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DISTRICT OF COLUMBIA BUILDING INDUSTRY ASSOCIATION

June 23, 2003

D.C. OFFICE OF ZONING
2003 JUN 23 PM 2:50
RECEIVED

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

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

Honorable Members of the Commission:

This letter provides the comments of DCBIA on the Notice of Proposed Rulemaking in the above-referenced case, which appeared in the June 6, 2003 D.C. Register.

1. Section 2515.3.

A. The proposed addition to this Section should not be included.

The proposed additional language goes beyond the original intent of the proposed changes to the regulations. The testimony and written submissions of DCBIA in the above case were focused on promoting Downtown Retail, i.e., allowing existing arcades in commercial zones in the Central Employment Area to be enclosed and devoted to retail, arts or service uses permitted as a matter-of-right, if the owner chose to do so. This is because, simply stated, retail and service uses in arcade areas in Downtown are not successful. It was not our intent, nor did it appear to be the intent of the Office of Planning, to prohibit or discourage the future construction of arcades as an architectural tool in all zones in which they are now permitted, through an FAR credit. However, the proposed additional language in 2515.3 could be read to do just that.

Arcades are currently permitted, through an FAR credit, in the R-5, SP, W, CR and C Districts (except C-5). Some, but not all, of these zones are in the Central Employment Area, and some, but not all, of these zones permit retail, arts and service uses as a matter-of-right. We believe that

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ZONING COMMISSION
District of Columbia
Case 02-44
Exhibit 27

ZONING COMMISSION
District of Columbia
CASE NO.02-44
EXHIBIT NO.27

the Commission may be concerned that after enactment of this proposal, arcades in commercial zones in the Central Employment Area could be built using the FAR credit, and then could subsequently be filled in, thereby unfairly taking advantage of the new regulation. The Commission's proposed language in Section 2515.13 takes care of that.

We do not believe that the Commission intends to prohibit or discourage the inclusion of arcades in all future buildings in all zones where arcades are permitted, i.e., buildings outside the Central Employment Area, and non-commercial buildings inside the Central Employment Area. Accordingly, we suggest that the proposed additional language of Section 2515.3 be deleted.

B. The proposed FAR credit should reflect the current official version of the D.C. Zoning Regulations.

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 the original arcade regulation in Sections 7614.1 of the D.C. Zoning Regulations, as published in the September 22, 1978 issue of the D.C. Register at page 2753 (see attached), it is evident that the regulation should read: ". . . credit not to exceed 0.25 or 25% of the gross floor area . . . whichever is less". The recent published versions of 11 DCMR omit the phrases ". . . 0.25 or . . ." and "whichever is less". Both 0.25 FAR and 25% were included in the original adopted regulation, in order to take into account the inclusion of multi-story arcades.

There has been no official final action taken by the Zoning Commission on open arcades since the 1978 adoption of the original arcade regulations. Therefore, the current codification does not reflect the original official action of the Commission. It is in error, and should be corrected in this action.

2. Section 2515.13.

This section as written is somewhat misleading. This section would allow certain existing arcades to "be enclosed if solely devoted to retail, arts or service uses permitted as a matter of right . . .". We suggest that the word "if" in that phrase be changed to "and".

As currently proposed, it is possible to read the language to mean that the arcade space must first be devoted solely to retail, arts or service uses before it can be enclosed, e.g., outdoor seating or outdoor displays within the arcade area. We do not think that this is the intention of the Commission. In any event, the language should be clarified.

Thank you for the opportunity to submit these additional comments.

Very truly yours,

DISTRICT OF COLUMBIA BUILDING INDUSTRY ASSOCIATION

By: _____
Christopher H. Collins

CHC/skp

cc: Len Harris
Arthur Jackson
Gail Edwards

WAS1 #1190444 v1

Government of the District of Columbia

ZONING COMMISSION

ZONING COMMISSION ORDER NO. 234
CASE NO. 78-1
SEPTEMBER 14, 1978

Pursuant to notice, public hearings of the District of Columbia Zoning Commission were held on March 30, April 3, April 10, April 24 and May 1, 1978 to consider proposed amendments to the text of the Zoning Regulations. Such amendments proposed to modify requirements for all of the Commercial Districts, as well as the planned unit development process.

Following the lengthy hearings and receipt of large amounts of public testimony, the Commission determined to divide the case into several parts, for the purpose of discussing the matter and arriving at a decision. The Commission held several work sessions and finally determined that several changes should be made to the C-3, C-4 and C-5 Districts and for the regulations governing credits for arcades in all districts.

This Order is therefore the first of several orders relating to the commercial revision case. Future Orders will deal with the remaining commercial districts, the planned unit development process and other elements of the case. After all of the issues in the entire case have been decided, the Commission will issue a full statement of reasons setting forth the basis for its decision

The Commission believes that the proposed amendments are in the best interests of the District of Columbia and are consistant with the intent and purposes of the Zoning Regulations and Zoning Act. The Commission therefore hereby order adoption of the following amendments to the Zoning Regulations:

1. Substitute for existing Sections 5103,5104, 5105 and 7614 and Articles 52 and 53, all the text language contained in the attached document entitle "Revised C-3, C-4, and C-5 Districts and Arcade Provisions," dated September 14, 1978, a copy of which is attached hereto and made a part hereof.

2. Amend the Regulations to conform to the changes made above, as specified in the sheet labeled "Additional Conforming Amendments," dated September 14, 1978, a copy of which attached hereto and made a part hereof.

Vote of the Commission taken at the public meeting held on August 14, 1978: 3-0 (George M. White, John G. Parsons, and Walter B. Lewis to adopt, Theodore F. Mariani, not voting, Ruby B. McZier not present, not voting).

WALTER B. LEWIS
Chairman

STEVEN E. SHER
Executive Director

This order was adopted by the Zoning Commission at its public meeting held on September 14, 1978 by a vote of 3-0 (Walter B. Lewis and John G. Parsons to adopt, Ruby B. McZier to adopt by proxy, Theodore F. Mariani not voting, George M. White not present, not voting).

In accordance with Section 3.62 of the Rules of Practice and Procedure before the Zoning Commission of the District of Columbia, these amendments to the Zoning Regulations are effective on 22 SEP 1978.

Section 7614 -- Exceptions to Density Regulations for Open Arcades

7614.1 -- This section establishes the standards and requirements for arcades to receive a floor area ratio credit. This section is designed to encourage open arcades at sidewalk level, to increase pedestrian convenience and result in greater open area adjacent to public streets without loss of rental floor space. An open arcade shall be allowed a floor area ratio credit not to exceed 0.25 or 25% of the gross floor area of the floor which is adjacent to the arcade, whichever is less.

7614.2 -- An open arcade shall be permitted in all R-5, SP, W, CR, and all C Districts except C-5 (PAD), provided that:

7614.21 -- An open arcade shall provide pedestrian access to and along a building and shall extend for the entire side of the building or other structure and adjoin a street or pedestrian way at sidewalk level. Such open arcade shall be designed to meet and carry through the arcades of adjoining buildings.

7614.22 -- The floor area granted by this section shall apply only to those areas embraced within the perimeter of the open arcade. Where vehicular access is permitted across an arcade area, the portion of the arcade encompassed by the access space shall not be counted for the purposes of this section.

7614.23 -- An open arcade shall be not less than 10 feet in width at any point, including piers, columns or arches. The minimum open unobstructed passageway shall be 7 feet in width.

7614.24 -- An open arcade shall be not less than 9 feet in height at any point within the arcade,

7614.25 -- An open arcade shall have its floor at the same level and continuous with the sidewalks, and shall connect to existing adjoining open arcades or shall be so constructed as to permit such connection in the future, provided however, where the existing arcade is at a different elevation, the new arcade connection shall be made in a barrier-free manner.

7614.26 -- The use of the area within an open arcade shall be essentially restricted to pedestrian uses, and vehicular access to or through an open arcade shall be minimized.

7614.27 -- In commercial buildings, an open arcade shall include retail and service uses fronting on at least 60% of the arcade, with such uses directly accessible from the open arcade.

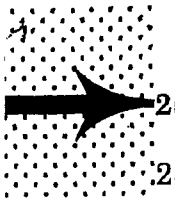
7614.3 -- The additional gross floor area permitted under Subsection 7614.1 shall not be counted in determining the number of off-street parking spaces or loading berths.

(c) C-1, C-2-A, C-2-B, C-2-C, C-3-A, C-3-B, C-3-C, C-4, and C-5 (PAD) districts;

(d) W-1, W-2, W-3, and CR districts; and

(e) C-M-1, C-M-2, C-M-3, and M districts.

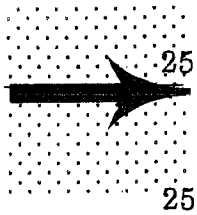
SOURCE: §§7613.1 and 7613.2 of Regulations effective May 12, 1958; as amended by Final Rulemaking published at 2226, 2228 (May 23, 1980); and by Final Rulemaking published at 39 DCR 8305, 8310 (November 13, 1992).



2515 EXCEPTIONS TO DENSITY REGULATIONS FOR OPEN ARCADES

2515.1 This section establishes the standards and requirements for arcades to receive a floor area ratio credit.

2515.2 This section is designed to encourage open arcades at sidewalk level, to increase pedestrian convenience, and to result in greater open area adjacent to public streets without loss of rental floor space.



2515.3 An open arcade shall be allowed a floor area ratio credit not to exceed twenty-five percent (25%) of the gross floor area of the floor that is adjacent to the arcade, whichever is less.

2515.4 An open arcade shall be permitted in all R-5, SP, W, CR, and all C districts except C-5 (PAD); Provided, that the requirements of this section shall be met.

2515.5 An open arcade shall provide pedestrian access to and along a building and shall extend for the entire side of the building or other structure and adjoin a street or pedestrian way at sidewalk level. This open arcade shall be designed to meet and carry through the arcades of adjoining buildings.

2515.6 The floor area granted by this section shall apply only to those areas embraced within the perimeter of the open arcade. Where vehicular access is permitted across an arcade area, the portion of the arcade encompassed by the access space shall not be counted for the purposes of this section.

2515.7 An open arcade shall be not less than ten feet (10 ft.) in width at any point, including piers, columns, or arches. The minimum open, unobstructed passageway shall be seven feet (7 ft.) in width.

2515.8 An open arcade shall be not less than nine feet (9 ft.) in height at any point within the arcade.

2515.9 An open arcade shall have its floor at the same level and continuous with the sidewalks, and shall connect to existing, adjoining open arcades or shall be constructed to permit this connection in the future; Provided, that where the existing arcade is at a different elevation, the new arcade connection shall be made in a barrier-free manner.

2515.10 The use of the area within an open arcade shall be restricted essentially to pedestrian uses, and vehicular access to or through an open arcade shall be minimized.

2515.11 In commercial buildings, an open arcade shall include retail and service uses fronting on at least sixty percent (60%) of the arcade, with these uses directly accessible from the open arcade.

2515.12 The additional gross floor permitted under §2515.3 shall not be counted in determining the number of off-street parking spaces or loading berths.

SOURCE: §§7614.1, 7614.2 and 7614.3 of Regulations effective May 12, 1958.

2516 EXCEPTIONS TO BUILDING LOT CONTROL (Residence Districts)

2516.1 If approved by the Board of Zoning Adjustment in accordance with the conditions set forth in §3108 of this title, two (2) or more principal buildings or structures may be erected on a single subdivided lot, subject to the provisions of this section.

2516.2 The provisions of this section shall apply to construction on a lot that is located in, or within twenty-five feet (25 ft.) of, a residence district as designated in §105 of this title.

2516.3 In addition to other filing requirements, the applicant shall submit to the Board, with the new application, four (4) site plans, for all new rights-of-way and easements, and existing and preliminary landscaping and grading plans with approximate building footprints; Provided, that the following requirements are met:

(a) The applicant shall also submit, either with the original application or at a later time, final landscaping and grading plans, and two (2) sets of typical floor plans and elevations; and

(b) If the applicant elects to submit the plans referenced in §2516.3(a) at a later date, the Board's original approval shall be conditioned, subject to a later public hearing and final decision on the project as a whole.

2516.4 The number of principal buildings permitted by this section shall not be limited; Provided, that the applicant for a permit to build submits satisfactory evidence that all requirements of this chapter (such as use, height, bulk, open spaces around each building, and limitations on structures on alley lots pursuant to §2507), and §§3202.2 and 3202.3 are met.

2516.5 If a principal building has no street frontage, as determined by dividing the subdivided lot into theoretical building sites for each principal building, the following provisions shall apply:

(a) The front of the building shall be the side upon which the principal entrance is located;

(b) Open space in front of the entrance shall be required that is equivalent either to the required rear yard in the district in which the building is located or to the distance between the building restriction line recorded on the records of the Surveyor of the District of Columbia for the subdivided lot and the public space upon which the subdivided lot fronts, whichever is greater;