

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



d. Office of the Director

OCT 25 2013

Mr. David Holmes
919 Massachusetts Ave, NE
ANC 6A, Chair
Washington, DC 20002-6227

Dear Chairman Holmes:

This letter is in response to Advisory Neighborhood Commission 6A's concerns regarding the District Department of Transportation's (DDOT) legal jurisdiction, process, and decision to grant a public space permit for landscaping at 147 Tennessee Avenue NE.

Let me provide some historical context and address the legal concerns regarding U.S. Reservation 266 (Parcel 266). A "reservation" is defined as a tract of public land that is set aside for a special purpose. U.S. Reservation 266 is a plot of federal land whose jurisdiction was transferred to the District government for highway purposes. The reservation designation is still attached to Parcel 266, but it should also be classified under the District's nomenclature as public parking due to its orientation in the public space.

The National Park Service (NPS) transferred U.S. Reservation 266, of which Parcel 266 is a part, to the District Government on December 14, 1972. The parcel was then dedicated to DDOT, as the agency assigned to manage "public space," which is defined as "all the publicly owned property between the property lines on a street, as such property lines are shown on the records of the District, and includes any roadway, tree space, sidewalk, or parking between such property lines." A sub-component of the public space is called the "parking" or "public parking." DDOT classified this area as "public parking," which is the area of public space devoted to open space, greenery, parks, or parking that lies between the property line and the edge of the actual or planned sidewalk that is nearer to the property line. This gives DDOT the authority to authorize the landscaping of Parcel 266 via a public space permit.

The owners of the residence planned to landscape the portion of Parcel 266 that abuts their property. They contacted DDOT to apply for a permit to commence this work, which included the installation of plants, trees, a shrubbery border, and other items to aesthetically improve Parcel 266. Based on a review of the owners' landscaping plans and a D.C. Surveyor's plat that marked Parcel 266 as public space, DDOT issued a public space permit to the owners, who commenced landscaping Parcel 266.

The entirety of U.S. Reservation 266 is located at the intersection of Tennessee Avenue and 13th Street NE, and roughly looks like two separate pieces of a single triangle with a roadway bisecting it. Nevertheless, as discussed above, Parcel 266 must be utilized for highway (not park) purposes, and therefore should be classified as public space—and more specifically—as public parking, due to its orientation between the sidewalk and the abutting residence’s property line.

To address the issuance of the permit for Parcel 266 and DDOT’s authority to issue permits for public space and public parking: The Mayor, or his designee, may issue permits to occupy the public space, and has delegated this authority to DDOT to review, approve and issue permits to utilize public space and the public parking. With this delegation, DDOT issues permits to allow property owners to perform the following activities in the abutting public parking:

- Plant hedges, flowers, and trees;
- Trim and prune trees;
- Beautify and landscape tree boxes;
- Install tree markers and fences; and
- Erect certain types of retaining walls.

Since the activities undertaken on Parcel 266 consisted of the planting of shrubbery, hedges, and trees in the public parking, DDOT had the authority to issue a public space permit for the landscaping of Parcel 266. Please note that many activities undertaken by abutting property owners in the public parking do not require public space permits since the public parking is legally under the immediate care and keeping of the owners or occupants of the premises abutting the public parking. DDOT issued a permit for Parcel 266 due to the specific nature of the landscaping plans.

The general role of the Public Space Committee (PSC), in the issuance of public space permits, is to make final determinations on the approval or denial of all applications for the temporary use of public space. The PSC must assure that temporary uses of public space and private purposes are consistent with the laws and policies of the District government. The PSC, however, does not review routine applications for the use of public space or those where it is not practicable to convene the full PSC – DDOT performs this review and approval function. The permit to landscape Parcel 266 is a routine application for landscaping work in the public parking, and thus did not necessitate review by the PSC.

The Advisory Neighborhood Commission (ANC) plays a limited role in the issuance of a public space permit, but when there is a role, the ANC’s concerns must be given “great weight” during deliberations by DDOT and the PSC. The ANC typically reviews permits that are:

- Required to be forwarded to the ANC based on explicit statutory language (e.g., new sidewalk cafes);

- Made by application due to non-standard uses of public space (e.g., over-height fences);
- Referrals from the Public Space Permit Office (PSPO) of some applications for permits for uses of public space delegated to other government agencies (e.g., requests for building permits from the D.C. Department of Regulatory and Consumer Affairs for projections into public space) when the PSPO determines the extent or nature of the use warrants review by the PSC; or
- For other such actions.

DDOT's issuance of the permit for Parcel 266 is not in conflict with the District of Columbia Comprehensive Plan (Comp Plan) and the National Capital Planning Commission's (NCPC) CapitalSpace Plan. NCPC's CapitalSpace Plan is the first comprehensive analysis of the District's parks and open spaces in 40 years, and provides a vision for a unified D.C. park system by offering recommendations to help make that vision a reality. The provisions are only recommendations, do not have the effect of law, and do not apply to Parcel 266 because of its classification as public parking.

The Comp Plan is the overarching plan that guides the District's development, and looks at the "big picture" of how change will be managed in the future. Although it is a legal document, at the heart of the Comp Plan is a series of goals, policies and action statements:

- Goals describe ideal future conditions for a particular topic;
- Policies provide guidance to the District as it makes decisions relating to each goal; and
- Actions identify the specific steps to be taken by the District to implement the policies.

Section 806.5 of the Comp Plan, cited by the ANC, provides guidance on a policy to maintain triangle parks as neighborhood amenities that support a range of activities, where those activities should vary based on the setting of each triangle. The term "triangle park" is not defined in the D.C. Code or D.C. Municipal Regulations (DCMR). However, triangle parks (as conceived in the L'Enfant Plan) are typically open spaces that resemble the shape of a triangle and that are located at the intersection of diagonal and orthogonal streets in the District. As discussed above, Parcel 266 is oriented between the sidewalk and the abutting residence's property line, and thus should be classified as public parking since it must be used for highway purposes. Even if it were considered a triangle park, the landscaping allowed by DDOT under the public space permit would not be inconsistent with the Comp Plan (nor the D.C. Code) since Parcel 266 is still available for neighborhood use as it has not been fenced in, blocked or otherwise barricaded for private use.

The two additional Comp Plan provisions cited by the ANC are action items that mandate:

- Site plans for the redesign of individual parks are reviewed by appropriate District agencies to ensure they advance the District's goals for better public recreation facilities and open space preservation, among others; and

- Transferring triangle parks from DDOT to the D.C. Department of Parks and Recreation (DPR) for maintenance purposes should be considered to recognize their primary function as parkland.

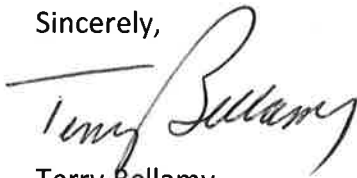
As noted above, Parcel 266 is public space and subject to the public space permitting process. The ANC asked about the opportunities for persons and entities to submit applications to improve parcels like Parcel 266 (i.e. transferred for highway purposes and therefore public space). Any use of such a parcel would be subject to a public space permit application and review process. The application process is determined in part by the location of the parcel. Those parcels like Parcel 266 that lie between the sidewalk and the property line of a private property would follow the process outlined for public parking. Any application for use of public space permit is considered in regards to the impact on an adjacent property owner. If an application to make permanent changes to the streetscape (e.g. planting, signs, furniture) is filed by another party, the application should include a letter of support from the adjacent property owner in order to ensure there is agreement between the applicant and the property owner. If no such letter is submitted the adjacent property owner's comments would be requested and considered in the review and determination of the application. In no case does the issuance of a public space permit confer rights of ownership of the public space on a permit holder. As per District regulation, the permit may be rescinded and the space must be vacated by the permit holder.

Access to public space is managed by a variety of agencies in different contexts. DDOT manages the public space in a manner to ensure it is available to all in a safe and efficient manner. Questions regarding who can access public space and the actions they can take in public space are not subject to general rules. DDOT encourages all citizens to use public space in a safe and neighborly manner.

Finally, DDOT's primary goal with these parcels is to encourage their beautification so they may improve the environment and be enjoyed by residents. While DDOT does not have a formal adopt-a-park program in place currently, DDOT's Urban Forestry Administration is open to discuss this issue further with ANC 6A.

Thank you for the opportunity to respond to this issue and please do not hesitate to contact Ms. Yvette E. Conley in my office. You may also contact Reggie Sanders, DDOT Director of Communications, at 202-671-5124 or reggie.sanders@dc.gov.

Sincerely,



Terry Bellamy
Director

Cc: Mark Kadesh, owner, 147 Tennessee Ave NE