Federal reservation 266 was invalid because it included a thirty-six-inch (36") hedge that effectively blocked public access to that portion of the reservation covered by the permit.

Instead, any DDOT public space permit issued for improvements to a District-controlled Federal reservation must be consistent with the agency's mission, with Federal law, regulations, District law and limitations on the reservation's use imposed by the transfer documents at the time of the jurisdictional transfer from the National Park Service to the District. This means that the permitted improvements must be consistent with the "highway use" specified on the transfer document and be publicly accessible. However, DDOT made a decision not to attempt to force the adjacent property owners to correct the landscaping.

He recommended that the ANC should submit a FOIA request to DDOT requesting a copy of a "DDOT legal opinion dated May 12, 2015, pertaining to Federal reservations".

Resident Mike Cushman noted that maps showing the reservations are available online at DC Atlas but that he was unable to determine which were under control of DDOT and which under the Department of Parks and Recreation (DPR). Mr. Kehoe explained that if the purpose of the transfer is given as “transportation or highway”, it would be DDOT; if “comprehensive plan”, DPR.

Ms. Nelson then invited any community members present to share concerns they have with pocket parks that do not feel welcoming. Lisa Turner, Chris Mullins, Richard Parker and Mike Soderman responded with examples of how they had been discouraged from entering or using pocket parks. Knowledge of these events (and /or physical barriers) further reduces park usage. Joyce West, whose property abuts Reservation 266 (and who received a permit to landscape it), said that it is still unclear to her that this is indeed a reservation and not parking. She said she has been required by DDOT to maintain it. Mr. Kehoe responded that DGS currently has the responsibility to maintain it.

A lengthy discussion ensued regarding the best course of action for the ANC to take. One suggestion is to post notices at pocket parks stating that they are public (or similar). Mr. Cushman noted that this is already the case at many DPR controlled pocket parks. Signage could be installed by DDOT or the ANC could request permission to have the installations done. Ms. West and Cynthia Whittley (who also resides adjacent Reservation 266) asked that any recommendation suggested by the TPS should apply to the entire city. Committee member Caitlin Rogger pointed out that doing so would almost certainly result in significant delay and that the issue is concentrated locally, due to the L’Enfant plan. The Committee deferred going forward with this approach, in favor of asking DDOT to first confirm existing information. *[note that documentation follows the minutes in this document]*

Commissioner Amber Gove made the motion: ***TPS recommends that ANC 6A send a letter to DDOT 1) requesting that DDOT present a full inventory, mapping and disposition of each of the Federal Reservations located in 6A, with special attention to those Federal Reservations that are adjacent to or abut private properties, to eliminate confusion regarding responsibility for their ownership, maintenance, and the right to public access. Once we have an informed mapping, we can proceed with requesting signage and developing a process for engaging with adjacent homeowners to come to agreement regarding any plantings/modifications that may be hindering public access, and 2) requesting release (or reissuance) of a DDOT legal opinion dated May 12, 2015 pertaining to Federal Reservations (this may require a FOIA request).*** The motion was seconded by Mr. Jeff Fletcher and passed unanimously (8-0), including the three Commissioners present

- B. Continued discussion of recommendations to improve safety and accountability for shared bikes, scooters and mopeds.

Ms. Nelson reported that the ANC had been given an opportunity to comment on the Terms and Conditions (T&C) portion of the contract between micromobility providers and DDOT. However, comments are due by October 31, 2019. Ms. Nelson explained that the ANC would not be able to submit an official response in that timeframe. The DDOT reps (Andrew DeFrank and Sharada Strasmore) requested that she send her own personal comments and that she also submit any comments the TPS Committee

provided, which she agreed to do. Personal comments were already submitted (noted as such). The following TPS comments will be submitted, making clear that are not from the ANC.

- Unique IDs should be large enough to be seen at a distance - and appear in photographs documenting problems. Ideally, these could be affixed at both the front and rear of devices. While easy enough to do on a bicycle, it might not be practical on scooters. If not, probably best to affix to the front as they could be placed high enough to be more plainly visible
- There should be a requirement that those deploying (delivering) devices - not just users of the devices - receive education regarding where they can and cannot be placed.
- T&C should require that a consistent and convenient means of reporting problems should be made available to the public. This should include accepting cell phone photos. DDOT should have a right to view these images and should establish a means of compliance checks. Persons initiating a complaint should be entitled to some sort of response, even if it is just an automated acknowledgment of receipt.
- Currently, DDOT's posted rules establish a minimum age and bar double-riding. However, there is no reference to this in the T&C. The T&C should be amended to remain consistent with DDOT's regulations.

IV. New Business

- A. Consideration of public space application for window projection on Wylie St. NE, (808-812 Thirteenth (13th) Street NE, permit #335468) for Thomas Kadida. Mr. Kadida presented plans for the proposed window projection and explained that the projection was in keeping with the existing window protections on the block.

Mr. Brummer made the motion: *TPS recommends that ANC 6A send a letter to DDOT in support of a public space application for window projections onto Wylie Street NE (808-812 13th St. NE, permit #335468).* The motion was seconded by Mr. Fletcher and passed unanimously (8-0), including the three Commissioners present.

- IV. Meeting was adjourned at 8:46 pm.

----- Forwarded Message -----

From: David Holmes <holmes6a3@gmail.com>

To: "john_sandor@nps.gov" <john_sandor@nps.gov>; "pgarylaw@aol.com" <pgarylaw@aol.com>; "lisadalejones@gmail.com" <lisadalejones@gmail.com>; "quigleyjl@verizon.net" <quigleyjl@verizon.net>; "eap1@mindspring.com" <eap1@mindspring.com>; "6c08@anc.dc.gov" <6c08@anc.dc.gov>; "brianf6b09@anc6b.org" <brianf6b09@anc6b.org>; "6c04@anc.dc.gov" <6c04@anc.dc.gov>; "fmcampbell6b10@yahoo.com" <fmcampbell6b10@yahoo.com>; "eddie.fowler@dc.gov" <eddie.fowler@dc.gov>; "brian.harris@dc.gov" <brian.harris@dc.gov>; "mario.patrizio@dc.gov" <mario.patrizio@dc.gov>; "jeff.brown@dc.gov" <jeff.brown@dc.gov>; "peter_may@nps.gov" <peter_may@nps.gov>

Cc: "alberti6a04@yahoo.com" <alberti6a04@yahoo.com>; "mahmud6a01@gmail.com" <mahmud6a01@gmail.com>

Sent: Tuesday, June 17, 2014, 05:17:12 PM EDT

Subject: New DDOT response to ANC 6A concerns

DDOT has written a new letter to ANC 6A addressing the public space/public parking issues at the parklets. It's attached, and was received by ANC 6A Chair Nick Alberti today.

This resolves favorably almost all issues raised to the City Council and DDOT by the DC Preservation League, the Capitol Hill Restoration Society and the ANC.

DDOT intends to hold a meeting with the ANC soon. In the meantime, Ms. Kelly tells me that DDOT has requested that public access passageways be made in the current exclusionary plantings at Res. 266.

It's my expectation that further police involvement in excluding people from the Reservation will end. The memo makes clear that there is no legal basis for doing so, and the TROs sought against local residents were dismissed by the courts.

FYI, no hedge can be more than 36" high where it will block the line-of-sight of drivers. That will probably apply to Res. 266 later this year.

David Holmes
Former Advisory Neighborhood Commissioner for 6A03

A designated representative of the ANC in this matter

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF TRANSPORTATION**



Office of the Director

June 11, 2014

Nicholas Alberti
Chair
Advisory Neighborhood Commission 6A
Box 75115
Washington, DC 20013

Dear Commissioner Alberti:

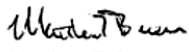
Thank you for your letter of May 21, 2014, requesting that the District Department of Transportation (DDOT) reconsider its prior characterization of Reservation 266 as public parking. As noted in your letter, DDOT recently issued an Open Space Preservation and Enhancement Policy (Departmental Order No. 1-2014), which is intended to provide “protection against the loss of public access to pocket and triangle parks and improve the management of all public parks under DDOT’s jurisdiction.” DDOT recognizes, and with this policy clarified, that the various triangle parks under DDOT’s jurisdiction are integral elements of the L’Enfant Plan that should be maintained as parks and preserved as publicly accessible neighborhood amenities for the use and enjoyment of all.

I understand the ANC’s concern that DDOT’s previous classification of Reservation 266 as public parking, in response to the adjacent property owners’ request to landscape and maintain the area, carries with it the implication that the adjacent property owners could have exclusive use of the park to the possible detriment of the surrounding community. First, I want to assure you that this was not the intent of the classification. DDOT is committed to working with the community and the adjacent property owners to modify the current landscaping to improve public access to Reservation 266, while providing the adjacent property owners the opportunity to beautify and maintain the green space immediately adjacent to their home. In addition, DDOT’s new Open Space Preservation and Enhancement Policy ensures that, moving forward, all permit applications for improvements to triangle parks must not “change the real or implied function of the park as a public open space” and also requires that future applications for improvement to triangle parks be sent to the appropriate ANC for its review and comment prior to permit issuance.

Finally, DDOT intends to propose amendments to Title 24 of the District of Columbia Municipal Regulations (DCMR) to modify the current DCMR definition of “public parking” so that it specifically excludes U.S. reservations. The proposed amendments will also further formalize the ANC review process.

DDOT believes that these actions will effectively address ANC 6A’s specific concerns with respect to Reservation 266, while also putting regulatory safeguards in place to ensure that future public space applications to make improvements to triangle parks are reviewed by the community and reflect the historic, park, and open space policies presented in the District’s Comprehensive Plan.

Sincerely,

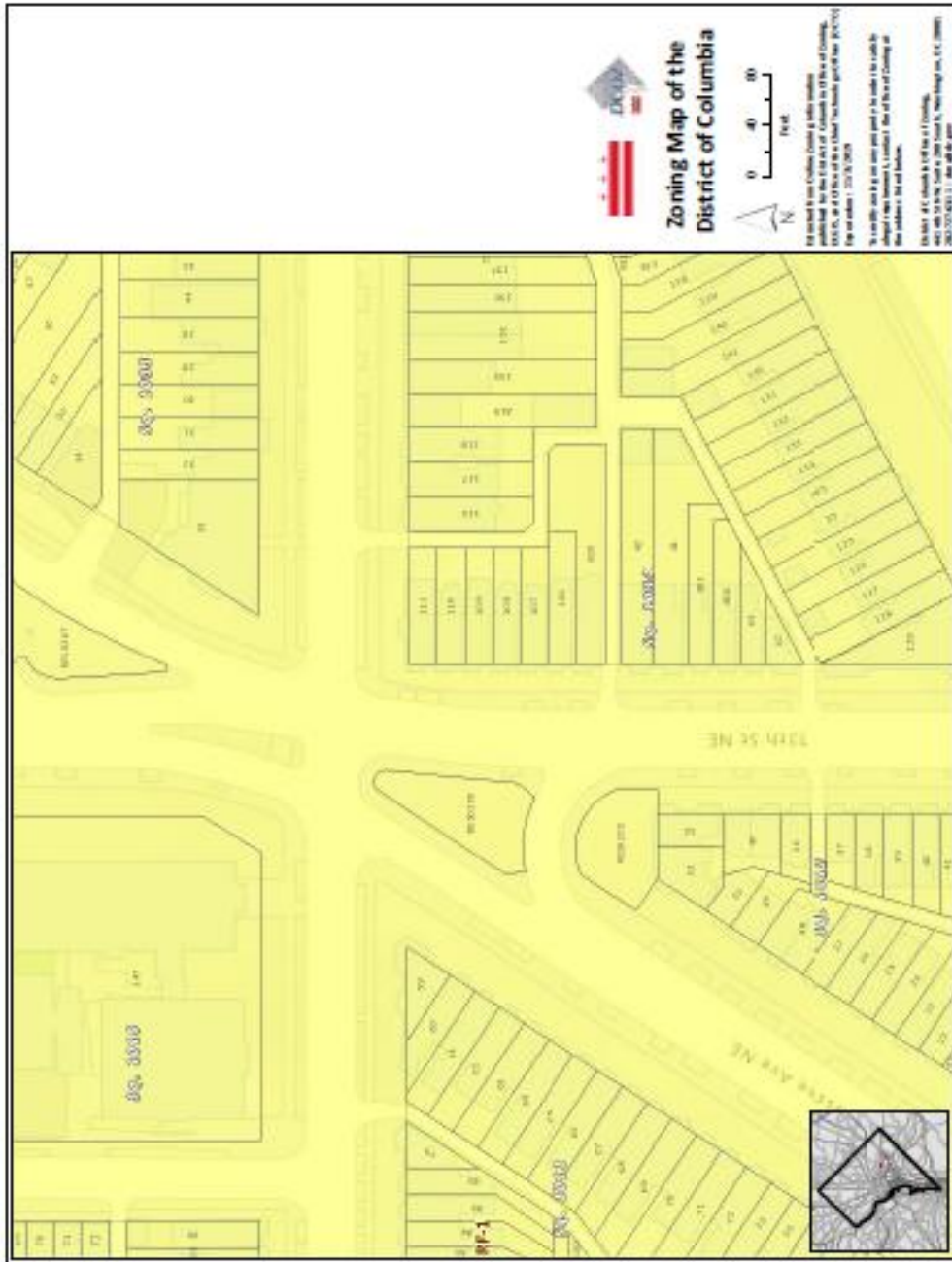


Matthew T. Brown
Acting Director

cc: Barry Kreiswirth
Chief of Staff, DDOT

Alice Kelly
Branch Manager, DDOT

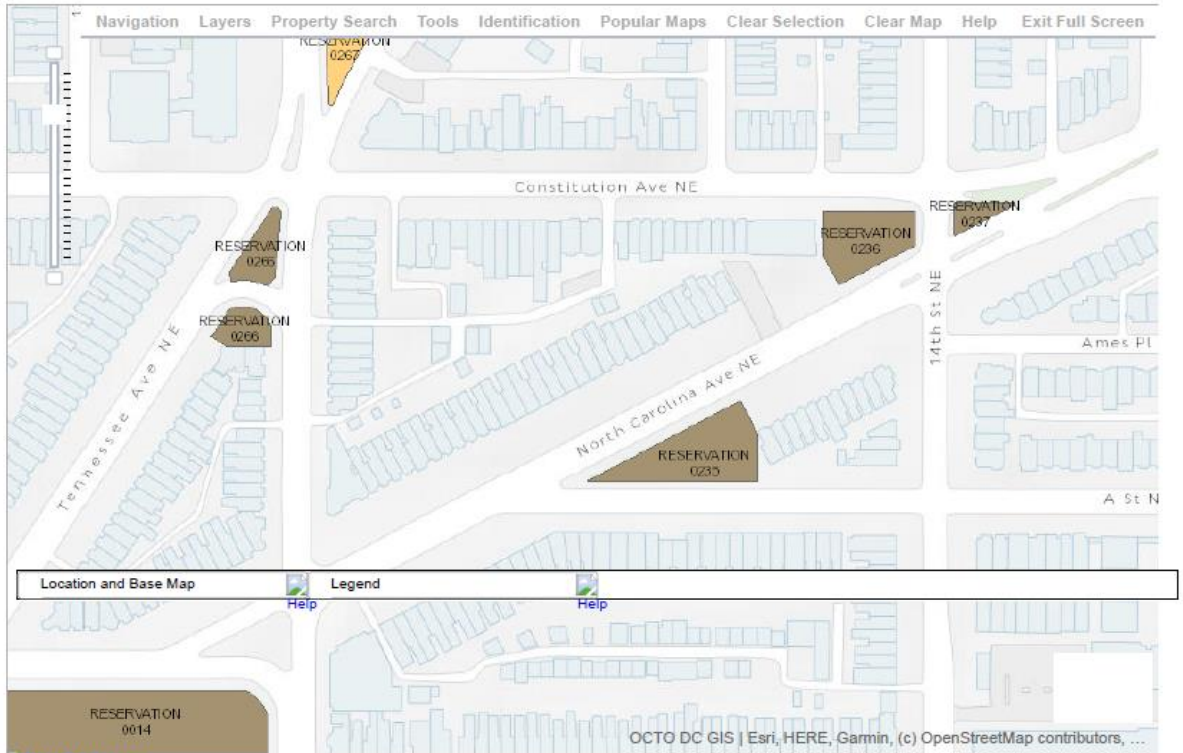
DC Office of Zoning



DC Atlas Plus

11/3/2019

DC Atlas Plus



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