

STAFF RECOMMENDATION

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NCPC File No. ZC 08-09



TEXT AND MAP AMENDMENT TO EXPAND THE SIXTEENTH STREET HEIGHTS OVERLAY DISTRICT SQUARES 2708 - 2716

Bounded by Colorado Avenue, Decatur Street, 14th Street, and 16th Street, NW
Washington, D.C.

Submitted by the Zoning Commission of the District of Columbia

November 25, 2008

Abstract

The Zoning Commission of the District of Columbia has taken a proposed action to approve a text and map amendment to expand the Sixteenth Street Heights (SSH) Overlay District southern boundary to include Squares 2708, 2709, 2710, 2711, 2712, 2713, 2714, 2715, and 2716. The Squares are bounded by Colorado Avenue to the north, Decatur Street on the south, 14th Street on the east, and 16th Street on the west in northwest Washington, D.C. The underlying zoning of R-1-B would remain intact.

Commission Action Requested by Applicant

Approval of the report to the Zoning Commission of the District of Columbia pursuant to 40 U.S.C. § 8724(a) and DC Code § 2-1006 (a).

Executive Director's Recommendation

The Commission:

Advises the Zoning Commission of the District of Columbia that the proposed expansion of the Sixteenth Street Heights Overlay District would not be inconsistent with the Comprehensive Plan for the National Capital nor adversely affect any other identified federal interests.

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PROJECT DESCRIPTION

Site

The proposed expansion encompasses Squares 2708 through 2712 in Northwest, Washington, D.C. The squares are bounded by Colorado Avenue to the north, 16th Street to the west, 14th Street to the east, and Decatur Street to the south. The existing development within the area is mainly residential use with a few churches and other institutional uses.

Within one half mile of the proposed SSH Overlay expansion there are two embassies, two chanceries, and six foreign missions; three of the six foreign missions and one of the embassies are located within the current SSH Overlay. The proposed expansion is also in close proximity to the section of Rock Creek Park that includes the Carter Barron Amphitheatre and the William H.G. Fitzgerald Tennis Center.

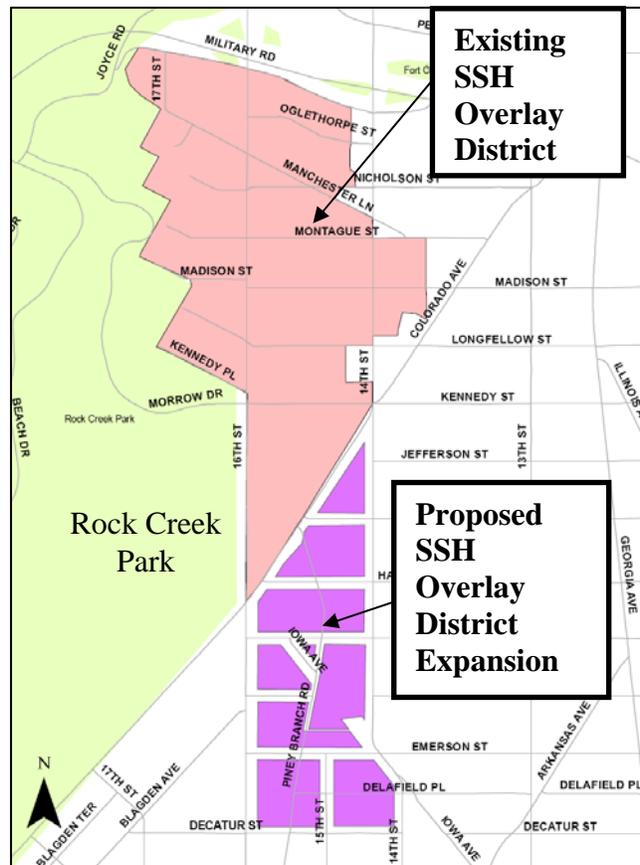
Background

On April 15, 2008, the Advisory Neighborhood Commission (ANC) 4C petitioned the Office of Zoning for a text and map amendment to expand the Sixteenth Street Heights (SSH) Overlay District to include all lots in Squares 2708 through 2716.

The existing SSH Overlay District was established in July of 1994. The current boundary of the SSH Overlay District is 16th Street and Rock Creek Park on the west, Military Road and Missouri Avenue on the north, 14th Street on the east, and Colorado Avenue on the southeast.

The application to the Zoning Commission states that the intent of the SSH Overlay is to conserve and enhance low density, single-family neighborhoods for housing and neighborhood-related uses and to control conversion of residential housing to non-residential uses to maintain housing supply.

At its February 1994 meeting, the Commission found that the text and map amendments that established the original Sixth Street Heights Overlay “would not adversely affect the Federal Establishment or other Federal interest in the National, nor be inconsistent with the Comprehensive Plan for the National Capital.”



SSH Overlay District with Expansion Area

Proposal

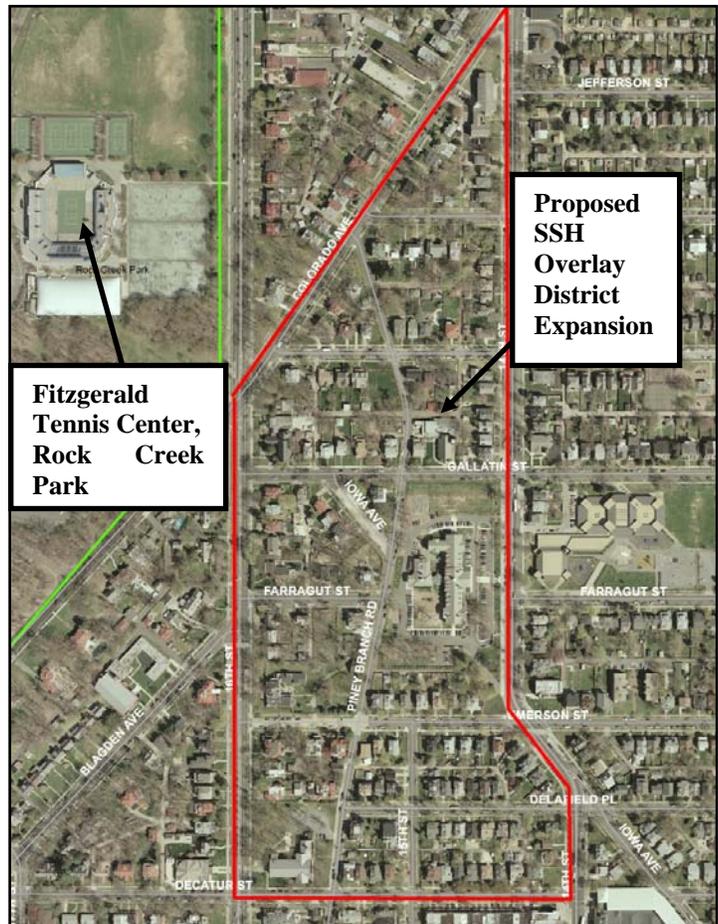
The Zoning Commission for the District of Columbia has submitted a proposed text and map amendment to the D.C. Zoning Regulations and Map for review and comment. The proposed amendments seek to expand the existing boundary of the SSH Overlay District to include Squares 2708 through 2716.

The Zoning Regulations would be amended as follows (new text in **bold underline font**):

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, 14th Street on the east, and **Colorado Avenue on the southeast** **Decatur Street on the south**. This overlay zone is applied to properties zoned R-1-B in the following squares and portions of the squares: **2708, 2709, 2710, 2711, 2712, 2713, 2714, 2715, 2716,** 2718, 2719, 2720, 2720W, 2721, 2721W, 2722, 2722W, 2723, 2723W, 2724, 2724W, 2725, 2741, 2742, 2796, and 2799.

The SSH Overlay restricts all matter-of-right, non-residential uses. Those non-residential uses built since July 29, 1994 have greater restrictions placed on them. The Overlay allows for a special exception for all non-residential uses, upon approved by the Board of Zoning Adjustment (BZA). Existing, non-residential uses within the proposed overlay expansion area will be “grandfathered” and allowed to continue their use. Under the Overlay, these grandfathered, non-residential uses do have the option of building up to 10% of their gross floor area as a matter of right. Any increase greater than 10% will need BZA approval.

The District of Columbia Office of Planning has identified ten existing religious organizations and one independent school within the boundaries of the proposed expansion. Also, NCPC staff has identified the Liberian Embassy as located within the proposed overlay addition. All future proposed non-residential uses including religious and school uses would be subject to the provisions of the zoning overlay.



Proposed Area for SSH Overlay District Expansion

PROJECT ANALYSIS

Federal Interest

Foreign Missions and Federal Laws

Staff finds that the effect of expanding the overlay would require any proposed new non-residential user to go through a “special exception” process before the Board of Zoning Adjustment. The overlay does not prohibit non-residential uses. Although the area is primarily comprised of residential uses, there are some non-residential and institutional uses. These uses include the Liberian Embassy, some schools, and churches. These existing uses would be grandfathered. It has also been brought to our attention that the Church of Jesus Christ of Latter Day Saints (LDS) has plans to build a church within the proposed overlay expansion area.

Under the Foreign Missions Act of 1982, the Foreign Missions Board of Zoning Adjustment (FMBZA) must review the location, expansion, or replacement of a chancery in the District of Columbia. The FMBZA process will include a review of all applicable zoning and overlay requirements. There will be no additional process required for foreign missions as a result of the proposed overlay expansion.

The Free Exercise Clause of the First Amendment of the U.S. Constitution, and two statutes implementing that Clause, bear on the District of Columbia’s action here. The statutes are the Religious Freedom Restoration Act (RFRA) and the Religious Land Use and Institutionalized Persons Act (RLUIPA). It is a federal interest to assure that the District is implementing these laws. We note that counsel for LDS has provided us with written materials arguing that in putting the expansion into place the District would violate RFRA, RLUIPA, and the First Amendment’s Establishment Clause.

RFRA prohibits the District of Columbia and the federal government from imposing a “substantial burden” on the free exercise of religion unless the government demonstrates that the burden furthers a compelling governmental interest and is the least restrictive means of furthering that interest. When it adopted the initial overlay in 1994, the District wrote an opinion that the overlay did not violate RFRA. We have reviewed that opinion and more recent case law and have determined that, as a matter of law, we agree with the District that the District’s adding a step to the zoning process is not a “substantial burden” on religious exercise and thus the overlay expansion does not violate the federal interest in assuring that the District is complying with RFRA. RLUIPA does not apply to federal agencies; it may apply to the District. It has a similar “substantial burden” provision for land use decisions and the legal analysis would be the same. An action that meets the RFRA and RLUIPA substantial burden tests would not violate the Free Exercise Clause of the First Amendment.

The requirements of the First Amendment apply to the District. RLUIPA and the First Amendment have an additional non-discrimination requirement that religious uses must be treated on equal terms with non-religious uses, and that an action must not substantially

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

In February 1994, the Commission approved the original SSH Overlay District case, Zoning Case Number 92-2, by noting that its role was advisory to the Zoning Commission and focused on only a few federal issues identified in the Comprehensive Plan. Although RFRA was raised during the meeting, the Commission determined that there would not be any adverse impact to the federal interests identified in the EDR, namely 16th Street, Rock Creek Park and the adjacent Fort Circle Parks, and embassies and foreign missions located within the SSH area.

Comprehensive Plan for the National Capital: Federal Elements

In the Foreign Missions and International Organizations Element under the Chancery Siting Policies are the following policies with respect to land use and zoning:

Foreign missions are encouraged to:

1. “Locate their chancery facilities in areas where adjacent existing and proposed land use is compatible (e.g., office, commercial, and mixed use), giving special care to protecting residential areas.”
2. “Ensure that chancery locations are compatible with existing or proposed zoning, giving special care to protect the integrity of residential areas.”

Urban Design Polices:

3. “Construct chanceries to complement or reflect neighboring buildings and settings and ensure that the height, size, and spatial orientation of chanceries are consistent with the character of the neighborhood.”
4. “Construct buildings and landscapes that demonstrate appreciation of the architectural style and landscape of the surrounding environs while representing the finest architectural thought of the corresponding nation.”

The SSH Overlay District does not restrict foreign missions from locating within its boundaries; it does however require a special use permit which allows for greater community involvement, which will help to ensure that foreign missions will be compatible with surrounding scale, height, and architectural style of the neighborhoods, in conformance with the Comprehensive Plan. Several foreign missions are located in the existing Overlay zone and another, the Liberian Embassy will be added if this proposed zoning change is approved.

Comprehensive Plan for the National Capital: District Elements

In the final report dated September 12, 2008, the District of Columbia Office of Planning states that the Comprehensive Plan Generalized Policy Map, adopted by the District of Columbia City Council in 2006, identifies the SSH Overlay District and the expansion within the Neighborhood Conservation Area. Neighborhood Conservation Areas are described as primarily residential in nature and if changes occur "...will be modest in scale and will consist of scattered site infill housing, public facilities, and institutional uses." OP also states in their report that the proposed text and map amendment re not inconsistent with the Comprehensive Policy Map.

The proposed SSH Overlay District expansion area is located within the Rock Creek East Planning Area within the Comprehensive Plan for the National Capital: District Elements. Section 2204 of the Comprehensive Plan describes the Housing characteristic of the area as the following:

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

The Rock Creek East Planning Area identifies the following priorities for the area:

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

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

Recommendation

Staff recommends that the **Commission advise the Zoning Commission of the District of Columbia that the proposed expansion of the Sixteenth Street Heights Overlay District would not be inconsistent with the Comprehensive Plan for the National Capital nor adversely affect any other federal interests.**