Vol. 39

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
Case No. 90-5
(Text & Map Amendment - Wesley Heights Overlay District)

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in the Zoning Act (D.C. Code, Section 5-413 et seq.), having held a public hearing as required, hereby gives notice of adoption of amendments to the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning, and the Zoning Map of the District of Columbia. The amendments create and map the new Wesley Heights Overlay District (WHOD). A notice of proposed rulemaking was published in the D.C. Register on March 20, 1992 (39 DCR 1922).

The amendments were adopted by the Zoning Commission as final action at a public meeting on July 13, 1992. The specific amendments to the Zoning Regulations and Map are as follows:

1. Adopt new sections to Chapter 15, to read as follows:

1541 WESLEY HEIGHTS OVERLAY DISTRICT

1541.1 The Wesley Heights Overlay District (WHOD) is established to preserve and enhance the low density character of Wesley Heights by regulating construction and alteration of residential and other buildings in the area.

1541.2 The WHOD will apply to the area and properties contained in this subsection:

(a) The area is generally bounded by a line which begins at the intersection of Nebraska and New Mexico Avenues and runs southeast along the centerline of New Mexico Avenue N.W. to the western boundary of Glover Archbold Park. The line then runs south and west along the west boundary of Glover Archbold Park to a point east of the southernmost point of Lot 33 of Square 1341. The line then runs west across 44th Street to the southwest boundary of Lot 33. The line then runs in a northerly direction along the rear lot lines of the properties on the west side of 44th Street, to the southern boundary of Lot 15 of Square 1341, inclusive of Lot 33. (For those lots with narrow frontages on the west side of 44th Street, the WHOD boundary line shall cross those narrow lot frontages by connecting the rear lot lines of the adjacent lots across the narrow lot frontage.) The line then runs west along the southern boundary of Lot 15; then runs northwest along the west boundary

BZA
Case No. 16788
Exhibit No. 28

Board of Zoning Adjustment
District of Columbia
CASE NO.16788
EXHIBIT NO.28

of Lot 15; then runs in a westerly direction along the right-of-way of the Dexter Court cul-de-sac excluding lots 19-21 and then runs southwest along the south boundary of Lot 18. The line then runs north along the west boundary of Lot 18 to the southern boundary of Lot 805. The line then runs west along the southern boundaries of lots 805 and 800; then runs north along the west boundary of Lot 800; then runs west to Foxhall Road along the southern boundary of Lot 804. The line then runs south along the centerline of Foxhall Road; then runs west along the northern boundary of Lot 813 of Square 1380; then runs southwest along the rear of lots 4, 5 and 820 of Square 1380; then runs west to 49th Street along the southern boundaries of lots 820-824, 826 and 6 of Square 1380. The line then runs north along the western boundary of 49th Street right-of-way; continues east along the northern boundary of Cathedral Avenue right-of-way; and turns north along the property line at the rear of the properties on the west side of Foxhall Road (including all of Square 1523, and lots 28 and 29 of Square 1521). The line then runs east along the northern property line of Lot 28 of Square 1521 to Foxhall Road, then runs north along the west boundary of the Foxhall Road right-of-way to New Mexico Avenue. The line then runs northeast along the centerline of New Mexico Avenue to the point of origin at the intersection of New Mexico and Nebraska Avenues N.W.

(b) The properties that are contained within the boundaries of the WHOD, as set forth in subsection 1541.2(a) include all of squares 1338-1340, 1380, 1381, 1406, 1408, 1521, 1523, 1524, 1603-1612, 1614, 1615, 1619-1622, 1625, 1626, 1700, and 1701; and a portion of squares 1341, 1397, and 1601 (those portions include lots 11, 12, 15-18, 24, 25, 28-34, 36, 37, 800, 804, 805, 807, 810, 814, 819, 821, 824, 825, and 868, and a portion of lots 35, 857, and 869 in Square 1341; lots 4-6, 814-816, 818, 820-824, and 826 in Square 1397; and lots 804 and 805 in Square 1601).

1541.3 The purpose of the WHOD is as follows:

(a) To preserve in general the current density of the neighborhood.

(b) To allow reasonable opportunities for owners to expand their dwellings; and

(c) To preserve existing trees, access to air and light, and the harmonious design and attractive appearance of the neighborhood.

1542 GENERAL PROVISIONS

1542.1 The WHOD is an overlay district and shall be mapped in combination with one of two underlying districts (R-1-A and R-1-B) and not instead of the underlying districts.

1542.2 All uses, buildings and structures permitted in accordance with this chapter and the appropriate regulations of the underlying district with which the mapped WHOD is combined, shall be permitted in the combined districts.

1542.3 All restrictions and prohibitions provided for by either of the underlying districts combined in accordance with this chapter shall also apply, except as specifically modified by this chapter. Where there is a conflict between this chapter and the underlying zoning, the more restrictive provisions of this title shall govern.

1543 RESTRICTIONS: MAXIMUM LOT OCCUPANCY, FLOOR AREA RATIO AND FRONT YARD SETBACK

1543.1 The following restrictions will apply to both the R-1-A and the R-1-B zone districts, within the WHOD.

1543.2 No structure, including accessory buildings, shall occupy an area in excess of thirty percent (30%) of the lot; except that:

(a) Structures on lots of between 5,000 and 6,667 square feet may occupy up to 2,000 square feet; and

(b) Structures on lots of less than 5,000 square feet may occupy up to forty percent (40%) of the area of the lot.

1543.3 The gross floor area of all buildings and structures on the lot shall not exceed the sum of 2,000 square feet plus forty percent (40%) of the area of the lot; provided, that the following modifications of gross floor area shall apply in the WHOD:

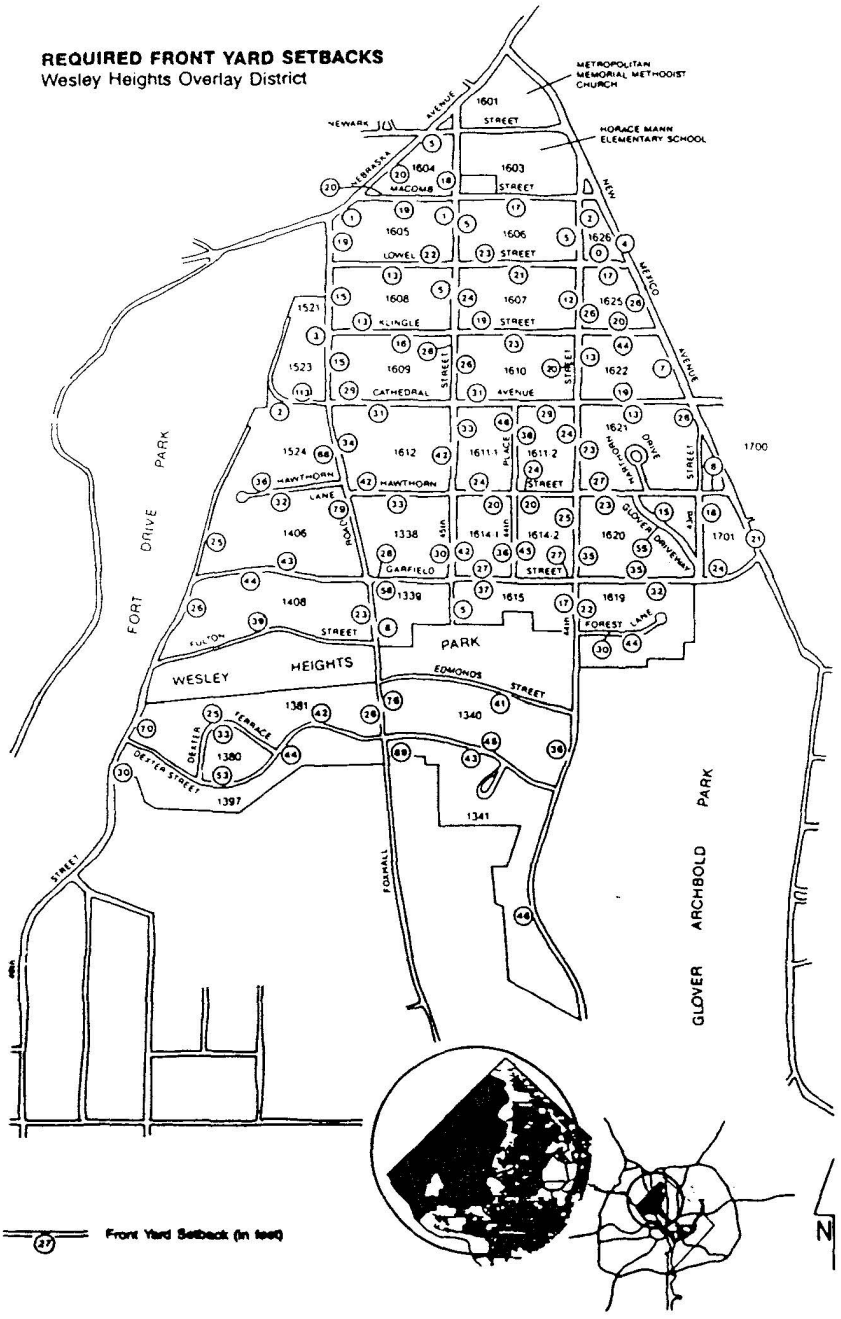
(a) The first 200 square feet of an open porch, or total open porch space if there is more than one open porch, and the first 600 square feet of a garage shall not count in gross floor area; and

(b) Basement or cellar floor area shall count in gross floor area if a finished floor is provided, if the floor to ceiling height is in excess of six feet six inches (6' 6"), and shall count only up to a floor area equal to five (5) times the total fenestration area for the cellar or basement floor.

1543.4 All residential buildings shall have a front yard setback equal to or greater than the average setback of all structures on the same side of the street in the block where the building in question is located. The required setbacks are depicted in the map entitled, "Required Front Yard Setbacks," which is a part of this overlay district and located in the Office of Zoning and in the Zoning Division of the Department of Consumer and Regulatory Affairs.

2. Amend the Zoning Map to map the Wesley Heights Overlay District as described in Section 1541.2 of this chapter.

Z.C. NOTICE OF FINAL RULEMAKING
CASE NO. 90-5
PAGE NO. 5



ZONING COMMISSION ORDER NO. 718
Case No. 90-5
(Text & Map Amendment - Wesley Heights Overlay District)
July 13, 1992

Pursuant to notice, a public hearing was held by the Zoning Commission for the District of Columbia on December 5, 1991. At that hearing session, the Zoning Commission considered a petition from the Wesley Heights Historical Society (WHHS) to amend the text of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning, and the Zoning Map of the District of Columbia, pursuant to the provisions of 11 DCMR 3021.

By petition dated April 11, 1990, the president of the WHHS requested the Zoning Commission to authorize a public hearing to consider amending the Zoning Regulations and the Zoning Map to create and map the Wesley Heights Overlay District (WHOD). The purpose of the WHOD is to preserve and enhance the low density character of Wesley Heights by regulating construction and alteration of residential and other buildings in the area.

A majority of the Wesley Heights neighborhood is zoned R-1-A and the remainder is R-1-B with the general boundaries being Nebraska Avenue, New Mexico Avenue, Garfield Street, 44th Street, and the rear property lines south of Dexter Street and Foxhall Road.

The R-1-A District permits matter-of-right development of single-family residential uses for detached dwellings with a minimum lot area of 7,500 square feet, a minimum lot width of 75 feet, a maximum lot occupancy of forty percent, and a maximum height of three stories/forty feet.

The R-1-B District permits matter-of-right development of single-family residential uses for detached dwellings with a minimum lot area of 5,000 square feet, a minimum lot width of 50 feet, a maximum lot occupancy of forty percent, and a maximum height of three stories/forty feet.

The District of Columbia Generalized Land Use Map of the Comprehensive Plan for the National Capital, as amended, designates the area for low density residential use.

The District of Columbia Office of Planning (OP), by report dated July 27, 1990, stated the following in its recommendation:

> "The Office of Planning has pediodically met with the architect who did much of the technical work for petitioners. We have provided him and the petitioners with material we have been developing regarding the updating of R-1 zoning provisions in the D.C. Zoning Regulations as well as materials we have from other jurisdictions. We have emphasized that we are interested in these factors at least as much from the

citywide text amendment perspective as from the immediate neighborhood perspective. Specifically, we are of the opinion that the de facto FAR permitted in the R-1 zones is inappropriately high. This has not mattered in the past because development rarely used the full envelope permitted (a 1.2 FAR house on a minimum R-1-A lot of 7,500 s.f. is 9,000 s.f. of living area). It may well prove feasible and desirable to establish a sliding FAR standard for R-1 development that will control the oversized houses beginning to be built in some of the higher priced neighborhoods of the city, while not penalizing the great majority of new homes or additions in these neighborhoods or around the city.

To summarize, we are not recommending a setdown of this case, but rather plan to address it as part of a package of proposed citywide text amendments to be submitted to the Commission in the Fall."

On August 6, 1990, at its regular monthly meeting, the Zoning Commission considered the OP status report dated July 27, 1990 concerning the case. After discussion, the Commission concurred with the OP recommendation that Z.C. Case No. 90-5 be considered as part of the OP city-wide Comprehensive Plan rezoning initiative and the Chairman so ruled.

By letter dated December 19, 1990, the President of the Wesley Heights Historical Society indicated that after a series of meetings within the Wesley Heights community, the neighbors re-evaluated the petition of April 11, 1990 and revised and simplified the proposal that has the full-fledged support of the neighborhood. The organization urged the Commission to set the revised proposal down for hearing at the earliest possible date to prevent further erosion of the character of the neighborhood.

By letter dated May 17, 1991, Councilmember James E. Nathanson indicated his support for the revised proposal and urged the Commission to schedule a hearing on the matter as soon as possible.

On July 8, 1991 at its regular monthly meeting, the Commission considered the above-mentioned letter and also considered OP's statement indicating that OP was incline to support a seperate hearing action on the matter, as opposed to including the matter with the city-wide Comprehensive Plan rezoning initiative. The Chairperson requested OP to report to the Commission at a later time with a recommendation on whether this should be set down for a hearing.

By memorandum dated July 26, 1991, OP stated that it is fully supportive of the proposed FAR standard for R-1-A and R-1-B zones, which was developed in part by information sharing between OP and

neighborhood representatives. Accordingly, OP recommended that a public hearing be scheduled.

The Office of Planning indicated that the proposed overlay zone represents substantial technical analysis of zoning factors affecting development in the Wesley Heights neighborhood, and that there has been extensive and intensive neighborhood participation in reviewing and developing the proposed overlay zone.

The specific proposal to create and map the WHOD was published as a notice of public hearing and appeared in the October 25, 1991 edition of the D.C. Register (38 DCR 6490).

The Wesley Heights Historical Society (WHHS), the petitioners, by its prehearing submission dated September 9, 1991 and by testimony at the public hearing, indicated that the provisions of the proposed overlay zone are designed to supplement the current R-1-A and R-1-B regulations. The WHHS further stated that the intent of the overlay zone proposal is to limit new construction to a scale and proportion compatible with the character of the neighborhood as it was before recent large scale additions and new construction were initiated.

The petitioners indicated that the overlay proposal would impose the following additional restrictions beyond those that are already required in R-1 zone districts:

LOT OCCUPANCY: Only 30 percent of the lot can be covered by livable structures, except for smaller lots. Houses on lots with 6,667 square feet or less would be permitted to occupy a higher percentage of the lot - up to 40 percent for lots 5,000 square feet or less.

FLOOR AREA RATIO (FAR): The overlay proposal also provides for a limitation on the livable space in each residence. The gross livable floor area will be restricted to less than the sum of 2,000 square feet plus 40 percent of the area of the lot. The formula will apply to all residences regardless of the size of the lot. The gross livable area shall include all but the first 200 square feet of an open porch, all but the first 600 square feet of any garage, any attic space with headroom greater than 7'6" (if accessible by a permanent stair), and any basement space with a finished floor, a ceiling height greater than 7'6" and window area that equals at least 20 percent of the wall area.

FRONT YARD SETBACK: The overlay proposal includes a front yard setback, consisting of the average setback on each side of the street in each block. Construction would be allowed up to an average distance from the street of the fronts of

other houses on the same side of the street in that block. The effect of this limitation would be to prevent additions from extending ahead of neighboring houses toward the street.

OP by memorandum dated November 25, 1991 and by testimony presented at the public hearing, recommended that the WHOD be approved. OP stated the following:

> "The present controls of the R-1 zones as to density, especially the combination of the 40 percent lot occupancy and the three-story height limit, have been identified in the past to represent unnecessarily bulky development -- a de facto 1.2 FAR. As the Commission is aware, OP has proposed that a sliding scale FAR limit be adopted as a text amendment affecting R-1 development citywide. Our research on houses in a wide variety of R-1-A and R-1-B zones has found that a significant, but not onerous, reduction in permitted bulk can be adopted while allowing the great majority of new houses and additions to proceed as of right. Neighboring properties will in many cases benefit from more favorable conditions regarding light, air and privacy. In Wesley Heights itself, OP has found that there are a significant number of vacant lots as well as existing houses sited on large lots with potential for additions or subdivision. Thus, the overlay zone's provisions can have an important and favorable impact on future neighborhood character."

Advisory Neighborhood Commission (ANC) 3D, by letter dated February 14, 1991 and by testimony presented at the public hearing, unanimously voted to support the Wesley Heights Overlay zone proposal at its January 22, 1991 regular monthly meeting.

A representative of ANC-3D also testified at the public hearing that the Spring Valley-Wesley Heights Citizens Association also voted unanimously to support the proposal.

Several persons testified at the public hearing and several letters were received in support of the proposal. In addition to the aforementioned, other reasons for supporting the proposal include, but are not limited to, the following:

a. The proposed overlay is consistent with the goals of the Comprehensive Plan for retention of the natural environment and encouragement of appropriate design solutions;

b. The proposed overlay represents an extraordinary effort by existing property owners to limit the development potential of their property in order to maintain overall neighborhood quality;

c. The proposed overlay restrictions represent a compromise between environmental preservation and the need for broad-based community support. To achieve the latter, the proposal does not limit tree cutting or the creation of impermeable surfaces (driveways, tennis courts, pools, patios, walkways, etc.); and

d. The residents of the neighborhood do not want their 60-year old houses dwarfed by shiny new palaces, do not want housing stock that is affordable for families replaced by mansions, and do not want the recreational charms of the neighborhood obliterated by overdevelopment.

Testimony was also received from an individual representing the trustees of property at 2620 Foxhall Road which recommended that the southern boundary of the overlay follow the rear lot lines of properties fronting on Dexter Street instead of following an arbitrary line 200 feet south of Dexter Street.

Several persons testified at the public hearing and several letters were received in opposition to the proposal. Reasons for opposing the proposal include, but are not limited to, the following:

a. The proposed restrictions need to be justified by a very convincing case, since they are not needed to protect the physical environment or public health but instead are advanced largely on aesthetic grounds or on grounds related to philosophies about the desireability of allowing economic forces to cause change in the composition of communities;

b. Insofar as aesthetics are concerned, the rebuilding and enlargement of houses in Wesley Heights during the past decade has in most cases made the houses and neighborhood more attractive;

c. The existing R-1-A and R-1-B zoning restrictions are adequate. (Property owners wishing to restrict their own property rights in accordance with the proposed WHOD zoning restrictions are already free to add irrevocable covenants that encompass WHOD zoning restrictions to their own property deeds);

d. If the Zoning Commission adopts the proposal, the District of Columbia will be deprived of much needed property tax revenue that will be derived from future Wesley Heights construction projects; and

Z.C. TEXT ORDER 718
CASE NO. 90-5
PAGE NO. 6

e. The proposed overlay is not adequate to preserve the trees, topography, and natural drainage patterns of Wesley Heights.

On February 10, 1992, at its monthly meeting, the Zoning Commission discussed the case including, but not limited to, clarifying the boundaries of the proposed overlay, proposing alternative language regarding the definition of gross liveable floor area and gross floor area, and clarifying language concerning the front yard setback standards.

The Commission concurs with the position and recommendations of the petitioners, ANC-3D and the Office of Planning. The Commission does not concur with the position of the opponents to the proposal. The Commission believes that after considering and balancing all of the issues for and against the proposal, the WHOD is an appropriate means of preserving the character of the community.

The Commission believes that the proposed overlay will preserve, in general the current density of the neighborhood, allow reasonable opportunity for owners to expand their dwellings and preserve existing trees and access to air and light, as well as the harmonious design of the neighborhood.

The Zoning Commission believes that the proposed decision to approve the Wesley Heights Overlay District is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and the Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

The proposed decision to approve the WHOD was referred to the National Capital Planning Commission (NCPC), under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by report dated April 2, 1992, found that the objectives of the proposed zoning amendments would not adversely affect the Federal Establishment, nor be inconsistent with the Comprehensive Plan for the National Capital.

The Zoning Commission has accorded ANC-3D the "great weight" consideration to which it is entitled.

A notice of proposed rulemaking was published in the D.C. Register on March 20, 1992 (39 DCR 1922). A letter from the petitioner dated April 22, 1992, and a memorandum from the Secretary to the Zoning Commission dated April 6, 1992 were received into the record.

Z.C. TEXT ORDER 718
CASE NO. 90-5
PAGE NO. 7

The petitioner in the above-mentioned letter submitted a certified study map of the existing setbacks of all the houses that are included in the WHOD as requested by the Commission for establishing the average front yard setback. The petitioners also submitted information that would clarify the boundaries of the proposed overlay and revised Section 0002.4(a) of the notice of public hearing.

The April 6, 1992 memorandum from the Secretary to the Zoning Commission recommended, in addition to the description of the boundaries of the WHOD in Section 1541.2 of the notice of proposed rulemaking, that it would be useful to identify the squares and portions thereof that are included within the WHOD boundaries. The above-mentioned memorandum recommended the following:

1. Renumber subsection 1541.2 to read 1541.2(a).

2. Create a new subsection 1541.2 and a preamble sentence thereto and to read as follows:

   1541.2 **The WHOD will apply to the area and properties contained in this subsection.**

3. Create a new subsection 1541.2(b) to list the squares and portions thereof that are contained in the boundaries that are described in subsection 1541.2(a) and to read as follows:

   (b) The properties that are contained within the boundaries of the WHOD, as set forth in subsection 1541.2(a) include all of squares 1338-1340, 1380, 1381, 1406, 1408, 1521, 1523, 1524, 1603-1612, 1614, 1615, 1619-1622, 1625, 1626, 1700, and 1701; and a portion of squares 1341, 1397, and 1601 (those portions include lots 11, 12, 15-18, 24, 25, 28-34, 36, 37, 800, 804, 805, 807, 810, 814, 819, 821, 824, 825, and 868, and a portion of lots 35, 857 and 869 in Square 1341; lots 4-6, 814-816, 818, 820-824, and 826 in Square 1397; and lots 804 and 805 in Square 1601).

4. Correct the reference to "Loughboro Road" in the last two sentences of subsection 1541.2 of the notice of proposed rulemaking. Use the phrase "New Mexico Avenue" instead of "Loughboro Road". Although Loughboro Road is the western extension to New Mexico Avenue, it only becomes so at a point that is west of the intersection of Foxhall Road and New Mexico Avenue.

Z.C. TEXT ORDER 718
CASE NO. 90-5
PAGE NO. 8

On May 11, 1992 at its regular monthly meeting, the Zoning Commission considered draft Zoning Commission Order No. 718 for final action and the comments that were received in response to the publication of the notice of proposed rulemaking. The Commission referred the petitioner's letter dated April 22, 1992 to OP for further analysis and requested OP to report its findings to the Commission at a subsequent meeting. The Commission decided to incorporate the suggestions of the Secretary to the Zoning Commission, as outlined in the April 6, 1992 memorandum. The Commission also requested the Office of Zoning to prepare a graphic illustration of the WHOD boundaries for the Commission's understanding.

By memorandum dated May 13, 1992, the Office of Zoning prepared a graphic illustration of the boundaries of the proposed WHOD, which also highlights the southern boundary of the WHOD as the zone boundary lines gerrymanders through squares 1341 and 1397.

On July 13, 1992 at its regular monthly meeting, the Zoning Commission discussed the OP memorandum dated July 6, 1992, which analyzed the requested front yard setbacks of the WHOD. The Commission found that the average frontyard setback, as recommended by OP, for each street front was a reasonable setback requirement for new construction or additions.

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders APPROVAL of the amendments to the Zoning Regulations and Map to create and map the Wesley Heights Overlay District (WHOD). The specific amendments to the Zoning Regulations and Map are contained in the Notice of Final Rulemaking, which is located elsewhere in this edition of the D.C. Register.

Vote of the Zoning Commission taken at the regular meeting on February 10, 1992: 3-0 (John G. Parsons, William L. Ensign and Maybelle Taylor Bennett, to approve - Tersh Boasberg, not voting having recused himself and Lloyd D. Smith, not voting, not having participated in the case).

This order was adopted by the Commission at its monthly meeting on July 13, 1992 by a vote of 3-0 (John G. Parsons, William L. Ensign and Maybelle Taylor Bennett to adopt as amended - Tersh Boasberg, not voting, not present and having recused himself and Lloyd D. Smith, not present, not voting).

In accordance with 11 DCMR 3028.8, this order is final and effective upon publication in the D.C. Register; that is, on _____.