

**Memorandum of Understanding and
Statement of Land Use Review Process
for Development of the Armed Forces Retirement Home-Washington Site
among
the National Capital Planning Commission
the Office of Planning of the District of Columbia
and U.S. Armed Forces Retirement Home**

1. Authorities and Overview. The U.S. Armed Forces Retirement Home (AFRH) was established as an independent federal agency in 1991 under P.L. 101-510. One of AFRH's facilities, the Armed Forces Retirement Home-Washington (AFRH-W or Home), is located on federal land in the District of Columbia (District). In 2001, AFRH obtained authority to lease non-excess property under its jurisdiction to promote the purpose and financial stability of the Home. Under 24 U.S.C. § 411(i), AFRH's use of this lease authority is subject to the approval of the Secretary of Defense. AFRH seeks to use its lease authority to enter into a long-term lease for a portion of the AFRH-W property (defined as Zone A in the AFRH-W Master Plan) with a private developer for mixed-use development.

The National Capital Planning Commission (NCPC or Commission) is the central planning agency for the Federal government in the National Capital Area as that term is defined in 40 U.S.C. § 8702(3). NCPC exercises planning and zoning authority (the latter known as "in lieu of zoning" authority) in the District of Columbia on federal land. 40 U.S.C. § 8722(a), (b), and (d). Under 40 U.S.C. § 8722(a), (b), and (d), NCPC advises on and/or approves master plans and construction on federal land.

The Office of Planning of the District ("OP") has been delegated most of the Mayor's District of Columbia charter function as the "central planning agency for the District." D.C. Code § 1-204.23. In addition, OP is responsible for making recommendations to the Zoning Commission for the District (Zoning Commission), and its recommendations must be afforded "great weight." D.C. Code § 6-623.04.

The Zoning Commission establishes zoning in the District pursuant to D.C. Code § 6-641.01 *et seq.* The District's zoning regulations (Zoning Regulations) are set forth in the District of Columbia Municipal Regulations (DCMR) at 11 DCMR §100 *et seq.* The Zoning Regulations include and incorporate a zoning map. Under § 492 of the District of Columbia Self-Government and Governmental Reorganization Act (also known as Home Rule Act), changes to the zoning map must be submitted to NCPC for a period of review after a hearing by the Zoning Commission. D.C. Code § 6-641.05(a) and 40 U.S.C. § 8724. Under 40 U.S.C. § 8722(d) and D.C. § 6-641.15, "federal public buildings" are exempt from District zoning.

NCPC maintains it has zoning jurisdiction over Zone A regardless of the ownership or use of the improvements. The land is currently federal property and will remain such notwithstanding private development of non-government uses in the future. NCPC maintains that this exclusive jurisdiction is conferred by 40 U.S.C. § 8722(d) and reflects the constitutional requirements of the exclusive jurisdiction clause, the property clause, and the federal supremacy clause. However, the District maintains that because the improvements will not be owned or used by the

federal government, such improvements are not “federal public buildings” exempt from District zoning under 40 U.S.C. §8722(d) or D.C. § 6-641.15 and, therefore, are subject to District zoning.

The goal of this Memorandum of Understanding (MOU) is to establish a process for private development of Zone A at AFRH-W that complies with the legal obligations of all parties, is streamlined, and provides a basis for issuance and enforcement of land-use planning requirements and controls and building codes. For NCPC to meet its “in lieu of zoning” requirement, a land-use plan must be submitted to NCPC; the submission must include information that meets applicable National Historic Preservation Act (NHPA) and National Environmental Policy Act (NEPA) requirements; NCPC staff must review the plan; and the Commission must review and approve the plan. To meet District zoning and building code requirements, a petition to zone the land must be filed with and approved by the Zoning Commission, subject to the NCPC review and comment process described below. The goal of the NCPC and zoning review process set forth herein is a working hybrid approach to the unique circumstances of essentially private development on federal land within Zone A at the AFRH-W site.

AFRH retained the U.S. General Services Administration (GSA) under 40 U.S.C. § 501(b)(1)(A) to prepare, among other things, a master development plan for the portion of AFRH-W’s property to be developed using AFRH’s leasing authority. A Master Plan approved by NCPC in 2008 (and amended in 2018) (AFRH-W Master Plan) provides for mixed-use, private development comprised of residential, office, research and development, institutional, medical, and retail, as well as institutional uses for AFRH. The private uses, developed by a private sector developer, will generate income to supplement AFRH’s trust fund, allow continuation of AFRH’s operations, and ensure on-going provision of services to retired members of the U.S. Armed Forces.

NCPC, OP, and AFRH seek a land use review process for the private development and use of Zone A that provides adequate opportunities for comment and input by all three agencies and the public. In addition, all parties want to ensure that the private development on Zone A is subject to a single, clear set of land-use regulations and building code standards. AFRH seeks a predictable and efficient land-use review process for those entities involved in developing private uses in Zone A. All parties seek a process that is predictable and straightforward.

2. The Hybrid Process for This Unique Circumstance. The process set forth in this MOU is developed solely for the unique circumstances here, where there is federal land and substantial private development for traditionally non-federal uses. It applies only to the land and uses that are privately developed for private purposes on Zone A, and does not apply to the federal buildings or federal uses in the AFRH Zone (as defined in the AFRH-W Master Plan). It recognizes NCPC’s important role in reviewing and approving master plans for federal agencies and federal land, and the District’s role in providing zoning for private development. It also provides a basis for enforcement to ensure that requirements and building codes are effectively enforced. This unique hybrid planning-zoning process is not intrusive for the developer or AFRH because the AFRH-W Master Plan and all subsequent amendments have been or will be made in consultation with OP and approved by NCPC, and the approved AFRH-W Master Plan,

as amended, has been used by OP to recommend updated policies to the District Elements of the Comprehensive Plan, which will in turn guide the Zoning Commission's consideration and adoption of zoning, as needed.

3. Cooperation. NCPC, OP, and AFRH will work together cooperatively on the land-use and neighborhood planning issues for AFRH-W. The cooperation will continue throughout the planning and development process, and, subject to the provisions of this MOU, to any revisions and amendments to private development plans for Zone A.

4. NCPC's Substantive Requirements for Master Plan Approval. NCPC's statutory obligations include development of a Comprehensive Plan for the National Capital Area (Comprehensive Plan). The Comprehensive Plan includes Federal Elements prepared and adopted by NCPC and District Elements prepared by the OP and approved by the Council of the District of Columbia (Council) following NCPC review (Federal Elements and District Elements respectively). Its review of master plans and construction projects includes assurance of master plan and project consistency with the Federal Elements, including promotion of local economic development, protection of the federal interest, promotion of historic preservation, and facilitation of efficient transportation systems. For the AFRH-W Master Plan and any amendments thereto, NCPC did or will apply its Submission Guidelines for Master Plans and related policies including its current NEPA Regulations and Procedures for Intergovernmental Cooperation in Federal Planning. NCPC's Submission Guidelines, NEPA Regulations, and procedures for intergovernmental review are contained on NCPC's website.

5. The AFRH-W Master Plan Will Be Subject to the NCPC Review and Approval Process. The AFRH-W Master Plan and any amendments thereto either underwent or will undergo the NCPC review and approval process in consultation with OP. For all future proposed amendments, AFRH will submit to the Commission for review and approval the materials required by NCPC's Submission Guidelines and other such materials as NCPC staff determines necessary. AFRH will submit to NCPC any changes to the AFRH-W Master Plan, including, without limitation, any request for special exception, zoning variance, Planned Unit Development (PUD), and any modifications or changes in land use, made by any person or entity for Zone A. Any such proposed changes will be treated under this MOU as a proposed amendment to the AFRH-W Master Plan that requires NCPC review and approval in consultation with OP. If the change requires an additional zoning action, it will be submitted to the Zoning Commission or Board of Zoning Adjustment (including the ordinary process whereby NCPC reviews District zoning actions) in accordance with the processes specified in this MOU.

6. Office of Planning Amendments to the District Elements of the Comprehensive Plan. As part of the on-going update to the District Elements of the Comprehensive Plan, OP has proposed amendments to the District Elements policies addressing private development of Zone A at AFRH-W as necessary. The proposed amendment language references the current NCPC-approved AFRH-W Master Plan, as the guide to future zoning and private development specific to Zone A. The proposed AFRH policies have been submitted to the Council for adoption as part of the District Elements following the process prescribed in the Planning Act at 40 U.S.C. § 8721 and once adopted will guide future zoning and development specific to Zone A. During the current Comprehensive Plan amendment cycles, and to the extent necessary in future amendment

cycles and as appropriate, OP will work cooperatively with NCPC and AFRH to identify and advocate for additional Comprehensive Plan changes as necessary to facilitate the approved AFRH-W Master Plan.

7. Office of Planning Proposals for Zoning Commission Action. OP shall use the AFRH-W Master Plan, as amended, to develop proposed new or updated zoning in the form of a map amendment to permit matter-of-right development of Zone A and petition the Zoning Commission for a hearing on the case. OP will initiate such a petition through the filing of a report with the Zoning Commission. In coordination with NCPC and AFRH, OP will determine whether any zoning text amendment is needed to permit matter of right private development of Zone A consistent with the current NCPC-approved AFRH-W Master Plan and Comprehensive Plan. OP will work diligently to fulfill its responsibilities under 11 DCMR Subtitle Z §§ 405.1 – 405.4, and to ensure, within the limits of its authority, that the time between filing of the petition and the publication of a notice of final rulemaking giving effect to the mapping of the AFRH-W zoning scheme will not exceed 5 months.

8. Zoning as Rulemaking. Because the zoning case will be commenced through a petition, rather than an application, the case will be presumed to be a rulemaking proceeding unless the Zoning Commission, at the time it decides whether to set the case for hearing, decides the matter should be heard as a contested case. Rulemaking cases differ from contested cases in that there are no parties or cross examination and a zoning map amendment approved via rulemaking may not be directly appealed to the District of Columbia Court of Appeals. The standards for whether the proceeding is a rulemaking or a contested case are set forth at 11 DCMR Subtitle Z §§ 400 - 506.

9. Phased Zoning. AFRH shall have the option to seek zoning for any development within Zone A prior to the Council's anticipated 2020-2021 adoption of updated District Elements of the Comprehensive Plan (see paragraph 6 above). The ability to obtain zoning prior to the update of the District Elements shall be contingent upon completion by AFRH of any outstanding or otherwise required NEPA and/or NHPA Section 106 obligations. All development contemplated for which zoning is sought under this provision shall be consistent with the current approved AFRH-W Master Plan. AFRH shall notify NCPC and OP of its intent to seek zoning for all or a portion of Zone A. If all parties agree, OP shall proceed to submit a zoning amendment in accordance with the zoning process outlined in this MOU.

10. Opportunity for Public Involvement. NCPC, OP, and AFRH are committed to a substantial and effective public process for review and approval of the AFRH-W Master Plan and any amendments thereto. Each party will assure full opportunity for public participation in the component of the process for which it is responsible. Opportunities for public involvement would be available through NCPC Commission hearing, Zoning Commission hearings, and AFRH NEPA and Section 106 processes.

11. Building Codes and Certificates of Occupancy. Once the zoning for Zone A becomes effective, applications for building permits and certificates of occupancy for private development for private use on Zone A shall be filed with and processed pursuant to applicable District building code and regulations.

12. Enforcement. As to the development in Zone A, the failure of AFRH or its developer to comply with the provisions of the District's Building Codes or Zoning Regulations will subject both parties to enforcement, either through the issuance of stop work orders, court injunctions, or notices of civil infraction, or through the revocation of building permits and certificates of occupancy. The District and AFRH will explore whether third party inspections are mutually acceptable.

13. Expanded AFRH Uses or Sale of Property. (a) Construction of buildings and use of land for the AFRH in the AFRH Zone (as defined in the AFRH-W Master Plan as amended) are subject to review and approval by NCPC under the National Capital Planning Act and are not part of this MOU (see paragraph 2 above). In seeking such review, AFRH shall follow ordinary NCPC submission policies and procedures. (b) If AFRH-W sells property to a private entity, the sold property and land use of that property is subject to District zoning but not to NCPC review except as provided by § 492 of the District charter or by 11 DCMR § 603.1(b). Both NCPC and the District participate in a monthly Coordinating Committee review procedure where information exchange about proposals may occur.

14. GSA Role. AFRH commits that when GSA acts for or on behalf of AFRH in connection with the development of Zone A that AFRH will ensure GSA's compliance with the procedures set forth here.

15. Authority to Sign. Each signatory represents that he/she has the authority to bind the government instrumentality for which he/she signs to the terms of this MOU.

Signatories:

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the National Capital Planning Commission
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National Capital Planning Commission


Marcel C. Acosta (Jul 27, 2020 14:19 EDT)

Name: Marcel C. Acosta
Title: Executive Director

Date:

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The District of Columbia Office of Planning



Name: Andrew Trueblood

Title: Director

Date:

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U.S Armed Forces Retirement Home

James M Branham

James M Branham (Jul 28, 2020 09:09 EDT)

Name: James Branham

Title: Chief Operating Officer

Date: