

MEMORANDUM

TO: District of Columbia Zoning Commission
JLS
FROM: Jennifer Steingasser, Deputy Director Development Review & Historic Preservation
DATE: September 15, 2014
**SUBJECT: OP Response to NCPC Staff submission of August 26, 2014
ZC Case 13-14**

The Office of Planning (OP) has reviewed the submittal by the staff for the National Capital Planning Commission (NCPC staff) dated August 26, 2014. OP understands that the applicant and NCPC staff have reached an amicable design solution for the medical office buildings proposed at the northernmost end of the site, and OP supports that design resolution.

However, the NCPC staff submittal proposes an interpretation of the position of the Office of Planning based on participation in a federal planning process with which OP does not agree. Additionally, the submittal misrepresents the District Elements of the Comprehensive Plan and attempts to include new and unsolicited testimony from the AFRH after the close of the record. The Office of Planning offers the following comments and response.

The Office of Planning (OP) does not accept the conclusion that by participating in the planning of the Armed Forces Retirement Home-Washington (AFRH) and the Veterans Administration hospital (VA) sites, the Office of Planning has endorsed applying the resulting development guidelines for the AFRH or VA to other non-federal sites or in any manner that would impact or limit the development of the McMillan Sand Filtration site (McMillan).

The AFRH and the VA are federal projects subject to the processes and standards outlined in Section 106 of the federal Historic Preservation Act. The negotiated development and maintenance parameters for the properties are codified in a Programmatic Agreement (PA) that was finalized in 2007. That PA was put into place to delineate how NCPC and others would assure that subsequent development of AFRH would comply with their Section 106 responsibilities, since the AFRH property was to be developed privately but maintained in federal ownership through a ground lease from the federal government. The McMillan Sand Filtration Site is not subject to this PA and falls outside of the “Area of Potential Effect” identified within it. McMillan was transferred from the General Services Administration (GSA) to the District of Columbia in 1987. GSA’s Section 106 responsibilities for the property were satisfied by attaching covenants that transferred with the site. The DC State Historic Preservation Officer has determined that those covenants have been honored by the proposed redevelopment. Therefore, the MOA established for the federally-owned AFRH in 2007 is in no way applicable to the District-owned McMillan site.

In addition, the Office of Planning rejects the NCPC staff *ultra vires* interpretation of the District Elements of the Comprehensive Plan as both inaccurate and incomplete. The NCPC staff has left out key phrases regarding the correlation of land use designations and zoning districts, while drawing a determination based on the same. Notably, after each list of zone districts that generally correspond to land use categories in the DC Future Land Use Map, the phrase “...*although other districts may apply*” is explicitly stated in the District Elements of the Comprehensive Plan. The NCPC staff submission has chosen to omit that phrase from their discussion.

Furthermore, the NCPC staff submittal includes new testimony from the AFRH. The Office of Planning requests that the Commission decline to accept the AFRH testimony into the record. The attachment is a submittal of new testimony, which was submitted after the close of the record, was not requested by the Zoning Commission, and makes assertions that have not been reviewed by the full National Capital Planning Commission.

The NCPC staff submittal with the AFRH attachment conflates and confuses the clearly delineated authority of the DC Zoning Commission over zoning and private development and the authority of the National Capital Planning Commission over federal projects. The PUD will be reviewed for impact on the federal interest in the normal fashion in accordance with the Zoning Regulations, after the Zoning Commission makes a decision and, if it is approved, refers the case to NCPC for their review and advisory comments.

The Office of Planning reiterates its recommendation for approval of the planned unit development, including supplemental design changes, as consistent with the purpose of Title 11 Chapter 24 and as “not inconsistent” with the Comprehensive Plan.