Government of the District of Columbia
Office of Zoning

Z.C. CASE NO.: 02-44

As Secretary to the Zoning Commission, I herby certify that on APR 30 2004 copies of this Z.C. Notice of Final Rulemaking & Order No. 02-44 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. District of Columbia Building Industry Association
   5100 Wisconsin Avenue, N.W.
   Suite 301
   Washington, D.C. 20016-4162
3. All Advisory Neighborhood Commissions (see attached list)
4. Gottlieb Simon
   ANC
   1350 Pennsylvania Avenue, N.W.
   Washington, D.C. 20004
5. All Councilmembers (see attached list)
6. Office of Planning (Ellen McCarthy)
7. Ken Laden, DOT
8. Zoning Administrator
9. Corporation Counsel (Alan Bergstein)

ATTESTED BY: Alberto P. Bastida

Alberto P. Bastida, AICP
Secretary to the Zoning Commission

ZONING COMMISSION
District of Columbia
CASE NO. 02-44
EXHIBIT NO. 32

ZONING COMMISSION
District of Columbia
CASE NO.02-44
EXHIBIT NO.32

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Order No. 02-44
Case No. 02-44
(Text Amendment – Enclosure of Open Arcades -- 11 DCMR)

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Official Code § 6-641.01); having held a public hearing as required by § 3 of the Act (D.C. Official Code 6-641.03 (2001 Ed.)); and having referred the proposed amendment to the National Capital Planning Commission for a 30-day period of review pursuant to 11 DCMR §§ 3025.3 and 3028.1; hereby gives notice of the adoption of an amendment to Chapter 25 of the Zoning Regulations (11 DCMR).

The purpose of the amendments is to allow the enclosure of open arcades within the Central Employment Area, to be devoted solely to allowable retail, arts, or service uses. A notice of proposed rulemaking was published in the June 6, 2003 edition of the *D.C. Register* at 50 DCR 4413.

The final rulemaking is effective upon publication in the *D.C. Register*.

The Commission initiated this rulemaking in response to a petition from the District of Columbia Building Industry Association ("DCBIA") based on a prior amendment to § 1108, Policies in Support of Commercial Area Objectives of the District of Columbia Comprehensive Plan, adopted by the Council of the District of Columbia in 1998.

The rulemaking adds new §§ 2515.13 through 2515.15 to allow the enclosure of existing open arcades in buildings in a commercial zone district within the Central Employment Area (CEA), require the newly enclosed space to be used for retail, arts, or service uses, and to disallow enclosure for historic or contributing buildings if the Historic Preservation Review Board finds that the arcade contributes to the historic or architectural significance of the building.

The rulemaking also modifies existing § 2515.3, which authorizes the FAR credit, so as to make the credit unavailable to open arcades constructed in commercial zones within the Central Employment Area after the effective date of the rule.

Existing Zoning

The Zoning Commission added § 2515 to the Zoning Regulation to allow 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" (§ 2515.2). Open arcades are permitted in all R-5, SP, W, CR, and C Districts, except C-5 (PAD), subject to the specified requirements within § 2515. In addition, § 2515.4 allows a density credit not to exceed 0.25 FAR, or twenty-five percent (25%) of the gross floor area of the floor that is adjacent to an open arcade. The credit was intended to offset the potential commercial floor area eliminated by designating exterior pedestrian circulation space. Pursuant to these rules, a number of arcades were created in the downtown area. Over time, however, redevelopment of existing building sites within the CEA again extended ground floors to front property lines, converting continuous open arcades into intermittent walkways that "dead end" at the respective property boundaries. The pedestrian thoroughfares and continuous open spaces originally envisioned by adopting the amendment have gradually disappeared.

Description of Text Amendment

As noted by the Office of Planning (OP), DCBIA began, in 1996, to identify specific initiatives the Council might consider to make downtown retail space more "user friendly" and to eliminate what had, by then, become uninviting and sometimes dangerous recesses adjacent to downtown city sidewalks. As a result, the then Chair of the Committee on Economic Development recommended conversion of existing arcades to "retail, entertainment, arts and service uses." The recommendation eventually was incorporated in an amendment to the Comprehensive Plan that is discussed in the next section of this Order. The changes the Commission now makes to § 2515 will implement the Council's recommendation by allowing the enclosure of these arcade areas for retail, entertainment, arts and service uses, even if such enclosure causes the building to exceed the floor area limitations of § 771.2. The rulemaking also disallows new open arcades within the commercial zones in the CEA from receiving the FAR credit because the Commission no longer seeks to encourage the provision of such spaces. New text is added to emphasize that enclosure cannot occur if the Historic Preservation Review Board determines that the arcade contributes to the historic or architectural significance of a building that is a landmark or contributes to a historic district.

Relationship to Comprehensive Plan

As just noted, the Council amended the Comprehensive Plan, § 1108, POLICIES IN SUPPORT OF THE COMMERICAL AREA OBJECTIVES, in 1998 to add the following:

> (s) Support modification of the Zoning Regulations to encourage the success of ground floor retail and entertainment uses in the Central Employment Area by allowing arcade space in existing buildings to be converted as a matter of right to retail, entertainment, arts or service uses; . . .

This amendment was proposed in the belief that "allowing for the conversion of existing arcade space, even if this causes the reconfigured building to exceed allowable FAR, will make retail spaces more inviting to the consumer and more attractive to the retailer." Extending retail space "out to the building line (or perhaps to the minimum sidewalk line) [would] eliminate what are often dark and foreboding entrances" making the streets "more retail friendly."[1]

The Office of Planning submitted a report recommending approval of the proposed text amendment because the proposed text would be consistent with the policies of Chapter 11, Land Use Element of the Comprehensive Plan.

Public Hearing

A Notice of the Public Hearing containing the proposed amendments, and setting the hearing date for March 24, 2003, was published in the *D. C. Register* at 50 DCR 1176.

Prior to the public hearing, the Commission received a number of letters from the development community in support of the proposed amendment.

Three letters were also received from the Metropolitan Police Department. The First Police District, by letter dated March 5, 2003, objected to the proposed amendment, stating that it would prefer that enclosures of arcades be considered on a case-by-case basis. The Second Police District, by letter dated March 4, 2003, recommended that building owners be required to provide additional parking to accommodate the increase in usable commercial space. In a letter dated March 6, 2003, Assistant Chief of Police Ronal C. Monroe, concurred with the Second Police District's March 4, 2003 letter. However, the Commission feels that requiring additional parking for enclosing existing arcades is a demand that existing buildings may not be able to accommodate. Regarding the issue of deciding each enclosure request on a case-by-case basis, the Commission does not believe that the merits of this approach outweighs the additional burden that will be placed on the Board of Zoning Adjustment. In addition, subjecting each enclosure request to a time-consuming special exception review might discourage the elimination of arcades due to the amount of effort involved.

The Fire Marshall, by letter dated March 6, 2003, indicated that he had no objection to the proposed amendment.

The Office of Planning submitted three reports dated January 13, 2003; March 14, 2003; and March 21, 2003 in support of the text amendment. In its report dated March 14, 2003, OP recommended that the total additional floor area under this amendment be limited to the lesser of the FAR credit originally granted under § 2515.3 or 25% of the floor area adjacent to the open arcade; that the reference to "entertainment" uses be deleted because the term is not defined in the Zoning Regulations; and that the use of

[1] Letter dated December 8, 1996 from Councilperson Charlene Drew Jarvis, Chair of the Committee on Economic Development, to then Planning Director Jill Dennis.

additional floor area resulting from the elimination of arcades be limited to retail, arts, or service uses allowed within the zone district.

During the public hearing, the Commission requested OP to identify buildings that would be eligible to enclose their arcades under this rulemaking. OP reviewed the Zoning Administrator's records to document how many buildings have taken advantage of the open arcade FAR credit and presented the results to the Commission in a supplemental report, dated March 21, 2003. The results raised OP concerns that some property owners wishing to convert arcade space may still require Board of Zoning Adjustment approval of FAR variances even after Zoning Commission approval of the subject amendment. OP also observed from site visits that the referenced open areas represent only a fraction of the building ground floor in each case. Based on these observations, OP modified one of its earlier recommendations to limit total additional floor area under this amendment to either the floor area ratio (FAR) credit originally granted under § 2515.3, or 25% of the gross floor area adjacent to the open arcade, whichever is *greater.*

Proposed Rulemaking

Following the conclusion of the March 24, 2003 public hearing, a letter was received from DCBIA indicating that the open arcade closure rule not be limited to those arcades for which a density credit was taken, that amendment language proposed by OP regarding historic structures is unnecessary, and a possible error in the codification of Section 2515.3.

The Commission took proposed action on the text amendments pursuant to 11 DCMR § 3027.2 at its meeting on April 14, 2003. The Commission voted not to limit the proposed rule to projects that took advantage of the open arcade credit in § 2515.3; to eliminate the clause that would allow area beyond an open arcade to be enclosed; and to eliminate any reference to "entertainment" uses. Commission members also voted to accept OP's proposed language concerning historic properties, so that property owners will be made aware of the potential limitations.

A Notice of Proposed Rulemaking was published in the June 6, 2003 edition of the *D.C. Register* at 50 DCR 4413.

After publication of the proposed rulemaking, the Commission received several written comments. The DCBIA expressed concern that the proposed modification to § 2515.3 could be read to prohibit or discourage open arcades as an architectural tool in all zones in which they are permitted through an FAR credit. They requested that the proposed text make clear that it applies only to commercial zones in the CEA. DCBIA also suggested that the word "if" in the phrase "be enclosed *if* solely devoted to retail, arts or service uses permitted as a matter of right" in proposed § 2515.13 be changed to "and."

Karchem Properties submitted a letter supporting clarification that the proposed text amendment to §2515.3 is applicable only to the commercial zones in the CEA.

Lano Amada Harbourside, LLC, also submitted a letter supporting clarification that the proposed text amendment to §2515.3 is applicable only to the commercial zones in the CEA.

National Capital Planning Commission

The proposed rulemaking was referred to the National Capital Planning Commission ("NCPC") under the terms of § 492 of the District of Columbia Charter. NCPC, pursuant to the Commission's delegation of authority adopted on August 6, 1999, indicated that the proposed text amendment to allow for the enclosure of arcades would not adversely affect the identified federal interest, the quality of the pedestrian environment on L'Enfant Streets. However, the delegated action report also encouraged the Zoning Commission to consider that the preferred method of enclosure be in the nature of a glass storefront; that storefront entrances be separate from the building entrance, and that new enclosures not encroach on the public sidewalk with the exception of bays suitable to retail display.

Final Rulemaking

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on February 19, 2004.

Prior to taking final action, the Commission agreed that the proposed text amendment to § 2515.3 should be clarified so that its restriction is limited to projects in commercial zone districts within the CEA. The Commission did not agree with DCBIA's recommendation that it should replace the word "if" with "and" when describing the requirement that the enclosed area be devoted to devoted to retail, arts, or service uses permitted as a matter of right. Instead the Commission decided to divide the text permitting enclosure into three new subsections in order to lend greater clarity to its intent.

No other substantive changes were made. The Office of the Corporation Counsel has determined that this rulemaking meets its standards of legal sufficiency.

Based upon the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purposes of the Zoning Regulations, and not inconsistent with the Comprehensive Plan for the National Capitol.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to chapter 25 of the Zoning Regulations, Title 11, DCMR. Added wording is in bold and underlined.

Title 11 DCMR (Zoning), Section 2515, EXCEPTIONS TO DENSITY REGULATIONS FOR OPEN ARCADES, is amended by:

1. Amending subsection 2515.3 to read as follows:

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 adjacent to the arcade; Open **arcades constructed in commercial (C) districts within the Central Employment Area after [INSERT: the date on which the Commission's final rule is published in the *D.C. Register*] are ineligible for this credit.**

2. Adding new subsections 2515.13 through 2515.15 to read as follows:

2515.13 Notwithstanding the limitations of § 771.2 of this title, and subject to §§ 2515.14 and 2515.15, an open arcade existing in a building in a commercial (C) district in the Central Employment Area on [INSERT: the date on which the Commission's final rule is published in the *D.C. Register*], may be enclosed.

2515.14 An open arcade area enclosed pursuant to § 2515.13 shall be solely devoted to retail, arts, or service uses permitted as a matter of right.

2515.15 An open arcade may not be enclosed if it is located in a building that:

(a) Is a historic landmark or has been designated as contributing to a historic district; and

(b) The Historic Preservation Review Board has determined that the arcade constitutes a feature contributing to the building's historic or architectural significance

The vote of the Zoning Commission to approve the proposed rulemaking was taken during its public meeting on April 14, 2003 (Carol J. Mitten, Anthony J. Hood, James H. Hannaham, John G. Parsons, and Peter G. May in favor by absentee ballot).

The Zoning Commission at its public meeting of February 19, 2004, adopted the Order by a vote of 3-0-2 (Anthony J. Hood, John G. Parsons, and Carol J. Mitten to approve; Kevin L. Hildebrand, not having heard the case, not voting; and James H. Hannaham not present, not voting).

In accordance with the provisions of 11 DCMR §3028.9, this order shall become effective upon publication in the *D.C. Register*; that is on MAY 07 2004.

CAROL J. MITTEN
Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning

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The full text of this Zoning Commission order is published in the "Final Rulemaking" section of this edition of the *D.C. Register*.