

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 757
Case No. 92-2
(Text & Map Amendment - 16th Street Heights Overlay)
July 11, 1994

Pursuant to notice, a public hearing was held by the Zoning Commission for the District of Columbia on July 23 and 27, and November 19, 1992. At those hearing sessions, the Zoning Commission considered a joint petition of the Sixteenth Street Heights Civic Association (SSHCA), and the District of Columbia Office of Planning (OP) to amend the District of Municipal Regulations (DCMR), Title 11, Zoning (Zoning Regulations) and the Zoning Map of the District of Columbia, pursuant to 11 DCMR 102. The public hearing was conducted in accordance with the provisions of 11 DCMR 3021.

By submission dated January 31, 1992 and revised on February 28, 1992, the Sixteenth Street Heights Civic Association (SSHCA) filed a petition with the District of Columbia Office of Zoning (OZ). The SSHCA requested the Zoning Commission for the District of Columbia to amend the text of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning, and the Zoning Map of the District of Columbia.

The SSHCA proposed the creation and mapping of the Sixteenth Street Heights (SSH) Overlay District in the area that is generally bounded by Missouri Avenue on the north, 14th Street and Colorado Avenue on the east and southeast, and 16th Street and Rock Creek Park on the west.

The intent of the SSH Overlay District was to preserve and enhance the historical residential character of the SSH neighborhood by regulating the location and expansion of non-residential uses of residential property, regulating the expansion of existing non-residential uses or structures, and preserving residential housing units.

By memorandum dated February 12, 1992, OZ referred the SSHCA petition to the District of Columbia Office of Planning (OP) for review and comment, and a recommendation on whether the petition had sufficient merit to warrant a public hearing.

By memorandum (preliminary report) dated February 28, 1992, OP offered some alternative or substitute provisions to the proposal, and recommended that a public hearing be set. The report, in part, stated the following:

"The Office of Planning believes that the current number of non-residential and intensive uses in the neighborhood could well have the identified adverse impacts. For this and other reasons; OP believes that there is sufficient merit to schedule a public hearing."

On March 9, 1992 at its regular monthly meeting, the Zoning Commission considered the SSHCA petition, the preliminary OP report, and a letter dated March 6, 1992 in support of the petition from Council Chairman John A. Wilson. After discussion, the Zoning Commission authorized the scheduling of a public hearing and, on its initiative, expanded the area of consideration to include both sides of Colorado Avenue.

At that same meeting, the Zoning Commission also determined that it would broaden the scope of the public hearing and advertize both the SSHCA and OP proposals.

The proposed amendments to the Zoning Regulations and Map were contained in the notice of public hearing, as follows:

(The regular type represents the SSHCA proposal and the astericks (*) and bold type represent the OP alternative proposal.)

1. Adopt a new section of Chapter 15 to read as follows:

1551 SIXTEENTH STREET HEIGHTS OVERLAY DISTRICT

1551.1 The Sixteenth Street Heights (SSH) Overlay District is established to: (1) preserve and enhance the historical residential character of the Sixteenth Street Heights neighborhood by regulating the location and expansion of non-residential uses of residential property; (2) regulate the expansion of existing non-residential uses or structures; and, (3) preserve residential housing units.

1551.2 The SSH Overlay District encompasses the geographic area generally bounded by Rock Creek Park on the west; the south side of Military Road and Missouri Avenue, N.W. to the north, and both sides of Colorado Avenue, N.W. to the south and east.

1551.2(*) The SSH Overlay District encompasses a geographic area bounded generally by Rock Creek Park on the west, Military Road and Missouri Avenue on the north, and Colorado Avenue and 14th Street on the east. The provisions of the overlay apply to properties within the R-1-B and R-2 Districts included in squares numbered

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2741, 2742, W2720 through W2724, 2718 through 2725, 2795
and 2796.

1551.3 The purposes of the SSH Overlay District are to:

- (a) Further the goals and objectives of the Comprehensive Plan for the National Capital, including:
- (1) "Protect residential neighborhoods from disruptive uses, and to prevent concentrations of nonresidential uses in residential neighborhoods" (Section 1103);
 - (2) "Promote the conservation, enhancement and revitalization of the residential neighborhoods of the District for housing and neighborhood-related uses" (Section 1105(1));
 - (3) "Conserve and maintain the District's sound, established neighborhoods through the strict application and enforcement of the general level of existing residential uses, densities, and heights" (Section 1105(2));
 - (4) "Develop neighborhood improvement programs and neighborhood land use proposals for residential areas that have deficiencies which threaten neighborhood quality, through coordinated community and government action programs and plans, systematic monitoring of neighborhood social and physical conditions, and continuing assessment of land use, and, regulatory actions to correct deficiencies" (Section 1105(4));
 - (5) "Protect residential neighborhoods from incompatible uses and from activities generating excessive traffic, noise, litter, and other damaging environmental impacts, by promoting buffering and other techniques to provide for appropriate separation of uses which may, in some cases, require modification of the Zoning Regulations of the District of Columbia and street patterns and strict enforcement of traffic, anti-littering, noise, and pollution regulations" (Section 1105(9));
and

(6) "Control the external negative impact of new non-residential uses that are permitted in residential areas to provide sufficient parking, loading areas, pick-up and drop-off access consistent with the activity level of the non-residential uses, including schools, hospitals, churches, and clinics, this policy is designed to reduce the possible adverse impact of non-residential uses on the residential area" (Section 1105(11)).

(b) Maintain the desirability of the SSH Overlay District as a residential neighborhood.

(c) Regulate existing non-residential uses to minimize the adverse impact on the residential character of the SSH Overlay District.

(d) Minimize the adverse cumulative impacts of non-residential uses in the SSH Overlay District.

1551.3(*) The requirements and standards of this chapter shall apply to any proposed new nonresidential use, including new construction of a building or structure, conversion of a one-family dwelling or a multiple dwelling, and any addition of gross floor area to an existing nonresidential use.

A new nonresidential use shall be permitted provided that the following requirements of this subsection are met:

(a) There shall be no more than three (3) nonresidential uses in a square and no more than one (1) nonresidential use on a block face;

(b) The proposed nonresidential use shall not abut an existing nonresidential use; and

(c) The nonresidential use shall require four (4) or fewer parking spaces.

1552 GENERAL PROVISIONS

1552.1 The SSH Overlay District is mapped in combination with the underlying residential zone district and not instead of the underlying residential zone district.

1552.2 Except as specifically provided in this chapter, all uses, buildings and structures permitted in accordance with this chapter and the appropriate regulations of the

underlying district with which the mapped SSH Overlay District is combined, shall be permitted in the combined district.

1552.3 Where there is a conflict between this chapter and the underlying zoning, the more restrictive provisions of this chapter shall govern.

1553 RESTRICTIONS, ADVERSE IMPACT, OCCUPANCY CAPACITY, USE OF PUBLIC SPACE, LIMITATION ON CURB CUTS, OFF-STREET PARKING REQUIREMENTS, SCHEDULE OF REQUIREMENTS FOR PARKING SPACES, GARBAGE AND TRASH HAULING, EMERGENCY EXIT STAIRWELLS, NOTICE REQUIREMENTS.

1553.1 The following restrictions will apply to the R-1-B and R-2 Zone Districts within the SSH Overlay District for residential and non-residential uses.

1553.2 No proposed non-residential use, conversion or expansion shall be allowed that adversely affects the residential character of the SSH neighborhood. A proposed non-residential use, conversion or expansion shall be deemed to adversely affect the residential character of the SSH neighborhood if it, when considered by itself or in combination with existing non-residential uses:

- (a) Would create any deleterious external effects, including but not limited to, undue noise, traffic, parking and loading considerations, illumination, vibration, odor, and nonresidential design features and siting effects;
- (b) Would result in there being more than two nonresidential uses of residential property in any square block or equivalent area;
- (c) Would result in there being more than one nonresidential use of residential property in any block face;
- (d) Would result in there being two or more contiguous nonresidential uses; or
- (e) Would result in the demolition or destruction of any residential dwelling, regardless of whether such dwelling is currently used for a residential or a nonresidential use.

1553.3 For purposes of the SSH Overlay District, occupancy capacity of residential structures proposed to be used

for nonresidential purposes shall be defined as the maximum number of persons that the building structure reasonably can be expected to hold at any one time. All interior space, inclusive of space available for standing or sitting shall be included in determining occupancy capacity. The following shall apply:

- (a) Where non-fixed seating is proposed, the occupancy capacity shall be computed by dividing the total square footage of all spaces or areas within the entire building structure that can be used for assembling or queuing, by seven (7) square feet. Every seven (7) square feet of such space shall constitute one (1) seat for purposes of determining occupancy capacity.
- (b) Where benches or multi-person raised seating structures are proposed, the occupancy capacity shall be computed by dividing the total square footage of all spaces or areas within the entire building structure that can be used for assembling or queuing on benches or raised seating structures, by three (3) square feet. Every three (3) square feet of such space shall constitute one (1) seat for purposes of determining occupancy capacity.
- (c) In all other instances and areas, where neither benches, nor multi-person raised seating structures are proposed, the occupancy capacity shall be computed as if non-fixed seating were proposed.

1553.3(*) Any proposed nonresidential use that is not in compliance with the standards set forth in subsection 1553.2 shall only be permitted in the SSH Overlay District if approved by the Board of Zoning Adjustment after public hearing, in accordance with the conditions specified in Section 3108 of this title and subject to the following requirements:

- (a) The Board shall find that the cumulative effect of the new facility, together with existing nonresidential uses in the vicinity will not have an adverse effect on the use and enjoyment of neighboring properties due to traffic, noise, hours of operation, nonresidential design features, or gatherings of visitors, employees or participants.
- (b) There shall be adequate, appropriately located and screened off-street parking sufficient to provide

for the needs of occupants, employees, congregants and visitors to the facility, provided that:

- (1) The number of parking spaces provided shall be not less than the number required in subsections 1553.6 and 1553.7 of this chapter; and
 - (2) Parking spaces shall not be located in a required side yard or a rear yard, nor in public space abutting the lot.
- (c) The Board shall assure that exterior design features of the subject building are retained in a residential appearance to the maximum extent feasible. This shall include a review of building and site plan features such as signs, fire escapes, facade and entrance design, siting and screening of parking spaces, and any other design feature that might adversely affect the use and enjoyment of nearby residential properties.
- (d) Applicant shall provide full information regarding the projected numbers of employees, visitors and/or congregants, as well as the projected schedule of operating hours and activities, so that the Board may establish any suitable controls over operations of the facility, including permitted hours of operations and size of work force, in the interest of protecting the residential character and tranquility of the neighborhood.

1553.4 The following shall apply to the use of public space:

- (a) All proposed non-residential use, conversion and expansion must comply with all applicable statutory and regulatory requirements without consideration or use of any public space, except for legal ingress and egress for parking.
- (b) Any nonresidential use application for a permit for the use of public space give written notice of the application and all public hearings or public meetings regarding the same by certified mail return-receipt requested to the Advisory Neighborhood Commission 4A, the Sixteenth Street Heights Civic Association, and all owners within 1200 feet of the public space no more than 10 days after the application is filed and no fewer than 45 days before the date of such public hearing or public meeting.

- 1553.5 No more than one curb cut shall be permitted for any one non-residential use property in the SSH Overlay District. No curb cut shall be permitted on any arterial street in the SSH Overlay District.
- 1553.6 All proposed nonresidential uses, conversions and expansions shall be subject to the following off-street parking requirements:
- (a) No certificate of occupancy shall be issued for the use of residential buildings for a nonresidential purpose unless the required off-street parking spaces shall have been provided in accordance with the SSH Overlay District.
 - (b) No application for a building permit for a nonresidential use on or after the effective date of the SSH Overlay District shall be approved unless there is included with the plans for the building, structure or addition a parking plan which shows: (1) the location, dimensions, and grades of all parking spaces and approaches thereto; (2) conformance with all parking requirements of the SSH Overlay District; and (3) conformance to all applicable District of Columbia parking requirements.
 - (c) All nonresidential use buildings, structures, or additions, and any modification thereto shall be required to provide parking spaces as specified in the following table. Whenever calculations based on the schedule set forth in this subsection for nonresidential uses result in a fractional space, any fraction shall require one (1) additional parking space.
 - (d) The Board of Zoning Adjustment shall have no authority to reduce the amount of parking spaces required for nonresidential uses in the SSH Overlay District.
 - (e) Any accessory parking area or accessory garage containing twenty-five (25) or more parking spaces, may designate up to a maximum of twenty-five (25) percent of the parking spaces for compact cars. Any accessory parking area or accessory garage containing less than twenty-five (25) parking spaces shall not designate any of the required parking spaces for compact cars.

- (f) No accessory parking area or accessory garage containing five (5) or more parking spaces shall be permitted in the SSH Overlay District except by special exception as provided in Section 1554 of the SSH Overlay District.
- (g) Each parking lot shall be located, and all facilities of the lot designated, so that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic, physical appearance, or other objectionable conditions.
- (h) Parking lots shall not obstruct or interfere with the light, view, movement of air and visual privacy of adjoining or nearby property.
- (i) Each parking lot shall have a front and a rear yard with minimum depth of no fewer than 25 feet and side yards with a set-back of no fewer than 8 feet. No parking space shall be permitted to exist or intrude upon any front, rear or side yard required by this paragraph.
- (j) No parking space shall be permitted to exist or intrude upon any public space.
- (k) No overnight parking of any commercial vehicle or any vehicle with a gross vehicle weight in excess of 2399 pounds shall be allowed on any parking lot unless the vehicle is parked within a fully enclosed structure.

1553.7 All buildings or structures in the SSH Overlay District not existing on _____ shall provide off-street parking spaces as specified in the following schedule of requirements for parking spaces:

<u>USES</u>	<u>NUMBER OF PARKING SPACES REQUIRED</u>
Community-based Residential Facilities/ Nursing Homes/Associations	
One to eight person Housing capacity	4
Nine to 15 person housing capacity	7

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Sixteen or more person housing capacity	7, plus 1 for every 2 person housing capacity in excess of 15 person housing capacity
Rooming or Boarding house	1 for each rooming unit
Child Development Centers/ Schools	1 for each 2 part-time or full-time employees, including teachers
Places of Assembly or Congregation	1 for each 4 persons of occupancy capacity

- 1553.8 No application for certificate of occupancy for a nonresidential use building, structure, addition or expansion shall be approved unless a fully executed contract for not less than three years for private garbage and trash collection from the property is submitted with the application.
- 1553.9 No application for a certificate of occupancy for a nonresidential use building, structure, addition or expansion shall be approved unless all emergency exit fire-rated stairwells required by the Construction Office of the Department of Consumer and Regulatory Affairs, and the D.C. Fire Marshall for nonresidential use are fully enclosed in the manner and with the materials as the building, structure, addition or expansion that they serve. The enclosed stairwells shall be constructed of non-combustible materials to fully comply with applicable building code requirements and designed to not adversely affect the residential character of the neighborhood.
- 1553.10 All nonresidential use applicants for building permits and/or certificates of occupancy shall provide written notice of such applications within 5 days of filing the application to Advisory Neighborhood Commissions 4A and 4C, the Sixteenth Street Heights Civic Association, and owners within 1200 feet of the property to which the application pertains, by certified mail return-receipt requested.

1554 SPECIAL EXCEPTIONS

1554.1 Exceptions from the requirements of the SSH Overlay District shall be permitted only as a Special Exception, if approved by the Board of Zoning Adjustment after public hearing, in accordance with the conditions specified in Section 3108 of this title and subject to the following requirements:

- (a) In any action involving a request for a special exception, there shall exist a rebuttable presumption that the special exception requested adversely impacts the residential character of the SSH neighborhood. This presumption may only be overcome by clear, convincing and unequivocal evidence to the contrary.
- (b) For the excepted use, building, addition, or structure to be approved, it must also be shown that it will not adversely affect the stated purposes of the SSH Overlay District and will not adversely affect neighboring property as measured by the extent to which the use, building, addition, structure, tree removal and topographical change would impair the residential physical and environmental characteristics of the SSH Overlay District.
- (c) For the excepted use, building, addition, or structure to be approved it must also be shown that it will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity.
- (d) Failure to attain maximum economic advantage from ownership of a property is not an exceptional economic circumstance for purposes of a special exception within the meaning of this provision;
- (e) The Board of Zoning Adjustment shall impose additional requirements as to design, appearance, size, landscaping, days and hours of operation, permissible number of employees, visitors and participants/congregants, and other matters, necessary to achieve the purposes of the SSH Overlay District; particularly, the Board shall require that, where possible, building plans shall create the least possible impact on the residential character of the SSH neighborhood; and
- (f) In addition to notice otherwise required, the

person or entity requesting a special exception shall give written notice of all public hearings involving a request for a special exception within the SSH Overlay District by certified mail return-receipt requested to the Advisory Neighborhood Commissions 4A and 4C, the Sixteenth Street Heights Civic Association, and residents within 1200 feet of the property at issue no fewer than 45 days before the date of the public hearing. Failure to provide such notice as required by this subsection shall make any public hearing held null and void whether or not the entities or persons required to receive such notice have actual notice of the hearing.

1554.2 This section shall not operate to allow any exception to the parking requirements of subsections 1553.6 and 1553.7 of the SSH Overlay District.

1599 DEFINITIONS

1599.1 For the purposes of Sections 1551-1554 (SSH Overlay District), the following definitions shall apply:

- (a) Nonresidential - improved real property which is not residential.
- (b) Residential - improved real property consisting of single-family dwellings and apartment buildings which are used exclusively for non-transient residential dwelling purposes (including accessory uses permitted by Section 202 of this title) whether as a row, detached or semidetached structures, or as a single condominium unit within a horizontal property regime.
- (c) Yard - an unpaved, open and uncovered area with a border of foliage at least six feet in height to screen objectionable conditions of the parking lot.
- (d) Contiguous - having a common or abutting boundary or lot line and having a boundary or lot line that is separated from the next boundary or lot line by a public street, alley or sidewalk.

1599.1(*) For purposes of this chapter, the following definitions shall apply in addition to those found in Section 199 of this title.

- (a) Block face - one side of a square which fronts on a

street, has streets at both ends and has no intervening streets.

- (b) Nonresidential use - a permitted use other than a one-family dwelling or a multiple dwelling. This definition encompasses both nonresidential uses that do not provide human habitation and intensive residential uses that are permitted with special restrictions in the R-1 zone. The applicable uses include those that are or have been permitted as of right, by special exception or by variance. Nonresidential uses include, but are limited to, private school, college or university, clinic, church, religious residence, hospital, chancery, embassy, association office, private club, child development center, community based residential facility, rooming or boarding house, and utility substation.

2. Amend the Zoning Map by applying the SSH Overlay District to the existing R-1-B and R-2 zoned properties in squares 2715, 2716, 2718 - 2725, W2720 - W2724, 2741, 2742, 2796 and 2799, and the properties that are bounded by Manchester Lane, and 14th and Nicholson Streets, N.W.

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

The R-2 District permits matter-of-right development of single-family detached and semi-detached dwelling units with a minimum lot area of 3,000 square feet, a minimum lot width of thirty feet, a maximum lot occupancy of forty percent, and a maximum height of three stories/forty feet.

The Zoning Commission indicated that it would also receive testimony at the public hearing and written submissions about, and would consider adoption of, other alternative amendments that were reasonably related to the scope of the amendments that were set forth in the notice of public hearing.

At the public hearing, the SSHCA presented its petition, as contained in the notice of public hearing. SSHCA testified about the history of the area, the cumulative adverse impact of the increase of non-residential uses on the area, and a study of the number of non-residential uses in the area. SSHCA indicated that the proposal is consistent with the goals and policies objectives of the Comprehensive Plan by encouraging the preservation and

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stability of the 16th Street Heights neighborhood, that the overlay approach is an appropriate means of achieving the objectives of the Comprehensive Plan, and that the proposal does not discriminate against nor single-out places of worship, because it affects all new non-residential uses and only existing non-residential uses that expand.

OP by memorandum (interim report) dated July 15, 1992 and by testimony presented at the public hearing, recommended approval of the SSH Overlay District, subject to some modifications. OP requested to submit its final report based on testimony at the public hearing.

The OP report contained an analysis of the number of non-residential uses in the subject neighborhood. The report also, in part, indicated the following:

"The petitioners cite a number of adverse effects that arise from the number and concentration of nonresidential uses in the neighborhood: (1) there is an erosion of residential quality and a loss of housing supply and tax revenues deriving from the loss of tax-paying residents; (2) some of the nonresidential uses create increased noise, especially during evening and night hours; (3) increased traffic and overspill parking are cited as impacting the neighborhood adversely; and (4) single-family homes are modified to accommodate nonresidential uses by the addition of fire escapes, paved parking lots, exterior floodlights, signs, status and facade alterations. Many of these features normally arise, to a limited degree, in the R-4 and more intensive zones, but are not normal accompaniments to single-family neighborhoods. The petitioners also cite increased trash and significant numbers of "strangers" visiting the neighborhood on a regular basis as adverse impacts".

Symbolic of the various impacts is the presence of a paved parking lot on previously residential property that abut existing residential property. A parking lot is often a visual eyesore and represents the comings and goings of vehicular traffic not normally found in a neighborhood setting. Neighborhood residents are concerned that houses adjacent to nonresidential uses will not be saleable or rentable to incoming residents and that erosion of neighborhood character will continue unless limits are placed on nonresidential uses.

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The Office of Planning believes that the current number of nonresidential uses in the neighborhood does have the identified adverse impacts to a high degree and that an overlay zone is justified as a means of protecting the neighborhood from incompatible levels of nonresidential activity"

Because a number of the nonresidential uses are places of worship or religious residences, OP requested legal advice from the Office of Corporation Counsel (OCC) regarding the type and degree of land use regulation that is appropriate for religious uses. OP fully recognized the social value of the religious institutions, group homes and other nonresidential uses to neighborhoods and to the District as a whole. OP made the following comments:

1. Religious uses are not proposed to be excluded from the 16th Street Heights area. OP's recommended regulation would allow additional religious uses as a matter of right within certain performance standards. A special exception process is also provided as a means by which new or expanded religious uses may be approved;
2. The proposed regulation would apply to only one neighborhood constituting a very small fraction of the total land area of the District of Columbia, where the development of religious uses in land use terms is subject to more limitations than elsewhere in the city. This is not a city-wide text amendment, and even in the one affected neighborhood, the proposed regulation does not exclude religious uses;
3. OP's analysis of four other low-density neighborhoods has found a distinctly lesser concentration of nonresidential uses; there is a rational basis for somewhat different land use regulations in this neighborhood regarding nonresidential uses than other neighborhoods in the city.

OP further indicated that the issues raised in this neighborhood relate to a variety of nonresidential uses, the degree of concentration, location within the neighborhood (e.g., on local and collector streets as against arterials), and reasonable control over impacts on residential neighbors, if additional regulations are adopted, they must be balanced and fair.

By memorandum dated February 27, 1992 to the Director of the OP, the OCC indicated, in part, the following:

1. Our concern is primarily based upon the impact of the proposed overlay on religious uses, institutions and residences. The regulation of religious uses and institutions through zoning controls - especially when they are permitted in a use dis-

strict as a matter of right - has been found to implicate directly constitutional principles of the First Amendment Establishment Clause and Free Exercise Clause ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ..."). Where the express purpose or clear impact of a zoning regulation is to limit or exclude religious uses in a zone where they are otherwise permitted, a large majority of jurisdictions have determined that such religious facilities "are, by their very nature, clearly in furtherance of the public morals and general welfare, and may not be excluded from a residence district in which location of such use is sought."

2. A minority of jurisdictions make religious uses subject to zoning regulations in the same manner and to the same extent as other uses, and allow prohibition of such uses if they do not fit the comprehensive plan just as other uses may be similarly excluded. The few federal cases which have addressed such regulation have adopted a "balancing test", weighing the municipality's interest in enforcing its zoning laws against the burden the regulation imposed on the free exercise of religion.
3. Because no local or federal appellate court in the District of Columbia has addressed this issue, it is unclear whether the majority, minority or federal standards would prevail. Nonetheless it is very clear from all of the authorities that there is a substantial, even compelling, burden on a municipality to justify and support the exclusionary regulation of religious uses in areas where they have traditionally existed as a matter of right.
4. Because the purpose of the proposed 16th Street Heights Overlay is to regulate non-residential uses, and over 40 percent of the non-residential uses in the area are "house churches", "religious residences" and "conventional churches" according to the Civic Association, there is a clear regulatory impact of the overlay on religious institutions. In light of such regulatory impact, we advise that the Office of Planning develop a substantial factual information base and assess alternative regulatory mechanisms before adopting any overlay zone which may have such a direct, apparently significant impact on religious uses in the 16th Street Heights area.

The District of Columbia Department of Public Works (DPW), by memorandum dated July 13, 1992, indicated that the department had no objections to the requirements and standards as set forth in the proposed overlay.

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The District of Columbia Department of Consumer and Regulatory Affairs (DCRA), by memorandum dated July 20, 1992, expressed concerns about some provisions of the proposed overlay. DCRA recommended the following:

1. The term "flat" should be included in Section 1551.3.
2. Add Section 1551.4 to read as follows:

1551.4 The applicant must present to the Zoning Administrator a block-survey proving conditions in Section 1551.3(a) and (b). The Zoning Administrator's Office would then verify conditions found in the survey.
3. What are "multi-person raised (seating) structures as referenced in Section 1553.3(b)?"
4. There appears to be an inconsistency between Sections 1553.3(b) and 1553.7 with 1551.3(c)
5. Delete the phrase "2399 pounds", and restrict "commercial vehicles, buses and trucks" in Section 1553.6(k)
6. The phrase "flats and multi-dwellings" should be included in Section 1599.1(b)
7. The definition of yard is not necessary in Section 1599.1(c); it is defined in Section 199, and screening for parking is addressed in Chapter 21.

The District of Columbia Department of Human Services (DHS), by memorandum dated July 23, 1992, supported the "grandfather" language proposed by OP but expressed concern that the proposed restrictions will make it impossible to provide needed services in the mix and number required by a community. Moreover, the city will continue to be in violation of court orders for lack of permitted uses where certain services are needed.

Councilmember Charlene Drew Jarvis, by testimony presented at the public hearing, made no recommendation but requested the Zoning Commission leave the record open.

Councilmember William Lightfoot, by testimony presented at the public hearing and by letter dated November 17, 1992, supported the proposal.

Other letters in support of the proposal were received from Council Chairman John A. Wilson dated July 23 and November 19, 1992, and

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Councilmembers John Ray dated June 29 and November 18, 1992, Hilda Mason dated July 23, 1992, and Linda Cropp dated July 23, 1992.

Advisory Neighborhood Commission (ANC) 4A, by letter dated May 27, 1992 and by testimony presented at the public hearing supported the proposal. ANC-4A stated the following:

"ANC-4A feels any action other than approval for this overlay plan would be in direct opposition to the Comprehensive Plan for the District, and would be a vote to encourage the unconscionable erosion of this and other residential neighborhoods which are the major source of stability for the District."

The Zoning Commission received many other letters in support of the proposed overlay, which asserted that the SSH overlay will help to:

1. Lessen the erosion of the residential quality of the area;
2. Prevent the loss of the city's housing supply;
3. Prevent the erosion of the tax base by the retention of tax paying residents;
4. Lessen the increase of trash, noise, traffic, and spill-over parking that is created by the proliferation of non-residential uses;
5. Minimize the increase of strangers visiting the neighborhood;
6. Preserve the integrity and stability of the neighborhood by furthering the goals and policies objectives of the Comprehensive Plan; and
7. Minimize an increase of alterations to many single-family houses that included the construction of fire escapes, the paving of grass areas for parking lot use, the erection of signs and statues, and the changing of building facades.

ANC-4C, by letter dated July 1, 1992 and by testimony presented at the public hearing, opposed the proposed overlay because it was objectionable, misleading, unreasonable, and unconstitutional. ANC-4C stated the following:

1. That it objected to the notion that the change of use from residential to non-residential will destroy the quality of life in the 16th Street Heights area.
2. That it found the boundaries established by the SSHCA for the proposed overlay district to be misleading.

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ANC-4C and others historically had always known the SSHCA area to be bounded by Military Road to the north, Colorado Avenue to the east, Rock Creek Park to the west, and Kennedy Street to the south.

3. That it found to be unreasonable the requirement for existing property owners to seek a zoning variance from the same neighborhood association and residents who have acted hostile, vindictive, and unyielding in their demand to hinder the progress of various non-residential use facilities.
4. That it found to be unconstitutional, the creation of laws by the city government with respect to hindering religion or religious practices.

The Greater Carter Barron Citizens Coalition (GCBCC) by submission dated July 21, 1992 and by testimony presented at the public hearing, opposed the proposal. The GCBCC stated the following:

1. The GCBCC feels that churches and social service organizations offer valuable and much-needed services to the city as they assist in fulfilling human, social, and educational needs to members of the community. In reference to churches, the GCBCC asserts that it was the original intent of the founders and builders of 16th Street that it be an "avenue of the churches" leading straight to the White House. The street was to represent each American citizen's inherent right of freedom of religion.
2. The GCBCC finds the overlay zoning to have an adverse affect upon religious institutions, as it could easily be used to discriminate against religious denominations wishing to establish a house of worship in the Sixteenth Street Heights neighborhood, thus depriving citizens of the constitutionally guaranteed freedom of religion and freedom of establishing a place of worship. Furthermore, there are city-wide implications if the zoning overlay proposal is approved. If used as a precedent, and adopted by other residential areas in the city, citizens would not be able to benefit from the social services provided by the churches or social service organizations. Also, whether citizens were able to establish new churches or social service organizations would be at the mercy of a few people who could easily prohibit their establishment simply because they did not approve of the religion or race of the founders/members of the establishments.

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3. The GCBCC has witnessed the SSHCA's active and documented attempts to dissuade neighborhood property owners from selling their property to organizations towards which they dislike due to ethnic origin and religious affiliation. We feel that the zoning overlay would restrict the rights of all citizens in the neighborhood to sell their residential property to anyone, as the SSHCA would have the power to control to whom residents sell their property.

The Zoning Commission received many letters in opposition to the proposed overlay, which asserted that the SSH overlay will encourage:

1. A restriction of the ethnic, cultural, social and other forms of diversity in the area;
2. Discrimination against places of worship and the freedom to establish and expand such facilities;
3. The imposition of land-use controls on a geographic area beyond the boundaries of the SSHCA;
4. The imposition of subjective and unreasonable criteria against which to review the establishment and expansion of non-residential uses; and
5. The use of zoning to correct traffic, environmental, and other violations.

At the conclusion of the public hearing on November 19, 1992, the Zoning Commission left the record open to receive the final OP report and advice from the Corporation Counsel about the constitutionality of the proposal. OP requested and was granted a six-month period to conduct a study to explore city-wide text amendments together with enforcement mechanisms or possible alternatives to an overlay zone affecting only this neighborhood.

By memorandum dated January 14, 1993, the Office of Zoning, on behalf of the Zoning Commission, requested the advice of OCC to provide guidance on the following:

1. The general extent of land use regulation that is acceptable when religious-affiliated uses constitute a significant percentage (approximately one-half) of the uses being regulated (recognizing that this percentage is existing uses, whereas the proposed overlay would primarily regulate future uses); and

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2. Any particular concerns regarding particular provisions of the overlay as advertised, including but not limited to:
 - a. Whether certain provisions of the Sixteenth Overlay Heights Overlay, as advertised, may have a disproportionate regulatory impact on religious and religion-related uses; and, if so,
 - b. Whether the Sixteenth Street Heights Overlay violates, or otherwise impairs, protected rights under the Free Exercise Clause of the First Amendment to the Constitution of the United States ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...")

On March 22, 1993, the Zoning Commission received advice from OCC, which was subject to the attorney-client privilege and did not become a part of the record in the case.

By memorandum (final report) dated June 4, 1993, OP recommended a modified overlay proposal. The main features of the modified overlay proposal were as follows:

1. Existing nonresidential uses would be permitted to expand by up to 10 percent of gross floor area as a matter of right.
2. Existing nonresidential uses would be conforming uses rather than nonconforming uses.
3. Potentially rigid and arbitrary spacing standards for new nonresidential uses would no longer be utilized. Instead, a new nonresidential use or an existing nonresidential use proposing to expand by more than 10 percent of gross floor area would be reviewed by the Board of Zoning Adjustment (BZA) as a special exception.
4. The originally proposed spacing requirement had the primary purpose of limiting cumulative impacts from the presence of clusters of nonresidential uses. The proposed alternative is the special exception process, which will enable the BZA to consider the localized impacts of the proposed new use, while taking into account the type as well as the number of existing nonresidential uses. This degree of flexibility is desirable.
5. Several of the original overlay provisions that are peripheral to zoning and that lend themselves to nonzoning enforcement actions or that are zoning-related but onerous on nonresiden-

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tial uses are deleted from the proposed overlay zone, e.g., requirements for a trash collection contract, prohibition on demolition of single-family homes, special parking schedule.

6. Comprehensive Plan policies supportive of social service and cultural and religious uses are cited in the preamble, together with the previously cited policies requiring controls over adverse impacts from nonresidential uses and protection of residential character.
7. Several definitions originally advertised are not included in the simplified overlay zone proposal, because these definitions are not needed in the absence of spacing requirements. The definition of nonresidential use is simplified.

On June 14, 1993 at its regular monthly meeting, the Zoning Commission considered the final OP report and took proposed action to approve the modified overlay proposal, as amended.

The Zoning Commission concurs with the final recommendation of the OP and, in part, with ANC-4A, the SSHCA and others, and believes that the modified proposal as amended is appropriate. The Commission does not concur with ANC-4C, GCBCC, and others that are opposed to the proposal.

The Commission believes that after balancing all of the issues in the case, its decision is fair and reasonable, and notes that the unregulated proliferation of non-residential uses in the 16th Street Heights area would:

1. Erode the character and quality of life for area residents;
2. Cause a further reduction in the housing supply;
3. Diminish tax revenue for the city;
4. Continue adverse impacts associated with trash, noise, traffic and parking; and
5. Not be consistent with the goals and policies objectives of the Comprehensive Plan.

The Commission also believes this regulation would not discriminate against places of worship because it will regulate all new non-residential uses, and retain the conformity of and moderately affect existing lawful nonresidential uses.

The Commission further believes that its decision is in the best interest of the District of Columbia, is consistent with the intent

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and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

On October 18, 1993 at its regular monthly meeting, the Zoning Commission considered a letter dated September 30, 1993 from the GCBCC requesting access to the March 1993 OCC advice to the Zoning Commission. The Commission also considered and granted a request of the Director of OZ to provide it more time to communicate with OCC about this matter.

On November 15, 1993 at its regular monthly meeting, the Zoning Commission considered the September 30, 1993 letter and an additional letter dated November 9, 1993 from GCBCC requesting access to the OCC advice to the Commission, and also considered a memorandum from OZ with recommendation about the matter. After discussion, the Commission determined that it would not waive its attorney-client privilege in this case and denied the GCBCC request.

A notice of proposed rulemaking was published in the D.C. Register on February 4, 1994 (41 DCR 560). As a result of the publication of that notice, more than thirty (30) comments were received.

The proposed action of the Zoning Commission to amend the Zoning Regulations and Map was referred to the National Capital Planning Commission (NCPC), under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by report dated February 3, 1994, indicated that the proposed overlay will enhance the Federal interests by improving the quality of views from 16th Street, Rock Creek Park, the Fort Circle Parkway, and embassies and chanceries located in this area. NCPC found that the proposed overlay would not adversely affect the Federal Establishment or other Federal interests in the National Capital nor be inconsistent with the Comprehensive Plan for the National Capital.

On April 11, 1994 at its regular monthly meeting, the Commission considered a staff draft of Z.C. Order No. 757. After discussion and some editorial changes, the Commission took final action on Z.C. Order No. 757, as amended.

On or about April 21, 1994, OZ staff informed the Chairperson that, because of a staff oversight, the Commission took final action on Z.C. Order No. 757 without the benefit of having received the public comments that were submitted as a result of the publication of the notice of proposed rulemaking in the D.C. Register. The Chairperson concurred with the rescheduling of final action reconsideration of Z.C. Order No. 757.

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On May 9, 1994 at its regular monthly meeting and with the benefit of having received more than thirty (30) public comments on the notice of proposed rulemaking, the Commission deferred final action reconsideration of Z.C. Order No. 757 because Commissioner Parsons was needed to participate in the discussion and was not expected to be in attendance at that meeting.

At that same meeting, the Chairperson inquired about whether the "Religious Freedom Restoration Act of 1993" would apply to or impact Case No. 92-2. After Commission discussion, the Chairperson requested OZ to solicit the opinion of OCC, and reopened the record for interested persons to respond only to the OCC opinion letter.

On June 13, 1994 at its regular monthly meeting, the Zoning Commission scheduled a separate meeting for June 27, 1994 to reconsider final action on Z.C. Order No. 757.

On June 27, 1994 at a special public meeting, the Commission acknowledged receipt of the OCC comments and responses thereto. The responses included letters from the American Center for Law and Justice (ACLJ), Advisory Neighborhood Commission (ANC) 4A, the Greater Carter Barron Citizens Coalition (GCBCC), the Sixteenth Street Heights Civic Association (SSHCA), the Interfaith Conference, the Western Presbyterian Church, Ellen Broderick, area resident, and Lois G. Williams, counsel for the Religious Freedom Roundtable.

After considering how best to proceed in this matter, the Commission voided its final action of April 11, 1994.

The Chairperson expressed her agreement with OCC that municipalities have the authority and the right to condition the use of properties, including church properties, by way of a special exception. She disagreed with those who believe that there should be no regulation of any kind for churches. She concurred with OCC that the proposed cumulative impact analysis of existing nonresidential uses within a certain radius could be burdensome. She was reminded of the conflicting impact analyses of existing nonresidential uses that were presented by opposing factions in the case; i.e., the SSHCA and the GCBCC.

The Chairperson indicated that she understands but does not concur with the following:

- a. The ACLJ recommendation to exempt religious organizations from the requirements of the proposed overlay;

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- b. The GCBCC recommendation to deny the proposed overlay;
and
- c. The SSHCA suggestion that the elimination of the proviso language in proposed paragraph 1553.2(a) would irreparably damage the affect of the proposed overlay.

For the aforementioned reasons, the Chairperson recommended the deletion of the proviso language in the proposed paragraph 1553.2(a).

Commissioners Ensign and Parsons concurred with the Chairperson's rationale and recommendation. The Commission determined that by deleting the proviso language, the remaining guidelines in Subsection 1553.2 are not unlike those special exception guidelines that are considered by the Board of Zoning Adjustment in similar cases before it.

The Commission believes that its action renders the proposed rulemaking less restrictive, as opposed to more restrictive, and therefore does not constitute a significant change to the proposal, which otherwise would require the publication of a new notice of proposed rulemaking.

The Zoning Commission has accorded ANC's - 4A and 4C the "great weight" consideration to which they are entitled.

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders APPROVAL of amendments to the Zoning Regulations and Map. The specific amendments are as follows:

- 1. Adopt a new section of Chapter 15 of the Zoning Regulations to read as follows:

1551 SIXTEENTH STREET HEIGHTS OVERLAY DISTRICT

1551.1 The Sixteenth Street Heights (SSH) Overlay District is established to help accomplish several goals and policies of the Comprehensive Plan for the National Capital, 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 SSH 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.

1551.3 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 further conversion of residential housing to nonresidential uses in order to maintain the housing supply and minimize the external negative impacts of new non-residential uses that are permitted in the SSH/R-1-B District in order to preserve neighborhood quality; and
- (c) Allow the neighborhood 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.

1551.4 The provisions of the SSH Overlay District are applied to the 16th Street Heights neighborhood based on the following key findings:

- (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 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.

1552 GENERAL PROVISIONS

- 1552.1 The SSH Overlay District is mapped in combination with the underlying R-1 District and not instead of the underlying district.
- 1552.2 Where there is a conflict between this chapter and the underlying zoning, the more restrictive provision shall govern.

1553 MATTER OF RIGHT AND SPECIAL EXCEPTION USES

- 1553.1 An existing nonresidential use with a valid Certificate of Occupancy as of the effective date of this amendment 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:
 - (a) No additional land area or subdivision of lots is involved in the expansion;
 - (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 the effective date of this amendment.
- 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, if approved by the Board of Zoning Adjustment after public hearing, in accordance with the conditions and specified in Section 3108 of this title and subject to the following requirements:

- (a) 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
- (b) There shall be adequate, 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, provided, that:
 - (1) The number of parking spaces provided shall be not less than the number required by chapter 21 of this title and shall be located and designed so that they have the least objectionable effects on contiguous or nearby property because of noise, traffic or other objectionable conditions;
 - (2) Parking spaces and driveways providing access to them 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;
 - (3) 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 wall made of brick or stone at least twelve inches (12") thick and forty-two inches (42") high, and/or by evergreen hedges or evergreen growing trees which are thickly planted and maintained and are at least forty-two inches (42") in height when planted; and
 - (4) 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 purposes.

1553.3 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.

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1599.1 Nonresidential use - a permitted use in the R-1 District other than a single-family dwelling.

2. Adopt a new overlay zone district on the Zoning Map to reflect the following:

Change the zoning from R-1-B to SSH/R-1-B for all of the existing R-1-B zoned properties in the following squares or portions thereof:

Squares: 2718, 2719, 2720, 2720W, 2721, 2721W, 2722, 2722W, 2723, 2723W, 2724, 2724W, 2725, 2741, 2742, 2796, and 2799

Vote of the Zoning Commission taken at the regular monthly meeting on June 14, 1993 to approve proposed rulemaking: 4-0 (Tersh Boasberg, Maybelle Taylor Bennett, John G. Parsons, and William L. Ensign, to approve as amended - Lloyd D. Smith, not present, not voting).

This order was adopted prematurely by the Zoning Commission at its regular monthly meeting on April 11, 1994 by a vote of 3-0: (William L. Ensign, John G. Parsons and Maybelle Taylor Bennett, to adopt as amended - Jerrily R. Kress, not voting, not having participated in the case and William B. Johnson, not present, not voting not having participated in the case).

Final action taken on this order on April 11, 1994 was voided by the Zoning Commission at a special meeting on June 27, 1994 by a vote of 3-0 (William L. Ensign, John G. Parsons and Maybelle Taylor Bennett, to void the April 11, 1994 final action - Jerrily R. Kress and William B. Johnson, not present, not voting not having participated in the case).

Vote of the Zoning Commission to revise the notice of proposed rulemaking taken at the special meeting on June 27, 1994: 3-0 (William L. Ensign, John G. Parsons, and Maybelle Taylor Bennett, to revise - Jerrily R. Kress and William B. Johnson, not present, not voting not having participated in the case).

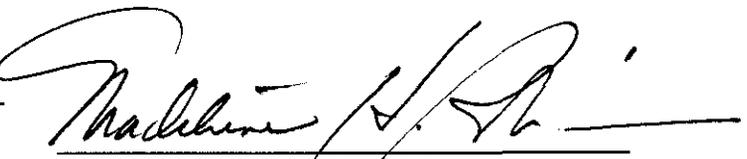
This order was adopted by the Zoning Commission at its regular monthly meeting on July 11, 1994 by a vote of 3-0 (John G. Parsons and Maybelle Taylor Bennett, to adopt as amended and William L. Ensign, to adopt by absentee vote - William B. Johnson, not voting, not having participated in the case and Jerrily R. Kress, not present not voting not having participated in the case).

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In accordance with the provisions of 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is, on JUL 29 1994 .



MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission



MADELIENE H. ROBINSON
Director
Office of Zoning

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