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The Honorable Phil Mendelson

Executive Director

Marcel C. Acosta

IN REPLY REFER TO:
NCPC File No. ZC 12-07

JAN 15 2013

Zoning Commission of the
District of Columbia
2nd Floor, Suite 210
441 4th Street, NW
Washington, DC 20001

Members of the Commission:

The National Capital Planning Commission, at its January 10, 2013 meeting, approved the enclosed action on the map amendment to establish zoning at the Old Post Office Annex, 1100 Pennsylvania Avenue, NW. The Executive Director's Recommendation is also enclosed.

Sincerely,

Marcel C. Acosta
Executive Director

Enclosures

cc: Harriet Tregoning, Director, D.C. Office of Planning
Anthony Hood, Chairman, Zoning Commission
Mina Wright, General Services Administration



Commission Action

January 10, 2013

PROJECT

Map Amendment to Establish Zoning at Square 323, Lot 800, and Parcels 1, 2 and 3 of Squares 349 and 350

Old Post Office and Annex
1100 Pennsylvania Avenue, NW
Washington, DC

SUBMITTED BY

Zoning Commission of the District of Columbia

NCPC FILE NUMBER

ZC 12-07

NCPC MAP FILE NUMBER

1.26(06.00)43707

APPLICANT'S REQUEST

Approval of report to the Zoning
Commission of the District of Columbia

ACTION TAKEN

Approve with conditions

REVIEW AUTHORITY

Advisory

per 40 U.S.C. § 8724(a) and DC Code § 2-1006(a)

The Commission:

Advises the Zoning Commission of the District of Columbia that the proposed map amendment to establish zoning at Square 323 Lot 800, and Parcels 1, 2, and 3 of Square 349 and 350 will not adversely affect the federal interest.

Notes that while the United States General Services Administration intends to redevelop the Old Post Office and Pavilion Annex under the terms of a public-private partnership with the Trump Organization, the Old Post Office and Pavilion Annex, including the property upon which these structures reside, will remain federally owned and under federal jurisdiction and therefore remain subject to NCPC's in-lies of zoning authority.

Notes that the United States General Services Administration will undertake all building permitting and inspections during construction of the Old Post Office redevelopment project and will carry out the project in a manner that is consistent with local land use policies and zoning and building codes to the maximum extent feasible in accordance with the provisions of 40 U.S.C. 3312 and the policies of the Comprehensive Plan for the National Capital: Federal Elements.

Deborah B. Young

Secretary to the National Capital Planning Commission

[Date]



Executive Director's Recommendation

Commission Meeting: January 10, 2013

PROJECT

**Map Amendment and Related Text
Amendment to Establish Zoning at Square
323 Lot 800, and Parcels 1, 2, and 3 of
Squares 349 and 350**

Old Post Office and Annex
1100 Pennsylvania Avenue, NW
Washington, DC

REFERRED BY

Zoning Commission of the District of Columbia

REVIEW AUTHORITY

Advisory

per 40 U.S.C. § 8724(a) and DC Code § 2-1006(a)

NCPC FILE NUMBER

ZC 12-07

NCPC MAP FILE NUMBER

1.23(06.00)43707

APPLICANT'S REQUEST

Approval of report to the Zoning
Commission of the District of
Columbia

PROPOSED ACTION

Approve with conditions

ACTION ITEM TYPE

Staff Presentation

PROJECT SUMMARY

The Zoning Commission of the District of Columbia has taken a proposed action on a map amendment, and related text amendment, to establish zoning on the site of the Old Post Office and its Pavilion Annex (Square 323 Lot 800, and Parcels 1, 2, and 3 of Squares 349 and 350). The Old Post Office and Pavilion Annex, located at 1100 Pennsylvania Avenue, NW, are owned by the Federal government with administrative jurisdiction held by the United States General Services Administration (GSA). At the direction of Congress, GSA is currently in negotiations with the Trump Old Post Office LLC (the Trump Organization) on a long-term ground lease that will result in the redevelopment of the Old Post Office and Pavilion Annex into a luxury hotel and conference facility containing ancillary retail and dining establishments and cultural attractions. The District of Columbia Office of Planning (DCOP) is the applicant for the proposed map and associate text amendment. The zoning designation proposed for the site is DD/C-4.

KEY INFORMATION

- Ownership of the Old Post Office and Pavilion Annex, including the property upon which these structures reside, are held by the United States Government under the jurisdiction of the United States General Services Administration.
- Following redevelopment, ownership and jurisdiction of the Old Post Office, Pavilion Annex, and site will remain with the United States Government with the Trump Organization operating a luxury hotel and conference facility containing ancillary retail and dining establishments under the terms of a long-term ground lease with the General Services Administration.
- The planned redevelopment of the Old Post Office and Pavilion Annex is not subject to local zoning regulations but rather is subject to NCPC's in-lieu of zoning authority pursuant

to the National Capital Planning Act (40 U.S.C. 8722(b)(1) and (d)) and Section 15 of the District of Columbia Zoning Act (D.C. Code 6-641.15).

- Federal law requires that agencies carry out construction and alteration projects, to the maximum extent feasible, in compliance with nationally recognized building codes, and all local requirements, except procedural requirements, that would apply if the project were not carried out by a federal agency (40 U.S.C. 3312).

RECOMMENDATION

The Commission:

Advises the Zoning Commission of the District of Columbia that the proposed map amendment and related text amendment to establish zoning at Square 323 Lot 800, and Parcels 1, 2, and 3 of Squares 349 and 350 will not adversely affect the federal interest on the condition that the proposed text amendment be modified to eliminate the statement "*properties which previously were under federal control*" as these properties will remain under federal control even after completion of the Old Post Office and Pavilion Annex redevelopment project.

Notes that while the United States General Services Administration intends to redevelop the Old Post Office and Pavilion Annex under the terms of a public-private partnership with the Trump Organization, the Old Post Office and Pavilion Annex, including the property upon which these structures reside, will remain federally owned and under federal jurisdiction and therefore are not subject to the District of Columbia Zoning Regulations but rather are subject to NCPC's in-lieu of zoning authority pursuant to the National Capital Planning Act (40 U.S.C. 8722(b)(1) and (d)) and Section 15 of the District of Columbia Zoning Act (D.C. Code 6-641.15).

Notes that the United States General Services Administration will undertake all building permitting and inspections during construction of the Old Post Office redevelopment project and will carry out the project in a manner that is consistent with local land use policies and zoning and building codes to the maximum extent feasible in accordance with the provisions of 40 U.S.C. 3312 and the policies of the Comprehensive Plan for the National Capital: Federal Elements.

PROJECT REVIEW TIMELINE

Previous actions	None
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Remaining actions (anticipated)	None
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Prepared by Shane L. Dettman
January 4, 2013

I. PROJECT DESCRIPTION

Site

The proposed map amendment encompasses the site of the Old Post Office and Pavilion Annex (Square 323 Lot 800 and Parcels 1, 2, and 3 of Squares 349 and 350). The site is located within Washington's Federal Triangle and is bound by Pennsylvania Avenue, NW to the north, 12th Street on the west, and the Internal Revenue Service Headquarters on the east and south. The Old Post Office and Pavilion Annex, and the underlying property, is owned by the federal government with administrative jurisdiction held by the United States General Services Administration (GSA).

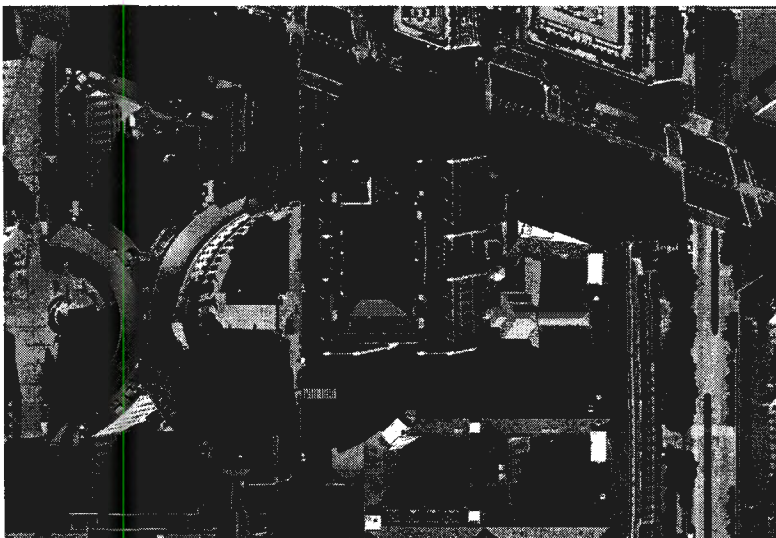


Figure 1: Aerial photo showing Old Post Office and Pavilion Annex

Background

Built from 1892 to 1899, the Old Post Office was built to house the U.S. Post Office Department Headquarters and the city's post office. However, the District of Columbia Mail Depot was moved to a larger building constructed next to Union Station in 1914, and although only 15 years old, the building at 12th Street and Pennsylvania Avenue was dubbed the "old" post office. In the 1920s, Treasury Secretary Andrew Mellon's building commission developed the

surrounding Federal Triangle complex and actively sought the building's demolition. In 1943, the Postmaster General moved to a newly constructed office building directly across 12th Street, and the fate of the building appeared to be sealed. The only reason that the Old Post Office was not razed then was a lack of money due to the Great Depression. For the next 40 years the building served as overflow space for several government agencies. As no particular agency was made responsible for it, the building fell into decay.

In 1962, recognizing that the neighborhood around the Old Post Office was in need of improvement, President John F. Kennedy appointed a Pennsylvania Avenue Commission to study ways to improve the area. In 1964, the Commission proposed several recommendations, including demolition of the Old Post Office Building to allow completion of the Federal Triangle. In 1970 and 1971, demolition permits were issued and Congress appropriated the money for the building's removal. However, local citizens who had grown to admire the building's architecture banded together and formed a group called "Don't Tear It Down," now the DC Preservation League to save it. Nancy Hanks, the politically influential chairwoman of the National Endowment for the Arts, joined the effort and prevailed in convincing Congress to reverse its decision. In 1973 the Old Post Office was added to the National Register of Historic Places.

Redevelopment plans for the Pennsylvania Avenue corridor included preservation of the Old Post Office Building, and renovation began in 1977. The renovation included a mix of retail spaces on the lower level, with Federal offices on the upper levels. The glass Pavilion Annex that is located to the east of the Old Post Office Building was also added as part of this project. The Pavilion Annex contained a mix of retail and eating establishments, as well as a movie theater. Unfortunately, the Pavilion Annex proved to be unsuccessful and it was closed down not long after it had opened. Currently, the Old Post Office contains the same mix of uses as was envisioned during the 1970s renovation. The lower levels contain a food court and a mix of small retailers. The upper floors are occupied by Federal agencies such as the Advisory Council on Historic Preservation and the National Endowment for the Arts. The Pavilion Annex remains vacant.

In 2008, Congress passed the Old Post Office Redevelopment Act which directed GSA to proceed with the redevelopment of the Old Post Office Building in accordance with existing authorities and consistent with a 2001 redevelopment plan that was approved by the Committee on Transportation and Infrastructure of the House and the Committees on Appropriations and Environment and Public Works of the Senate. In March 2011, GSA issued a Request for Proposals (RFP) for the redevelopment of the Old Post Office building, land, and Pavilion Annex (OPO). According to the RFP, the goals of the redevelopment are:

- To leverage the expertise of the real estate industry to reposition the Old Post Office as a viable asset;
- To preserve the historic integrity of this unique and important asset;
- To put the Old Post Office to its highest and best use;
- To provide a lucrative financial return to the Government;
- To provide for public access; and
- To contribute to the vitality of Pennsylvania Avenue and the Federal Triangle

In February 2012, GSA selected a private sector preferred developer, the Trump Organization, and commenced with various planning and regulatory activities, including negotiating the terms of a long-term ground lease and complying with the requirements of National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act (NHPA), which are currently ongoing. The intended redevelopment program includes a luxury hotel and conference center, and publically accessible eating establishments, retail, and cultural uses that relate to the history of the building. The clock tower will remain open to the public, operated by the National Park Service. Similar to how GSA carried out the adaptive reuse of the Tariff Commission Building, now the Hotel Monaco, located at 700 F Street, NW, following completion of construction, the Old Post Office Building, Pavilion Annex, and land will remain in Federal ownership under the administrative jurisdiction of GSA, with the Trump Organization entering into a long-term ground lease with GSA to operate the site.

Proposal

The Zoning Commission of the District of Columbia has taken a proposed action to approve a map amendment, and related text amendment, for the site of the Old Post Office and Pavilion Annex

(Square 323 Lot 800, and Parcels 1, 2, and 3 of Squares 349 and 350). The proposal, which was applied for by the District of Columbia Office of Planning, would establish a zoning designation of "DD/C-4" on the site. The C-4 zone, or Central Business District, is a high-density commercial district that was developed for the downtown core and comprises retail and office centers. This district is intended to support a variety of commercial, retail, and business uses needed to serve the Washington, D.C. metropolitan area. In addition, the C-4 zone is intended to accommodate high-density residential and mixed-use developments, with hotels also allowed as a matter-of-right.

The "DD" overlay zone, or Downtown Development Overlay District, is applied to subareas identified in the Comprehensive Plan for the National Capital: District Elements as the Downtown Shopping District (Retail Core). The purpose of the DD Overlay is to help accomplish Comprehensive Plan land use and development policies related to the downtown. These policies seek to create a balance of uses by means of incentives and include requirements for critical land uses such as retail, hotel, residential, entertainment, arts, and cultural. The policies also focus on protection of historic places and buildings while permitting sensitive and compatible new development. The combined zoning designation of "DD/C-4" allows a maximum building height of 130 feet, maximum floor-to-area ratio (FAR) of 8.5, and maximum lot occupancy of 100 percent.

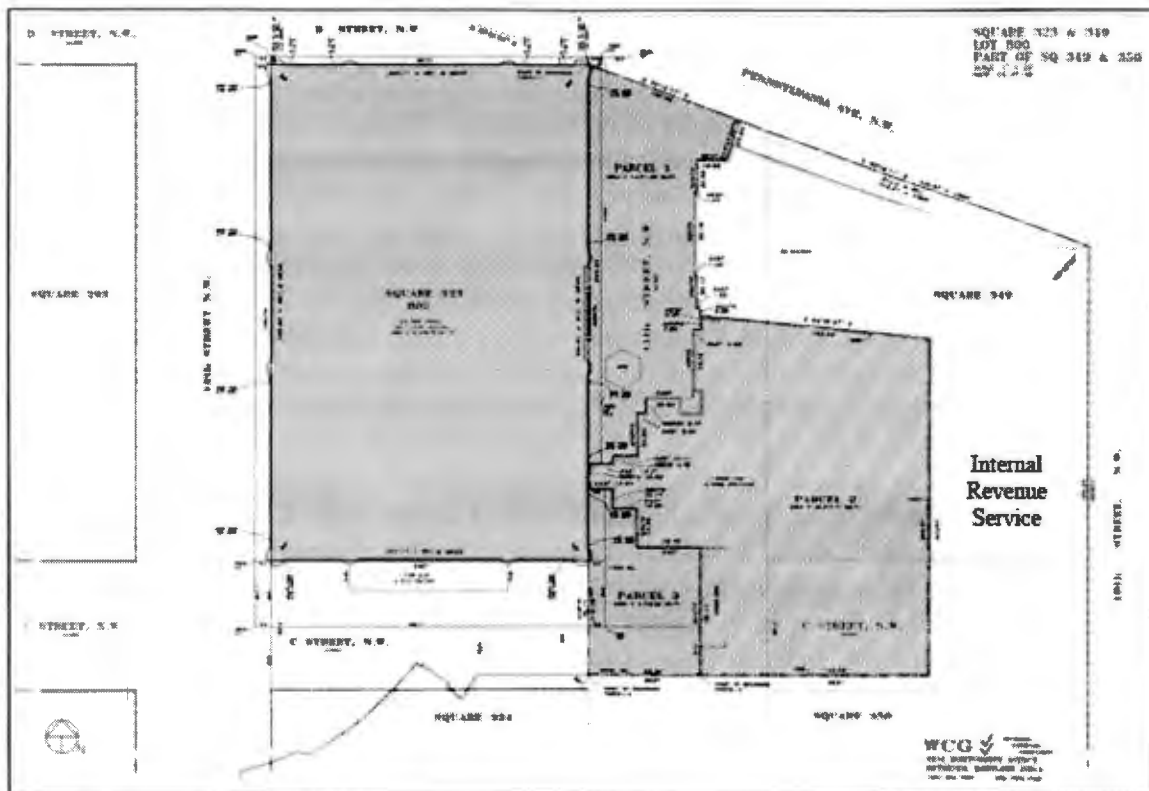


Figure 2: Plat showing properties proposed to be zoned (Square 323 Lot 800, and Parcels 1, 2, and 3 of Squares 349 and 350)

The proposed text amendment would modify the language of Section 1700.1 of the Downtown Development Overlay District (DD), which describes the boundary of the DD district, to include the site of the Old Post Office and Pavilion Annex. The following is the proposed text amendment (with changes in **BOLD** and underlined):

“1700.1 The Downtown Development (DD) Overlay District is applied to the core of the Downtown area, including subareas identified in the Comprehensive Plan as the Downtown Shopping District (Retail Core), the Arts District, Gallery Place, Chinatown, Pennsylvania Quarter, Convention Center, and Mount Vernon Square, and areas designated for historic preservation and housing mixed use, which areas overlap geographically with the subareas. The boundaries of the DD Overlay District **as originally approved** are indicated in Map A, filed in Zoning Commission Case No. 89-25, which may be viewed at the D.C. Office of Zoning. **This map does not include Square 0323, lot 800 and Parcels 1, 2, and 3 on Square 349 and 350, properties which previously were under Federal control.** All street locations in this overlay district are in Northwest Washington.”

II. PROJECT ANALYSIS/CONFORMANCE

Pursuant to the Old Post Office Redevelopment Act of 2008, the United States General Services Administration is currently in the process of redeveloping the Old Post Office and Annex through the use of a public-private partnership that will put this long-time underutilized, federally owned property located on Pennsylvania Avenue to its highest and best use. According to the Act, the GSA Administrator “is directed to proceed with redevelopment of the Old Post Office Building, in accordance with existing authorities.” In early-2012, GSA selected the Trump Organization as its private partner for the redevelopment project, and is currently in negotiations to establish a long-term ground lease that will result in the OPO being redeveloped into a luxury hotel and conference center with publically accessible eating establishments, retail, and cultural uses. The existing legal authorities that GSA is relying upon to carry out the redevelopment project are listed below. GSA used these same authorities in the early-2000s for its successful redevelopment of the Tariff Commission Building, now the Hotel Monaco and Poste Restaurant, located at 700 F Street, NW.

- **The Old Post Office Redevelopment Act of 2008, Pub. L. 110-359:** Directs the Administrator of General Services to proceed with redevelopment of the Old Post Office Building, in accordance with existing authorities available to the Administrator and consistent with the redevelopment plan previously approved by the Committee on Transportation and Infrastructure of the House of Representatives and the Committees on Appropriations and Environment and Public Works of the Senate.
- **40 USC 581:** Authorizes the Administrator to lease a federal building under terms considered to be in the public interest, and specifically allows for the cooperative use of public buildings through leaseholds to a person, firm, or organization engaged in commercial, cultural, educational, or recreational activity.

- **National Historic Preservation Act, Section 111 (40 U.S.C. §. 470h-3):** Permits any federal agency to establish and implement alternatives for historic properties that are not needed for agency purposes, and may lease an historic property to any person or organization, if the agency head determines that the lease or exchange will adequately insure the preservation of the historic property.
- **40 USC 3312:** Requires that buildings constructed or altered by the General Services Administration or any other federal agency be constructed or altered, to the maximum extent feasible, in compliance with nationally recognized building codes, and with consideration given to local zoning and land use requirements, except procedural requirements.

In its final report to the Zoning Commission of the District of Columbia dated November 26, 2012, the District of Columbia Office of Planning (DCOP) states, “because the property will no longer be used for a federal public building or use, and will shift to a private business, the property is subject to zoning. Until zoning has been designated for this site, no building permit or certificate of occupancy can be issued for this private redevelopment.” The specific provisions of the District of Columbia Zoning Regulations cited in DCOP’s report include:

- **11 DCMR 3202.1:** “...a building permit shall not be issued for the proposed erection, construction, conversion, or alteration of any structure unless that structure complies with the provisions of this title.”
- **11 DCMR 106.7:** “No building permit or certificate of occupancy shall be issued...nor shall any property in private ownership be used for any purpose until after the Zoning Commission has designated zoning for the property.”
- **11 DCMR 106.4:** “Properties owned by the Government of the United States and used for or intended to be used for a Federal public building or use and properties owned by the Government of the District of Columbia in the Central Area, are not included in any zone district.”

The Old Post Office and Pavilion Annex, including the property upon which these structures reside, are owned by the United States Government and therefore are not subject to the District of Columbia Zoning Regulations, specifically as these regulations pertain to the process of acquiring construction related building permits and certificates of occupancy. Rather, pursuant to the National Capital Planning Act (40 U.S.C. 8722(b)(1) and (d)) and Section 16 of the District of Columbia Zoning Act of 1938 (D.C. Code 6-641.15), any erection, construction, conversion, or alteration of these structures and/or site are subject to NCPC’s in-lieu of zoning approval process. As stated above, although the Trump Organization will operate and manage the OPO following the redevelopment project, ownership and jurisdiction of the OPO will remain a federal public building under federal control. Therefore, in the same fashion

that it did for the adaptive reuse of the Tariff Commission Building (NCPC File No. 5677¹), GSA intends to submit the OPO redevelopment project to NCPC for review and approval (see attached letter from GSA to NCPC Executive Director, Marcel Acosta). **Therefore, NCPC staff recommends that the Commission advise the Zoning Commission of the District of Columbia that the proposed map amendment and related text amendment to establish zoning at Square 323 Lot 800, and Parcels 1, 2, and 3 of Squares 349 and 350 will not adversely affect the federal interest on the condition that the proposed text amendment be modified to eliminate the statement "properties which previously were under federal control" as these properties will remain under federal control even after completion of the Old Post Office and Pavilion Annex redevelopment project.**

Regarding DCOP's statement in its report to the Zoning Commission that "no building permit or certificate of occupancy can be issued for this private redevelopment," following a favorable by NCPC, the General Services Administration will conduct all construction permitting and inspections for the Old Post Office and Pavilion Annex redevelopment, just as it did for the adaptive reuse of the Tariff Commission Building. However, while GSA will be issuing the building permits, conducting building inspections, and issuing the final certificate of occupancy through its own internal process, it will carry out the project in a manner that is consistent with local land use policies and zoning and building codes to the maximum extent feasible in accordance with the provisions of 40 U.S.C. 3312 and the policies of the Federal Workplace Element of Comprehensive Plan for the National Capital.

Pursuant to 40 U.S.C. 3312, all federal agencies are required to carry out building construction and alteration projects, to the maximum extent feasible, in compliance with "one of the nationally recognized model building codes and with other applicable nationally recognized codes, including electrical codes, fire and life safety codes, and plumbing codes."² In addition, prior to undertaking any building project, agencies must first consider all State and local requirements, except procedural requirements, including zoning laws and other "laws relating to landscaping, open space, minimum distance of a building from the property line, maximum height of a building, historic preservation, aesthetic qualities of a building, and other similar laws" that would apply to the building if it were not a building constructed or altered by a federal agency.³ Agencies are required to consult with appropriate State and local officials in which a project is located according to a clearly defined process that provides opportunities for officials, if desired, to request and review plans and provide recommendations concerning measures necessary to meet certain requirements or which should be taken in the construction or alteration of the building to take into account local conditions, which agencies must give due consideration.⁴ GSA has been coordinating closely with several District of Columbia agencies, including the District of Columbia Department

¹ The staff report for NCPC File No. 5677, dated October 9, 1997, states the Commission reviewed the project pursuant to the National Capital Planning Act, 40 U.S.C. § 8722(d) (NCPC's in lieu of zoning authority) as codified in DC ST § 6-641.15.

² 40 U.S.C. § 3312(b).

³ 40 U.S.C. § 3312(c).

⁴ 40 U.S.C. § 3312(d).

of Consumer and Regulatory Affairs, and intends to continue its coordination and take into consideration any recommendations received from local agencies, as required by Federal law.⁵

⁵ Pursuant to 40 U.S.C. §§ (f), (g), an action may not be brought against the federal government and a fine or penalty may not be imposed against the Government for failure to meet the requirements of 40 U.S.C. §§ 3312(b), (c), or (d) or for failure to carry out any recommendation provided by a State or local official. In addition, the Federal government and its contractors shall not be required to pay any amount for any action a State or local agency takes including reviewing plans, carrying out on-site inspections, issuing building permits, and making recommendations.



GSA National Capital Region

January 3, 2013

Mr. Marcel Acosta
Executive Director
National Capital Planning Commission
401 9th Street, NW, Suite 500
Washington, DC 20576

Dear Mr. Acosta,

Thank you for notifying my office that ZC 12-07, a map amendment and related text amendment that would establish zoning for the Old Post Office and Pavilion Annex (the OPO), is on the National Capital Planning Commission's January 10, 2013 agenda. It is our understanding that the District of Columbia Office of Planning initiated the action to apply to the Zoning Commission of the District of Columbia in order to zone the site DD/C-4.

As you know, the title to the OPO is held by the United States Government under the jurisdiction of the U.S. General Services Administration (GSA). Pursuant to 40 U.S.C. § 8722, "the location, height, bulk, number of stories, and size of federal public buildings in the District of Columbia and the provision for open space in and around federal public buildings in the District of Columbia are subject to the approval of the [National Capital Planning Commission]."

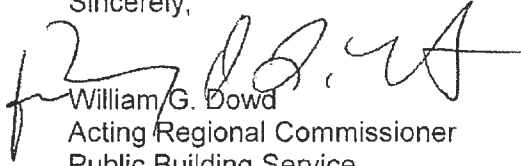
In accordance with the Old Post Office Redevelopment Act of 2008 (Pub. L. 110-359) and Section 111 of the National Historic Preservation Act (40 U.S.C. § 470h-3), GSA is currently negotiating the terms and conditions of a ground lease to redevelop the OPO as a luxury hotel and conference facility. While the Trump Organization will operate the hotel and conference facility, the OPO will still fall within the definition of a federal public building. Thus, GSA believes that NCPA, by statute, serves as the sole approval authority with regards to the redevelopment of the OPO. Accordingly, GSA will not, and does not, recognize any proposed zoning action by the District of Columbia regarding the redevelopment of the OPO.

With the above in mind, GSA does not object to the proposed zoning overlay of the site with the understanding that Federal property is not subject to local zoning regulations and that the proposed map amendment would only apply to a subsequent private sector owner/developer if the United States Government decides to entirely divest its fee simple interest in the OPO through a sale.

U.S. General Services Administration
301 7th Street, SW
Washington, DC 20407-0001
www.gsa.gov

If you have any questions or need any additional information, please feel free to contact me at
202 -708-5891

Sincerely,



William G. Dowd
Acting Regional Commissioner
Public Building Service