

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**NOTICE OF FINAL RULEMAKING**

**AND**

**Z.C. ORDER NO. 08-09**

**Z.C. Case No. 08-09**

**(Text and Map Amendments - 11 DCMR)**

**(Sixteenth Street Heights Overlay – Addition of SSH 2 District)**

**April 27, 2009**

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01); having held a public hearing and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District of Columbia Charter; hereby gives notice of the adoption of amendments to the Zoning Map of the District of Columbia and to the text of § 1551 of the Zoning Regulations (Title 11 DCMR).

The amendments designate the area that currently comprises the Sixteenth Street Heights Overlay District as the SSH-1 District, adds properties located the south of the SSH 1 District to the overlay, and designates the area encompassing those added properties as the SSH-2 District.

A Notice of Proposed Rulemaking was published in the *D.C. Register* (“DCR”) on November 7, 2008, at 55 DCR 11546. A discussion of the comments received may be found under the heading “Comments and additional government reports received”.

The Commission took final action to adopt the amendments at a public meeting on April 27, 2009. The changes made to the proposed text are discussed *infra*. This final rulemaking is effective upon publication in the *D.C. Register*.

**Existing Regulations**

By Order Number 757, the Commission established and mapped the SSH Overlay District. The text and map amendments became effective upon their publication in the *D.C. Register* on July 29, 1994.

The existing SSH Overlay District was applied to all R-1-B properties in the area between 16<sup>th</sup> Street and Rock Creek Park on the west, Military Road and Missouri Avenue on the north, 14<sup>th</sup> Street on the east, and Colorado Avenue on the southeast. (11 DCMR § 1551.2.) The overlay was established to conserve and enhance the stability of the low density, single-family neighborhood for housing and neighborhood-related uses, to control the 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 in order to preserve neighborhood quality within a framework of improved public review and control over the external effects of nonresidential uses.

To accomplish these purposes, the SSH Overlay subjects “proposed new nonresidential use or an expansion of an existing nonresidential use in excess of ten percent (10%) of gross floor area” to special exception review. (11 DCMR § 1553.2.) Although not required to do so by law, 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.

(11 DCMR § 1551.4.)

### **Description of Text Amendment**

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 16<sup>th</sup> Street on the west, Colorado Avenue on the north, 14<sup>th</sup> Street on the east, 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.

**Relationship to the Comprehensive Plan**

The SSH-1 and -2 Districts are located in the Rock Creek East Planning Area. The area is described by the Comprehensive Plan as having a higher than average percentage of single-family homes and home ownership:

More than 60 percent of the housing units in Rock Creek East are single family homes, compared to 39 percent citywide. The 2000 Census reported that 24 percent of the area's homes were single family detached units and 39 percent were single family attached units (row houses and townhouses). Only 18 percent of the area's housing stock consists of multi-family buildings of 20 units or more, compared to 31 percent for the city as a whole.

The home ownership rate in Rock Creek East is higher than in the city as a whole. The 2000 Census reported that 59 percent of the households in the Planning Area were homeowners (compared to 41 percent in the District) and 41 percent were renters (compared to 59 percent in the District). About 61 percent of the area's residents lived in the same house in 2000 as they did in 1995. This compares to a citywide average of 46.9 percent, and is indicative of the stability of the Rock Creek East community.

(10 DCMR §§ 2204.1, 2204.2.)

One of the planning and development priorities reflected in the Comprehensive Plan's Rock Creek East Area Element is the community's concern for preserving the stability of the area's residential character:

Residents of Rock Creek East have expressed concerns about the growth of particular land uses, including group homes, churches, and related facilities such as day care centers and social service centers. The Planning Area's inventory of large homes, many located on major transit lines, has made it an attractive choice for social service providers and community based residential facilities. Issues relating to safety, parking, and neighborhood character have been raised, particularly in areas where group homes are clustered. Residents seek a stronger role in decisions on the siting and management of such facilities, and desire increased coordination with group home operators. There are also issues connected to code enforcement, related not only to special needs housing but to broader issues such as unpermitted construction and blighted properties. 2207.

(10 DCMR § 2207 (e).)

The Comprehensive Plan identifies several policies to guide growth and neighborhood conservation decisions in the Rock Creek East Planning Area that are relevant to this case:

***Policy RCE-1.1.1: Conservation of Low Density Neighborhoods***

Maintain and conserve the attractive, stable neighborhoods of the Rock Creek East Planning Area. Any new development in the Planning Area should be attractively designed and should contribute to the community's positive physical identity.

***Policy RCE-1.1.2: Design Compatibility***

Ensure that renovation, additions, and new construction in the area's low density neighborhoods respects the scale and densities of adjacent properties, avoids sharp contrasts in height and mass, and preserves parklike qualities such as dense tree cover and open space.

(10 DCMR §§ 2208.2, 2208.3.)

Accordingly, the map and related text amendments are not inconsistent with the Comprehensive Plan.

**Set Down Proceeding**

ANC 4C initiated this rulemaking by filing a petition to amend the Zoning Map on April 15, 2008, and a petition to amend the Zoning Regulations on April 24, 2008. The April 15, 2008 petition requested that the Commission apply the SSH Overlay District to the New Area. Attached to the document was a resolution indicating that ANC 4C adopted a resolution in support of the petition of at a properly noticed meeting, attended by a proper quorum, and that the ANC had voted in favor of the resolution. The April 24, 2008 petition requested conforming amendments to the text of Zoning Regulations.

The Commission set down the case for a public hearing as a rulemaking case at its June 9, 2008 public meeting.

**Public Hearing**

The Commission held a public hearing on September 22, 2008. In his opening remarks, the Commission Chairman noted that the Commission received a motion to dismiss the rulemaking proceeding filed by the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints ("Church"). Because there is no motions practice in a rulemaking proceeding, the Commission considered the motion and associated materials as part of the Church's testimony.

At the hearing, Ronald Bland testified in support of the amendments as the authorized spokesman of the petitioner ANC 4C. Mr. Bland testified that the ANC believed the amendments were consistent with the provisions of the Comprehensive Plan that call for stabilizing low and moderate density residential neighborhoods. Mr. Bland further testified of threats to the stability of the community, namely that two residential structures were recently

razed and were being used for parking, and that a 33,000 square foot nonresidential facility is being proposed that is not compatible with the neighborhood.

Doreen Thompson, Lawrence Jones, and Patricia Cooper testified in support of the amendments on behalf of the 16<sup>th</sup> Street Heights Collaborative, an unincorporated association formed to support the amendments. They testified that (1) the neighborhood's residential character was challenged by the presence of two major institutional uses located just outside its borders, the Carter Barron Amphitheater complex, the Metro northern bus launch, and by over 50 institutional uses located in the neighborhood; (2) that these institutional uses had negative impacts on the residential quality of the neighborhood in the form of increased traffic, trash, noise, and in other ways; (3) that there were a number of factors, including access to major arterial roads, the presence of large residential structures, and the existing regulatory environment, that made the 16<sup>th</sup> Street Heights neighborhood, including the expanded overlay area particularly attractive to institutional uses; (4) that the Comprehensive Plan recognizes that large homes in the neighborhood are attractive to institutional uses; and (5) that they believed the expanded overlay area met the criteria established in § 1551.4 of the Zoning Regulations and therefore mapping the Overlay District in the area was warranted.

The Office of Planning ("OP") testified in support of the amendments because they were consistent with the Comprehensive Plan and because the expansion area met the three criteria established in § 1551.4. OP did not provide figures to support its contention that the conversion rate of existing homes in the New Area was comparable to the 10% conversion rate indicated in that subsection. As to the extent to which the New Area accommodated nonresidential uses, OP concluded nonresidential uses occupied 38.96% of the land area.

Carolyn Brown, Esquire testified in opposition to the amendments on behalf of the Church. Ms. Brown contended that the amendments were unjustified because there was insufficient conversion of residential uses to nonresidential uses in the New Area, and because they were inconsistent with the Comprehensive Plan, particularly the land use policy that encourages the presence of churches in the District. (10 DCMR § 311.8.) She further testified that the amendments violated the free exercise clause of the Constitution, the Religious Freedom Restoration Act ("RFRA"), and the Religious Land Use and Institutionalized Persons Act ("RLUIPA") by allegedly singling out the Church for differential treatment.

As to the conversion issue, the Church provided statistics for the rate of conversion from residential to nonresidential uses within the New Area since 1994, the year the overlay was established. According to these statistics, a total of 143 properties existing in 1994; of which 13 were nonresidential, 128 were residential, and two were vacant. The Church further asserted that two of the 128 homes existing in 1994 have since been converted to a nonresidential use, resulting in a conversion rate of 1.56%.

Concerning the extent to which the New Area accommodates nonresidential uses, the Church did not analyze the percentage of land area occupied by nonresidential uses in the New Area, but

rather indicated that the 15 existing nonresidential uses represent 10.6% of the 141 improved properties and 10.4% of all 143 properties.

Ms. Brown's presentation reiterated the substantive grounds for dismissal stated in the Church's "motion". In addition the Church also sought dismissal because the ANC resolutions calling for the filing of the petitions did not specifically authorize its Chair, Joseph Martin, to do so.

### **Proposed Action**

The Commission took proposed action at a properly noticed public meeting held on October 20, 2008 to authorize the publication of a Notice of Proposed Rulemaking pursuant to the District of Columbia Administrative Procedure Act, and the referral of the proposed text and map amendments to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District of Columbia Charter. The Notice of Proposed Rulemaking was published in the *D.C. Register* on November 7, 2008, at 55 *DCR* 11546.

### **NCPC Referral and Response**

NCPC, through a delegated action dated December 4, 2008, found that the proposed map and text amendments would neither adversely affect the identified federal interests nor be inconsistent with the Comprehensive Plan for the National Capital. The Executive Director's report included the following discussion:

The Free Exercise Clause of the First Amendment of the U.S. Constitution, and two statutes implementing that Clause, bear on the District of Columbia's action here. The statutes are the Religious Freedom Restoration Act (RFRA) and the Religious Land Use and Institutionalized Persons Act (RLUIPA). ...

We note as a matter of federal interest that the District, before moving forward, must make the factual determination that the action of extending the overlay is non-discriminatory within the meaning of these laws.

### **Comments and Additional Government Reports Received**

The Commission received two written comments on the proposed rule. The first was submitted on behalf of the Downtown Cluster of Congregations and requested that the "Zoning Commission undertake a full, updated review of the likely impacts of the Religious Land Use and Institutionalized Persons Act of 2000, and the Religious Freedom Restoration Act upon this matter." The letter was premised on the author's belief "that the National Capital Planning Commission members believe that these statutes could well impact this matter, but believed that any such considerations were the duty of the DC Zoning Commission prior to referral to it."

The second comment was submitted on behalf of the Church. The Church questioned what it characterized as the Commission's conclusion that a 10% conversion rate existed within the New Area. In response to the Commission's concerns about the length of the period used to determine the conversion rate, the Church reanalyzed its findings based upon historical records dating back to the establishment of the Commission in 1920. According to the Church there were 143 properties existing at that time, of which two were vacant and five were devoted to nonresidential uses. The Church treated the two vacant lots as residential properties and then subtracted the original five nonresidential properties from that figure, to arrive at a total of 138 original residential properties. The Church then indicated that eight of these have been converted to nonresidential uses. Rather than divide eight by 138, the Church used 143 as the denominator (thus adding back in the nonresidential property it had subtracted), which resulted in a conversion rate of 5.6 percent. Had the Church divided the eight converted properties by the 136 properties originally built as residential uses (thereby excluding the two historically vacant lots and the five original nonresidential uses), the conversion rate would be 5.9%.

The Church also contended that OP's claim that 38.96% of the land in the New Area was occupied by nonresidential uses was erroneous, particularly because it included the Kingsbury Center. That facility occupies all 173,026 square feet of the land area in Square 2711, making it the largest single occupier of land in the New Area. Along with its R-1-B designation, Square 2711 is currently zoned in the Diplomatic Mixed Use Overlay pursuant to Zoning Commission Order No. 520, February 1987. The Church claimed that no R-1-B property already mapped in an overlay may also be mapped SSH.

Following proposed action, OP sought to determine whether the percentage of land occupied by nonresidential uses within the New Area was comparable to what existed in other R-1-B zone districts. Neither the first key factor (§ 1551.4) (a)) nor the order establishing the overlay indicate the actual number of nonresidential uses accommodated by the originally mapped neighborhood, or why the Commission considered that amount to be "significant". Although the first clause of that paragraph indicates that the Commission compared the 10% conversion rate to other R-1 properties, no similar analysis is indicated for the percentage of existing nonresidential uses.

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.

Lastly, the report included a section that discussed the construction history of the New Area. Like the Church, OP concluded that there were 143 properties constructed between 1906 and 1936. OP further indicated that there were 4 original nonresidential properties and 12 existing ones. These are essentially the same figures used by the Church and result in a conversion rate of either 5.6 or 5.8 percent depending upon whether the eight converted properties are divided by all 143 overlay lots or just the 137 originally occupied by residential uses using OP's investigation. If the Kingman Center is counted, the rate increases to 6.2 or 6.5 percent.

By letter dated March 3, 2009, the Office of Zoning circulated OP's supplemental report to the petitioner ANC 4C, and the other entities that commented on the notice of proposed rulemaking, including the Church and the Downtown Cluster of Congregations.

The Church submitted a response dated March 17, 2009. The response did not quarrel with the land use occupancy rates found by OP, but instead declared the issue relevant.

The criteria established by the Commission under section 1551.4 (a) is based solely on the number of residential properties converted to nonresidential uses. Use of any different standard would require the filing of a new text amendment application and consideration by the Zoning Commission on whether to set it down for a hearing.

As proof of its contention, the Church included a document entitled "Non-Residential Use Properties, 1992" submitted by the Sixteenth Street Heights Civic Association in support of the establishment of the original overlay. After listing the properties and uses within the proposed overlay area, the document contained the following summary.

Total homes surveyed: 326  
Homes converted to other than single-family residences: 44  
(13 percent of residential homes in neighborhood used for non-residential purpose).

The Church further refined its conversion rate analysis to arrive at a figure of 4.2%.



### **Disposition of Factual and Legal Issues**

Although this petition is a rulemaking, which normally only involves the resolution of policy considerations, this case also required the Commission to consider objective criteria as well. In addition, it has been suggested that there are federal statutory and constitutional issues involved. Although the Commission is aware that the impetus of this petition concerned a proposed place of worship within the New Area, it cannot and has not considered the advisability or potential impact of that particular project. To do so would turn this rulemaking into a special exception. The point of this rulemaking is to consider whether new and significantly expanded nonresidential use facilities should be subject to special exception review in order for there to be an “improved public review to ameliorate adverse impacts on immediate and nearby neighbors and preserve a predominantly single-family residential character.” (11 DCMR § 1551.4 (a).)

#### *Authority to file petition.*

As to the procedural objection of the Church, the Commission does not believe that the ANC resolution needed to specifically authorize its Chair to file these petitions on its behalf. However, even if Mr. Martin was not authorized by the ANC to file the petition, he was permitted by the District of Columbia Administrative Procedure Act to do so. Section 6 (c) of that Act provides that “[a]ny interested person may petition the Mayor or an independent agency requesting the promulgation, amendment, or repeal of any rule.” (D.C. Official Code § 2-505(b).)

#### *Appropriateness of requested text and map amendments.*

Turning to the substantive issues presented, the Commission notes that the SSH Overlay text includes factual findings that appear intended to provide guidance concerning any future application of these zoning controls to other areas. *Compare* Chapter 13. Neighborhood Commercial Overlay District, where the only precondition for the imposition of development incentives and controls is that the properties are within a neighborhood shopping area.

And although the SSH overlay was named for the neighborhood that comprised its original boundary, the Commission disagrees with the Church that only areas that share the same name may be afforded similar controls. The Zoning Regulations are not about nomenclature, but exist to establish such land use controls as are necessary to the public welfare throughout the District. The critical consideration for applying the zoning controls of this overlay to the New Area is whether the introduction of new nonresidential uses, or the expansion of existing ones, threatens to destabilize it. The three key factors set forth on § 1551.4, particularly the first one, represent indicia of destabilization, but not necessarily the exclusive ones.

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

First, the Commission disagrees with the Church that the first finding only concerns the conversion of residential uses to nonresidential purposes. Facially, the provision addresses both the rate of conversion and the extent to which the neighborhood accommodated nonresidential uses; separating each concern with a semi-colon. Indeed, it is that latter factor that appears to have been given the greater weight. The finding reads in part:

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 ... .

(11 DCMR § 1551.4 (a) (emphasis added).)

The text preceding the semicolon is introductory in nature and could be entirely eliminated without diluting the essence of the finding. It is the “extent” to which the neighborhood accommodated nonresidential uses that compelled greater public review, not the conversion rate. The Church’s position is also contradicted by its own proffer of proof. The computation of nonresidential uses before the Commission in 1994 arrived at the following analysis.

Total homes surveyed: 326  
Homes *converted* to other than single-family residences: 44  
(*13 percent* of residential homes in neighborhood *used* for non-residential purpose).

(Emphasis added).

The Commission clearly considered both the conversion percentage and the occupancy percentage when establishing the overlay, although both rates turned out to be the same. In this case, both the Church and OP agree that that the conversion and occupancy rates differ within the New Area, principally because the 1994 analysis did not include any originally existing nonresidential uses, but only calculated how many of the existing 326 houses were for nonresidential purposes.

Depending upon how one manipulates the figures, the conversion rate ranges from 4.2 to 6.5 percent. For the purposes of this Order, the Commission accepts this higher figure, only because it finds that even this highest rate of conversion alone would not suffice to impose the overlay’s controls on the New Area.

Nevertheless, Commission concludes such controls are warranted because the extent of land area occupied by nonresidential uses in the New Area is far greater than that found in other R-1-B zones, including those currently mapped in the overlay. This neighborhood has clearly reached

the point where “new and significantly expanded nonresidential use facilities should be governed by improved public review”. *Id.*

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”. *Id.* 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.

#### *Constitutional and statutory consideration*

The religious expression issues raised by the Church, NCPC, and the Downtown Cluster of Congregations are not new. The question of whether the SSH Overlay places a substantial burden on the free exercise of religion was addressed in 1994 with the adoption of the original text. The Office of Corporation Counsel (now the Office of Attorney General) concluded that the overlay’s requirement of a special exception for new nonresidential uses did not place a “substantial burden” on the free exercise of religion and therefore did not violate RFRA. The Commission agreed when it approved the SSH Overlay.

This Commission does not believe it must revisit settled legal issues unless subsequent case law or adopted legislation calls its conclusion into question. In fact, several courts subsequently found RFRA invalid. In order to cure the constitutional defect identified, Congress adopted RLUIPA. The new statute continued to prohibit land use actions that would substantially burden the free exercise of religion. Specifically, § 3 provides that no local government may:

impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution ... is in furtherance of a compelling governmental interest ... and is the least restrictive means of furthering that compelling governmental interest.

(42 U.S.C. § 2000cc (a).)

Since this standard is essentially the same as stated in RFRA, and the interpretation given it by case law has not changed, the Commission will not revisit the legality of the overlay on that basis.

However, § 3 of RLUIPA also added a provision (42 U.S.C. § 2000cc (b)) prohibiting three specific forms of discrimination and exclusion. Although there is case law suggesting that RLUIPA does not apply to any special exception review, *see Cambodian Buddhist Soc'y of Conn., Inc. v. Planning & Zoning Comm'n*, 941 A.2d 868 (Conn. 2008), the Commission will nevertheless address each prohibition.

1. No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

The overlay does not violate this provision because it applies to all nonresidential uses.

2. No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

The overlay singles out no particular assembly or institution. All places of worship are treated the same, and all such uses are treated the same as other nonresidential uses.

3. No government shall impose or implement a land use regulation that—
  - (A) totally excludes religious assemblies from a jurisdiction; or
  - (B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

The overlay does not bar religious assemblies from the District of Columbia or from the overlay area, nor does it place unreasonable limits on the category of uses and buildings stated in paragraph 3(B). Instead it only requires that all new or expanded nonresidential uses be subject to special exception review to determine whether their impact will be compatible with the neighborhood.

**Legal Sufficiency Review**

The Office of the Attorney General has determined that this rulemaking meets its standards of legal sufficiency.

**Great Weight Given to ANC Issues and Concerns**

The Commission is required under D.C. Official Code § 1-309.10(d) to give great weight to issues and concerns raised in the affected ANC's written recommendation. The Commission has carefully considered the ANC's recommendation for adoption of the text and map amendments and concurs in its recommendation.

**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 ~~striketrough~~ 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:

**1551.4 The SSH-1 Overlay District encompasses the geographic area in northwest Washington generally bounded by 16th Street and Rock Creek Park on the west, Military Road and Missouri Avenue on the north, and 14th Street on the east, and Colorado Avenue on the southeast. This overlay zone is applied to properties zoned R-1-B in the following squares and portions of squares: 2718, 2719, 2720, 2720W, 2721, 2721W, 2722, 2722W, 2723, 2723W, 2724, 2724W, 2725, 2741, 2742, 2796, and 2799.**

5. By amending § 1551.4 to read as follows:

~~1551.4~~ **1551.5** The provisions of the ~~SSH~~ **SSH-1** Overlay District shall be applied ~~to the 16th Street Heights neighborhood~~ **properties identified in § 1551.4** based on the following key findings:

- (a) Over a period of years, approximately one in every ten (10) houses in the **SSH-1 District** 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 **SSH-1** 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 **in effect on July 29, 1994**.

6. By inserting the following new sub-sections:

**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.**

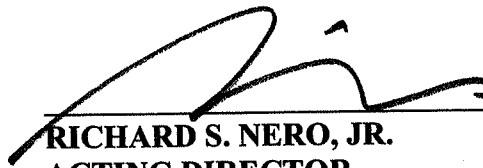
On October 20, 2008, upon motion of Commissioner May, as seconded by Vice Chairman Jeffries, the Zoning Commission **APPROVED** the petition at its public meeting by a vote of **3-1-1** (Anthony J. Hood, Gregory N. Jeffries, Peter G. May to approve; Michael G. Turnbull opposed; Curtis L. Etherly, Jr., not present, not voting).

On April 27, 2009, upon motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **3-1-1** (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to approve; Gregory N. Jeffries, not present, not voting; third Mayoral appointee position vacant at the time of the hearing, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in *the D.C. Register*; that is, on May 15, 2009.



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ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION



\_\_\_\_\_  
RICHARD S. NERO, JR.  
ACTING DIRECTOR  
OFFICE OF ZONING



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF FINAL RULEMAKING  
AND  
Z.C. ORDER NO. 08-09  
Z.C. Case No. 08-09  
(Text and Map Amendments - 11 DCMR)  
(Sixteenth Street Heights Overlay Expansion)  
April 27, 2009**

The full text of this Zoning Commission Order is published in the "Final Rulemaking" section of this edition of the *D.C. Register*.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Zoning



**Z.C. CASE NO.: 08-09**

As Secretary to the Commission, I hereby certify that on MAY 21 2009 copies of this Z.C. Notice of Public Hearing were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- |   |   |
|---|---|
| 1. <i>D.C. Register</i>   | 6. Councilmember Muriel Bowser  |
| 2. Audrey Nwanze<br>4710 14 <sup>th</sup> Street, N.W. #200<br>Washington, D.C. 20011         | 7. Office of Planning (Harriet Tregoning)   |
| 3. Joseph Martin, Chair<br>ANC 4C<br>P.O. Box 60847<br>Washington, DC 20039-0847              | 8. DDOT (Karina Ricks)  |
| 4. Commissioner Janet M. Myers<br>ANC/SMD 4C02<br>5005 13th Street NW<br>Washington, DC 20011 | 9. Zoning Administrator (Matthew LeGrant)   |
| 5. Gottlieb Simon<br>ANC<br>1350 Pennsylvania Avenue, N.W.<br>Washington, D.C. 20004          | 10. General Counsel<br>941 North Capitol Street, N.E.<br>Suite 9400<br>Washington, D.C. 20002 |
|   | 11. Office of the Attorney General<br>(Alan Bergstein)  |

ATTESTED BY: \_\_\_\_\_

*Sharon S. Schellin*  
**Sharon S. Schellin**  
Secretary to the Zoning Commission  
Office of Zoning

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