

**THE  
CARTER BARRON EAST  
NEIGHBORHOOD ASSOCIATION/  
SIXTEENTH STREET HEIGHTS (CBENA)  
SUBMISSION**

**ZRR CASE NO 08-06A**

**PROPOSALS FOR CHANGES TO  
SIXTEENTH STREET HEIGHTS (SSH)  
OVERLAY REGULATIONS  
&  
BOARD OF ZONING ADJUSTMENT  
PROCESS REGULATIONS**

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## **PROPOSALS FOR CHANGES TO SIXTEENTH STREET HEIGHTS (SSH) OVERLAY REGULATIONS & ZONING PROCEDURAL REGULATIONS**

### **I. BACKGROUND**

#### **A. What is the SSH Overlay District and what are its boundaries?**

The Sixteenth Street Heights (SSH) Overlay District is made up of two (2) districts---the SSH-1 District, which was created in 1990's and the SSH-2 District, which extended the SSH-1 to Decatur Street (in 2000's). In both instances, the effort to create this Overlay was generated<sup>1</sup> by the residents and not the District government, even though for decades, the Comprehensive Plan captured residents' repeated concerns about the number of institutions in this community.

It is important to note that the SSH Overlay does not cover all of what is considered the Sixteenth Street Heights neighborhood. **The Overlay runs generally from Military Road to Decatur and from 16<sup>th</sup> Street and Rock Creek Park to 14th Street.**

According to the SSH Overlay regulations, the following are its specific boundaries:

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.

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.

#### **B. In what type of zoning district is the SSH Overlay located and what is the purpose of this zoning district?**

The SSH Overlay is primarily in an **R 1-B District, which according to the zoning regs is designed to protect and stabilize quiet residential areas (primarily single family) and to promote a suitable environment for family life.**

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<sup>1</sup> Residents met with elected officials and Office of Planning (OP) staff and undertook the legwork and costs involved in establishing this Overlay, including placarding the area and representing the community at the Zoning Commission hearing. OP provided informational support. The Overlay does not extend further south because the then head of the Sixteenth Street Neighborhood Association did not sign on to extending it further. That org is no longer functioning as an association but appears as a listserv. At the zoning hearing, one Zoning Commission member expressed concern that this was a piecemeal approach, generated by two different neighborhood associations (resulting in two SSH-1 and SSH-2) and was not fully covering SSH and the concerns expressed in the Comprehensive Plan.

200.1 The R-1 District is designed to protect quiet residential areas now developed with one-family detached dwellings and adjoining vacant areas likely to be developed for those purposes.

200.2 The provisions of this chapter are intended to stabilize the residential areas and to promote a suitable environment for family life. For that reason, only a few additional and compatible uses shall be permitted.

**C. Why was there a need for the SSH Overlay District?**

As stated in the SSH Overlay regs:

1. 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;

2. The District of Columbia executive branch and council members 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

3. In the SSH-2, more than 20% of the residentially zoned land is used for nonresidential purposes<sup>2</sup>;

4. The neighborhood boundaries are well established and encompass a significant geographic area; and

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

**D. What is the purpose of the SSH Overlay District?**

As stated in the SSH Overlay regs at Section 1551.2, the purposes of the SSH Overlay District are to:

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

2. 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

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<sup>2</sup> Attachment B – Survey of Nonresidential Uses In & Bordering SSH-2 Overlay Community, prepared by the Carter Barron East Neighborhood Association/16<sup>th</sup> Street Heights.

3. Allow 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.

**E. What was the SSH Overlay District intended to accomplish & how is this to be accomplished?**

As stated in the SSH Overlay regs: It was intended to subject new and expanded institutional (non-residential) uses to **greater scrutiny** based on the cumulative impact of the number of these institutions in the SSH Overlay community. To accomplish this scrutiny, it **requires new non-residential uses and any existing non-residential use, which is expanding in excess of 10% to have to seek a special exception hearing**. It sets out specific regulations which apply to the Overlay. Requirements include prohibiting parking in side yards, determining the number of required parking spaces based on square footage, parking lot lighting to be the minimum necessary for reasonable visibility by drivers and for security purposes and sets a minimum standard for screening of parking lots.

**II. COMMUNITY'S EXPERIENCE WITH THE OVERLAY**

**A. What has been the experience of SSH-2 community with the Overlay?**

The current SSH Overlay regs do not offer sufficient protection as discussed below. The community's experience has not been positive<sup>3</sup>. Since the Overlay has been in place, there has been a major non residential construction (LDS), an expansion of an existing nonresidential use with major variances from the required parking (JPDS)<sup>4</sup> with impacts on SSH2 and the requested conversion of another residence to a non-residential facility (child development center at 1414 Delafield)<sup>5</sup>. Only one institution (small church using a residence at 16<sup>th</sup> & Kennedy) when notified it would have to go through the BZA special exception process did not do so and stopped operating in the residential structure.

**B. Why have the SSH Overlay regulations and the special exception process been ineffective in protecting the residential nature of the community?**

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1. There have been instances where the process has simply been

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<sup>3</sup> At the hearing expanding the Overlay, one of the Commissioners asked why the community was not seeking a moratorium instead. The community should consider this given the arbitrary recognition and compliance with the Overlay.

<sup>4</sup> This appears to border on the SSH-2 as it is listed as Square 2707 but has significant impact on SSH-2. There is also a significant expansion of a church (Washington Seventh Day Adventist in an old residence) within a half block of this facility, also immediately outside the Overlay and apparently in Square 2707.

<sup>5</sup> Unclear as to the status of this request.

arbitrary, resulting in decisions where the only option for the community was to seek Court of Appeals review at its expense<sup>6</sup>;

2. There is broad, undefined general language in the regs which has allowed the BZA discretion in crafting variances for which past BZA decisions are ignored and/or no mitigation is required of the applicant<sup>7</sup>;

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<sup>6</sup> Examples include decisions by the BZA and other agencies:

Example #1 - LDS was able to raze the buildings on the property, even though the DC Environmental Policy Act intake form provides that no permits (including raze permit) should be issued until the environmental assessment is completed. Specifically, the Screening Form requires that if there are plans to build on the razed property within two years, the environmental screening process should be completed first. This provision ensures that applicants do not break up a project into phases to avoid complying with the environmental review process. LDS indicated that it planned to build in two years but was given a raze permit nevertheless. The razing of the building avoided Historic Preservation Board review required by the DC Environmental Policy Act. (Historic Preservation review would have required a review of possible detrimental consequences to the zoning district in which the building is located) . This was unsuccessfully brought to the attention of the government. The SSH-2 Overlay community would have had to go to Superior Court as was done in North Portal section of Northwest DC where a newly constructed house that did not comply with permitting/siting requirements was subsequently purchased by the city and demolished to resolve the issue .

Example #2 - In the LDS Zoning decision, the BZA would not give great weight to the unanimous decision of ANC4C opposing construction of the LDS church facility because according to LDS, ANC4C did not follow the reporting requirements in the zoning regs. LDS maintained that as a result, it did not know the basis for the decision. ANC4C did not set out findings or a basis for its decision--- specifically it did not comply with section 3115.1 (e) requirement that the written report of the ANC prepared in response to a notice of application contain “the issues and concerns of the ANC about the appeal or application as related to the standards of the Zoning Regulations against which the appeal or application must be judged.” Most recently, however, in the JPDS zoning case, ANC4C provided the same report which did not follow the reporting requirements in the zoning regs (section 3115.1(e) , yet this was given great weight by the BZA. (BZA Application 18399)

<sup>7</sup> For example, the BZA does not distinguish why Parkmont, a private School which does not meet the onsite parking requirements but parks at the Carter Barron public parking 4 blocks away, was given a conditional variance while Lowell/JPDS a private which does not meet the onsite parking requirements has been given numerous unconditional variances (first to place the parking in the side yards (4 on the Decatur side and 2 next to the residence on the south) and most recently another unconditional variance (Application No. 18399) to substitute “contracted off-site private parking (4 blocks away)” for required onsite parking. What is the reason for these inconsistent decisions affecting two private schools within a block of each other?

3. BZA Orders do not identify the specific purpose of the regs for which the variance is being granted and often do not provide a reason for the interpretations. As a result the BZA process is legislating or creating new regs<sup>8</sup> and often ignoring case law as to why variances should or should not be granted.

4. The process does not provide for close review of design drawings. The agencies (OP/DDOT) advising the BZA in the special exception process do not review and respond to the design drawings; yet the regs address design issues<sup>9</sup>;

5. Applicants and the agencies which advise the BZA do not track the SSH Overlay regulations when preparing their applications or their reports to the BZA. There is also no acknowledgement or reference to the concerns in the Comprehensive Plan of excessive non-residential uses<sup>10</sup>;

6. The hand-off at the end of the zoning approval process to the licensing/certifying, agencies (i.e. DCRA/DDOE/OSSE) does not require or result in a review of applicant's compliance with the BZA order and the BZA regs.

7. The agency tasked with enforcing BZA Orders is not involved in the special exception process and compliance review is only triggered by complaints.

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<sup>8</sup> For example in BZA Application No.18399 (JPDS), the Office of Planning recommends that off-site contracted parking substitute for required on-site parking with no reference to the basis or authorization for this recommendation. What is the purpose of the "onsite"-parking requirement in the regs? Why is off-site contracted parking 4 blocks away a perfect substitute? Is this considered regulating by OP when it recommends "off-site contracted parking" as a substitute? What is the process for an agency making such a recommendation if it is not in a proposed rulemaking? Should this be based on some legal precedent or at least some discussion as to why this is acceptable? Should this be accomplished by regulatory change? Is there an authorization in the Comprehensive Plan or in the current regs authorizing OP to make such changes? Should the Agency be required to address the Comprehensive Plan and the concerns by residents for over twenty-five years regarding institutionalization?

<sup>9</sup> For example, the recent BZA decision re LDS sets out the requirement for the play lot to comply with the screening requirements. Yet, in past BZA decision re this property, there was no oversight of compliance with the requirement regarding screening of the play lot. Lowell's application talked about a garden between the play lot and the adjacent house. No garden or shrubbery was provided. Who would be required to review this when compliance with what the applicant has committed to does not require a "license or permit". JPDS subsequently indicated that its property line is some feet outside the fence between its property and the adjacent neighbor *in places* and maintains that this therefore complied with the requirement in the Lowell Order. Who oversees this? Why is this role relegated to the community? Why is an agency free to grant variances and place conditions on these variances but has nothing to do with oversight of compliance with these conditions?

<sup>10</sup> Even with the placement of the SSH Overlay and specific regs applicable to the SSH Overlay, neither BZA decisions or OP recommendations mention their existence or applicability or the concerns re excessive institutionalization in the Comprehensive Plan as to the Rock Creek East community.



8. Changes in ownership do not require a review by the Office of Zoning or the BZA which has resulted in new owners not complying with previous BZA Orders<sup>11</sup>.

9. The SSH-2 community is neither knowledgeable nor “adequately represented” in the process and is often “out-gunned by deep-pocketed institutions”.<sup>12</sup>

10. The ANC “great weight” review process is troubling and needs fixing. The ANC review report frequently does not comply with the regs. As a result, there are arbitrary decisions as to weight to be given these reports at the BZA. For example, the same type of report, while ignored by the BZA in the LDS case as being out of compliance was adopted by the BZA in the JPDS case without any explanation by the BZA for the disparity in treatment. In addition, the ANC review and decision making process appears to view the BZA process as a “licensing” approval process<sup>13</sup>. The ANC review process uses no “identifiable standards” and does not track the regulations. For example, in a most recent ANC4C decision on a special exception application, there was only anecdotal statement as to the need for the service to be offered by the applicant. There was no analysis whether the institution which is being supported and the increased service it offers needs to be located in the SSH-2 community, which is overburdened with institutions<sup>14</sup> or how the proposed institutional use meets the SSH Overlay regulations.<sup>15</sup>

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<sup>11</sup> For example, CBENA has witnessed where new owners have failed to comply with the Zoning Order, which attaches to the property but is not a part of the “deed” transfer process. For example, after the initial BZA Order (Lowell School) at 4715 16<sup>th</sup> Street, subsequent owner/operators used the side yard parking on Decatur as a bus depot for buses operating out of Virginia (which weren’t even providing services to the occupant/tenant; the play lot was also used as a bus depot, visible to the houses directly behind it on Piney Branch and emitting exhaust fumes which exacerbated an elderly neighbor’s asthma. In addition, the front of the school was also used as a bus depot for school buses including one from Maret School and which were parked next to the home immediately south of the school. Subsequent school operations were also able to exceed the maximum number of students and teachers set under the BZA Order.

<sup>12</sup> The BZA process is a quasi-judicial process. Hearings are held during the day. Persons have to seek standing to appear in these cases unless they fall within the 200 foot range of the property. CBENA has experienced where it has submitted documents, which have been ignored with no mention in the ensuing BZA Orders. There is a need for a public advocate at the BZA particularly as there is no public representative position on the Commission.

<sup>13</sup> In a recent special exception case for a child development center, the ANC approval was contingent on restrictions on the owner not being able to transfer the property as a child development center. It is unclear how a zoning special exception process approval does not go with the property and can be restricted to the owner.

<sup>14</sup> There was no mention of the Overlay.

<sup>15</sup> ANCs should be provided with information/training on the zoning process as well as legal representation

particularly as there is no public advocate at the BZA. This is even more troubling as the process defers to

### **III. OFFICE OF PLANNING (OP) PROPOSAL IN ZRR AFFECTING SSH OVERLAY.**

#### **Has OP proposed any changes to the SSH Overlay Regs or to the hearing process to address the concerns identified above?**

OP has proposed no specific changes to the SSH Overlay regs in its ZRR proposals. However, OP is recommending that parking be determined based on square footage of the facility. It is unclear what the impact of this change will be in SSH Overlay<sup>16</sup>. Statements by OP re the SSH Overlay community raises concerns that this new standard will still require the community to participate in special exception hearings<sup>17</sup>, which places the community at a disadvantage, as discussed above.

OP has also not proposed any changes to the sections of the regs, which address the administrative or hearing procedure or process. There is no attempt to capture the major impacts of all the hundreds of case decisions (orders), which have been made in 55 years since the last comprehensive rewrite to ensure that the average citizen can follow these regs and participate in this process without hiring special counsel.

### **IV. CBENA RECOMMENDATIONS FOR CHANGES TO SSH OVERLAY REGULATIONS**

There is a need to look at each provision in the current regs, identify the reason they were adopted, assess their effectiveness, address their deficiencies and identify where they should be supplemented or where new provisions or regulations should be added.

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the ANCs and the expectation that they are familiar with “standards of the Zoning regulations against which the application must be judged”. The reality is that ANCs are committed, unpaid volunteers with no specialized staff support on zoning and land use law. Specifically, section 3115.1 requires the written report of the ANC prepared in response to a notice of application contain (e) “The issues and concerns of the ANC about the appeal or application as related to the standards of the Zoning Regulations against which the appeal or application must be judged”.

<sup>16</sup> OP has not proposed the formula which it will use. The city of Portland uses square footage for different categories of institutions/establishments; other cities use other formulas in determining parking, some of which are similar to what is in the current DC zoning regulations. OP should provide examples of its impact. It is believed by some that this change will result in fewer parking spaces being required for institutions seeking to locate in the SSH Overlay District.

<sup>17</sup> As the SSH-2 Overlay community has come to realize, the participation in special exception hearings is needlessly burdensome. Clear regulations could assist with this process.

**A. Provision prohibiting parking spaces in side yards is ineffective and should be supplemented (Section 1553.2)** . The current SSH Overlay regulations prohibit placing parking lots in “required” side yards. Specifically, the regs state: *“Parking spaces and driveways providing access to them shall not be located in a required side yard”*. This provision protects nearby residential districts.

**1. Problem: This has been ineffective or ignored.**

**Example #1** – The newly constructed LDS meetinghouse was able to avoid this requirement by building two entrances, one entrance with the official address on 16<sup>th</sup> street (4901 16<sup>th</sup> Street), which on any Sunday can be seen as not in use, and a second, with tremendous visual and aesthetic impact on the residences on Emerson, which no other church with a 16<sup>th</sup> Street address has done. If LDS had chosen an Emerson address, they would have had to seek a variance to place the parking in the side yard. (LDS was aware of this. Their initial BZA application, which they withdrew, contained a request for a variance to do this. They just changed the design drawings and accomplished the same thing). The question then is what is the reason for this prohibition? We believe it was intended to protect the residential community from visual, aesthetic and noise impacts.

**Example #2** – At the Washington Latin School (previous owners: Lowell, and the British School and current owner Jewish Primary Day School) at Decatur & 16<sup>th</sup> Street, which also has a 16<sup>th</sup> Street address, the parking spaces for staff were placed in the side yard under variances with no requirement to shield these spaces from visual, aesthetic or noise impacts. In addition, two of the required parking spaces are directly on the side of the building adjacent to the house immediately next door to the School<sup>18</sup> (for years school buses were parked directly adjacent to this home). Interestingly, the BZA Order does not mention the location of these two parking spaces (appears to be in an addendum which is not attached to the Order). What is the reason for the addendum and why couldn’t be captured in “words” in the Order? Afterall, the Order specifically mentions the location of the other four (4), which are also in the side yard abutting Decatur. For years, these spaces were used as a bus depot for buses not serving the facility. So while a variance was granted for the four (4) spaces on the Decatur side, no screening or mitigation was provided.<sup>19</sup> This was done before SSH Overlay-2 was put in place, which borders this property. There was a recent variance after the Overlay was in place, which further expanded the variance from the on-site parking requirements, which leads the community to question, what is the legal basis for granting variances?

**2. Recommendations:** While the regs are pretty clear, this

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<sup>18</sup> As many as four cars have parked in this area, some in the driveway in the public right of way with no oversight or supervision. In addition, over the years, school buses, including one for the Maret School parked in this area---where this served as a bus depot. CBENA is aware that this lot is not included in SSH-2 but activities on this property directly impacts SSH-2 and points to the crazy quilt pattern of this Overlay and OP’s failure to protect the residential nature of this community.

<sup>19</sup> The Order converting this facility to a private school was issued before the SSH Overlay was put in place. No notice was provided to many highly impacted community residents along Piney Branch as 200-foot notice to the north only included another institution, the Church of Christ property.

provision should be tightened keeping in mind what it is intended to address -- in other words, the purpose or objective to be achieved. For example, the city of Philadelphia allows non-residential parking in side yards but has specific requirements as to set back and screening of these spaces from the residences. The rewrite of the District's 55-year-old regs is not addressing what has happened over this period. As a result, the SSH Overlay community has the worst of both worlds. While the regs on paper restrict parking in side yards, the special exception process is not protecting the residential nature of this community. If the BZA is going to allow applicants to not comply with this requirement, it should "mitigate" this and impose some protections such as a screening using trees or plants. See recommendation below similar to Philadelphia.

In addition, at the outset, "required side yard" should be defined to allow the public to understand what it is referring to. For example, it could be defined as: *"the yard extending along the side of a house and continues from the front to the rear property line. For a corner lot, a street side yard is a yard that extends from the front yard to the rear property line."*

**B. Parking lot lighting must be confined to surface and be the minimum necessary (Section 1553.2).** The current SSH Overlay regs require that "all direct rays of lighting at parking lots are confined to the surface of the paved area and any lighting provided shall be the minimum necessary for reasonable visibility by drivers and for security purposes".

**1. Problem:** This has been ineffective and has not provided protection for this Overlay community. For example, **some** LDS parking lot lighting is placed on the walls around the parking; this avoids vertical freestanding lighting. However, when lit the direct rays are not confined to the surface but instead shine out horizontally and into homes. While diffused, this appears to be in violation of the regs, Lighting with rays confined to the surface would have been more appropriate. As pointed out above, the licensing agency (DCRA) would have to be familiar with the zoning regs and take this into consideration before approving the drawings. (This presumes that the lighting to be used appeared in the drawings). Assuming this was the case, the purpose of the regs (balancing safety concerns and protection for the residential community) should have been considered and should have been mitigated.

**2. Recommendation:** The parking lot lighting requirements section should be tightened recognizing that a significant part of the problem is that the requirement for the shielding of the parking lot is also ineffective. Philadelphia, for example, which has language requiring lighting to focus on the surface of the lot and restrict the glare ("The illumination shall be focused upon the lot so as to prevent glare upon the surrounding areas") also has detailed regs focused on screening of such lots.

**C. Number of Required Parking Spaces must take into consideration the full square footage of the facility (Section 1553.2)**. The current SSH Overlay regs state that the number of required parking spaces must be sufficient to provide for the needs of the maximum number of occupants, employees, congregants, and visitors who

can use the facility at one time” time taking into consideration the full square footage of the facility.

**1. Problem:** In spite of the language in the regs which clearly states that the full square footage should be considered when determining the number of parking spaces, applicants have been allowed to base it on one part of the building (for example, they have been able to base it on language in the zoning regs which states that the parking spaces cannot be less than the standard of 1 parking space for each 10 seats of occupancy/capacity in the main sanctuary). Applicants have also been allowed to argue that congregants/staff will walk or take public transportation, etc.) or that off-site contracted parking is a substitute for the required on-site parking (even when not in close proximity to the facility) and without precedent. In addition, while language in the regs refer to accommodating “visitors”, there are no provisions to capture what is to be considered.

Example #1 – Even though the LDS facility has a chapel, 24 classrooms and a gymnasium, the BZA Order focused on the chapel. There was no discussion of the use of the classrooms or of the gymnasium. The Order therefore allowed for a standard less than what the regulations required. LDS also argued that the parking should reflect that its members would take public transportation and that members have large families. What then is the purpose of the requirement? Should there be a provision in the regs giving the OP and the BZA authority to consider other conditions and identifying what will be considered?

Example #2 – JPDS was able to argue that it should not receive a conditional variance even though it significantly does not meet the on-site parking requirements; that off-site contracted parking 4 blocks away from the facility should substitute for the on-site parking requirement with no conditions placed on it, even though a school a block away had a smaller on-site parking variance and only got a conditional variance.<sup>20</sup>

**2. Recommendation:** Language should be added to clarify/define language in the current regs as what is meant by uses at “one time and taking into consideration the full square footage” (the ability to schedule overlapping events in the entire facility at the same time should be part of the consideration in calculating the space which can be used “at one time” and that “the full square footage be part of this consideration”). According to one OP staff, OP believes that the proposal in the ZRR to base the parking on the square footage of the facility (using a formula), should address this. It is not clear, however, why this language is any help as square footage is already referred to in the current regs and applicants are still allowed variances from this requirement without adequate explanations.

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<sup>20</sup> While this does not fall within SSH-2, it immediately borders SSH-2 and is affected by the institutionalization. One observation is that the BZA in the initial Lowell Order did not meet the standard in land use law for granting a variance---the facility was too small to meet the on-site parking requirements and a zoning variance is not a process to ensure the maximum returns for the use of a property.

It is also puzzling as to how this new square footage formula in the ZRR will work as to private schools, given that the applicants will still argue in the special exception hearing that their particular or unique situation should be considered. It is also unclear why square footage is a more meaningful measure in determining parking requirements for private schools as often students (who significantly determine the square footage requirements of the space) do not drive, do not have a need for parking and large spaces may be used for group activities and changes to the use of these spaces do not trigger review.<sup>21</sup> As proposed, a determination of the number of parking spaces on a case-by-case basis will be made with no guidance in the regs as to how exceptions should be handled. The determination will largely be made on a case-by-case basis in a complex/expensive zoning process where the community is not adequately represented. Lastly, there are numerous provisions in other jurisdictions' regulation of private schools in R1 zones which help to protect the communities and which should reasonably be a part of this ZRR but are not being included. There is a fundamental failure in the ZRR to right the wrongs, which have accumulated over the past 55 years.

As provided in Portland, Oregon, if BZA is going to allow a variance for the required on-site parking, the proximity of that parking should be specified. In Portland the regs require: Required parking spaces for nonresidential uses must be located on the site of the use or in parking areas whose closest point is within 300 feet of the site.” Why do you think Portland has this requirement---we would presume it is to protect the residential character of the community---if three blocks away works why not 3 ½ or 4 or 5? What then prevents persons from purchasing property which cannot meet the zoning requirements for a school and making a similar arguments---there isn't enough space for parking on the property?

**D. Parking lots must be adequately screened to protect contiguous and neighboring properties.** The current regs requires “adequate” screening. Specifically, it provides that “There shall be adequate, appropriately located, and screened off-street parking” and that “if five (5) or more open parking spaces are provided, the parking spaces shall be screened from all contiguous residential property by a wood fence or a

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<sup>21</sup> OP should explain how the use of square footage would work. What would be the triggering mechanism for enforcement other than through the building permit process? A building permit is not required for converting a group space such as a science lab or computer lab into a classroom and for retaining additional staff. Therefore, a parking review will not be triggered to require additional parking for additional students and employees. There is also no ongoing oversight of the facilities as to zoning compliance. As a result, owners of private schools have exceeded the special exception limits with no consequences (British School's own operation and its lessor Washington Latin). Who has oversight of capacity decisions in Zoning Orders?

wall made of brick or stone at least twelve inches (12 in.) thick and forty-two inches (42 in.) high, or by evergreen hedges or evergreen growing trees that are thickly planted and maintained and are at least forty-two inches (42 in.) in height when planted;

1. **Problem:** This requirement, however, is not protective of this residential community.

Example #1 As to LDS, it appears to have met the minimum requirement on the Emerson and Piney Branch sides. However, as a result, 100 year old residences surrounding the meetinghouse now look out at a black top surface parking lot, or a lot with cars and trucks, with unwanted visual and aesthetic characteristics. For properties immediately adjacent to the facility (contiguous), LDS erected a higher wall. LDS was able to provide the minimum while at the same time obtaining a variance<sup>22</sup> with no mitigation required from them. Who looks out for the residential community?

Example #2 – At Washington Latin/JPDS, the play lot is in places adjacent to the home to the south with “minimal screening”. At other points, the fence is not on the JPDS property line, which JPDS views as adequate screening. So while the applicant (Lowell) discussed a garden barrier, this was never provided and subsequent owners used this as a parking lot. Who looks out for the residential community?

2. **Recommendation .** The current fence requirement for parking lots is inadequate. Where a parking lot is located so that there is not a building or portion of a building between the parking lot and the residential district, a planted buffer at least six feet high shall be installed and maintained between the parking lot and the residential district in accordance with the following requirements:

(a) The planted buffer shall be installed along the entire edge of the lot line where it abuts the lot line of the Residential District;

(b) The planting material shall be installed at a size and number to ensure adequate screening from the time the material is installed;

(c) The type of plant material shall be selected from a list of types, sizes of species of plants, and numbers of plants that are appropriate to achieve adequate screening and appropriate for the location of the parking facility. This list shall be prepared and maintained by the Department of Transportation;

(d) The planted buffer may be located within the required side and rear yards;

(e) The required screening shall be maintained in a manner to ensure its survival. In the event that any landscaping dies, it shall be replaced at the required ratio.

**E. The location and screening of play lots should be regulated.**

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<sup>22</sup> LDS was able to obtain a variance from the prohibition re the use of public space and the parking lot.

As to play lots, their location and screening should be addressed in regulations and should not be left up to the applicant<sup>23</sup>. Some cities set out specific square foot requirements for outdoor play areas for private schools in residential and nonresidential areas. (For example, in one jurisdiction: “in residential zoning districts, a minimum of 125 square feet shall be provided for each child enrolled. In nonresidential zoning districts, a minimum of 75 square feet shall be provided for each child enrolled”)

The Lowell/JPDS is a perfect example of how not to treat older residents in a community. Another example was the Ideal School property, where the play lot directly abutted the residences. (Ideal did not act on its special exception which has expired). The property has been sold – as there has been no contact with the community, it is presumed that it is being reverted back to a residence.

**F. A traffic study must be required in the regulations, must take into consideration cumulative impacts and must have specific standards and guidelines (Section 1553.2) (new provisions).** The SSH-1 community continues to be surprised at the lack of information by District agencies and the ANC as to the number of institutions in the community, when reviewing traffic studies provided by applicants. There is no requirement as to what the traffic studies should address which lead to the cumulative impacts of institutionalization not being considered in determining traffic impacts on a case-by-case basis. In fact, there have been instances, where this review has been pro forma (resulting in erroneous conclusions. The community witnessed where the DDOT staff was clearly unfamiliar with Piney Branch Road and in a rush to support the LDS application, stressed how a metro bus operated on Piney Branch.

**1. Problem**

As indicated above, there are numerous concerns with the government role in reviewing these traffic studies, which leads to arbitrary decisions or analysis depending on the DDOT staff. For example, while DDOT projected that the LDS impact would exceed rush hour impacts, and had concerns with the study, and the profusion of institutions operating on Sundays in the vicinity, it was still able to say “ it had no problems with the application. To the community, the analysis clearly did not fit the conclusion, and at a minimum there should have been some mitigation for this old, established community.

**2. Recommendation**

The application process should require the applicant to conduct a traffic study and identify all institutions within two blocks of the applicant’s facility. In addition, traffic studies should address the cumulative impacts of traffic in the community with an identified standard

**G. A traffic control plan must be required for private schools and staging which takes over public streets must be limited.**

As to private schools, there are no requirements in the current SSH Overlay regs to require a traffic flow and parking plan showing sufficient ingress, egress, drop-off areas

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<sup>23</sup> This lack of requirements has resulted in a lawsuit at the JPDS school at 16<sup>th</sup> & Missouri and the adjacent neighbor.



and parking spaces. The applicant should be required in the regulations to submit a traffic control plan showing how loading and unloading of school children will occur with minimum disruption to traffic. Private schools should not be allowed to stage their operations in public space in a residential community, essentially shutting down the use of the streets by the taxpayer residents. Why is this acceptable for one institution and not another? Why is this such an arbitrary determination?

**H. Notice to property owners of a special exception application should be extended to 1000 feet**

Because of the number of institutions and the fact that in some areas in SSH-2, there is an institution on every block or one on every corner, the notification of 200 foot in the zoning regs results in notification being given to other institutions and not the residents. What is the reason for the fifty year old 200 foot requirement? What is the impact of institutionalization over the past fifty years? What is the impact of persons attending these institutions arriving from outside the District?

**1. Problem**

In the Lowell and JPDS examples (4715 16<sup>th</sup> Street), while the homes on Piney Branch to Emerson are tremendously impacted by the operations at that location, they fall outside of the 200 foot zone as the Church of Christ across the street essentially comprises the 200 foot area. As a result, they received no notice when 4715 16<sup>th</sup> was converted to a private school. Given the change in traffic in the city and specifically in the area, the question is why is this notification requirement not a part of the ZRR review.

**2. Recommendation**

The notice requirement within and immediately on the border of the SSH should extend to 1000 feet.

**I. Need for Standards as to what is a minor and what is a major variance** In addition, there should be a definition of a minor variance and a major variance. While there are currently no provisions in the regs referring to such variances, they have been granted and there is no consistency.

**1. Problem**

Zoning decisions within the SSH Overlay are inconsistent. For example, the Lowell School, which is now the Jewish Primary Day School and did not have enough land for onsite parking, has been allowed to not meet 70% of the required onsite parking requirements with no requirement that the variance be conditional. It has also been allowed to place parking in the side yard, to not meet the square footage requirement for one parking space and to not meet the buffer requirement stated in the Order between the play lot and the adjacent house. Yet, this zoning variance is considered to be “minor”.

On the other hand, Parkmont School, which had land for parking but would have resulted in it being on a slope (the issue had to do with the property) as a result, does not meet 60% of the onsite parking requirements has been given a conditional variance. The community cannot begin to grasp these distinctions.

## 2. **Recommendation**

The community can make little sense of the distinction between minor and major zoning variances allowed in zoning decisions. Minor zoning variance should be defined in the regulations, as they are in other jurisdictions. Currently, there are no definitions. In many jurisdictions, what is considered minor is defined as : “The maximum amount of a minor variance cannot exceed 10% variation of the zoning regulation requirements.

### J. **New Provision – Parameters on offsite parking as a substitute for on-site required parking should be provided in the regulations**

#### **Problem:**

In BZA Application No.18399 (JPDS), the Office of Planning recommends that off-site contracted parking substitute for required on-site parking with no reference to the basis or authorization for this recommendation. Moreover, there is no discussion as to the purpose for the onsite “onsite”-parking requirement in the regs? Why is off-site contracted parking 4 blocks away a perfect substitute? Is this considered regulating by OP when it recommends “off-site contracted parking” as a substitute? What is the process for an advisory agency making such a recommendation if it is not in a proposed rulemaking? Should this be based on some legal precedent or at least some discussion as to why this is a perfectly acceptable substitute? Should this be accomplished by regulatory change? Is there an authorization in the Comprehensive Plan or in the current regs authorizing OP to make such changes? Should the Agency be required to address the Comprehensive Plan and the concerns expressed over the years regarding institutionalization?

**Recommendation:** This is another example of the level of arbitrary decision making and is even more puzzling when another school a block away is accorded different treatment. allowing the BZA to periodically review the impact on the community. Other jurisdictions set out specifically what will be considered substitute parking, setting up some parameters or standards.

### K. **New Provision – BZA Orders must identify the specific purpose of the regs for which they are granting a variance, discuss how the design drawings, comply with the regs and the agencies (OP/DDOT) advising the BZA in the special exception process must review and respond to the design drawings in their reports;**

**Problem & Recommendation:** Please see the discussions and recommendations in this Document for examples. There is significant missing support for protecting the community

### L. **New Provision – Applicants, the agencies which advise the BZA and the BZA must track the SSH regulations when preparing relevant documents (applications, reports, orders) regarding properties within the Overlay**

**Problem & Recommendation:**

.Again, please see the discussions and recommendations in this document, for ample examples. There is significant missing support for protecting this Overlay community

**M. New Provision – The hand-off at the end of the zoning process to the licensing/certifying, agencies (i.e. DCRA/DDOE/OSSE) must incorporate a review of applicant’s compliance with the BZA order and the BZA regs**

**Problem:**

For example, the recent BZA decision re the JPDS application sets out the requirement for the play lot to comply with the screening requirements. Yet, in past BZA decision re this property, there was no oversight of compliance with the requirement regarding screening of the play lot. Lowell’s application talked about a garden between the play lot and the adjacent house. No garden or shrubbery was provided. Who would be required to review this when compliance with what the applicant has committed to does not require a “license or permit”. In discussions with the community, JPDS subsequently indicated that its property line is some feet outside the fence in places and therefore is in compliance with this requirement. Who oversees this? Why is this role relegated to the community? Why in this process is the BZA able to grant variances and place conditions on these variances but then has no oversight of compliance with these conditions? Are there other examples of this in the District government? To my knowledge where licenses are conditional there is compliance oversight by the agency which places the condition on the applicant, such as the ABC Administration.

**Recommendation:** This situation begs for a review. Either there should be no conditions or there has to be some monitoring of compliance.

**N. New Provision – Change in ownership should require a compliance review**

**Problem:** As indicated, CBENA has witnessed where new owners have failed to comply with the BZA Orders, which attach to the property but is not a part of the “deed” transfer process. For example, after the initial BZA Order (Lowell School) at 4715 16<sup>th</sup> Street, subsequent owner/operators used the side yard parking on Decatur as a bus depot for buses operating out of Virginia; the play lot was also used as a bus depot, visible to the houses directly behind it on Piney Branch and emitting exhaust fumes which exacerbated an elderly neighbor’s asthma. In addition, the front of the school was also used as a bus depot for school buses including one from Maret School and which were parked next to the home of another elderly neighbor immediately south of the school. Subsequent school operations were also able to exceed the maximum number of students and teachers set under the BZA Order.

Similar agreements with the community also become overlooked in time even when there is no change in ownership but changes in administration or changes in staffing in District

government agencies. For example, at the Kingsbury School, the applicant shared with the community that the school buses would access the school on 14<sup>th</sup> street. Over the years, the community has had to remind the administrators and the drivers of DC school buses of this agreement. Why does this require community institutional knowledge? While Kingsbury has been very responsive, there should be a better way to address compliance with zoning commitments.

**Recommendation:** This process is completely broken. Either there is a compliance review of some sort when there is a change in ownership or something such as the BZA Order should be attached to the certificate of occupancy. As indicated, subsequent owners have been able to ignore the occupancy limits, the parking requirements, and whatever they choose to unless or until the community (with institutional) knowledge speaks up for itself. Some of this noncompliance occurs because the new owners/lessees or their new administrators are completely unaware of the Orders, etc.

**O. New Provision – Requirements for ANC reports should be supplemented to ensure uniformity in compliance and consistency in the level of acceptance and review by the BZA**

**Problem:** As indicated, in the LDS Zoning decision, the BZA would not give great weight to the unanimous decision of ANC4C opposing construction of the LDS church facility because according to LDS, ANC4C did not follow the reporting requirements in the zoning regs. Specifically, LDS maintained that ANC4C did not set out findings or a basis for its decision--- specifically it did not comply with section 3115.1 (e) requirement that the written report of the ANC prepared in response to a notice of application contain “the issues and concerns of the ANC about the appeal or application as related to the standards of the Zoning Regulations against which the appeal or application must be judged.” Most recently, however, in the JPDS zoning case, ANC4C did not follow the reporting requirements in the zoning regs (section 3115.1(e) , yet this was given great weight by the BZA. (BZA Application 18399)

**Recommendation:** Greater direction should be provided in the regs or the BZA should be required to provide a specific document to the ANCs which outlines what the report should look like and what standards are to be met. This is way too arbitrary, with no one looking out for the community.

**VI. NEED TO SIMPLIFY PROCEDURAL REGULATIONS WHICH HAVE IMPEDED COMMUNITY INVOLVEMENT IN ZONING PROCEEDINGS**

Having participated in numerous zoning proceedings, our 16th Street Heights residential community hoped that a fundamental goal of the rewrite would be to simplify the regulations to make them user-friendly. Such changes can expedite zoning proceedings and benefit all participants and assist in compliance with the Comprehensive Plan. Here are 10 suggested changes to current zoning regulations:

1. Don’t schedule a hearing on an application until the paperwork is complete, so that the

community has all the information needed to determine the impact. Baltimore has included this in its recent zoning code rewrite.

2. Ensure public access to Office of Planning and Department of Transportation advisory reports before hearing a zoning application, which would assist the community in determining whether to comment or attend.
3. Allow community associations to seek to be notified and participate in proceedings, as currently occurs in Alcoholic Beverage Control Board cases.
4. Expand the radius of property owners to be notified beyond the current 200-foot radius given traffic increases and other changes in the District over 50-plus years. Many major cities use a notification radius of at least 500 feet.
5. Set out written standards as to what constitutes minor or major variances and when off-site parking can be substituted for on-site required parking. Many jurisdictions already do this.
6. Incorporate major zoning decisions made over 50-plus years that are not included in the current regulations, thereby significantly reducing the need for communities to be or retain experts in zoning and land-use law.
7. Clearly identify the zoning standards to be used by advisory neighborhood commissions in evaluating an application and which must be incorporated in order for their reports to be given great weight in zoning proceedings. Neighborhood commissioners aren't experts in zoning and land-use law, and the commissions rarely have funds to retain experts.
8. Set up a mechanism to oversee future compliance of community agreements, provisions of conditional variances, and traffic and staging orders.
9. Ensure that applicants comply with zoning decisions, setting up penalties for noncompliance and identifying changes that will require commission review.
10. Incorporate a user-friendly layout of the regulations, allowing users to clearly follow the required process and identify the role of participating agencies (as Baltimore has done in its zoning code rewrite). In addition, our 16th Street Heights community is concerned that the current zoning regulations have not adequately protected our neighborhood's residential character, which has resulted in more than 50 institutions located among our homes. The rewrite should address this concern, which has been raised repeatedly in the Comprehensive Plan. The rewrite should set clear, protective standards regarding items such as the placement and screening of parking lots and play areas.

## **ATTACHMENT A**

CBENA Recommended Language Change to Section 1553. Please see below language from the current regs and the proposed language in red

### **ZONING REGS APPLICABLE TO THE SIXTEENTH STREET HEIGHTS OVERLAY DISTRICT (SSH)**

#### **1500 PREAMBLE**

- 1500.1 Miscellaneous Overlay Districts are created to implement the Comprehensive Plan and other public policy goals and objectives.
- 1500.2 The Miscellaneous Overlay Districts include, but are not limited to, those overlay districts that are applied to a specific small area or neighborhood that requires special treatment in controlling land uses.
- 1500.3 The Miscellaneous Overlay Districts may provide development incentives, restrictions, or a combination thereof.

#### **1551 SIXTEENTH STREET HEIGHTS OVERLAY DISTRICT (SSH)**

- 1551.1 The Sixteenth Street Heights (SSH) Overlay District is established to help accomplish several goals and policies of the Comprehensive Plan, especially those land use objectives relating to housing supply, neighborhood quality and character, and policies relating to human services and private institutions, as applied to the 16th Street Heights neighborhood.
- 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 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.

- 1551.3 The Sixteenth Street Heights (SSH) Overlay District is comprised of the SSH-1 and the SSH-2 Districts.
- 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.
- 1551.5 The provisions of the SSH-1 Overlay District shall be applied 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 council members 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.
- 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
- © The District of Columbia Comprehensive Plan has identified the number of nonresidential uses in the neighborhood as a problem.

SOURCE: Final Rulemaking published at 41 DCR 5045 (July 29, 1994); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8464 (October 20, 2000).

**1553 TREATMENT OF EXISTING AND NEW NONRESIDENTIAL USES IN SSH OVERLAY MATTER-OF-RIGHT AND SPECIAL EXCEPTION USES IN (SSH) OVERLAY**

1553.1 An existing nonresidential use with a valid Certificate of Occupancy as of July 29, 1994, shall be considered a conforming use and may expand by up to ten percent (10%) of its gross floor area as a matter of right under the provisions of the R-1-B District; provided, that the following requirements are met:

- (a) No additional land area or subdivision of lots is involved in the expansion; and
- (b) The ten percent (10%) expansion limit shall be a total limit on expansion based on the gross floor area of the building as of July 29, 1994.

1553.2 A proposed new nonresidential use or an expansion of an existing nonresidential use in excess of ten percent (10%) of gross floor area shall be permitted as a special exception subject to the requirements in Sections 1553.3 through 1553.11 of this section,

- (a) if approved by the Board of Zoning Adjustment after public hearing, in accordance with § 3104 and
- (b) if the nonresidential use is capable of being established and operated without adversely affecting the use and enjoyment of neighboring and nearby properties due to traffic, noise, design, or other objectionable conditions; and

1553.3 There shall be adequate number of appropriately located, and screened off-street parking sufficient to provide for the needs of the maximum number of



occupants, employees, congregants, and visitors who can use the facility at one time taking into consideration the full square footage of the facility; provided that

- (a) The number of parking spaces provided shall be not less than the number required by chapter 21 of this title
- (b) The off-street parking shall have the least objectionable effects on contiguous or nearby property because of noise, traffic, or other objectionable conditions;

1553.4 In determining, the location of off-street parking spaces and driveways providing access to them, they shall not be located in a required side yard, or on the lot between the principal building and a street right-of-way, nor in public space abutting the lot; **Any variance from these provisions shall require mitigation on the part of the applicant in terms of the impact on the contiguous and nearby or surrounding properties.**

1553.5 If five (5) or more open parking spaces are provided, the parking spaces shall be screened from all contiguous **and nearby or surrounding** residential property by a wood fence or a wall made of brick or stone at least twelve inches (12 in.) thick and ~~forty-two inches (42 in.)~~ sixty inches **(60 in) high**, or by evergreen hedges or evergreen growing trees that are thickly planted and maintained and are at least forty-two inches (42 in.) sixty inches **(60 in.) in height when planted; Variances from these requirements shall only be granted where the substituted screening addresses objectionable effects on contiguous or nearby residential properties;**

- (a) **The planting material shall be installed at a size and number to ensure adequate screening from the time the material is installed;**
- (b) **The type of plant material shall be selected from a list of types, sizes of species of plants, and numbers of plants that are appropriate to achieve adequate screening and appropriate for the location of the parking facility. This list shall be prepared and maintained by the Department of Transportation;**
- (c) **The planted buffer may be located within the required side and rear yards;**
- (d) **The required screening shall be maintained in a manner to ensure its survival. In the event that any landscaping dies, it shall be replaced at the required ratio; and,**

1553.6 Within the parking lot, an additional area shall be provided for the installation and maintenance of landscaping. The total landscaping shall not be less than

ten percent (10%) of the area of the parking lot, including all spaces, aisles and driveways, but excluding all walkways and screening required elsewhere herein;

1553.7 For parking facilities which contain twenty-five or more parking spaces, no more than twenty-five percent (25%) of the parking spaces may be not less than eight feet by sixteen feet; provided, that such spaces are each clearly designated to be limited to use by compact and/or subcompact automobiles

Off-site parking may be used to satisfy the parking requirements provided:

- .
  - ☐ The parking spaces are available exclusively for the proposed use during its hours of operation. They may not be spaces that are required by other uses to meet their parking requirements.]
  - ☐ The parking must be within a three hundred foot (300') radius of a principal entrance.
    - (a) If the off-site parking area is under the same ownership control as the property that requires the parking, a letter from the owner of the properties that meets the above requirements is required.
    - (b) If the off-street parking area is in a different ownership than the property that requires the parking then, in addition to the above requirements, a formal lease agreement must be submitted to the Zoning Administrator for their approval. The written lease or other legal agreement shall include the following:
      - ☐ The address for which the parking is required.
      - ☐ The address of the off-site parking area.
      - ☐ A site plan showing the location of the specific parking spaces.
      - ☐ The lease must be for a minimum of a two (2) year time period
      - ☐ The lease must contain the following specific language for all uses:  
“The Zoning Administrator shall be notified in writing at least thirty (30) days prior to either party canceling the lease.
- 1553.8 Any lighting used to illuminate open parking spaces shall be so arranged that all direct rays of lighting are confined to the surface of the paved area devoted to parking; any lighting provided shall be the minimum necessary for reasonable visibility by drivers and for security purpose which lights shall be focused so as to prevent glare on surrounding dwelling units s.
- 1553.9 Each application for special exception shall include a map with the location of each institution or institutional use within 2 blocks of the applicant’s facility
- 1553.10 Each applicant shall provide a traffic control plan
- 1553.11 Notice to property owners shall extend to property owners within 1000 feet of the applicant’s facility . This provision shall also apply to properties which fall outside the Overlay but immediately border the overlay

1553.12 In addition to complying with the provisions in this section, private schools and child care center shall meet the following requirements as to play lots and traffic control plans

(a). Play lots shall be shielded from residential homes and shall be located 250 feet away from a contiguous residential area and shall **provide** a minimum of 125 square feet for each child enrolled. Shielding shall address visual and aesthetics and shall be designed and operated to comply with the noise regulations of Municipal Code Chapter \_\_\_\_\_.

(b) Each school shall provide a transportation plan

1553.13 The maximum amount of a minor variance cannot exceed 10% variation of the zoning regulation requirements. Variances which exceed 10% are major variances and shall be conditional. Whether major or minor, the Board of Zoning adjustment is required to consider the protections provided to the community and mitigate or provide other substituted protections. Applicant shall provide an Impact Mitigation Plan

1553.14 Any expansion, renewal of time limits, or other changes to an existing use permitted by special exception in the R-1 District provisions shall continue to be governed by the R-1 provisions rather than those of this overlay district, with the exception of Sections 1553.2 through 1553.13

**ATTACHMENT B****DRAFT - 2013 SURVEY OF NON-RESIDENTIAL USES IN & BORDERING  
(Impacting) THE SSH OVERLAY DISTRICT**

| NAME                                                              | FACILITY                    | <u>ADDRESS</u>                | PHONE    | CONTACT |
|-------------------------------------------------------------------|-----------------------------|-------------------------------|----------|---------|
| <b><u>North/South Streets</u></b>                                 |                             |                               |          |         |
| <b><u>Sixteenth Street</u></b>                                    |                             |                               |          |         |
| Carter Barron Park/<br>Amphitheater & Fitzgerald<br>Tennis Center | Park/<br>Tennis<br>Facility | 5400-5500<br>16 <sup>th</sup> |          |         |
| Foreign Embassy                                                   |                             | 5501 16 <sup>th</sup>         |          |         |
| Sixth Presbyterian Church                                         | Church                      | 5413 16th                     | 723-5377 |         |
| Buddhist Congregational<br>Church                                 | Church                      | 5401 16th                     | 829-2423 |         |
| Liberian Embassy                                                  | Embassy                     | 5201 16th                     | 723-0437 |         |
| Christ Lutheran church                                            | Church                      | 5101 16th                     | 829-6727 |         |
| Buddhist Vihara                                                   | Church                      | 5017 16th                     |          |         |
| Church of Latter Day Saints                                       | Church                      | 4901 16th                     |          |         |
| Parkmont School                                                   | Private<br>School           | 4842 16th                     | 726-0740 |         |
| Church of Christ                                                  | Church                      | 4801 16th                     | 882-6168 |         |
| Capital Spanish Church                                            | Church                      | 4800 16th                     |          |         |
| Jewish Primary Day School                                         | Private<br>School           | 4715 16th                     |          |         |
| 7 <sup>th</sup> Day Adventist                                     | Church                      | 47 16 <sup>th</sup>           |          |         |
| 19 <sup>th</sup> Street Baptist                                   | Church                      |                               |          |         |
|                                                                   |                             |                               |          |         |
| <b><u>Fourteenth Street</u></b>                                   |                             |                               |          |         |
| Jehovah's Witnesses                                               | Church                      | 5113 14th                     |          |         |
| Mt. Zion Baptist Church                                           | Church                      | 5101 14th                     |          |         |
| Kingsbury School                                                  | Private<br>School           | 5000 14tg                     |          |         |
| YOUR Enrichment Cntr                                              | Child Dev<br>Center         | 4913 14th                     |          |         |
| Uptown B & B                                                      | B&B                         |                               |          |         |
| St. Paul AME Church                                               | Church                      | 4901 14th                     |          |         |
| Metrobus Northern<br>Garage                                       | Bus Parking                 | 4729 14th                     |          |         |
| Ethiopian Church                                                  | Church                      | 14 <sup>th</sup> Street       |          |         |
|                                                                   |                             |                               |          |         |
| <b><u>Thirteenth Street</u></b>                                   |                             |                               |          |         |
| Marantha Gospel Hall                                              |                             | 4910 13th                     |          |         |
| Triangle Park/DC Rec                                              |                             |                               |          |         |
| Dental practice                                                   |                             | 13 <sup>th</sup> St           |          |         |
| <i>People's Congregational<br/>Church</i>                         |                             | 4704 13th                     |          |         |
|                                                                   |                             |                               |          |         |
| <b><u>East/ West Streets</u></b>                                  |                             |                               |          |         |
| <b><u>Decatur Street</u></b>                                      |                             |                               |          |         |
| Bishop's Residence?                                               |                             | 1600 Decatur                  |          |         |
| Foreign chancery                                                  |                             | 1601 Decatur                  |          |         |

|                                                 |                  |                |  |  |
|-------------------------------------------------|------------------|----------------|--|--|
| Bethea Welch VFW Post 7284?                     | Private Club?    | 1409 Decatur   |  |  |
| Andromeda Mental Health                         | Treatment Center | 1400 Decatur   |  |  |
| Metro bus facility                              |                  |                |  |  |
| <b>Delafield Street</b>                         |                  |                |  |  |
| Century Club                                    | Private Club     | 1500 Delafield |  |  |
| Childhood Dev Center                            | Child dev cntr   | 14 Delafield   |  |  |
|                                                 |                  |                |  |  |
| <b>Farragut Street</b>                          |                  |                |  |  |
| West Elementary                                 | Public School    |                |  |  |
| Minister's Residence                            |                  |                |  |  |
| Macedonia Church of God                         | Church           |                |  |  |
|                                                 |                  |                |  |  |
| <b>Gallatin Street</b>                          |                  |                |  |  |
|                                                 |                  |                |  |  |
| I am Temple                                     |                  |                |  |  |
| St. Luke's Baptist                              |                  |                |  |  |
|                                                 |                  |                |  |  |
| <b>Hamilton Street</b>                          |                  |                |  |  |
| Bridges of DC                                   |                  |                |  |  |
| Samaritan Ministry                              |                  |                |  |  |
| Hamilton Playground                             |                  |                |  |  |
|                                                 |                  |                |  |  |
| <b>Ingraham Street</b>                          |                  |                |  |  |
| 1 <sup>st</sup> Superet Branch Church of Christ | Church           |                |  |  |
| Greater New St. Paul Baptist Church             |                  |                |  |  |
|                                                 |                  |                |  |  |
| <b>Kennedy Street</b>                           |                  |                |  |  |
| International Guest Hse                         | B&B              |                |  |  |
|                                                 |                  |                |  |  |
| <b>Iowa Avenue</b>                              |                  |                |  |  |
| Tabitha House                                   | Group Home       | 44 Iowa        |  |  |
|                                                 |                  |                |  |  |
| <b>Colorado Ave</b>                             |                  |                |  |  |
| Star of Bethlehem Church                        |                  |                |  |  |
| Northwest Children's Hse.                       |                  |                |  |  |
| LDS Child Dev Cntr                              |                  |                |  |  |
| Center for Student Mission                      |                  |                |  |  |
| Liberian Embassy                                |                  |                |  |  |
|                                                 |                  |                |  |  |
| <b>Blagden Ave</b>                              |                  |                |  |  |
| Zion Baptist Church                             |                  |                |  |  |

