



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 OPPOSING PUBLIC SPACE APPLICATION #352958

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”¹ (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 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. An owner of 4301 Ellicott St NW (“Applicant”) has applied for permission to build a 6-foot fence in public space around his side yard to enhance his privacy and security. Because his is a corner lot, the public space in question directly abuts a sidewalk and street.
7. The other three corner lots on Applicant’s block do not have overheight fences.
8. Applicant here does not appear to have a more compelling need for privacy or security than other residents in the area.

¹ 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/>

9. If ANC 3E supported applications for overheight fences for every resident who sought to install such fences to enhance their privacy and security, the exception would swallow the rule.

10. Numerous other landowners would no doubt then seek and expect to receive similar support for their overheight fences, and the ANC (and Public Space Commission) would have no reasonable basis to oppose such applications.

11. Likewise, other landowners who prefer either no fence around the public parking abutting their homes, or fences smaller than 42 inches, would complain – justifiably – that the ANC had essentially chosen to read the decades-old rule out of the rule book, to their detriment.

12. Supporting such applications would therefore create an untenable situation.

13. Applicant also seeks permission to build a stone wall in public space that is less than 42 inches high.

14. It is unclear why the ANC has been asked to opine on this request, and requests for clarification to DDOT have gone unanswered.

15. In any event, ANC 3E sees no reason to oppose an application to build a fence / wall shorter than 42 inches merely because it is to be made of stone.

NOW THEREFORE BE IT RESOLVED:

1. Because the Applicants have not provided a compelling rationale to depart from the longstanding rule that fences in public space may not exceed 42 inches, it would not be in the public interest to support their application to install an overheight fence, and the ANC must therefore oppose the application as it relates to the proposed overheight fence.

2. Because, by contrast, ANC 3E sees no compelling rationale to object to a fence smaller than 42 inches in public space merely because it is made of stone, ANC supports Applicant's request as it relates to the proposed underheight stone wall.

The resolution passed by a vote of 4-0-0 at a properly noticed meeting held on July 16, 2020, at which a quorum was present, with Commissioners Bender, Hall, McHugh, Quinn, in attendance.

ANC 3E

by Jonathan Bender
Chairperson