D.C. OFFICE OF ZONING
2003 JUN -6 PM 3:56

NCPC
NATIONAL CAPITAL PLANNING COMMISSION

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June 6, 2003

Ms. Carol J. Mitten
Chairman
Zoning Commission of the District of Columbia
2nd Floor, Suite 210 South
441 4th Street, N.W.
Washington, D.C. 20001

Dear Ms. Mitten:

I am writing with regard to the proposed zoning map amendment to be considered at the Zoning Commission's June 9, 2003 meeting that would purportedly apply to certain portions of federal property administered by the Armed Forces Retirement Home. We believe that the extension of District zoning to this federally-owned property would be inconsistent with federal law, and therefore request that the Zoning Commission decline consideration of this matter.

As you are aware, pursuant to the Zoning Act of 1938, 40 USC § 8722(d), federal public buildings in the District of Columbia are exempt from District zoning; they are instead subject to the approval of the National Capital Planning Commission under its "in-lieu-of-zoning" review authority. In this case, we understand that AFRH, under a grant of authority vested by Congress in Public Law 107-107, intends to lease certain portions of its property for use by a D.C. charter school. Nevertheless, such property, and the buildings located on them, will remain under the ownership and control of the United States. Thus, under NCPC's and the Zoning Commission's long-standing interpretation of this statute, although AFRH intends to lease the buildings on its property to a D.C. charter school, as buildings located on public land under the administrative jurisdiction of the federal government, they would remain "federal public buildings" exempt from District zoning and subject to NCPC approval under 40 U.S.C. § 8722(d).

As a matter of practice, the Zoning Commission has consistently recognized that its zoning authority does not extend to buildings on federal property, even if such buildings are used by non-federal entities. This includes, for example, the Tariff Commission Building at 700 F Street, N.W., a General Services Administration (GSA) building leased to the Kimpton Group for the Hotel Monaco; the American Red Cross Building at 2025 E Street, N.W., located on GSA land leased to the Red Cross; and the Bell Altantic/Verizon cellular antenna towers, located on National Park Service (NPS) land in Rock Creek Park. Each of these projects was submitted to NCPC for approval in-lieu of action by the Zoning Commission pursuant to 40 U.S.C. § 8722(d).

ZONING COMMISSION
District of Columbia
Case 03-20
Exhibit 3

ZONING COMMISSION
District of Columbia
CASE NO.03-20
EXHIBIT NO.3

Recognizing NCPC's authority in this matter, the AFRH on June 4, 2003 submitted its proposal to reuse a portion of its property for the charter school to NCPC for approval, and NCPC has tentatively placed the item for review by the Commission at its next scheduled meeting on July 10, 2003. If the Zoning Commission proceeds with consideration of this matter next week, it is our understanding that AFRH will not recognize the application of any District zoning map amendment to this property.

We do, however, understand and support AFRH's efforts to move the charter schools into its existing facilities in an expedited manner. Further, NCPC is looking forward to working closely with AFRH and the District Office of Planning on this very exciting federal property. In fact, there have already been several meetings in which all parties have agreed to work together as full partners in the planning process for the overall development of the site.

If you have any further questions regarding this matter, please contact Ash Jain, our General Counsel, or myself at (202) 482-7200.

Sincerely,

Patricia E. Gallagher, AICP
Executive Director

cc: John V. Cogbill, Chairman, NCPC
Tim Cox, Chief Operating Officer, AFRH
Andrew Altman, Director, DCOP

FAX TRANSMISSION COVER SHEET

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To: Carol Mitten **From:** Ken Jarboe

Fax: **Pages:** 5

Phone: 721-6072 **Date:** 6.6.03

Re: **CC:**

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