



The Interfaith Conference of Metropolitan Washington (IFC)

*"Advancing Justice, Building Community,
Nurturing Understanding"*

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September 12, 2008

D.C. Zoning Commission
441 4th Street, N.W.
Suite 210-S
Washington, DC 20001

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**Re: Zoning Commission Case No. 08-09 – Map and Text Amendments
Expansion of the Sixteenth Street Heights Overlay District**

Dear Members of the Commission,

I write this letter to comment on the proposed expansion of the Sixteenth Street Heights Overlay District. The Interfaith Conference of Metropolitan Washington believes that the proposed expansion of the Overlay District violates the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) and strongly recommends that the Commission reject the proposed map and text amendments to the Zoning Regulations.

The Interfaith Conference opposed the creation of the original Sixteenth Street Heights Overlay District in 1994. While we continue to disagree with the underlying wisdom of the Overlay District, the Zoning Commission's action in that case was supported by evidence that some residential properties were being converted to nonresidential uses. The Zoning Commission found that one in ten residential buildings within the boundaries of the Overlay District had been converted to nonresidential uses in the years preceding its adoption. In this case, however, there is simply no evidence of a similar trend within the proposed expansion area. In fact, there has been no net increase in nonresidential land uses within the proposed expansion area in the years following the original adoption of the Overlay District. Indeed, the proposed chapel of The Church of Jesus Christ of Latter-day Saints on the corner of 16th Street and Emerson Street, NW, that appears to have motivated the application for the zoning overlay expansion is not a conversion from residential use; it is a conversion from another religious use – a convent with a chapel – to a neighborhood house of worship.

In addition to being unnecessary, the proposed expansion of the Overlay District would violate federal law. RLUIPA establishes a heightened standard of scrutiny for land use regulations that either impose a substantial burden on the free exercise of religion or target religious land uses for discriminatory treatment. Importantly, the requirements of RLUIPA are not limited to facially discriminatory land use regulations. On the contrary, RLUIPA applies equally to facially neutral regulations of general applicability. The proposed expansion of the Sixteenth Street Heights Overlay District will impose a substantial burden on religious land uses and has been proposed for the sole

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purpose of preventing the construction of a new chapel by The Church of Jesus Christ of Latter-day Saints. The proposed expansion is therefore inconsistent with the requirements of RLUIPA.

Religious land uses have been permitted as a matter of right within the proposed expansion area since long before the adoption of the Zoning Regulations in 1958. If the proposed expansion is approved, any new religious land use or significant expansion of an existing use will be required to submit to a lengthy, expensive, uncertain, and cumbersome special exception process. Many religious organizations do not have the resources to clear these burdensome regulatory hurdles. Moreover, because of its growth, The Church of Jesus Christ of Latter-day Saints faces unique and immediate needs for a new chapel, which would inevitably be delayed (if not thwarted) by imposing new regulatory and permitting burdens.

It is exceedingly difficult for religious organizations to find suitable property anywhere in the District, as the LDS Church's decades-long search for a permanent site attests. 16th Street has traditionally welcomed churches, permitting them as of right. The Comprehensive Plan also recognizes that churches are important to "the fabric of the city's neighborhoods" and need to be "sustained as neighborhood anchors." (***Policy LU-2.3.6: Houses of Worship***) However, the proposed expansion turns this policy on its head and posts a neon "unwelcome" sign over the expansion area, imposing significant, unjustified and often insuperable hurdles on churches. *See Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 899-900 (7th Cir. 2005) (subjecting churches to "delay, uncertainty, and expense" is substantial burden on religious exercise; "That the burden would not be insuperable would not make it insubstantial."); *Guru Nanak Sikh Soc. v. County of Sutter*, 456 F.3d 978 (9th Cir. 2006).

In addition to imposing a substantial burden on the exercise of religion, the proposed expansion is a transparent attempt to block a specific religious land use – the LDS chapel – through a sweeping amendment of the Zoning Regulations and the Zoning Map. In support of its petition to expand the Overlay District, Advisory Neighborhood Commission 4C provided a signed petition expressing specific opposition to the construction of a new chapel by The Church of Jesus Christ of Latter-day Saints at 4901 16th Street, N.W. The Commission should not sanction the ANC's attempt to use the map amendment process to target a particular religious use. To do so would inevitably result in a violation of RLUIPA's anti-discrimination provision.

Again, there is no evidence of any increase in the conversion of residential properties to nonresidential uses within the proposed expansion area since the adoption of the original Overlay District in 1994. Even if there were, such conversions would not represent a compelling governmental interest, which RLUIPA requires the District to prove in order to justify a violation of the statute. The courts have uniformly held that issues such as traffic, parking, and density do not rise to the level of a compelling governmental interest. While these are certainly valid concerns for the Commission, they cannot justify the imposition of substantial burden on the exercise of religion. Accordingly, approving the proposed expansion would represent a clear violation of RLUIPA.

As you may know, the Interfaith Conference was created in 1978 to bring together the Baha'i, Buddhist, Hindu, Islamic, Jain, Jewish, Latter-day Saints, Protestant, Roman Catholic, Sikh, and Zoroastrian faith communities and their leaders in order to promote dialogue, understanding, and a sense of community among persons of diverse faiths and to work cooperatively for social and

economic justice in the Washington metropolitan region. The proposed expansion of the Sixteenth Street Heights Overlay District is based upon an irrational fear of a proposed Mormon chapel and is therefore inconsistent with the core purposes of our organization.

We strongly urge you to deny the proposed expansion of the Sixteenth Street Heights Overlay District. Thank you very much for considering our views on this critically important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Clark Lobenstine". The signature is fluid and cursive, with the first name "Clark" being more prominent than the last name "Lobenstine".

Rev. Dr. Clark Lobenstine
Executive Director