

**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 the 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 "the site"), is located on federal land in the District of Columbia. Under 40 USC § 8722(a), (b), and (d), the National Capital Planning Commission (NCPC) advises on and/or approves master plans and construction on federal land in the National Capital Area. The Office of Planning of the District of Columbia ("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 giving advice to the Zoning Commission for the District of Columbia ("Zoning Commission") and its recommendations must be afforded "great weight". D.C. Code § 6-623.04.

The District of Columbia Zoning Commission establishes zoning in the District of Columbia pursuant to D.C. Code § 6-641.01 *et seq.*, except in those circumstances where the "location, height, bulk, number of stories, and size of federal public buildings [and certain District government buildings] ... are subject to the approval of the [National Capital Planning] Commission." 40 U.S.C. § 8722 (d) and (e); D.C. Code § 2-1004 and § 6-641.15. The Zoning Regulations are set forth in the District of Columbia Municipal Regulations (DCMR) at 11 DCMR § 100 *et seq.* The Regulations include and incorporate the zoning map. Under § 492 of the Home Rule Act, changes in zoning maps must be submitted to NCPC after a hearing thereon for a period of review. D.C. Code § 6-641.05 (a) and 40 U.S.C. § 8724.

As to ground-leased construction at AFRH-W, NCPC is of the view that because the site is federal, construction is subject to NCPC "in lieu of zoning" authority under 40 USC § 8722(d), and is not subject to District of Columbia (DC) zoning, and that a long-term lease does not constitute a sale of land; and the Office of the Attorney General for the District of Columbia is of the view that because the improvements to be constructed will not be owned or used by the federal government, such improvements are not federal public buildings and are subject to DC zoning. The goal of this Memorandum of Understanding (MOU) is to establish a process for development at the AFRH-W that satisfies NCPC, OP, and AFRH, that is streamlined, and that provides a basis for issuance and enforcement of land use planning requirements and controls, and building codes. To meet its "in lieu of zoning" requirements, NCPC must have submitted to it a land use plan, and the applicant must provide information that meets applicable historic preservation and NEPA requirements; the NCPC staff must review that plan; and the plan must be submitted to the NCPC Commission for approval. To meet DC 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 above. The goal of the process set forth here is a working hybrid approach appropriate to the unique circumstances of essentially private development on federal land at the AFRH-W site.

AFRH is working with the U.S. General Services Administration (GSA) under the Economy Act, 31 U.S.C. § 1535, to plan for reasonable development and open space at the AFRH-W to protect AFRH and provide a reliable source of income for AFRH's operations and capital expenses. AFRH, with GSA's assistance, is developing a Master Plan that will provide for long-term lease of portions of the property for appropriate private development in accordance with AFRH authority under 24 U.S.C. §411(e)(3). The Master Plan may also provide for sale of portions of the property. The Master Plan, submitted to NCPC in draft form on February 2, 2006, contemplates a mixed-use development of portions of the site with a potential range of uses encompassing residential, office, research and development, institutional, medical, retail and embassies. Most of the uses proposed for development will not be constructed by AFRH but by private sector and/or institutional entities. Development of these uses will generate revenue for AFRH that will be deposited into the AFRH Trust Fund and used to continue AFRH's operations and ensure the ongoing provision of services to retired military personnel. NCPC approved comments on the draft Master Plan on February 2, 2006.

NCPC, OP, and AFRH seek a land use review process for the private development and use components of the AFRH project with adequate opportunities for comment and input by those agencies and the local community. In addition, all parties want to assure that each part of the development at the AFRH is subject to a single clear set of land use and building code standards. AFRH seeks a predictable and efficient land use review process for those entities that may be involved in developing the site. All parties seek a process that is certain and uncomplicated. Particularly because the neighbors and local Advisory Neighborhood Commissions (ANCs) have expressed concerns about the extent of proposed development, NCPC, DC and AFRH want to involve the community in the review of the proposed development plan.

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 this federal site ("the Development"), and does not apply to the federal buildings or federal uses at the AFRH-W site. It recognizes NCPC's important role in reviewing and approving Master Plans for federal agencies and federal land, and DC's role in providing zoning for private development. It also provides a basis for enforcement to assure that land use requirements and building codes are effectively enforced. This unique hybrid planning-zoning process is not intrusive for the developer or AFRH because the AFRH Master Plan will be approved by NCPC and the approved Master Plan will be used by OP like a small area plan in order to recommend zoning for Zoning Commission consideration and adoption.

3. Cooperation. NCPC and OP staffs and AFRH will continue to work together cooperatively on the land use and neighborhood planning issues for AFRH-W. This cooperation will continue



throughout the planning and development process, and, subject to the provisions in this MOU, to any revisions and amendments to plans, for the site.

4. NCPC's substantive requirements for Master Plan approval. NCPC's statutory obligations include development of a Comprehensive Plan for the National Capital Area. Its review of master plans and construction projects includes assurance of master plan and project consistency with the Comprehensive Plan including promotion of local economic development, protection of the federal interest, historic preservation, and facilitation of efficient transportation systems. For the AFRH-W Master Plan review, as with all master plan reviews, NCPC applies its Master Plan Submission Requirements (most recently amended in 1994) and related policies including its Environmental and Historic Preservation Policies and Procedures and its Procedures for Intergovernmental Cooperation in Federal Planning. These procedures are updated periodically. Documents setting forth the procedures are all available on the NCPC website. NCPC encourages applicants to submit a draft as well as a final master plan.

5. The AFRH-W Master Plan will be subject to the NCPC review and approval process. AFRH submitted its draft Master Plan to NCPC and NCPC approved comments on that draft plan by Commission Action on February 2, 2006. AFRH will submit to NCPC for review the materials required for master plan review and approval for the site. In addition, once NCPC approves the "final" initial Master Plan for the site ("the final Master Plan"), AFRH will submit to NCPC for master plan review any changes to the approved Master Plan, including any request for special exception, zoning variance, PUD, modifications, or changes in land use, made by any person or entity; any such proposed changes will be treated under this MOU as a proposed amendment to the Master Plan that requires NCPC review and approval and submission to OP and the Zoning Commission (including the ordinary process whereby NCPC reviews Zoning Commission actions) as specified in this MOU for the final Master Plan for the Development.

6. Office of Planning recommendation and Zoning Commission action. After NCPC approves a Master Plan for the site, OP will treat the Plan like a small area plan. It will also consider the Master Plan approved by NCPC, and any amendments thereto that NCPC approves, as supplemental guidance for the District of Columbia Elements of the Comprehensive Plan adopted on March 6, 2007. Pursuant to § 492 of the District Charter, zoning cannot be inconsistent with the Comprehensive Plan for the National Capital. OP will develop proposed zoning in conformance with the approved Master Plan, and within 30 days after NCPC's action to approve the final Master Plan will petition the Zoning Commission for a hearing on the case. OP will initiate such a petition through the filing and presentation of a report with and before the Zoning Commission. The petition will include no text, other than the description of the map amendments needed to permit matter of right development as described in the approved Master Plan, unless NCPC requests otherwise. OP will work diligently to fulfill its responsibilities under 11 DCMR § 3012.1, § 3012.2, and § 3012.3, and to assure that the time between the filing of the petition and the publication of a notice of final rulemaking giving effect to the mapping of the Master Plan site will not exceed 5 months. The steps and an example of such a schedule are set forth in Attachment A to this MOU.



7. 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 schedule the case for hearing, decides the matter should be heard and decided as a contested case. Rulemaking cases differ from contested cases in that there are no parties or cross examination and notices of final 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 § 3010.

8. Opportunity for public involvement. NCPC, DC, and AFRH are committed to a substantial and effective public process for review and approval of the Master Plan and development plans. To that end, all three parties have already taken a number of steps to involve the local community and solicit input. As this process moves forward, each party will assure full opportunity for public participation in the component of the process for which it is responsible. NCPC will hold at least one public hearing as part of a regularly scheduled Commission meeting. OP will hold at least one advertised public hearing in consideration of the zoning and AFRH will obtain public input through the National Environmental Policy Act and National Historic Preservation Act Section 106 processes.

9. Building Codes and Certificates of Occupancy. Once the zoning becomes effective, applications for building permits and certificates of occupancy may be filed with and processed pursuant to applicable Building Code requirements.

10. Enforcement. As to the Development, the failure of AFRH or its developer to comply with the provisions of the Building Code or Zoning Regulations of the District of Columbia will subject both 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. DC and AFRH will explore whether third party inspections are mutually acceptable.

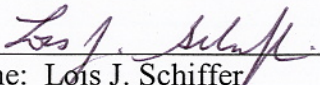
11. Expanded AFRH uses or sale of property. (a) Construction of buildings and use of lands for the AFRH (such as expanded medical/institutional uses proposed in the February 2, 2006 draft Master Plan in Zone 2 at the site) are subject to review and approval by NCPC under the National Capital Planning Act and are not part of this MOU (see par. 2 above). In seeking such review, AFRH will 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 DC zoning but not to NCPC review except as provided by § 492 of the District Charter or by 11 DCMR §3025.3. Both NCPC and DC participate in a monthly Coordinating Committee review procedure where information exchange about proposals may occur.

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

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

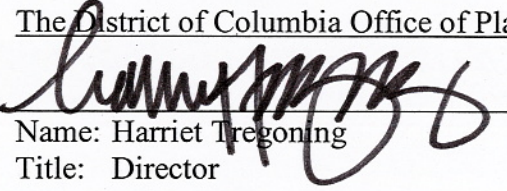
Signatories:

National Capital Planning Commission

  
Name: Lois J. Schiffer  
Title: General Counsel

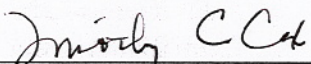
Date 8-2-07

The District of Columbia Office of Planning

  
Name: Harriet Tregoning  
Title: Director

Date 8.1.07

U.S. Armed Forces Retirement Home

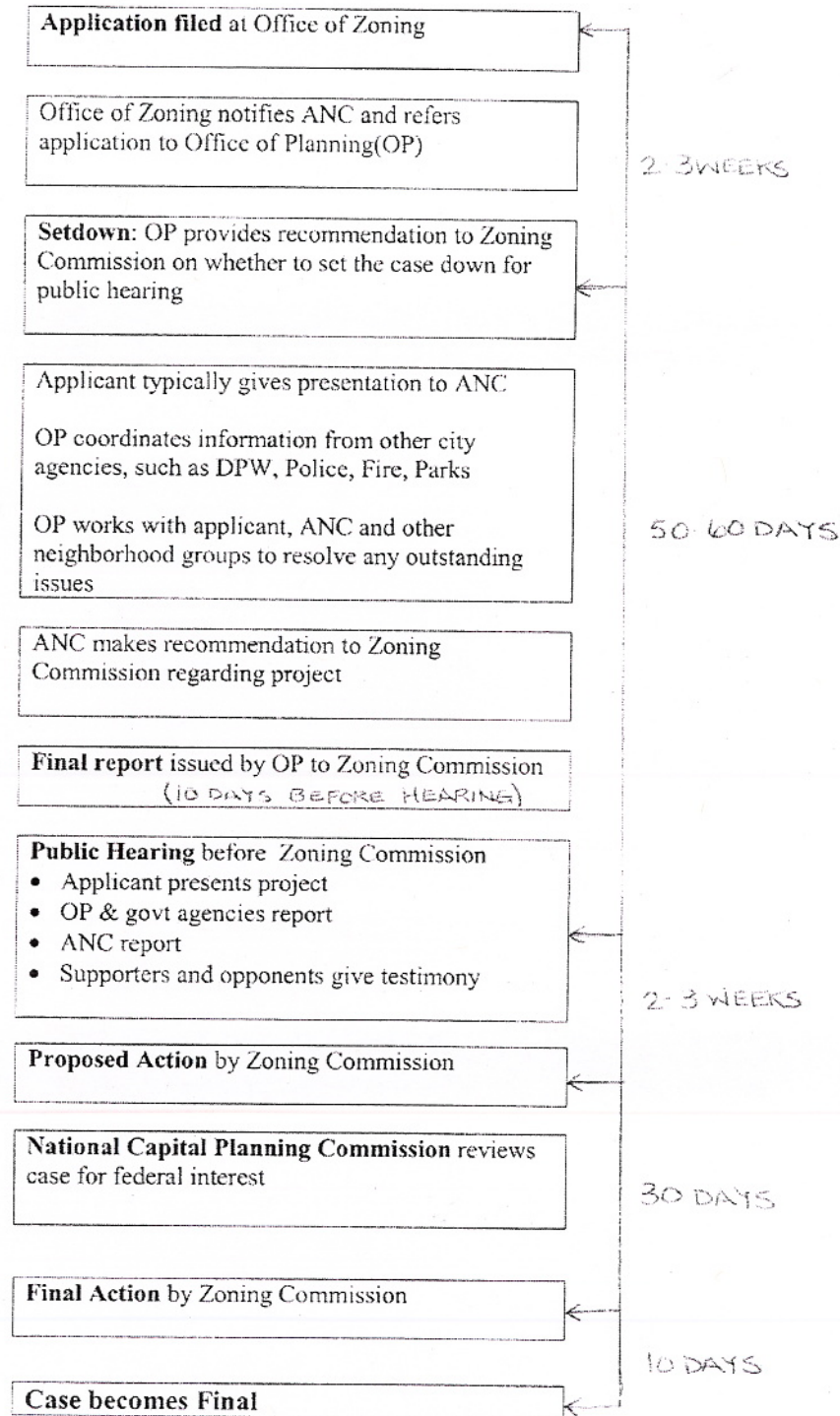
  
Name: Timothy C. Cox  
Title: Chief Operating Officer

Date 8-2-07



## Attachment A

### Schedule



TOTAL = 5 MONTHS