



**ADVISORY NEIGHBORHOOD COMMISSION 3E**  
**TENLEYTOWN AMERICAN UNIVERSITY PARK FRIENDSHIP HEIGHTS**  
**CHEVY CHASE WAKEFIELD FORT GAINES**  
**c/o Lisner Home 5425 Western Avenue, NW Washington, DC 20015**  
**www.anc3e.com**

**RESOLUTION NOT OPPOSING PUBLIC SPACE APPLICATION #339585**

**WHEREAS:**

1. In 1870, Congress designated certain right-of-way owned by the federal government but next to private property in DC as park areas to be maintained by the adjacent property owner, designating the space as “public parking”<sup>1</sup> (thus, 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.
2. Accordingly, much of what residents think of as “their” front yards, and side yards for those with corner lots, is in fact public space.
3. Because DC law places public parking under the care and keeping of adjacent landowners, the law permits landowners to install fences up to 42 inches of height that are also of “open design of at least 50%”<sup>2</sup> around the parking. This permits owners to exclude third persons physically from their land, but makes the green space in the parking visually available to all passers-by while creating an open feel.
4. The extensive greenspace visible around private properties in DC is a defining characteristic of our city.
5. Where some compelling rationale exists, however, landowners may apply for permission to build fences higher than 42 inches
6. The residents of 3848 Harrison Street NW (“Applicants”) had sought permission to build a 6-foot high wooden fence utilizing overlapping boards in public space in their side yard parallel to the sidewalk, enclosing a swimming pool, to enhance their privacy and public safety. Because theirs is a corner lot, the public space in question directly abuts a sidewalk and street.

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<sup>1</sup> The District of Columbia subsequently acquired additional right of way, some of which landowners technically own subject to easement, and which may not be strictly termed “public parking.” Because DC law treats such space identically to public parking, for convenience we here refer to all public space attached to residential lots as public parking. See generally “The City Park Outside Your Front Door,” *Forest Hills Connection*, <https://www.foresthillsconnection.com/home-front/the-city-park-outside-your-front-door/>

<sup>2</sup>

[https://ddot.dc.gov/sites/default/files/dc/sites/ddot/publication/attachments/ddot\\_public\\_realm\\_design\\_manual\\_2011.pdf](https://ddot.dc.gov/sites/default/files/dc/sites/ddot/publication/attachments/ddot_public_realm_design_manual_2011.pdf) section 4.5.1

7. After discussions with an ANC member, the applicant amended his application to recess the fence by 12 feet along 39<sup>th</sup> Street. This version of the proposed fence would come within 3 feet of a pool house. Applicant maintains that he needs access to the pool house from the fence side.

8. Applicant also agreed to use a fence with alternating slats that will not form an opaque wall from the street.

**NOW THEREFORE BE IT RESOLVED:**

1. Because the Applicant has amended his application and proposes to now locate his fence 12 feet from the sidewalk instead of immediately abutting the sidewalk as previously proposed, because if Applicant moved the fence closer it would prevent access to the pool house, because the currently-proposed fence no longer forms an opaque wall from the street, and because two other adjacent properties on 39<sup>th</sup> Street have fences and a wall of trees much closer to 39<sup>th</sup> Street, ANC 3E believes in context the applicant's proposal is a reasonable compromise that retains the intended open feel of the public space laws and therefore ANC 3E does not oppose this application.

The resolution passed by a vote of 4-0-0 at a properly noticed meeting held on June 18, 2020, at which a quorum was present, with Commissioners Bender, Hall, McHugh, Quinn, in attendance.

ANC 3E

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by Jonathan Bender  
Chairperson