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**DISTRICT OF COLUMBIA BUILDING INDUSTRY ASSOCIATION**

April 2, 2003

D. C. Zoning Commission
441 – 4th Street, N. W.
Room 220 South
Washington, D.C. 20001

RECEIVED
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Re: Zoning Commission Case No. 02-44
(Retail Arcades)

Honorable Members of the Commission:

At the close of the public hearing in this case, the Commission left the record open until April 4th for additional submissions. This letter is to provide additional information regarding several items of discussion at the public hearing regarding the above-referenced matter.

1. *Historic Preservation.*

The Office of Planning's suggested text, as stated in their Reports of March 14 and March 21, 2003, provides a specific exclusion "in the case of buildings designated as historic landmarks or contributing to a historic district where the Historic Preservation Review Board has determined that the arcade constitutes a feature contributing to the building's historic or architectural significance." While we are not strongly opposed to that language, we believe that it is unnecessary.

Under the current regulatory scheme in the District, any proposed addition to a historic landmark or a building in a historic district is subject to review by the Historic Preservation Review Board (HPRB). That agency is charged with review of demolition, alteration, new construction and subdivision involving historic structures. That agency will review alterations to arcades in historic landmarks and buildings in historic districts, and decide whether to allow or disallow such alteration, regardless of whether OP's proposed language is included in the Zoning Regulations. For that reason, we believe that OP's proposed historic preservation language is unnecessary.

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ZONING COMMISSION
District of Columbia
Case 02-44
Exhibit 24

ZONING COMMISSION
District of Columbia
CASE NO.02-44
EXHIBIT NO.24

2. *Applicability of New Proposed Regulation.*

Open arcades are recessed areas beneath a building at the ground floor (retail) level and, therefore, are already included in the building's FAR. The original intent of the proposed regulation was to allow those open arcades for which an FAR credit was given, to be enclosed and devoted to retail, service, arts or arts-related uses. The Office of Planning testified that there are a number of buildings in the District which contain arcades, for which no arcade credit was taken when the building was constructed. In those instances, if no FAR credit was taken, the arcade can be enclosed as a matter of right without the need for any new regulation.

In its testimony, the Office of Planning also discussed instances where an entire building is set back from the front lot line. The Office of Planning's testimony suggested that this area is also classified as an "open arcade." That open, uncovered area in front of the building is not an open arcade, but is actually an open court. An FAR credit could not logically be given for that area if the area is not included in FAR in the first place. The definition of "open arcade" does not specifically state that it is a covered area. However, the definition of "arcade" in Webster's Dictionary is more clear in this regard.

In its testimony, the Office of Planning underscored the difficulty in locating City records to demonstrate the existence of an FAR credit for an open arcade in a particular project. DCBIA's testimony emphasized the desire to enclose open arcades for retail and related uses, in order to bring the store front to the sidewalk line in those zones where ground floor retail is permitted, regardless of how the open arcade was created in the first place. Section 1108.1(s) of the Comprehensive Plan, which encourages the enclosure of open arcades, does not establish a distinction between open arcades created by virtue of an arcade credit and those where an arcade credit was not used.

For all of the above reasons, to remove any ambiguity, we suggest that the language of the new subsection to Section 2505 be revised to read as follows:

> "Notwithstanding the limitations of Section 771.2, an open arcade existing as of [the effective date of the new regulation], in a building in a non-residential zoning district within the Central Employment Area, may be enclosed and devoted to

retail, service, arts or arts-related uses permitted as a matter of right."

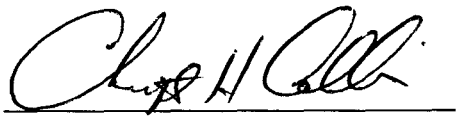
3. *Error in Codification.*

Both the most recent official version of 11 DCMR, and the "unofficial version" dated September 2002, contain an error in codification. When existing Section 2515.3 in those versions is compared with Section 7614.1 of the Zoning Regulations, as published in the September 22, 1978 issue of the D.C. Register at page 2753 (*see* Exhibit C of DCBIA's March 24, 2003 submission in this case), it is evident that the regulation should read: ". . . credit not to exceed 0.25 or 25% of the gross floor area . . .". There has been no action taken by the Zoning Commission on open arcades since the 1978 publication of the arcade regulations. Therefore, the current codification is in error.

Thank you.

Very truly yours,

DISTRICT OF COLUMBIA BUILDING INDUSTRY ASSOCIATION

By: 

Christopher H. Collins

CHC/skp

cc: Len Harris
Arthur Jackson
Gail Edwards

WAS1 #1169485 v1