



**BEFORE THE ZONING COMMISSION OR
BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA**



FORM 140 - PARTY STATUS REQUEST

Before completing this form, please go to www.dcoz.dc.gov > IZIS > Participating in an Existing Case > Party Status Request for instructions. Print or type all information unless otherwise indicated. All information must be completely filled out.

PLEASE NOTE: YOU ARE NOT REQUIRED TO COMPLETE THIS FORM IF YOU SIMPLY WISH TO TESTIFY AT THE HEARING. COMPLETE THIS FORM ONLY IF YOU WISH TO BE A PARTY IN THIS CASE.

Pursuant to 11 DCMR Subtitle Y § 404.1 or Subtitle Z § 404.1, a request is hereby made, the details of which are as follows:

Name:	Committee of Neighbors Directly Impacted by LAMB Application (CNDI-LA)		
Address:	1505 Emerson Street NW Washington, DC 20011		
Phone No(s):	(202) 907-7002	E Mail:	rami.rihani@gmail.com

I hereby request to appear and participate as a party in Case No.: **19581**

Signature: *Rami X. Rihani* Date: **OCTOBER 31, 2017**

Will you appear as a(n) Proponent Opponent Will you appear through legal counsel? Yes No

If yes, please enter the name and address of such legal counsel.

Name:	N/A		
Address:			
Phone No(s):		E Mail:	

ADVANCED PARTY STATUS CONSIDERATION PURSUANT TO: Subtitle Y § 404.3/Subtitle Z § 404.3:

I hereby request advance Party Status consideration at the public meetings scheduled for: **November 15, 2017**

PARTY WITNESS INFORMATION:

On a separate piece of paper, please provide the following witness information:

1. A list of witnesses who will testify on the party's behalf;
2. A summary of the testimony of each witness;
3. An indication of which witnesses will be offered as expert witnesses, the areas of expertise in which any experts will be offered, and the resumes or qualifications of the proposed experts; and
4. The total amount of time being requested to present your case.

PARTY STATUS CRITERIA:

Please answer all of the following questions referencing why the above entity should be granted party status:

1. How will the property owned or occupied by such person, or in which the person has an interest be affected by the action requested of the Commission/Board?
2. What legal interest does the person have in the property? (i.e. owner, tenant, trustee, or mortgagee)
3. What is the distance between the person's property and the property that is the subject of the application before the Commission/Board? (Preferably no farther than 200 ft.)
4. What are the environmental, economic, or social impacts that are likely to affect the person and/or the person's property if the action requested of the Commission/Board is approved or denied?
5. Describe any other relevant matters that demonstrate how the person will likely be affected or aggrieved if the action requested of the Commission/Board is approved or denied.
6. Explain how the person's interest will be more significantly, distinctively, or uniquely affected in character or degree by the proposed zoning action than that of other persons in the general public.

Board of Zoning Adjustment
District of Columbia
CASE NO. 19581
EXHIBIT NO.39

Attachment to FORM 140 – PARTY STATUS REQUEST
submitted on October 31, 2017
by Committee of Neighbors Directly Impacted by LAMB Application (CNDI-LA)

PARTY WITNESS INFORMATION

1. A list of witnesses who will testify on the party's behalf;

The applicant may call the following witnesses to testify:

- 1) Rami Rihani (1505 Emerson Street NW)
- 2) Elizabeth Meltzer (5006 Piney Branch Road NW)
- 3) Taalib-Din Uqdah (4700 14th Street NW)

The applicant reserves the right to call any other witnesses testifying on behalf of the party, and to supplement this list at the hearing.

Pursuant to Rule 3106.2, the party submits the following information in support of its request to apply for party status:

The Applicant is an unincorporated non-profit association established under Title 29, Chapter 11 of the code of the District of Columbia, which is comprised of the following members who own properties on Emerson Street NW, Farragut Street NW, Gallatin Street NW, Hamilton Street NW, Piney Branch Road NW, and 14th Street NW, listed next to their names, and marked with an asterisk (*) where they are within the 200 feet limit (i.e., have standing in the case):

- 1) Rami and Elizabeth Rihani (1505 Emerson Street NW)*
- 2) Elizabeth Meltzer (5006 Piney Branch Road NW)*
- 3) Taalib-Din Uqdah (4700 14th Street NW)
- 4) John Strand and Lisa Weiss (1501 Emerson Street NW)*
- 5) Gael Murphy and Laurie Emrich (1405 Emerson Street NW)*
- 6) Tim Stefanick and Amy Dine (1500 Farragut Street NW)*
- 7) John Giles and Chunmeng Bai (1501 Gallatin Street NW)*
- 8) Robert Berg and Vivian Lowery Derryck (1501 Farragut Street NW)*
- 9) Adam Lingo and Abeba Taddese (1505 Gallatin Street NW)*
- 10) Doreen Thompson (1510 Emerson Street NW)
- 11) Andy Solberg and Yasemin Ciftci (1502 Emerson Street NW)
- 12) Brian Calis and Leslie Chang (1408 Emerson Street NW)
- 13) Tony Sloane and Kia Johnson (1406 Emerson Street NW)
- 14) Kamau Anderson (1331 Emerson Street NW)
- 15) Michael and Lillian Wardlaw (1300 Emerson Street NW)
- 16) Antonio and Alysa Francis (1503 Gallatin Street NW)
- 17) Rodney and Sharonda Savoy (1406 Hamilton Street NW)

- 18) Katherine Gill (1305 Farragut Street NW)
- 19) Jennifer Harwell (1339 Gallatin Street NW)

2. A summary of the testimony of each witness;

The members of CNDI-LA wish to state that we would welcome the LAMB school to our neighborhood and are pleased to see their proposed conditions of approval, as submitted in Exhibit 36B. Some of our members were living in their same homes and were engaged in the community discussions when The Kingsbury Center applied in April 2000 for a special exception to occupy the 5000 14th Street NW property (BZA case # 16569). Kingsbury was granted that exception given conditions that include that the number of students shall not exceed 300 and the number of staff shall not exceed 138. The neighborhood has never seen Kingsbury reach this limit and thus has not seen the resulting impact to traffic & parking, noise, and the environment. Moreover, Kingsbury Center has failed to comply with several of the conditions set forth by the term of the BZA Order, dated April 26, 2000 (see further reference below under item #5). It is with this lens that we feel that when the combined Kingsbury and LAMB schools will reach 485 students and 116 staff during the interim period (as stated in Exhibit 14), that this is an entirely unknown scenario to the neighborhood, let alone their 600 students and 110 staff maximum. But given the good faith in which LAMB has submitted their proposed conditions of approval (in Exhibit 36B) with their Good Neighbor Policy, we wish to extend the same and voice our support for the interim period limits (485 students and 116 staff), but ask the BZA that they place a condition on their approval of the full 600 student limit for LAMB to come back in two years and re-apply for the exception for that additional student body increase. Additionally, we would ask the BZA to stress the condition of its approval that LAMB host quarterly meetings with CNDI-LA to review agreed-upon metrics and verify compliance with the BZA's Order. This would allow all parties to assess the impact of LAMB's occupancy and management on the neighborhood during this interim period, before the maximum desired limit is reached.

Our testimony centers around the impact of the combined Kingsbury and LAMB schools, during the interim period, on the neighborhood in regard to traffic & parking, noise, and the environment. Accordingly, the summary of each witness is:

- Traffic & Parking – Rami Rihani (1505 Emerson Street NW):

Given my home's location at the North-East corner of Emerson Street NW and Piney Branch Road NW, I am particularly concerned about traffic congestion and parking limitations on these two streets. Given that we just resolved the Emerson Street traffic issue – converting it from two-way traffic – I know first-hand how increased traffic volumes caused congestion that resulted in us unable to exit our parking spaces in the mornings, and for our cars to be subject to scratches and broken mirrors from passing vehicles. I would request that (1) no LAMB school traffic enter or exit on Piney Branch Road, (2) no neighborhood parking be allowed for LAMB parents or staff, (3) the existing fence remain around the lot to stress the clear delineation between the property and the neighborhood, (4) trash pickup come into and out of the property on 14th Street

NW, and (5) the LAMB and Kingsbury management work with the community during parent-teacher nights to minimize impacts to the neighborhood.

- Noise & Traffic – Elizabeth Meltzer (5006 Piney Branch Road NW):

Piney Branch is an unimproved road with no pedestrian walkways, no parking lanes in either direction and is frequently restricted to one lane of travel with cars parked along it. Nonetheless, for students traveling from north and east of Kingsbury in the morning windows, GPS systems set to 1501 Farragut St NW (across from the rear entrance to Kingsbury) will bring vehicular traffic down Colorado St NW to Piney Branch and to the rear of Kingsbury. This suggests to us that the current traffic study is deficient as it did not consider traffic south on Piney Branch, and that if there is an entrance off Piney Branch, this raises considerable concern about the volume of traffic that will be seen on this narrow road. Apart from the likely difficulties this will cause for those of us in the neighborhood who need to commute to work, those of us who are parents of young children are particularly concerned about the possibility of anxious LAMB parents driving at high speeds down Piney Branch in an effort to get to school on time. We strongly believe that Piney Branch should not be used for child drop off and pick up.

- Environment – Taalib-Din Uqdah (4700 14th Street NW):

Currently, the DC Water and Sewer Authority's (DCWASA) storm water/sewer runoff, is a combined system, meaning all storm and waste water exiting the Subject Property will flow directly into one sewer drain traveling South along 14th St., NW.

At 4700-14th Street, NW, a 3200sf commercial property 3 blocks South of the Subject Property – 2000sf first floor level with 1250sf on the lower level – has been owned and occupied by the witness for the past fifteen (15) years.

The witness will testify, with supporting video, that in the past ten (10) months he and his lower level tenants have experienced no fewer than five (5) sewer backups, during torrential rainstorms, directly attributed to – according to DCWASA on two occasions – the increase in population density in the immediate neighborhood.

When the smaller 14th Street combined sewer line, meets the larger Crittenden Street combined sewer line at the building's location – the intersections of 14th and Crittenden Streets, NW – the larger storm water/sewer Crittenden Street line won't let the smaller storm water/sewer 14th Street line pass through; the resulting "collision" then causes a back-up of both raw sewage and rainwater through a floor drain on the building's lower level – all 1250sf.

At least four inches (4") of storm water / sewage rises throughout the lower level, until the larger Crittenden Street sewer line allows the smaller 14th Street sewer line to pass through. At least two inches (2") of this rising storm/sewer water is then "sucked back

down” through the same floor drain, leaving the remaining storm /sewer water to be removed.

The proposed increase in the student body of 600 students along with 110 faculty and staff – 710 total – will only exacerbate this growing neighborhood concern. It is both an environmental concern and a public health issue that the witness has not experienced before this year.

So far, in this year alone, (2017), if all others in the neighborhood, including Kingsbury, (which by their own admission is nowhere near its full student/faculty/staff capacity), has already contributed to this concern, how will a combined Kingsbury/LAMB proposal in the immediate, followed by a stand-alone LAMB of 710 people in the future, help alleviate or at the very least, not contribute to this public health issue?

Given these neighbors’ concerns about potential objectionable conditions from the impact of the LAMB/Kingsbury interim occupancy period, and the failure of the Applicant to adequately address them in their submissions, we request that the BZA impose a “Trust, but Verify” requirement on the Applicant as a condition of approval. Specifically, we ask that the BZA require that LAMB work with CDNI-LA (e.g., its representatives) and West Educational Campus to establish key metrics and verification methods of compliance with its own policy manual and with the terms of any resulting BZA order related to the core zoning issues of concern – traffic/parking, noise, environmental impact, lighting/design, and approved use. LAMB shall convene quarterly review meetings with CDNI-LA and West EC to review these metrics and identify any issues that require redress or mitigation. The results of these quarterly community meetings and any identified mitigation will be reviewed by the BZA in two years when considering the Applicant’s requested exception to increase the student population to 600. This process would be consistent with the intent of the 2009 SSH-2 Zoning Overlay, Item B.2.c. (shading added below):

(c) Allow the neighborhoods to continue to provide a range of health and social service facilities as well as private institutions that provide cultural and religious enrichment and economic vitality, **but within the framework of improved public review and control over the external effects of nonresidential uses.**

3. An indication of which witnesses will be offered as expert witnesses, the areas of expertise in which any experts will be offered, and the resumes or qualifications of the proposed experts; and

All our witnesses are households or a business in close proximity to Square 2711 – Lot # 0802 in the R-16 Zone District (current location of The Kingsbury Center).

4. The total amount of time being requested to present your case.

The CNDI-LA party requests 20 minutes to present its case.

PARTY STATUS CRITERIA

1. How will the property owned or occupied by such person, or in which the person has an interest be affected by the action requested of the Commission/Board?

The proposed uses will adversely affect property values and the quiet enjoyment of properties owned or leased by members of the Committee.¹ The zoning regulations (U Section 205.2(a)) require that the nonresidential use be capable of being established and operated without adversely affecting the use and enjoyment of neighboring and nearby properties due to traffic, noise and other objectionable conditions. As detailed below, in response to Question #4, the Applicant has not met this burden and the proposed use will adversely affect property owned or leased by members of the Committee with respect to traffic (e.g., congestion, traffic volume, parking challenges), noise (e.g., resulting from the property's HVAC systems, buses, and playground noise), and objectionable environmental conditions (e.g., resulting from idling buses, increase in sewer flow in a combined storm water / sewer system resulting in increased sewer back-up incidents downhill from the property). In addition, we believe the Applicant has failed to show that there will be adequate, appropriately located, and screened off-street parking sufficient to provide for the needs of the maximum number of occupants, employees and visitors who can use the facility at one (1) time as required in U Section 205.2(b) of the zoning regulations.

2. What legal interest does the person have in the property? (i.e. owner, tenant, trustee, or mortgagee)

Members of the Committee are owners or tenants.

3. What is the distance between the person's property and the property that is the subject of the application before the Commission/Board? (Preferably no farther than 200 ft.)

Committee members include:

- owners or tenants of properties which are within 200 feet of the property that is the subject of the application before the Commission;
- owners or tenants who are directly across the street from those owners and tenants who are within 200 feet;
- owners or tenants of properties which will be directly impacted by proposed increase in occupant capacity as it relates to the exacerbation of environmental/public health concerns;
- owners or tenants of properties which will be directly impacted by the proposed use and recommendations in the Application's traffic study

¹ In recent peer-reviewed research published in a distinguished MIT Press journal, Brehm et al (2017) appropriately use highly localized housing sales data to show that when charter schools are located in the same school district as a home, the home price falls. This stands in contrast to a common assumption that housing prices will rise with presence of a high-quality school. One likely explanation for this result is that neighbors bear the congestion costs but do not benefit from access to the school. The full citation is: Brehm, Margaret, Scott A. Imberman and Michael Naretta. "Capitalization of Charter Schools into Residential Property Values," *Education Finance and Policy* 12(1) (Winter 2017): 1-27.

4. What are the environmental, economic, or social impacts that are likely to affect the person and/or the person's property if the action requested of the Commission/Board is approved or denied?

Applicant has not demonstrated that its proposed use will not adversely affect the use and enjoyment of neighboring and nearby properties. As proposed, the use will result in adverse traffic & parking, noise, and environmental impacts.

- The zoning regulations (U section 205.2(a)) require that the nonresidential use be capable of being established and operated without adversely affecting the use and enjoyment of neighboring and nearby properties due to traffic, noise, and other objectionable conditions.
- The zoning regulations (U section 205.2(b)) requires Applicant to show ~~they~~ there will be adequate, appropriately located, and screened off-street parking, sufficient to provide for the needs of the maximum number of occupants, employees, and visitors who can use the facility at one (1) time.

Traffic Impacts: Applicant's Traffic Study identifies intersections where operations are unacceptable. The Study also indicates that traffic queuing will occur and provides mitigation recommendations, which will directly impact the quiet enjoyment of residences in the area of the property, which is the subject of the application.

Parking Impacts: The Application does not adequately address the zoning regulation requirement as to required parking during the interim co-location period and future operations as required in zoning regulations cited in response to Question #1.

Noise Impacts: The Application fails to address noise from traffic, the air conditioning system, trash and other bus/truck traffic, such as food services or buses dropping-off or picking-up current Kingsbury students now and continuing through any transition period. While the Application addresses noise from outside recreation activities, during the interim future stage of the proposed use, the Applicant provides no supporting data for its conclusion that the impact will be "negligible." In addition, the Applicant proposes that traffic from the proposed use will exit using Piney Branch Road, which lacks sidewalks in places and has no buffer zone, thereby significantly increasing traffic noise within less than six feet of adjacent homes and their bedrooms. This is a significant change as to current operations at that site. The community's support for the current use at the Subject Property was premised on the current occupant – Kingsbury – proposal that traffic would circulate inside the site.

Kingsbury also often leases its space to host outside events, ranging from weddings, to parties, to faith gatherings. These events occur on evenings and weekends, usually without community notification, and extend the detrimental impacts described above beyond the approved hours of operation delineated in BZA Order of April 26, 2000. Further interest by LAMB/Kingsbury in continuing this type of event hosting should be subject to the proposed community review process noted above.

Environmental Impacts: Neighbors and businesses downhill from the proposed site have experienced sewer overflows (backups) without a 6-fold increase in students, faculty and staff and are concerned that this will be exacerbated by an increase in usage, especially toilet facilities currently located on the property. While this concern has been presented to Applicant, it has not been addressed.

Since Kingsbury Center’s occupancy in 2000, immediate neighbors have repeatedly voiced their concerns about the loss of mature, deciduous trees on the subject property. More than 30 large trees were cut down on the property to create space for parking and recreation areas. Though required by the order, Kingsbury has not demonstrated compliance with the BZA Order #16569 – April 26, 2000, item #13 (see below). This loss of large trees – and their natural noise buffering and pollution filtering -- amplifies those detrimental impacts for the surrounding community.

5. Describe any other relevant matters that demonstrate how the person will likely be affected or aggrieved if the action requested of the Commission/Board is approved or denied.

BZA Case #16569 – April 26, 2000 (Highlights added for emphasis)

CDNI-LA members, as well as the community at large, will likely be affected or aggrieved if the action requested of the Commission/Board is approved because the current occupant, (and by extension the Applicant), has failed to adhere to and comply with the Board of Zoning Adjustment’s previous decision in the matter of World Plan Executive Council/The Kingsbury Center – BZA Case #16569 – dated April 26, 2000, effective May 23, 2000. The current relationship between the parties – LAMB and Kingsbury – is a tenuous one because of the many unanswered questions it leaves and the acceptance or denials of responsibilities either party will be willing to assume.

While there seems to be clear attempts by Applicant’s Attorneys of record, Holland & Knight, to downplay the relationship between the two parties – LAMB and Kingsbury – their letter to the BZA, dated August 04, 2017 on behalf of their client: Request for Modification of Consequence to Conditions of BZA Order No. 16569 5000 14th Street. NW Square 2711, Lot 802² would suggest otherwise. In that 5-page document, not including the Certificate of Service, LAMB is mentioned no fewer than four (4) times.

“In BZA Application No. 19851, the Latin American Montessori Bilingual Charter School (“LAMB”) is requesting a special exception under 11U DCMR § 205.1(a) to establish and co locate a public charter school at the Site, which has been The Kingsbury Center’s home for 17 years. The conditions that are requested to be modified by The Kingsbury Center in this application are unrelated to LAMB’s BZA application.”

“The Site is presently improved with a three-story plus basement building that was originally constructed circa 1907 as a retirement home, but has been occupied since 2000 by The Kingsbury Center, which provides a transformative educational and social experience for children and adults with learning differences. Pursuant to BZA Application No. 19851, LAMB is requesting approval to establish and co-locate its charter school at the Site. The Kingsbury Center will continue to operate at the Site unless and until it moves to a different location. Although both schools will occupy the building on the Site, they will operate independently, other than where shared facilities and

² Opponent’s Exhibit 1

operations are necessary, as discussed in LAMB's BZA application. As described below, this application is to modify two conditions to the prior BZA approval for The Kingsbury Center, and these conditions are unrelated to the special exception requested by LAMB."

"The Applicant has not yet presented the proposed modifications to the conditions of BZA Order No. 16569 to the community or the affected Advisory Neighborhood Commission ("ANC") 4C. The Applicant will coordinate with LAMB in presenting the proposed Kingsbury modifications to the community and requesting a formal vote from ANC 4C on this application prior to LAMB's BZA public hearing. As indicated in the Certificate of Service attached hereto, this application is being served on ANC 4C." (Footnote deleted)

"2. Per 11Y DCMR § 703.13(c), establish a timeframe for the parties to the original application to file a response to this request, and for the Applicant to respond thereto, so that this request can be scheduled for deliberation on or before October 4, 2017, which is the date that LAMB's BZA Application No. 19851 is scheduled for review."

CDNI-LA concludes, without proper BZA conditions attached to the current Applicant's Special Exception submission and CDNI-LA / community monitoring and oversight, both Applicants, LAMB and Kingsbury, are subject to repeat or expand on violating the conditions already set by the BZA decision in that matter 17-years ago.

More specifically, the (then) Applicant, World Plan Executive Council/The Kingsbury Center, (Kingsbury), pursuant to 11 DCMR 3 104.1, applied for a special exception under Section 205 to establish a private school for up to 400 students, ages 5 through 18 years of age and 200 staff persons, and to construct a small gym on the site in an R-1-B District at premises 5000 14th Street, N.W. (Square 271 1, Lot 802).³

In its Summary Order, the BZA wrote: *" . . . a decision by the Board to grant this application would not be adverse to any party. Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3 104.1 that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map . . . therefore . . . the application be GRANTED, SUBJECT to the following CONDITIONS:"* (Boldness, Highlighting and Underlining added for emphasis)

1. **The number of students shall not exceed 300**, which will consist of a maximum of 200 elementary and junior high school students and a maximum of 100 high school students.
2. **The number of staff shall not exceed 138**.
3. The hours of operation shall be Monday through Friday, 8:30 a.m. to 6:15 p.m., and Saturday, 8:30 a.m. to 1:30 p.m.
4. The ages of the children shall be 5 -18 years.
5. The number of parking spaces shall be 107.
6. **A community liaison committee, which will meet quarterly, shall be established.**

³ Opponent's Exhibit 2

7. **The school, in conjunction with the community liaison committee, shall consider and have in force a policy about students not driving when they reach the appropriate age.**
8. **The school, in conjunction with the liaison committee, shall develop a policy for leasing of the school's facilities.**
9. There should be coordination of the school's transportation plan with the West Elementary School, including a request for school crossing guards during the morning and afternoon rush periods.
10. The alley on the southeastern corner of the site must be kept open for two-way traffic and emergency vehicles at all times.
11. The gate on the southeastern corner of the site shall be on the property line and shall swing inward.
12. Effective buffers between the school property and adjacent residential properties shall be maintained.
13. **Tree replacement for those living trees to be removed would be at a rate of one caliper inch added for each caliper inch removed.**

CDNI-LA can substantiate at least 4 of the above 13 conditions – 6-7-8 and 13 – were not met and continue to be glowingly absent for the past 17-years, despite community efforts to force compliance.

2009 SSH-2 ZONING OVERLAY

In 2009, the Zoning Commission established a second Zoning Overlay – SSH-2 – that encompasses the Subject Property.⁴ In that order, *“the Commission identified the three “key findings” for applying the overlay to the properties mapped:*

(a) Over a period of years, approximately one in every ten (10) houses in the neighborhood has been converted to a nonresidential use, a much higher ratio than has been identified for any other R-1-zoned neighborhood in the District of Columbia; the neighborhood accommodates a significant number and range of human service facilities and private institutions to an extent that new and significantly expanded nonresidential use facilities should be governed by improved public review to ameliorate adverse impacts on immediate and nearby neighbors and preserve a predominantly single-family residential character;

(b) The neighborhood boundaries are well established and encompass a significant geographic area; and

(c) The District of Columbia executive branch and councilmembers have identified the number of nonresidential uses and the conversion of houses to these uses in this neighborhood as a serious planning and enforcement problem for more than ten (10) years, as reflected in the legislative history of adopted provisions in the Comprehensive Plan.

The amendments designate the area encompassing those properties presently mapped in the overlay as the SSH-1 District and establishes an SSH-2 District that comprises R-1-B properties bounded by 16th Street on the west, Colorado Avenue on the north, 14th Street on the east,

⁴ Opponent's Exhibit 3

and Decatur Street to the south (“New Area”). Although the properties to be included in the SSH-2 District require the same protections as are afforded the SSH-1 properties, the factors that justify the imposition of these protections to the New Area are somewhat different, but equally compelling. Therefore, a separate set of the “key findings” is added for the SSH 2 District.

At a public meeting held on February 23, 2009, the Commission was made aware that OP had completed its analysis and granted OP’s request to reopen the record to share its findings. OP advised the Commission that the percentage of land occupied by nonresidential uses in all R-1-B zoned land in the District is 8%; the percentage of land occupied by nonresidential uses in the existing SSH Overlay is 6.9%; and the percentage of land occupied by nonresidential uses in the **New Area is 19.1%.**

The Commission requested that OP reduce its findings to writing, and instructed the Office of Zoning to circulate those written findings to the petitioner and to anyone who commented. The Commission also set a deadline for those persons or entities to comment on the OP analysis.

OP submitted a supplemental report on March 2, 2009, which essentially repeated the occupancy findings it orally shared with the Commission, **except that the report noted that the 19.1% occupancy percentage excluded the Kingsbury Center, and that if the land areas of its square was included in the lot land area calculations, the percentage of land occupied by nonresidential uses in the New Area rises to 35.5%.**

The report also computed nonresidential occupancy based upon the number of buildings. The report found that there were 139 improved lots in the New Area, of which 11 or 12 contained nonresidential uses **(depending upon whether the Kingsbury Center was included).** This resulted in a nonresidential occupancy rate by building of 8.6 or 7.9 percent respectively.

Nevertheless, in this instance, the three findings, when applied to the New Area, demonstrate that this neighborhood requires the protections of the SSH Overlay.

As noted earlier, the Commission in 1994 apparently made no comparison as to the land occupancy rate as it had done with the conversion rating; finding that the conversion of one out of ten homes “a much higher ratio than has been identified for any other R-1-zoned neighborhood”. As a result of the OP analysis such a comparison is available for this proceeding. The analysis shows that the amount of land area occupied by nonresidential uses in the New Area is almost three times that of what is found in other R-1-B zones including those mapped in the original overlay, and that is without including the land area occupied by the Kingsbury Center. These figures make a compelling case for the Commission’s immediate intervention.

As to the other key findings, the Commission concludes that the “neighborhood boundaries are well established and encompass a significant geographic area”. (11 DCMR § 1551.4(b).) As to

§ 1551.4(c), while the discussion of this area in the current comprehensive plan may not mirror those expressed with respect to the originally mapped area, it is clear that concern for the stability of the New Area was raised. Moreover, it would not serve the public interest for the Commission to insist that this or any finding be made, when the empirical data clearly show that the stability of an R-1-B neighborhood is at risk.

Because a somewhat different set of findings justify the Commission's establishment of the SSH 2 district than justified the original 1994 mapping; those SSH 2 findings are set forth in a new §1554.7. In addition, provisions have been added to separately describe the applicability of the SSH-1 and SSH-2 districts. These changes from the proposed text are in response to the comments and reports received and, therefore, do not require the publication of a second notice of proposed rulemaking.

Final Action

At its properly noticed April 13, 2009 public meeting, the Commission took final action to approve the proposed text amendments and adopt this Order based upon the reasons stated herein. Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and the Zoning Act.

In consideration of the reasons set forth herein, **the Zoning Commission hereby APPROVES the following amendments to the Zoning Map and § 1551 and [of the Zoning Regulations, Title 11 DCMR.**

A. The Zoning Map is amended as shown in the following table:

Squares	Zone District
2708 through 2716	R-1-B to SSH/R-1-B

B. Chapter 15, MISCELLANEOUS OVERLAY DISTRICTS, Section 1551, Sixteenth Street Heights Overlay District (SSH), is amended as follows (new text is existing provisions is shown in bold and underlined text, deleted text is shown in strikethrough text):

1. By deleting § 1551.2.

2. By amending § 1551.3 to read as follows:

1551.3 1551.2 The purposes of the SSH Overlay District are to:

(a) Promote the conservation, enhancement, and stability of this low density, single-family neighborhood for housing and neighborhood-related uses;

(b) Control the expansion of nonresidential uses, and/or further conversion of residential housing to nonresidential uses in order to maintain the housing supply and minimize the external negative impacts of new nonresidential uses that are permitted in the SSH/R-1-B District in order to preserve neighborhood quality; and

(c) Allow the neighborhoods to continue to provide a range of health and social service facilities as well as private institutions that provide cultural and religious enrichment and economic vitality, but within the framework of improved public review and control over the external effects of nonresidential uses. The objective is to make more compatible the Comprehensive Plan's goals

and policies for maintaining the quality and stability of residential neighborhoods with other policies related to the reasonable provision of human services throughout the District of Columbia.

3. By inserting the following new sub-section:

1551.3 The Sixteenth Street Heights (SSH) Overlay District is comprised of the SSH-1 and SSH-2 Districts.

4. By inserting the following new sub-section:

1551.6 The SSH-2 Overlay District encompasses the geographic area in northwest Washington generally bounded by 16th Street on the west, Colorado Avenue on the north, 14th Street on the east, and Decatur Street to the south. This overlay zone is applied to properties zoned R-1-B in the following squares and portions of squares: 2708, 2709, 2710, 2711, 2712, 2713, 2714, 2715, and 2716.

1551.7 The provisions of the SSH-2 Overlay District shall be applied to the properties described in 1551.6 based on the following key findings:

(a) More than 20% of the residentially zoned land is used for nonresidential purposes;

(b) The neighborhood boundaries are well established and encompass a significant geographic area; and

(c) The District of Columbia Comprehensive Plan has identified the number of nonresidential uses in the neighborhood as a problem.

On October 20, 2009 . . . the Zoning Commission **APPROVED** the petition . . . by a vote of 3-1-1 . . . On April 27, 2009 . . . the Zoning Commission **ADOPTED** the Order . . . by a vote of 3-1-1 . . . In accordance with the provisions of 11 DCMR §3028.9, **this Order shall become effective upon . . . publication in the DC Register . . . May 15, 2009.**

6. Explain how the person's interest will be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than that of other persons in the general public.

Members of the Committee are geographically located adjacent to the property or are directly impacted by the proposed uses and recommendations in the Application. Because of this, they are distinctively, significantly, and uniquely affected as to the impacts identified in response to Question #4. These impacts are specific to those members of the Committee and do not impact persons in the general public.