

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

PUBLIC HEARING

+ + + + +

MONDAY

MARCH 24, 2003

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice, at 6:30 p.m., Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairperson
JAMES H. HANNAHAM	Commissioner
PETER G. MAY	Commissioner
JOHN G. PARSONS	Commissioner

ZONING COMMISSION STAFF PRESENT:

ALBERTO BASTIDA	Secretary
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OFFICE OF PLANNING STAFF PRESENT:

ARTHUR JACKSON	Office of Planning
STEPHEN MORDFIN	Office of Planning
JENNIFER STEINGASSER	Office of Planning

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P-R-O-C-E-E-D-I-N-G-S

6:34 p.m.

CHAIRPERSON MITTEN: Good evening, ladies and gentlemen. This is the public hearing of the Zoning Commission of the District of Columbia for Monday, March 24, 2003. My name is Carol Mitten, and joining me this evening are Vice Chairman Anthony Hood and Commissioners Peter May, John Parsons and James Hannaham.

We have two cases this evening and they are both rulemaking cases, so I won't need to read the opening statement twice.

The first case this evening is Zoning Commission Case No. 02-34. This is a request by the Office of Planning for a text amendment to the zoning regulations which are Title 11 DCMR, to provide Optical Transmission Nodes as a special exception use in the Special Purpose Zones, Mixed Use CR District and Waterfront Zones, and as a matter of right use within the Commercial and Industrial Zones.

Notice of this hearing on the Optical Transmission Nodes was published in the D.C. Register on January 24, 2003, and in The Washington Times on February 5, 2003. Copies of the hearing announcement are available to you and are located on the table near

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1 the door.

2 This hearing will be conducted in
3 accordance with the provisions of 11 DCMR, Section
4 3021, which are the procedures for rulemaking
5 hearings. The order of procedure will be as follows:
6 preliminary matters, followed by the presentation by
7 the Office of Planning, reports of any other
8 government agencies, reports of affected ANCs, and in
9 this case it would be all ANCs are affected,
10 organizations and persons in support, organizations
11 and persons in opposition.

12 The following time constraints will be
13 maintained in this hearing: organizations will have
14 five minutes and individuals will have three minutes.

15 The Commission intends to maintain these time limits
16 as strictly as possible, in order to hear the case in
17 a reasonable period of time. The Commission reserves
18 the right to change the time limits for presentations
19 if necessary and notes that no time shall be ceded.

20 All persons appearing before the
21 Commission are to fill out two witness cards. These
22 cards are also located on the table near the door. On
23 coming forward to speak to the Commission, please give
24 both cards to the reporter who is sitting to our
25 right.

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1 The decision of the Commission in this
2 case must be based on the public record. To avoid any
3 appearance of the contrary, the Commission requests
4 that persons present not engage the members of the
5 Commission in conversation during a recess or at any
6 other time. Staff will be available throughout the
7 hearing to discuss procedural questions.

8 Please turn off all beepers and cell
9 phones at this time, so as not to disrupt these
10 proceedings.

11 At this time, we will consider any
12 preliminary matters. Mr. Bastida?

13 SECRETARY BASTIDA: The staff has no
14 preliminary matters, Madam Chairman.

15 CHAIRPERSON MITTEN: Thank you, and I think
16 we will move right into the report by the Office of
17 Planning.

18 Good evening, Mr. Mordfin.

19 MR. MORDFIN: Good evening, Madam
20 Chairwoman, and members of the Commission. My name is
21 Stephen Mordfin with the Office of Planning, and this
22 is Zoning Commission Case No. 02-34. It's a text
23 amendment for Optical Transmission Nodes. This
24 application is for the addition of the use of Optical
25 Transmission Node, or OTN, to the zoning regulations.

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1 An OTN is a facility for transmitting or
2 relaying pulses along fiber optic lines for such
3 things as cable television, high-speed internet access
4 and interactive video. It does not transmit radio
5 waves through the air.

6 Currently, OTNs are regulated as non-
7 commercial broadcast antennas. However, as they do
8 not transmit radio waves this is not an appropriate
9 classification. OTNs are proposed to be permitted as
10 a matter of right within Commercial and Industrial
11 Districts and as use is permitted by special exception
12 within the Mixed Use, Special Purpose and Waterfront
13 Districts. Within the districts in which OTNs are to
14 be permitted by special exception, the use is grouped
15 together with other utility uses. OTNs are not
16 proposed to be permitted within Residential Districts.

17 OTNs, which typically require only 1500
18 square feet of area, may be located within existing or
19 proposed buildings. For those that will be located
20 within our proposed building, the Board of Zoning
21 Adjustment will have the authority to approve the use
22 subject to the following provision. The building
23 shall be built to appear compatible with surrounding
24 construction, including exterior building material,
25 fenestration and landscaping. This will ensure that

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1 any new construction for the purpose of housing OTN
2 facilities will be reviewed by the BZA for
3 compatibility with the surrounding neighborhood.

4 Parking for OTN facilities is proposed to
5 be one space for each 2000 square feet, as the use is
6 unmanned and parking will only be required should
7 maintenance be necessary.

8 That concludes the report of the Office of
9 Planning.

10 CHAIRPERSON MITTEN: Thank you.

11 Any questions for the Office of Planning?

12 Mr. Parsons?

13 COMMISSIONER PARSONS: Yes. I notice that
14 these are typically 1500 square feet. Certainly, we
15 don't expect that these would be freestanding
16 facilities, do we, that is, a stand-alone building?

17 MR. MORDFIN: Potentially, it could be a
18 stand-alone building, and that is the purpose of
19 including the provision that if you were to build a
20 building just to house it, depending on what the
21 neighborhood looks like, that it be compatible with
22 the surrounding area in terms of construction, and the
23 windows, the landscaping, the building materials, so
24 that it would fit in, if you were to build a stand-
25 alone building just to house this.

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1 Otherwise, it could be located within an
2 existing building, and just a portion of an existing
3 building, and not be subject to that criteria.

4 COMMISSIONER PARSONS: There's nothing that
5 would be advantageous to them to build a stand-alone
6 building, would there? I mean, wouldn't they seek to
7 be in an existing building, with just the minimal
8 square feet?

9 MR. MORDFIN: I think that would be up to
10 them to determine what works best for them.

11 COMMISSIONER PARSONS: I'm expecting some
12 temporary shed out in the middle of a parking lot that
13 we would not be pleased with.

14 MR. MORDFIN: Well, that's the purpose of
15 giving the BZA ?

16 COMMISSIONER PARSONS: Yes.

17 MR. MORDFIN: ? the authority to approve
18 the construction, including the exterior building
19 material, fenestration, landscaping, so that you don't
20 end up with a shed or a temporary-looking structure,
21 sitting there on some street someplace, and not
22 fitting in with the surrounding community.

23 COMMISSIONER PARSONS: Well, to push it a
24 little farther, supposing we didn't allow these to be
25 freestanding facilities?

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1 MR. MORDFIN: Well then, they would have ?

2 COMMISSIONER PARSONS: Force them into
3 existing buildings.

4 MS. STEINGASSER: That would certainly be
5 an option, but the case that started this was, indeed,
6 a freestanding building. They had bought property
7 just off Georgia Avenue and had built a tilt-up
8 building in the course of a weekend, and the neighbors
9 complained because it was, essentially, a big concrete
10 box with no windows and doors, and it looked like a
11 big utility shed.

12 But, it was the size of a house in a
13 residential zone, so they could, indeed, and they
14 prefer often to be, according to Comcast, in
15 individual buildings so they can control the size.
16 But, there is no reason that all, and I believe after
17 the building permit was revoked they did relocate into
18 an existing building.

19 But, there?s no reason at all that they
20 couldn?t go into existing buildings.

21 COMMISSIONER PARSONS: Thank you.

22 CHAIRPERSON MITTEN: If I could just make a
23 comment on that. I think that as the requirements
24 increase, in terms of making the building look
25 compatible in terms of materials and fenestration, it

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1 becomes more expensive to build. So, that's an added
2 incentive.

3 I just wanted to ask, the language that
4 you've selected to use in 509.2(a) and in 608.2, the
5 introduction, it speaks to any new construction solely
6 for the purpose of housing an Optical Transmission
7 Node, and I wondered if we could use, since it's
8 possible that it could be put to some other purpose,
9 but it would be ? the principal use would be an
10 Optical Transmission Node, that we could either
11 principally or primarily instead of solely. That's if
12 we even ? unless Mr. Parsons later wants to make a
13 compelling argument that we don't, you are going to
14 need to make allowances for these things.

15 Any other questions?

16 VICE CHAIRMAN HOOD: Madam Chair, the only
17 other thing I would ask that we look at, we are asking
18 for a special exception use in a CI, SP and W Zone,
19 I'm always concerned about those residential zones
20 that are right across the street from those CM zones,
21 and we have a few, I think, that are M Zones, I would
22 ask that we look into that, because that does exist.
23 And, I just think that that's really part of the
24 problem that we have now in the City, where you have
25 those Residential Zones right across the street from

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1 CM Zones, and I think that causes a problem.

2 I don't see any protection for those
3 residential areas.

4 CHAIRPERSON MITTEN: Shall we ask the
5 Office of Planning to do a little follow-up for us
6 then on --

7 VICE CHAIRMAN HOOD: I thought that's what
8 I was doing.

9 CHAIRPERSON MITTEN: Okay.

10 VICE CHAIRMAN HOOD: Yes, I would ask us to
11 look into and investigate that.

12 MS. STEINGASSER: Would you like ? I'm
13 unclear as to what additional criteria you'd like us
14 to look at, because we've allowed them ? I see,
15 because we've proposed them as a matter of right.

16 VICE CHAIRMAN HOOD: You've proposed it as
17 a matter or right.

18 MS. STEINGASSER: Okay. So, we could take
19 the same EES approach, where if they are within so
20 many feet of a Residential District.

21 VICE CHAIRMAN HOOD: Something to kind of
22 give a little precaution there, you know.

23 MS. STEINGASSER: Yes, sir.

24 VICE CHAIRMAN HOOD: Thank you.

25 CHAIRPERSON MITTEN: Any other questions?

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1 All right, I don't believe we have any
2 reports of other government agencies. I don't see any
3 ANCs represented here this evening.

4 Anyone who would like to testify in either
5 opposition or support on the Optical Transmission Node
6 case?

7 All right.

8 MS. STEINGASSER: Madam Chairman?

9 CHAIRPERSON MITTEN: Yes.

10 MS. STEINGASSER: I've been contacted by
11 the attorneys for Comcast, and they have requested
12 that the record remain open until Friday, so that they
13 could submit comments in writing.

14 CHAIRPERSON MITTEN: That's fine, that's no
15 problem. In fact, I was going to ask you how much
16 time you would need to provide us with some follow-up
17 to respond to Mr. Hood's question.

18 MS. STEINGASSER: We would shoot to have it
19 to you by Friday, April 4th, so that if the Commission
20 decided to take action at your April 14th meeting.

21 CHAIRPERSON MITTEN: All right. So, we'll
22 leave the record open until Friday, April 4th then, and
23 all submissions by 3:00 in the room next door.

24 All right, then I think we are ready to
25 move to the second case of the evening, and the second

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1 case is Zoning Commission Case No. 02-44. This is a
2 request that was generated by a letter to the
3 Commission from the Retail Subcommittee of the D.C.
4 Building Industry Association, which the Commission
5 set down for public hearing on our own motion.

6 This was to amend the text of the Zoning
7 Regulations, specifically, Section 2515, relating to
8 exceptions to density regulations for open arcades.
9 Notice of this hearing was published in the D.C.
10 Register on February 7, 2003, and in The Washington
11 Times on January 31, 2003.

12 I believe that the Office of Planning is
13 going to make the presentation, sort of taking the
14 role of the petitioner. Am I correct there?

15 MS. STEINGASSER: Yes, ma'am, we'll take
16 the lead in the presentation.

17 CHAIRPERSON MITTEN: All right, thank you.

18 MR. JACKSON: Madam Chair, my name is
19 Arthur Jackson, D.C. Office of Planning, and we have a
20 brief slide presentation that would just summarize our
21 case.

22 CHAIRPERSON MITTEN: All right.

23 MR. JACKSON: Just give me one minute to
24 get this equipment working.

25 CHAIRPERSON MITTEN: Okay.

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1 MR. JACKSON: All right. At this time the
2 black screen is deliberate, so we're ready to start.

3 CHAIRPERSON MITTEN: Oh, okay, great.
4 Okay, good.

5 MR. JACKSON: Madam Chair and members of
6 the Commission, this is a brief presentation
7 concerning the application before you, Zoning Case 02-
8 44, which is concerned with arcades in the Central
9 Employment Area.

10 Briefly, the original request was
11 submitted by the Retail Business Development Committee
12 of the District of Columbia Building Industry
13 Association. DCBIA identified specific strategies to
14 make retail space in the downtown more user friendly,
15 and this particular proposal will allow elimination of
16 some open arcades in buildings located in the Central
17 Employment Area.

18 The proposed text amendment would state as
19 follows: "Notwithstanding the limitations of Section
20 771.2, an existing open arcade in a building within a
21 Commercial District within the Central Employment
22 Area, for which a floor area credit has been granted
23 pursuant to this section, may be enclosed and devoted
24 to retail, entertainment, arts and service uses
25 permitted as a matter of right."

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1 First, let's talk about what an open
2 arcade is under the Zoning Regulations. It is defined
3 as a continuous area located along the perimeter of a
4 building designed for pedestrian uses and which
5 adjoins a street for its entire length, except for
6 structural piers, columns, arches, and is open to the
7 street, as shown in the illustration.

8 The Central Employment Area spans the
9 downtown and crosses the river, and you can see with
10 the purple outline the extent of the employment area.

11 Now, note that the proposed arcades are only allowed
12 in certain Commercial Districts. This slide shows,
13 the slight derivation in the colors shows the areas
14 where arcades are allowed in the district and,
15 essentially, are allowed within the Central Employment
16 Area.

17 The eligible projects under these
18 regulations would be buildings located in C1, C2A,
19 C2B, C2C, C3A, C3B, C3C, and so forth. Now, note that
20 the list actually reflects the zones that are within
21 the Central Employment Area that would be eligible,
22 their projects would be eligible.

23 Now, only buildings that have construction
24 plans submitted after May 12, 1958 would be eligible.

25 That is because that was when the regulation having

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1 to do with the arcade benefit was passed, and only
2 projects that took advantage of the arcade credit.
3 Also note that retail service ? arts and service uses,
4 and something called entertainment uses, would be
5 allowed to occupy the former arcade space.

6 The OP analysis, basically, started from a
7 field check, surveying the CEA, the Central Employment
8 Area, to identify buildings that appeared to have
9 arcades, then we compared those building addresses to
10 the records in the Department of Consumer and
11 Regulatory Affairs. It appeared that the best
12 information in their records had to do with the zoning
13 computation sheets that are done for each project.

14 When a project comes in, it?s assigned a
15 job number, and based on the job number the Zoning
16 Administrator reviews the original submission in terms
17 of whether it meets the zoning requirements, in terms
18 of FAR lot occupancy and so forth.

19 On those sheets, they actually do a
20 computation of what the allowable developed area, the
21 FAR, maximum FAR will be allowed on the site, given
22 the basic FAR, the benefits you get for having a
23 penthouse, and arcades. On those sheets, they
24 actually do tabulations indicating where ? which
25 projects have the arcades, and so how much area is

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1 granted as part of this benefit. So, that was what we
2 were using to document what arcades existed in
3 downtown.

4 Okay. Our findings, based on that
5 information, was that in terms of the impact on
6 existing development the computation sequence we were
7 able to identify indicate that both buildings in the
8 downtown appeared to provide arcades without asking
9 for the FAR credit.

10 Now, overall, we were able to identify
11 approximately between 60 and 65 computation sheets
12 that were of properties we thought would have arcades.

13 We compared the sheets of ? computation sheets that
14 actually included arcades with those that didn?t, and
15 it broke down to be about a 1/5 split. That is, for
16 every five sheets that did not show an arcade there
17 would be one that would.

18 In terms of the impact on pedestrian and
19 vehicle circulation, based on viewing existing
20 projects that have enclosed their arcades, and looking
21 at the extent of buildings that would be expanded, new
22 construction will tend not to extend beyond the front
23 property line without additional review. For instance,
24 there may be instances where a property owner might
25 want to, say, extend the building out into the public

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1 way, but, of course, they'll have to go through a
2 committee or an agency of the District government for
3 additional approval. So overall, we wouldn't expect
4 that pedestrian and vehicular circulation in the
5 public way would be affected, because, in essence, all
6 would be within the property line.

7 As to the impact of historic properties,
8 only properties that were developed after 1958 would
9 be eligible for the benefit, and as such those
10 properties would not be historic for another ? until
11 2008, so that the current ? this proposal would not
12 affect any current historic properties. However, we
13 can't say how it might impact the properties that may
14 become historic at a future date.

15 For instance, if you have a property now
16 that's ? a building now that in 2008 is deemed to be
17 of historic merit, it might be possible that the
18 presence of the arcade may add to the historic
19 significance. That would have to be an evaluation
20 that would be done at a later date.

21 Now, there also are some other findings,
22 in terms of the applicability of the amendment. The
23 current amendment text would not address open arcades
24 that are set back from the street frontage. And, I
25 have a couple of examples here to explain what I mean.

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1 This is an example of a project that came
2 through before the Board of Zoning Adjustment and
3 asked for a variance. Now, their situation was that,
4 if you note on the illustration, on the slide, the
5 existing open arcade was actually set back into the
6 building. This is a rather unusual circumstance, but
7 the arcade was set ten feet back from the property
8 line, in order for them to expand the retail ? okay,
9 and the total amount of credit they received was
10 around 973 square feet.

11 Now, in order to really expand the
12 storefront to come out to the sidewalk, that is to the
13 public way, they needed approximately 1000 square
14 feet. Now, note that there are some other interesting
15 issues with this site, in that it had an open
16 stairwell that goes down to an underground retail
17 space, and they have a driveway that cuts across the
18 property that goes into a garage. So, if the property
19 had been entirely ? had this been solid frontage all
20 the way across, the amount of square footage they
21 needed might be a bit more. But, in this case, they
22 needed 1000 square feet, but the arcade credit was
23 only for 973.

24 As a result, the enclosed area for the
25 storefront was more than the arcade credit, but it was

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1 only a fraction of the adjacent floor area. So, the
2 final result was that this variance was approved for
3 1000 square feet and the building exists today.

4 Another instance is 2001 L Street, N.W.
5 Now, the FAR credit on record for this property is 710
6 square feet. Now, this is at the intersection of L
7 Street and 20th. The L Street side appears to be built
8 out, but the 20th Street side still has a significant
9 setback in terms of their arcade.

10 By going out and measuring the site, the
11 actual site, it appeared that the estimated open area
12 was actually 2500 square feet. This means they'd need
13 an additional allowance in order to fill out the rest
14 of the arcade that exists.

15 So, there are instances where the arcades,
16 either by design or building siting, are actually ?
17 the open space between the property line and the
18 existing storefront or building front is more than the
19 arcade credit, and as such we would like to perceive
20 that there would be flexibility with unreining new
21 regulations so that if the properties who receive the
22 credit did not have enough other credit to reach the
23 street, that they could continue to make it a solid
24 street frontage.

25 Okay, so continuing with the other

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1 findings. One concern about the term "entertainment"
2 is that it's not a term listed in the Zoning
3 Regulations. However, it appears that arts and arts-
4 related uses adequately address what seems to be the
5 intent of that regulation.

6 Also, the allowable uses in former arcade
7 spaces should be limited to these types of uses. Now,
8 by that, we are interested in getting more vitality,
9 more life, more excitement on the street. What we are
10 concerned about is the possibility of using additional
11 floor area that's allowed with the expansion of these
12 former arcade spaces for larger lobbies, office space,
13 or other uses that would not bring life and vitality
14 to the street.

15 And lastly, the status of the current open
16 arcades. The FAR credit is no longer leading, but it
17 would make sense to me if we change the text of the
18 current Section 251.5 in order for future reviewers to
19 have a context for applying the proposed legislation.

20 However, we do think that the credit "the credit for
21 providing arcades should be discontinued and kept at a
22 date certain.

23 The agencies that decided to respond to
24 this had gave us a variety of responses. The fire
25 department had no objections so long as the fire and

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1 emergency medical service access are not affected, and
2 that the additions did not block their access to
3 utilities, such as stand pipes. Of course, during the
4 normal development review process any plans would be
5 subject to their review as far as the DCRA review, so
6 we don't think that would be a problem in that case.

7 The Department of Transportation had no
8 comments. Department of Housing and Community
9 Development did support the proposal, and I believe
10 you have a copy of their letter in you file.

11 And, the police department, we got ? they
12 provided us with several comments from different
13 districts. Overall, there was some support if parking
14 was provided for the additional floor area, but then
15 there was a lack ? there was also an expression of
16 lack of support because they wanted more specifics
17 about instances where this would occur, to allow them
18 to do more detailed analysis.

19 I guess I should respond to that. I think
20 we are looking at that, we foresee that the majority
21 of the arcades will be small in terms of the existing
22 building. That is, it would simply be ? our typical
23 arcade was eight to ten feet deep, and sits seven to
24 25 feet back from the street. We don't see that that
25 addition would be a significant expanse of existing

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1 floor area of a ground floor.

2 Beyond that, most of these buildings are
3 already up, these buildings are already constructed,
4 so the possibility of providing additional parking on
5 site is rather remote. And, looking at the Zoning
6 Regulations with regard to parking, until you get to
7 3000 square feet of retail space you are not really
8 required to provide anymore. So, we anticipate that
9 these additions would be minor in nature, and as such
10 would not generate significant additional need for
11 parking.

12 In terms of comprehensive plan, we think
13 this specific recommendation is in line with the
14 comprehensive plan, and, in fact, an amendment was
15 submitted to specifically address this issue.

16 So, based on this information, and these
17 results, we make the following suggested changes to
18 the proposed legislation, adding text to include
19 building setback from the right of way, and eliminate
20 the term "entertainment," replacing entertainment with
21 arts. Let arts and services readdress the
22 entertainment issue. Clarify that additional floor
23 area must be accompanied by arts, retail and service
24 uses allowed in the zoning district, exempt properties
25 designated historical or contributing to a particular

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1 historic district from proposed amendment, if the
2 arcade is determined to be a contributing factor. Do
3 not require additional parking, but limit the size of
4 additions, and retain the text in the current text to
5 provide a context for any future application of the
6 amendment.

7 As a result, we propose changing the text
8 amendment as follows: notwithstanding the limitations
9 of Section 771.2, an existing open arcade in a
10 building in a Commercial District within the Central
11 Employment Area, for which a floor area limitation
12 credit has been granted pursuant to this section, may
13 be enclosed and devoted solely to retail, arts and
14 service uses permitted in the zoning district as a
15 matter of right, except in the case of buildings
16 designated as historic landmarks or contributing to
17 historic district, creating a historic district, where
18 the Historic Preservation Review Board has determined
19 that the arcade constitutes a future contributing to
20 the building's historic or architectural significance.

21 We also recommend that there be a limit on
22 additional floor area under the amendment, to either
23 be the floor area ratio credit originally granted or
24 25 percent of the gross floor area adjacent to the
25 open arcade, whichever is greater, and clarify that

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1 construction plans submitted on or before the date ?
2 on or after the date of the Zoning Commission order as
3 adopted are not eligible for reference credit.

4 That concludes a brief summary of our
5 presentation.

6 CHAIRPERSON MITTEN: Thank you, Mr.
7 Jackson.

8 Any questions?

9 Mr. May?

10 COMMISSIONER MAY: Yes. First of all, I
11 want to apologize to my fellow Commissioners, I'm
12 going to have a bunch of questions because I'm very
13 confused.

14 First of all, I'm not sure from the
15 information I have, I don't recall exactly, but it
16 seems that the number of buildings that qualified for
17 this credit or initially were granted as credit is
18 very limited, right, or you've only found evidence of
19 11 of them or something like that, is that right?

20 MR. JACKSON: Right, I think what I have
21 now, what I've discovered now, would be more of a
22 sampling of what the actual is.

23 COMMISSIONER MAY: So, it's a sampling,
24 it's not meant to be something that effects only 11
25 buildings?

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1 MR. JACKSON: No.

2 COMMISSIONER MAY: Okay.

3 How does the credit actually work? I
4 mean, is it still under an overall limitation of the
5 FAR? I mean, if I were originally going to be
6 building a building, have an arcade, and take this
7 credit, how would that have worked in the calculations
8 of the FAR for my building?

9 MR. JACKSON: Well, my understanding is
10 that when you came in and had a set of building plans,
11 you show on your plans that you are providing an
12 arcade, and then you do the calculation about how much
13 floor area that is, and you would include that floor
14 area as part of your FAR envelope.

15 So, you might have 10.0 FAR, and they you
16 could get a credit for, say, if you had a roof
17 structure you could add a .37 credit for your roof
18 structure, and then you could add whatever total
19 credit for which you have for that arcade space to
20 that overall FAR.

21 So, it was ? the purpose of it was so that
22 you ? if you provide the arcade space, and it affected
23 your overall ability to provide retail and commercial
24 space, you could then ? you didn?t lose anything. You
25 are providing an open space amenity along the side of

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1 the building, but you weren't losing leasable retail
2 space, retail or service space.

3 COMMISSIONER MAY: Okay. I'm sorry, but
4 I'm still confused.

5 When I build a building with an arcade,
6 the arcade space does or does not count in the floor
7 area ratio, putting the credit aside?

8 MR. JACKSON: It counts.

9 COMMISSIONER MAY: It counts.

10 MR. JACKSON: Right, but you are not
11 penalized for having provided it.

12 COMMISSIONER MAY: Okay, but it does count
13 as floor space.

14 MR. JACKSON: Right.

15 COMMISSIONER MAY: Okay.

16 MR. JACKSON: Think of it as, it's a space
17 within the building, normally if you have a structure,
18 and you've got a roof over it --

19 COMMISSIONER MAY: So long as you have a
20 roof over it, it's part of the building?

21 MR. JACKSON: Yes.

22 COMMISSIONER MAY: Okay.

23 MR. JACKSON: You would normally count that
24 against your total FAR.

25 COMMISSIONER MAY: Okay, so now I'm taking

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1 a part of my building and I'm devoting it to public
2 use.

3 MR. JACKSON: Right.

4 COMMISSIONER MAY: So, therefore, if I have
5 1000 square feet of adjacent space I can get 250 feet
6 built somewhere else.

7 MR. JACKSON: Yes.

8 COMMISSIONER MAY: Right, okay. Now I
9 understand.

10 The next question I have is, the way this
11 is worded now, it says, "Notwithstanding the
12 limitations of Section 771.2 . . .," so if without the
13 credit, or even with the credit, if I'm at my FAR
14 limit, I'm still at my FAR limit, and I can't enclose
15 the arcade even though we put in this clause, is that
16 right or does it still have to ? does it still have to
17 be under the FAR, the overall FAR limitation?

18 MR. JACKSON: No, no, with this clause you
19 can fill in your arcade. The question is, is just how
20 much, because the way it's originally worded it seemed
21 ? well, right now there isn't any real ? the existing
22 wording doesn't really specify how much it actually
23 is, so we wanted to make an identifiable amount.

24 The thought was to go back to look at the
25 arcade credit, assuming that would be approximately

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1 what you needed for ?- what you lost when you provided
2 the arcade. In reality, that?s not really the case.
3 It?s going to be more, it?s going to take more to fill
4 in, not only your frontage, but possibly if your
5 arcade was immediately along the side of the building
6 and you weren?t really close to the property line, in
7 order for you to build out to the street you?d need
8 some additional benefit. So, that?s where the 25
9 percent came in, instead of just 25 percent of the
10 arcade space, it could be 25 percent of the floor area
11 of the ground floor.

12 COMMISSIONER MAY: Right. So, in theory, I
13 can fill in my arcade as a matter or right or whatever
14 up til 25 ? up to the value of that credit, the credit
15 that I had already received.

16 MR. JACKSON: Right, and with our current
17 amendment you can go beyond the credit to fill it up
18 to a percentage of your current ground floor area, the
19 assumption being that you would just ? you can?t go
20 any further than your property line, and, of course,
21 it?s only the first ground floor.

22 COMMISSIONER MAY: Right.

23 MR. JACKSON: So, that would meet the goal
24 of bringing the storefronts to the street.

25 COMMISSIONER MAY: Okay.

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1 Why are we limiting, why are we tying this
2 to buildings for which the floor area limitation
3 credit has been granted, because that's not what the
4 Comprehensive Plan seems to say.

5 MR. JACKSON: Well, we are basically
6 responding to the proposal from ABCA, but I think
7 overall it's going to be difficult, without going out
8 and analyzing every building that might potentially do
9 this, and see what the impacts would be, it's really
10 difficult to have any rule of measure about what the
11 potential impacts are.

12 At this point, we can identify some
13 buildings, at least by arcade credit, and gauge what
14 the impact would be based on ? okay, we put the credit
15 back and you put a little bit more, then you've gone
16 to the street. It's unclear just how to structure it
17 where you could just say, okay, any building that now
18 has an arcade, or some resemblance of an arcade, you
19 can build out to the street line. It's just hard to
20 predict the impact of something like that.

21 COMMISSIONER MAY: It's a very broad
22 regulation.

23 MR. JACKSON: I mean --

24 COMMISSIONER MAY: I'm not suggesting that
25 that's something that really is that desirable, it

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1 just seems to me that the language in the
2 Comprehensive Plan, what's excerpted here, is very
3 broad in saying that, you know, allow arcades to built
4 out as a matter of right, all the way. I mean, not
5 tying it to the credit, not doing anything else, so we
6 are ? that's not what is being proposed here.

7 I could understand if this was the only
8 manageable piece of it that could be done within the
9 limitations, that seems to be what you are saying, you
10 know, without just throwing open, you know, the gates
11 here.

12 MR. JACKSON: Again, I would say that based
13 on the work we've done to date, we can see where in
14 most instances where buildings who have had arcades,
15 and they were done in conjunction with the credit,
16 that those were fairly modest changes when they go out
17 to the street and we don't see there to be a wholesale
18 change. It would probably be incremental over time.

19 And so, we think that's a measurable
20 impact, even though we may only have ten examples of
21 it, we can actually measure the impact. And, I think
22 based on the samples we've taken we are fairly
23 comfortable with that, but all the potential sites
24 that could change is really a very broad area to work
25 with, and it could be analyzed, but we'd have to go

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1 from building to building and actually look at
2 buildings that predate 1958, because, in essence,
3 there are a number of buildings downtown that ? I
4 think part of the reason that we weren't able to find
5 the computation sheets for some buildings is that they
6 were built, they were completed prior to the actual
7 amendment being put in place.

8 So, as such, we need to look at every
9 building that could possibly have an arcade to just
10 see what the impacts would potentially be. It's
11 doable, it just would take more time.

12 COMMISSIONER MAY: Okay. It seemed odd
13 that what we are proposing here doesn't seem to be
14 consistent with the language in the Comp Plan.

15 MR. JACKSON: It's a step in that
16 direction, but it's not as broad as --

17 COMMISSIONER MAY: I'm not saying we want
18 to go there, I don't know where we want to go yet.

19 All right, I think that's it.

20 CHAIRPERSON MITTEN: Okay. I was just
21 going to pick up on that if you weren't finished,
22 because I had the same question, which is, presumably,
23 if someone is going to have a very large arcade, you
24 know, and we'll have to set aside the buildings that
25 predated 1958, but they would be motivated to take

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1 advantage of the credit, because they were giving up
2 something large, as opposed to something relatively
3 small, and so I think it would ? I just don?t think
4 it?s likely that you are going to find a dramatic
5 situation in a more modern building that has an arcade
6 that is going to cause you concern if we eliminate the
7 clause about it having to be a building that took
8 advantage of the FAR credit, because I just ? I
9 started to put down buildings that I could think of
10 that have arcades, and they are all the same, you
11 can?t pick out which ones took advantage of the credit
12 and which ones didn?t, and the arcades are all equally
13 dysfunctional. So, why don?t we ? you know, why don?t
14 we want to do something to help everyone? I think it
15 has a lot of merit, actually, the suggestion that Mr.
16 May was making.

17 COMMISSIONER MAY: Of course, this is all
18 contrary to my own natural instinct, to want to have
19 arcades to start with.

20 CHAIRPERSON MITTEN: Well, it was an
21 imperfect execution of the idea to begin with, right?

22 COMMISSIONER MAY: Well, and I don?t know
23 how to make them work in this environment anyway. I
24 mean, there?s certainly wonderful examples around the
25 world of arcades that worked well, we just don?t seem

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1 to have any of them here.

2 CHAIRPERSON MITTEN: Well, it was probably
3 that it was a selective, it wasn't imposed as a
4 requirement, it was just a selective opportunity, and
5 some people took advantage of it and some people
6 didn't.

7 COMMISSIONER MAY: Right. Well, I think it
8 works best where there's actually no sidewalk, except
9 for what's under the arcade. But anyway --

10 CHAIRPERSON MITTEN: We are probably not
11 going to be able to do anything about that any time
12 soon.

13 I would want to just ask if you had given
14 any consideration to, when we talk about an existing
15 arcade, are you talking about after we ? if we pass
16 this regulation and put it in place that anyone who
17 chooses to build an arcade in the future is not going
18 to have the opportunity to backfill it at some point?

19 MR. JACKSON: Yes, that was the thought.

20 CHAIRPERSON MITTEN: Okay.

21 Does anyone else have any questions for
22 Mr. Jackson?

23 Okay, thank you.

24 And, as you noted, Mr. Jackson, we do have
25 reports from ? we didn't have the DDOT report, but I

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1 guess the no comment doesn't require --

2 MR. JACKSON: I should say that I called
3 them directly and asked them about whether they had
4 any concerns. As additional background, I should say
5 that they are usually one of the organizations that's
6 contacted most directly on arcades and other changes
7 in the right-of-way, and I'm sure they have been
8 contacted when things have happened along these street
9 frontages that they had not had a chance to see. And,
10 from all indications, they had no concerns about it.

11 CHAIRPERSON MITTEN: Okay.

12 And then, you noted the comments from DHCD
13 and the fire marshal and MPD, and we don't have any
14 reports from the ANCs, have you seen anything from any
15 of the ANCs?

16 MR. JACKSON: No, Madam Chair.

17 CHAIRPERSON MITTEN: All right, then I will
18 just note that we have a number of letters in the file
19 in support of the text amendment, and now I would ask
20 for anyone who would like to testify in support.

21 Mr. Harris and Mr. Collins? We are not
22 going to even put you on the clock.

23 MR. COLLINS: Good evening, Madam Chair,
24 members of the Commission. My name is Christopher
25 Collins. I am a partner with the law firm of Holland

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1 and Knight, but I'm here tonight in my capacity with
2 the D.C. Building Industry Association. Seated to my
3 left is Mr. Len Harris, who is with Transwestern, but
4 is also here in his role as the Co-Chair of the D.C.
5 BIA Retail Business Development Committee.

6 You've gotten a copy of our very brief
7 statement this evening, I won't read it to you, but I
8 will paraphrase it, but I think more importantly we
9 are here tonight to give you a little background as to
10 how this started, the genesis of this proposal, the
11 genesis of the regulation itself, and to answer any
12 questions you might have.

13 Mr. Harris is a broker, but is also a
14 former retailer himself, and can testify firsthand as
15 to the impacts, the negative impacts of arcades in the
16 district.

17 As I said, I won't read this to you, but
18 to begin, we started, we, DCBIA, started this dialogue
19 with Council member Charlene Jarvis back in the mid
20 '90s, when she was Chair of the Economic Development
21 Committee of the Council, and we went to her talking
22 about economic development generally downtown, and the
23 fact that retail was coming into press state in the
24 early mid '90s, and we were talking about ways to
25 generate, regenerate and vitalize the downtown retail

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1 environment. And, one thing that was raised was
2 arcades, and as a retailing concept they were not
3 working. Storefronts were pulled away from the street,
4 and the shopper just didn't grab the ? the storefronts
5 were right on the line in these arcades, they are
6 depressed, depressed back, not depressing, but
7 depressed back and generally dark and didn't get the
8 full sunlight.

9 And, Council member Jarvis was very
10 interested in that and pursued that with us, and she
11 actually wrote the letter to the Director of Office of
12 Planning, asking that that be included in the
13 Comprehensive Plan. We worked with the staff to
14 develop a language for Comp Plan amendment, but at the
15 time, frankly, it was our understanding that all the
16 arcades that you see downtown were developed based on
17 this arcade credit that was enacted in 1962 by the
18 Zoning Commission, and the handouts that you have
19 include from the very beginning in 1962, Zoning
20 Commission action, Zoning Advisory Council
21 recommendation, the amendments to the regulations in
22 the '70s, the current regulation, and then the
23 dialogue between Council member Jarvis and the Office
24 of Planning and the OP reports leading up to tonight's
25 hearing.

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1 I thought it was interesting on Exhibit ?
2 you don?t need to turn to it, but Exhibit G of the
3 handouts we have is OP?s recommendations on a variety
4 of Comp Plan amendments in that cycle in ?97, and if
5 you are turning to Exhibit G, if you look to two pages
6 back from Exhibit G, it?s page 11-2 of OP?s report,
7 and it?s a great statement, it kind of sums up the
8 whole thing. It says, ?The arcade was invented by an
9 architect and not a retailer,? and that?s really the
10 whole issue. It?s a nice design, it makes the
11 building look great, it has, you know, whatever the
12 architect thinks, I?m not going to play architect, but
13 the point is it doesn?t work from a retailing concept.

14 And, I?ll ask Mr. Harris to give his
15 personal experience as a retailer in an arcade. But
16 also, it just ? they recommended, it did not work.
17 The reason for the language that we have used in our
18 proposal about giving the FAR credit where it was
19 given was because of our understanding that wherever
20 arcades are they are there because a credit was given.

21 It?s not likely that a commercial office building
22 developer or owner is going to give away FAR, that if
23 there?s an arcade there?s got to be a quid pro quo, or
24 likely to be a quid pro quo, and that is that there
25 must have been an arcade credit given for these

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1 things.

2 Now, I can personally attest to the
3 experience that Mr. Jackson had trying to find zoning
4 computation sheets at DCRA. They are still done in
5 hard copy. Often times, the original is there, it's
6 in a file, you can go get it out, copy it if you want
7 to. They'll let you take it and copy, you know, the
8 information, and, hopefully, it will get back in the
9 same file. It's been our experience that they don't
10 always get back in the same file, and that they are
11 very difficult to find, and they are more difficult to
12 find now than they were ten years ago, so it's just a
13 process of being lost. These valuable records are
14 just disappearing.

15 And, through the moves from, DCRA having
16 moved from 614 H Street to 941, and even moving to 614
17 H Street, lots of ? there's colloquial evidence about
18 boxes just being tossed. So, records are gone. But,
19 I would think that most of the arcades that are there
20 are because someone got a credit, which allowed them
21 to put them in, or allowed them to put the FAR
22 elsewhere that was not there.

23 So, based on that, I think that Mr.
24 Jackson's statement that his 11 list was really a
25 sampling, is truly that. It may not be a

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1 statistically accurate sampling, but I think the 109
2 buildings that were identified by OP in their study
3 probably the vast majority of them did get the FAR
4 credit at some point.

5 I just want to reflect on some things in
6 the slide show. There was a total of 2001 L Street
7 and the arcade that there was there, it's a grey
8 building on L and on 20th, now that building is part of
9 the PUD, a five-stage PUD called Lafayette Center, so
10 that may have been an amenity, and maybe not an FAR
11 credit, so I just wanted to make the record in that
12 respect. The fact that there was nothing found there
13 may be because it's a PUD.

14 I also just want to mention the police
15 comment about, it would be nice to have additional
16 parking based on these additional densities that we
17 see, the additional area that's filled in. Well, the
18 regulations currently say that if you expand a
19 building by up to 25 percent you don't need to provide
20 additional parking. That's, I think, Section 2100.6
21 or something, I don't have the regs here. So, if you
22 are going to add, you know, 2000-3000 square feet
23 maybe at most on one of these arcades, it shouldn't be
24 a situation where parking needs to be provided.

25 In terms of the phrases, 'arts and

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1 entertainment uses,? that was a phrase that we used,
2 and you'll see that it appears on the Comp Plan
3 document, because that was the phrase that was used
4 back then, I believe, retail, service, arts and
5 entertainment uses, and that's kind of the phrase that
6 was used in the early part of DD regulations. I think
7 now it does say arts and arts-related uses, and that
8 was what was intended. We didn't think that cabarets,
9 and taverns, you know, it needed to be anything
10 special carved out, but we were thinking the kind of
11 things that the DD encourages, because this is
12 primarily going to be located in the DD area,
13 certainly east of the White House, and then also the
14 area west of the White House, but we thought, like OP,
15 we didn't think that it would be a good place to put
16 office lobbies, or back of the house office space, or
17 front of the house office space, I guess, but it would
18 be really there to add the life and vitality that was
19 the intention of this regulation from the beginning.

20 Mr. May asked a question about how this
21 works and gave an example of if a credit ? if you had
22 an arcade of 1000 feet, 25 percent would allow you to
23 add 250 square feet, well that's not the way it works.

24 It's one for one, up to either, and the language is
25 in the regulation, just give me a second, I'm looking

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1 at current Section 2513.3, it says, "An open arcade
2 shall be allowed a floor area ratio credit not to
3 exceed .25 FAR or 25 percent of the gross floor area
4 of the floor that is adjacent to the arcade, whichever
5 is less." So, you can? I mean, if you do more than
6 that, if you build an arcade that's more than .25 FAR,
7 or more than 25 percent of the gross floor area of the
8 floor adjacent that's enclosed, then too bad, that's
9 all you get, but, typically, the arcades? maybe the
10 reason they work is they are so shallow that people
11 only built what they had to do, they could put it
12 elsewhere.

13 So, we did not find a lot of examples of
14 arcades that are a lot larger than either of those two
15 situations to give them more density.

16 But, at this point, I'm not going to read
17 the attachments to the exhibits to you, you have them
18 for the record there, and you'll see the rationale for
19 the original FAR, the original arcade regulations, the
20 rationale for the changes, and then the back and forth
21 between the Council and OP, and then the OP's reports
22 that supported the Comprehensive Plan changes.

23 So, really, that's all we came down, is to
24 support the application. I think Mr. Harris would
25 like to say a few words about his experience as a

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1 retailer.

2 MR. HARRIS: My name is Len Harris. I'm a
3 real estate broker for Transwestern Commercial
4 Services.

5 Retail is my specialty. I have a
6 background in retail. I owned and operated my
7 family's chain of retail businesses in the City
8 between 1966 and 1993. Some years of those were in
9 801 17th Street, what at the time was the IDB, it's a
10 perfect case of a setback arcade.

11 From my perspective, this was going to be
12 a continuation of Connecticut Avenue as it crossed K
13 Street and went to Pennsylvania Avenue, and having a
14 setback was of no benefit at all to my business, and
15 hence, the beginning, from my perspective, of driving
16 this issue through the Retail Business Development
17 Committee.

18 In the past several years, we've seen a
19 lot of arcades be filled in. I can't say how or why
20 regarding whatever the regulations are, but I can tell
21 you that in places where they've been filled in the
22 street life has been significantly enhanced.

23 As you go down Connecticut Avenue, most
24 particularly, between M Street and Connecticut Avenue,
25 with 1140 Connecticut, that was just put up there as a

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1 prime example, also above M Street at 1250
2 Connecticut, they filled that one in, 1211 Connecticut
3 filled there?s in as well, you see that the buildings
4 with storefront windows at the building line are
5 certainly more shopper friendly than any of the
6 buildings with arcades.

7 From a merchandising standpoint, you want
8 the people that are walking down our best streets to
9 see what it is you have to sell. That?s where retail,
10 that?s where the game is played, it?s between the
11 people walking down K Street and the people behind
12 those counters selling product.

13 We have less than a wonderful retail
14 climate in the City to begin with. It?s a tough place
15 to do retail, five days a week, too many Monday
16 holidays. Any time we get an opportunity to enhance
17 retail we need to do it. We are pushing our City from
18 being more of a sleepy southern town to a northern
19 city. It?s active, it?s got more people in it than it
20 ever had in my years in retailing, and we have got to
21 do whatever we can to enhance the presence of these
22 storefronts for the customers. It drives business, it
23 drives taxes, it?s just good for everything that goes
24 on downtown.

25 As the Chair of the Retail Development

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1 Committee, or the Vice Chair, we've been pushing hard
2 on every front we can think of to make our City's
3 street life more exciting and more inviting to the
4 people that work downtown and, hopefully, in the next
5 few years the people who will come downtown because we
6 provide something that you can't get in the suburbs, a
7 more active street life, a better way to interact with
8 your fellow citizens and the residents of the city and
9 the suburbanites that come to the town every day to
10 work, and, hopefully, will come, you know, come more
11 often downtown to experience what we have to offer as
12 a City, as far as entertainment, museums and retail.

13 It's something that we need to do. It
14 will just make the retail street life in the City that
15 much better, and everything that we can do to enhance
16 the street life is, you know, a good thing from a
17 retail perspective.

18 There's a lot of efforts being put
19 downtown. We have been very pleased with the stuff
20 that's happened with the downtown bid, the Golden
21 Triangle bid, and, quite frankly, there's some owners
22 we'd like to approach and be able to ask them that if
23 they are going to do any work on their buildings
24 they'll build their storefronts to the building lot.

25 The one that comes to mind to me is 801

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1 17th Street, between Connecticut at K and Pennsylvania
2 Avenue. There's not a reason in the world why we
3 shouldn't have active retail below K Street. We have
4 subways that are emptying out people from the
5 Orange/Blue Line, with no excitement on 17th Street
6 between H and I, and it should be there. There's
7 vitality on I Street, there should be vitality on 17th
8 Street. It should feel and look like Connecticut
9 Avenue, and it doesn't. It's just not as good as it
10 needs to be, and it's not as good as it can be.

11 So, on behalf of my committee, I firmly
12 support this effort and hope that it passes and that
13 we'll get to push for better street life and better
14 street storefronts for our City.

15 CHAIRPERSON MITTEN: Thank you.

16 Any questions for these gentlemen?

17 Mr. Hannaham?

18 COMMISSIONER HANNAHAM: I was very
19 interested in what you are trying to do. Are there
20 other things, aside from arcades, that can enhance
21 this friendliness, other things that you guys are
22 involved in?

23 MR. HARRIS: Yes. I, along with the people
24 on my committee, have written a proposal to have the
25 14th and U Street corridors declared RX District. We

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1 need to get, you know, between the Black Broadway part
2 on U Street and the theaters on 14th Street, we are not
3 promoting it unless you live in that neighborhood,
4 unless you really are in touch with what's going on in
5 our City, we are not getting that out.

6 We have people in the Metro area going to
7 Alexandria, to Old Towne, to go to the Torpedo
8 Factory. We should have a Torpedo Factory on 14th
9 Street. We should be promoting our smaller arts that
10 we have much of in our City, and as a commercial arts
11 district I think it should happen on 14th Street, it
12 should happen on U Street, we should be celebrating
13 it.

14 There's no reason in the world why the
15 Lincoln theater isn't a cornerstone of that effort,
16 and it's lying ? well, I wouldn't say fallow, but it's
17 certainly not as exciting as it should be. We have
18 the 9:30 Club, we have Bohemian Caverns/H.R. 57, New
19 Vegas Lounge, Living Stage, Studio Theater, up and
20 down 14th and up and down U Street, and nobody really
21 knows it.

22 And, we are trying to get the citizens to
23 back it, but we are running into a period where
24 everything is focused on main streets and nobody wants
25 to take the thunder away from the Main Street Program,

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1 it seems to be working well. We are starting to push
2 a lot of our neighborhoods, but I think that to
3 declare an arts district on 14th and U, and have people
4 understand that this is the place to come to see the
5 arts that are happening in and around the Metro area
6 is a wonderful place for us to do it.

7 There's a lot of things there that are
8 already in place, and we're just not doing anything
9 about telling anybody about it, and these are tax
10 dollars that we can keep in the City.

11 We should also think about putting other
12 retail inside the parameters of our City, so that not
13 all our shoppers are going to Pentagon City and
14 spending their money there. We have land near RFK, if
15 we are going to build a new baseball stadium maybe
16 we'd want to build a town center, we'd want to build a
17 retail complex there, and start keeping some of those
18 monies in the City.

19 I look very favorably at Rhode Island
20 Avenue and New York Avenue, where the subway station
21 is, as a place where we could put big box retailers
22 there, as well as what we are attempting to do in
23 Columbia Heights. There's a lot of things in the City
24 that could move our street life forward, we are just
25 not focused on it. Too much government, too much

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1 lawyers, too much, you know, too much K Street.

2 CHAIRPERSON MITTEN: They have their uses.

3 MR. HARRIS: Yes, they do, but the thing is
4 that, but it's what dominates our City, and the fact
5 is that we are trying to push the neighborhoods
6 forward. The Office of Planning has a good concept
7 with transit-oriented development. You know, the day
8 that we put a shovel in the ground to build a subway
9 is the day that we start to become a big City, and,
10 you know, for 30 years between 1970 and 2000
11 everything was suburban-based as far as development is
12 concerned, and now we are in an era where it's totally
13 urban and we need to take advantage of it, and we need
14 to push this stuff.

15 COMMISSIONER HANNAHAM: We've had people
16 from communities that are developing who run into the
17 same problem. Are you linking up with people in
18 communities who are trying to do things?

19 MR. HARRIS: Well, I am, but I'm out there.

20 COMMISSIONER HANNAHAM: I mean the
21 organization, for instance, Capital East has got a
22 beautiful PUD, where they've actually allowed for
23 space for a restaurant, and I don't think they've had
24 too much success, but there are other communities --

25 MR. HARRIS: Some of it is timing.

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1 COMMISSIONER HANNAHAM: ? that have a
2 potential.

3 MR. HARRIS: We are seeing it happen one
4 neighborhood at a time. The 14th and U Street
5 neighborhood is really off the charts as far as what's
6 going on there in the last five or six ? well, the
7 last four or five years, as far as all the
8 condominiums that are built there, new people moving
9 in. That seems to be the first big neighborhood to
10 go.

11 Columbia Heights, if, in fact, they do
12 build this project, this DCUSA one, Target and all the
13 big retailers there, will dramatically change what's
14 happening in that area. And, I'm not necessarily the
15 biggest advocate of that development in that area, but
16 it will change the nature there.

17 I know that I'm working with people in
18 Petworth. I'm involved a lot with the people at H
19 Street. The Main Streets Program, Restore D.C.,
20 there's stuff happening, it just takes time.

21 And then, the perception needs to be
22 changed out of here, because to drive retail, the
23 national retail, which is what's been created and what
24 does drive retail these days, based on what happened
25 in the last 30 years in the suburbs, you have a lot of

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1 people with suburban mentality doing the real estate
2 work, based on shopping centers, and now we are asking
3 those people to have an urban mentality. And, these
4 young men are 30 years old, or 40, you know, 40 or
5 younger, they don't know an urban mentality, they only
6 down a suburban mentality, and to ask those people to
7 come into town when they have their idea of a 2000 box
8 for their retail store, you know, to open up in every
9 mall, it looks the same, or every strip center looks
10 the same, and now we are going to tell them, look, we
11 want you to come into our City where there's density
12 and there's money, and there's people who need your
13 services, but you are not going to get your 2000
14 square foot square box, it's going to be 1200 feet or
15 1500 feet, or it's going to, you know, 2500 feet and
16 it's going to have an odd shape. It's going to be a
17 two-story townhouse that doesn't look square from the
18 retail perspective.

19 These people have to get over that. I
20 mean, the density and the bottom line says you can do
21 it. We know that it works in big cities, we are not
22 quite New York, we are not quite Philly or Boston, but
23 we do have the potential to do it, and we are working
24 hard in all the neighborhoods with programs that the
25 Mayor has in place, and the people who the Mayor is

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1 working with, to change the perception, first on the
2 part of the citizens, and then we have to go and
3 change the perception on the part of suburban
4 mentality retail representatives, you know, for the
5 real estate companies, you know, the retail real
6 estate representatives for these retail companies.

7 It's just a process, and we are a little
8 behind the curve, nothing seems to happen here first,
9 but it is happening, and there's a lot of people
10 putting a lot of effort towards changing the
11 perception and the neighborhoods so that we are
12 prepared to go into the next era with a different
13 mentality. It just doesn't happen quickly.

14 CHAIRPERSON MITTEN: Thank you.

15 COMMISSIONER HANNAHAM: Thank you very
16 much. I appreciate that.

17 CHAIRPERSON MITTEN: Anyone else?

18 Mr. May?

19 COMMISSIONER MAY: I just had a general
20 question, and this goes back more to just the simple
21 mechanics of it, how do we know whether somebody
22 actually has taken this credit or not, if the record
23 situation is what you described?

24 MR. COLLINS: Mr. Jackson and I had that
25 very conversation this afternoon, and I've had ?

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1 personally, I've had situations in buildings that are
2 not on the OP's list where the arcade credit was
3 taken, and it was that we found the plans, the
4 original building plans, or we did find in the
5 architect's files, or the owner's files, a zoning comp
6 sheet or something like that.

7 So, it would be up to the owner, or, you
8 know, not totally up to the owner, but if it is
9 limited to those cases where the arcade credit was
10 taken, to produce the documentation.

11 But, you raise a very good point, what if
12 you can't find it? Does that mean that the burden is
13 on you as the owner if the City can't produce a
14 record, you don't have a copy, or maybe the building
15 was sold five, six times and, you know, you don't have
16 any of that stuff, does that mean you can't take your
17 credit? Maybe you should be able to take the credit
18 regardless of whether it's there, because the goal we
19 are trying to produce here is not to reward an owner
20 for having a failed arcade, it's to get life and
21 vitality on the street where the City needs it to
22 promote economic development downtown, economic
23 opportunities downtown.

24 So, maybe it should be limited, maybe it
25 should not be limited, excuse me, to only those places

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1 where a credit was given, as OP has developed the
2 report.

3 MR. HARRIS: Can I add something? I never
4 really considered the fact that these arcades were or
5 weren't given credit, or however they got there, they
6 got there. All I can say is, any building that has an
7 arcade in its shopping area, or an area where we can
8 have good stores, have the ability not to have that
9 arcade.

10 I have no issue with credits or not
11 credits, all I care about is, I want better
12 storefronts to work with on the streets, so that the
13 streets look better and the merchandise shows better.

14 As far as whether they have arcade credits
15 or not, it's not my issue, it's your issue. My issue
16 is to try and promote better retail and better
17 activity on the streets.

18 So, from my perspective, if it has an
19 arcade and the arcade can go away, I don't care why,
20 just get rid of it. You know, it doesn't work in our
21 City, and, you know, that's really the basis for this
22 whole initiative, is just to make the storefronts
23 better, to make the merchandise show up better, to
24 make a retailer, national or independent, depending on
25 what the area is and what the people want to see, look

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1 at a storefront and say, I can show my product there,
2 and the people that are walking down here will see it
3 and it will be inviting, and it makes it worthwhile.

4 And, in places where the arcades are, if
5 you are selling merchandise it makes it awfully
6 difficult to want to show something if the people
7 walking down the street, and they are 20 feet away, or
8 15 feet away, or 12 feet away from that window, you
9 want them to be able to stick their nose in that
10 window, and if that's not easily done they are not
11 going out of their way to do it.

12 And so, arcades, you know, whatever the
13 credit issue is, it's not my issue. My issue is to
14 make the street life better, and that's really what
15 getting rid of the arcades is all about. And, if you
16 go down Connecticut Avenue, and most particularly the
17 1140, because they just put Ann Taylor in there, you
18 never would have had Ann Taylor in there before, and
19 it goes along with the other good retailers that are
20 on that street. And, the activity on that street,
21 come the nice weather, and this will be the first
22 spring that's it open, will be enhanced dramatically
23 by the fact that that whole street has storefronts to
24 the building line. And, every block that we could do
25 it is a block that's going to better to work.

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1 And, the other thing is, it would be nice
2 if we could get rid of the dark glass on the first
3 floors, but that's another issue.

4 CHAIRPERSON MITTEN: That's not a zoning
5 thing.

6 MR. HARRIS: No, I understand, but these
7 are all things that for whatever reason the architects
8 drove it, or the owner said my building will look
9 pretty, but it really is not doing anything to benefit
10 what happens on the streets at the times that people
11 are walking down them.

12 CHAIRPERSON MITTEN: Thank you.

13 Anything else, Mr. May?

14 COMMISSIONER MAY: No.

15 CHAIRPERSON MITTEN: Anyone else have any
16 questions?

17 All right, thank you both, and since I
18 don't see anyone else who could possibly testify,
19 either in support or in opposition, I think we are
20 ready to set a time frame. I don't know that we've
21 asked ? have we asked for anything? I guess we just
22 would ask for any additional thoughts from the Office
23 of Planning, maybe by the 4th of April again, about
24 eliminating the language that would constrain the
25 ability to enclose the arcades to only those

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1 properties that have taken advantage ? or that it
2 could be established that they took advantage of the
3 credits. So, if you'd like to weigh in with anything
4 else, so we'll leave the record open in this case as
5 well until the 4th of April, and then we will make a
6 decision at one of our regular monthly meetings, and
7 you should also be aware that if we propose
8 affirmative action that action will be published in
9 the D.C. Register as a proposed rulemaking. There will
10 be an additional period of time for comments, and it
11 will go to NCPD for federal impact review and so
12 forth. And then, we will have a final ruling.

13 So, I thank you both for coming out
14 tonight.

15 MR. JACKSON: Madam Chair?

16 CHAIRPERSON MITTEN: And, being patient
17 with us.

18 MR. JACKSON: Question of clarification.

19 CHAIRPERSON MITTEN: Sure.

20 MR. JACKSON: The hearing is on April ?
21 when does the report have to be in?

22 CHAIRPERSON MITTEN: The Commission ? the
23 record will be open until April 4th.

24 MR. JACKSON: The 4th of April.

25 CHAIRPERSON MITTEN: At 3:00 p.m.

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1 MR. JACKSON: Okay.

2 CHAIRPERSON MITTEN: Thank you.

3 Tonight's public hearing is now adjourned.

4 (Whereupon, the above-entitled matter was
5 concluded at 7:44 p.m.)

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