



ADVISORY NEIGHBORHOOD COMMISSION 3E

TENLEYTOWN AMERICAN UNIVERSITY PARK FRIENDSHIP HEIGHTS
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Resolution Regarding Application for usage of public space at 3815 Huntington Street NW (DDOT tracking number 106970)

Whereas, Mark & Karissa Kovner (applicants) residing at 3815 Huntington Street NW have applied to the District of Columbia's Department of Transportation (DDOT) Public Space Commission (PSC) for permission to construct a retaining wall and to construct a swimming pool partially located on public space, which is governed by the District of Columbia's public space regulations, and

Whereas, the applicants wish to construct the swimming pool on a single lot that is contiguous to 3815 Huntington Street NW where their home is located, and

Whereas, both the lot the applicants live on and on which they wish to construct the pool, and an adjoining lot they also own, are irregularly- shaped lots formed by the diagonal nature of Reno Road which borders both of their properties on the east, and

Whereas, about half of the land in which applicants wish to construct the pool is between the "Building Restriction Line" and Property Line, a zone that technically belongs to the applicants but which by law is to be treated as public space; and

Whereas, the rules governing what can be placed in public space severely limit what a homeowner may place in that space (see, e.g., [DDOT's Public Realm Design Manual](#)); and

Whereas, the application appears to present a case of first impression as to whether a swimming pool is permissible in public space under any circumstances; and

Whereas, due to the existing grade which is at times 8 feet above Reno road, the retaining wall proposed by the applicants and required to make the pool secure appears to be as much as 14 feet (7 to 8 feet of grade plus masonry wall) above Reno Road in an area that is currently has a moderate slope and is lightly landscaped with small retaining walls; and

Whereas, lacking confidence that construction of a swimming pool in public space is legally permissible under any circumstances, but wishing to work with the applicants to address the visual impact of the pool and related construction if it is determined that

circumstances may exist under which the pool is legally permissible, ANC 3E adopts the following resolution.

Now therefore be it resolved that, inasmuch as ANC 3E lacks confidence that a swimming pool is legally permissible under any circumstances, ANC 3E asks the PSC to issue an opinion on its legality with full recognition that allowing such construction in public space would be precedential and could lead to others to apply for and receive permission to construct pools or other similar structures in public space, including “public parking,”¹ which could have a transformational impact on streetscapes and public right of ways in the District of Columbia.

Be it further resolved, that ANC 3E is unable to opine in favor or against the proposed pool until the PSC determines and advises the ANC whether a pool may ever be placed in public space legally, and, if so, what circumstances must obtain for legality; and

Be it further resolved, if the PSC determines a pool may be legally placed in public space under certain circumstances, and provides guidance as to what such circumstances would be, then ANC 3E respectfully requests formal notice and an opportunity to opine as to whether it supports or opposes the application, as it might be amended, and asks PSC to provide notice to the ANC with sufficient lead time that the ANC may attempt to work with the applicants before it must opine.

ANC 3E approved this resolution at its meeting on April 8, 2015, which was properly noticed and at which a quorum was present. The resolution was approved by a vote of 5-0-0. Commissioners Jonathan Bender, Amy Hall, Jonathan McHugh, Tom Quinn and Anne Wallace were present.

ANC 3E
By Jonathan Bender, Chairperson

¹ In 1870, Congress designated certain right-of-way owned by the government but next to private property in DC as park areas to be maintained by the adjacent property owner (hence, the term “parking” refers to parks rather than a place to park automobiles). Public parking, although under the care and keeping of the adjacent landowner, is supposed to benefit the public at large. Although the space at issue in this application is technically owned by applicant, unlike public parking, PSC’s Chair has stated that PSC regulates such space exactly as if it were public parking. Thus, the decision in this case would likely serve as precedent for use of public parking in general.