

	<p align="center">ADVISORY NEIGHBORHOOD COMMISSION 3C GOVERNMENT OF THE DISTRICT OF COLUMBIA</p> <p align="center"><i>CATHEDRAL HEIGHTS • CLEVELAND PARK • MASSACHUSETTS AVE. HEIGHTS MCLEAN GARDENS • WOODLEY PARK</i></p>
<p>Single Member District Commissioners 01-Lee Brian Reba; 02- Josh Hart; 03-vacant 04-vacant; 05-Bruce Beckner; 06-Trudy Reeves 07- Richard Rothblum; 08-Catherine May; 09-Nancy MacWood</p>	<p align="right">4025 Brandywine Street, NW Washington, DC 20016-1843 P: (202) 657-5725 F: (515) 474-8595 Website http://www.anc3c.org</p>

ANC3C RESOLUTION NO. 2008-049

Resolution Commenting on the Proposed Rules Establishing DDOT’s Policies and Procedures Authorizing Curb Cuts in Public Space

WHEREAS the DC Department of Transportation has published for public comment a notice of proposed rulemaking that would establish standards for the granting of public space permits for curb cuts, driveways and parking pads, at 55 D.C. Reg. 10,975 (October 17, 2008) (the “NPRM”); and

WHEREAS the granting by DDOT of public space permits for curb cuts in recent years has appeared to proceed without reference to established standards, at times without notice to or regard for formal recommendations by this and other ANC’s, despite the obligation to give ANC recommendations “great weight”; and

WHEREAS the granting by DDOT of public space permits for curb cuts in recent years has exacerbated an ever-more critical shortage of on-street parking in this ANC, to the detriment of the public, including both residents of and visitors to this ANC; and

WHEREAS it is essential for DDOT to establish standards for the granting of public space permits for curb cuts that preserve and protect the public’s interest in public space, and ANC3C commends DDOT for commencing this rulemaking; and

WHEREAS the proposed rule set forth in the NPRM (the “Proposed Rule”), while moving in the right direction, could be substantially improved as, among other things, it (i) is ambiguous in certain important respects, (ii) suffers from a lack of clear procedures for establishing “special need” that are consistent with those that already exist for demonstrating a need for a “reserved parking place,” (iii) does not provide that a curb cut or and driveway that is granted for “special need” must be removed and returned to the public when the special need ceases to exist, (iv) does not define the appropriate relationship between the granting of a permit for a curb cut and the granting of a reserved parking space, (v) lacks clarity in defining the relationship between “special need” for a driveway and “compelling need” for a circular driveway and in limiting circumstances in which a public space permit for a circular driveway will be granted, and (vi) fails to confirm the Director’s obligation to give “great weight” to recommendations of the ANC.; and

WHEREAS DDOT established November 17, 2008 as the deadline for comments, but has agreed to accept and consider ANC3C’s comments received promptly following that date,

THEREFORE, BE IT HEREBY RESOLVED that ANC3C urges DDOT to redraft the Proposed Rules in accordance with the following comments and the specific changes in Attachment A:

- (i) Clarify the intent of section 1201, that subsection 1201.4 must be complied with (including either a showing of special need or that there is no alternative means of access) where a property has existing or potential alley access;
- (ii) Establish clear standards and procedures for a demonstration of “special need” that are consistent with the established standards and procedures applicable to reserved parking spaces in 18 DCMR chapter 27, which are, if anything, a less burdensome incursion on public space than a curb cut or driveway;
- (iii) Make clear, in a manner consistent with the rules for reserved parking spaces, that a curb cut or driveway granted for special need must be removed when the need ceases to exist;
- (iv) Provide that the Director grant a curb cut for “special need” only if a reserved parking space would not satisfy the need, or would be more burdensome on the supply of public parking;
- (v) Establish reasonable limitations on a showing of “compelling need” that will justify the added burden on public space caused by a circular driveway with two curb cuts, and clarifying the relationship between “compelling need” and “special need” suggested in the Proposed Rule;
- (vi) Confirm and recognize the Director’s statutory obligation to give ANC notice and its recommendations “great weight”;
- (vii) Establish that the Proposed Rule is to be applied to pending applications; and
- (viii) Adopt the other recommendations set forth in Attachment A; and

BE IT FURTHER RESOLVED that the Chair of ANC3C or her designee is authorized to represent ANC3C in this matter.

Attested by

Chair, on November 18, 2008

Nancy J. MacWood

This resolution was approved by a vote of 7-0 on November 17, 2008 at a scheduled and noticed public meeting of ANC 3C at which a quorum (a minimum of 4 of 7 commissioners) was present.

*Attachment A: ANC3C Suggested Changes to Title 24 DCMR, Chapter 12
New Sections 1201, 1202, and 1203*

1201 CURB CUTS AND DRIVEWAYS

1201. 1 No person shall make a curb cut in, demolish, repair or construct a driveway across the public space without first obtaining a public space permit from the Department of Transportation.
1201. 2 The Director may approve a public space permit for a curb cut when there is alley access to the property **only** if the applicant for the permit complies with subsection 1201.4.
1201. 3 The Director may approve a public space permit for a curb cut when there is a potential access to an expanded alley network **only** if the applicant for the permit complies with subsection 1201.4.
1201. 4 The Director may grant a public space permit for a curb cut when the applicant for the permit submits to the Director information that **proves** that there is no alternative way to access on-site parking or a loading dock through existing or proposed paved alleys, or **the applicant proves that** there is a special need as provided in section 1202.

N.P. Where access to a loading dock is presented as the basis for a permit, the property owner must demonstrate that it is not reasonably possible to use trucks that are able to access the loading dock by navigating the existing alley system; the applicant's desire to use larger trucks is in itself not sufficient to justify a curb cut.

1201. 5 A property owner shall obtain a new public space permit for the curb cut to continue use of an existing curb cut or driveway when any of the activities listed in subsection 1201.6 occur on the property.
1201. 6 The public space permit expires when the activities listed below occur on the property:
- (a) There is new construction;
 - (b) The principal building on the property is razed or partially razed;
or
 - (c) Substantial improvements, in excess of fifty percent (50%) of the building's value, are made to the principal building.
1201. 7 If the Director does not issue a public space permit for a curb cut or driveway to an owner, and there is an existing curb cut or driveway the owner of the property shall at the owner's expense remove the curb cut, driveway, or parking pad and restore the public space in accordance with the current standards of the DDOT Design and Engineering Manual and Standard Specifications for Highways and Structures.

Attachment A

1201. 8 The Director may approve a permit for double curb cuts to construct a circular driveway only if the applicant proves a **compelling need for a driveway and** a compelling need for one-way circulation of motor vehicles. A compelling need may include a special need as provided in section 1202 **to the extent that the nature of the special need requires one-way circulation of vehicles.**
- N.P.** **When there is existing or potential alley access to the property, if the applicant has complied with subsection 1201.4, and the applicant has convincingly demonstrated a compelling need for one-way circulation, before granting permission for double curb cuts, the Director must consider if the need for one-way circulation can be met by permitting an entrance from or exit to an adjacent alley.**
1201. 9 If approval of the activity is required to be approved by the Fine Arts Commission or the Historic Preservation Review Board, the applicant for a curb cut permit shall submit those approvals with the public space permit application.
- N.P.** **Consistent with its obligations under D.C. Code, section 1-309.10(d)(3), the Director will notify affected Advisory Neighborhood Commission in timely manner and will give great weight to the recommendations of the affected Advisory Neighborhood Commission before making a decision in response to an application, will address in the written record with particularity and precision the reasons why the Commission does or does not offer persuasive advice under the circumstances, and will provide specific, written and contemporaneous findings and conclusions with respect to each issue and concern raised by the Commission. This precludes summary issuance of permits, such as “walk-up” permits, which are not reviewed by ANCs.**
1201. 10 The Director shall issue a public space permit for the curb cut after the permit application is approved and all permit fees and deposits have been paid by the applicant.
1201. 11 The curb cut permittee shall construct the curb cut and associated driveway in compliance with current DDOT Design and Engineering Manual and Standard Specifications for Highways and Structures.
1201. 12 No person shall park any vehicle so that the vehicle protrudes in whole or in part into the public space, a public sidewalk, or public alley.
1201. 13 The owner of property abutting a curb cut shall repair, at the property owner’s expense, any damage to public space caused by the use or construction of an abutting curb cut, driveway, or parking pad.

Attachment A

N.P. **A permit for a curb cut granted by the Director shall limit the size of the curb cut on a residential street to not more than the smallest size that will permit safe access to and from the street, unless the applicant proves a special need within the meaning and under the procedures of section 1202 that requires a larger curb cut. The Director shall ensure that the curb cut is located to minimize the loss of street parking caused by the curb cut, for example, by ensuring that the curb cut is far enough away from other no-parking areas to permit cars to park between the curb cut and the other no-parking area.**

1202 SPECIAL NEEDS

1202. 1 An applicant has a special need if the applicant is the owner of the abutting property and the applicant meets the requirements for a reserved parking space contained in 18 DCMR 2710.1(a)-(e) **and 18 DCMR 2703.**

N.P. **Where a special need is presented as the basis for a permit, the Director must determine that the special need cannot be accommodated by the existence or addition of parking accessible through existing or proposed paved alleys.**

N.P. **The Director shall not approve an application for a curb cut on the basis of a special need if it would be possible to accommodate the special need by granting a reserved parking space and the granting of a reserved parking space would be less burdensome on parking in the affected neighborhood.**

1202. 2 Public space permits issued for a special need shall expire upon **either the sale of the property or the cessation of the special need for which the permit was granted.**

1202. 3 Prior to the issuance of a public space permit for a special need, a covenant of maintenance agreement shall be attached to the deed for the property stating that upon **either the sale of the property or cessation of the special need for which the permit was granted,** any curb cut, driveway or parking pad authorized by this permit and located on public space be removed and the public space restored.

1202. 4 **Upon the cessation of the special need or** upon the sale of the property, any curb cut, driveway or parking pad located on public space pursuant to a special need shall be removed and the public space restored in accordance with the current standards of the DDOT Design and Engineering Manual and Standard Specifications for Highways and Structures.

1202. 5 The responsibility to obtain a public space permit for the restoration of public space pursuant to subsection 1202.4 and the cost of the restoration

Attachment A

shall be borne by the seller of the property, unless the buyer agrees to obtain the public space permit and bear the cost instead.

1203 PERMIT REVOCATION

- 1203. 1 The Director may revoke a permit for a curb cut or driveway on or across public space at any time.
- 1203. 2 Upon revocation of the permit, the owner of the property, at the property owner's expense, shall remove the driveway and restore the public space in accordance with the current standards of the DDOT Design and Engineering Manual and Standard Specifications for Highways and Structures.
- 1203.3 A property owner, at the property owner's expense, shall remove any curb cut or driveway that is not authorized by the Director and the property owner shall restore the public space in accordance with the current standards of the DDOT Design and Engineering Manual and Standard Specifications for Highways and Structures.