

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

PUBLIC HEARING

+ + + + +

#	IN THE MATTER OF:	
	Text Amendment to Allow	Case No. 10-16
	Closure of Open Arcades	
#		

Thursday,  
September 2, 2010

Hearing Room 220 South  
441 4th Street, N.W.  
Washington, D.C.

The Public Hearing of Case No. 10-16 by the District of Columbia Zoning Commission convened at 6:39 p.m. in the Office of Zoning Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001, Anthony J. Hood, Chairman, presiding.

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Board of Zoning Adjustment  
District of Columbia  
CASE NO. Transcript  
EXHIBIT NO.null

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ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson  
KONRAD SCHLATER, Vice Chairperson  
PETER MAY, Commissioner (NPS)  
GREG M. SELFRIDGE, Commissioner  
MICHAEL G. TURNBULL, FAIA,  
Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

JAMISON WEINBAUM, Director  
SHARON S. SCHELLIN, Secretary  
DONNA HANOUSEK, Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER  
MAXINE BROWN-ROBERTS  
ARTHUR JACKSON

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTIG, ESQ.  
LORI MONROE, ESQ.

The transcript constitutes the minutes from the Public Hearing held on September 2, 2010.

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

Proposed Action  
 Z.C. Case No. 10-16  
 Office of Planning  
   Arthur Jackson . . . . . 4  
 Parties Testifying in Support  
   Ronald Taylor. . . . . 10  
   Ellen McCarthy . . . . . 14  
 Vote to Approve Case No. 10-16 (5-0-0). . . . 21

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

2 6:39 p.m.

3 CHAIRPERSON HOOD: Okay. Next,  
4 let's move right into our second case.

5 This is the Office of Planning's  
6 text amendment of open arcades, Zoning  
7 Commission Case No. 10-16.

8 Let's go straight to the Office of  
9 Planning.

10 MR. JACKSON: Good evening, Mr.  
11 Chairman, Members of the Commission.

12 CHAIRPERSON HOOD: Hello, Mr.  
13 Jackson.

14 MR. JACKSON: My name is Arthur  
15 Jackson. I'm a development review specialist  
16 with the District of Columbia Office of  
17 Planning and I will summarize the report you  
18 have before you.

19 In 2004, the Zoning Commission  
20 adopted a text amendment to allow the  
21 enclosure of certain open arcades in the  
22 Central Employment Area to eliminate the floor

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1 area ratio credit for these amenities. The  
2 amendment allowed closure of legally  
3 established arcades without the need for a  
4 zoning variance.

5 Recently the Office of Planning  
6 was approached by the owner of property  
7 outside the Central Employment Area about  
8 closing an open arcade on the ground floor of  
9 their building. After further review the  
10 Office of Planning proposed changing the  
11 intent of Section 2515 of the Zoning  
12 Regulations to facilitate elimination of  
13 existing arcades in all zoned districts where  
14 they currently are allowed.

15 Proposed text amendments would  
16 change the stated intent of this section of  
17 the regulations, eliminate design standards  
18 for open arcades that no longer apply while  
19 retaining provisions of the 2004 amendment  
20 that explained arcade closure standards and  
21 requirements.

22 Based on the District's experience

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1 with this section since it was originally  
2 adopted, there does not appear to be any  
3 reason to continue to encourage the creation  
4 of open arcades.

5 For the sake of clarity and in  
6 light of comments from the Office of Attorney  
7 General, the amendment text has been modified  
8 to specifically apply to open arcades in non-  
9 residential districts that are adjacent to  
10 sidewalks and public space. The revised text  
11 was included in the notice of public hearing  
12 for this case.

13 Amending the regulations to allow  
14 closure of open arcades in areas specified  
15 would not be inconsistent with the current  
16 Comprehensive Plan.

17 This concludes the summary of the  
18 Office of Planning report and we remain  
19 available to answer questions.

20 CHAIRPERSON HOOD: Thank you very  
21 much, Mr. Jackson.

22 Commissioners, do we have any

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1 questions of Mr. Jackson?

2 (No audible response.)

3 CHAIRPERSON HOOD: Okay. Not  
4 seeing any. You have any questions? Oh.

5 VICE-CHAIRMAN SCHLATER: Can we  
6 close the arcade at 441 4th Street under these  
7 regulations?

8 MR. JACKSON: Yes, you could.

9 COMMISSIONER MAY: That would  
10 require a PUD modification, by the way. We  
11 looked into that at one point.

12 VICE-CHAIRMAN SCHLATER: I guess I  
13 have one question. So, how do these text  
14 changes impact downtown buildings?

15 MR. JACKSON: Well, the current  
16 modification that was in place for 2001 covers  
17 buildings within the Central Employment Area.

18 VICE-CHAIRMAN SCHLATER: Yes.

19 MR. JACKSON: This amendment would  
20 affect buildings that are outside the Central  
21 Employment Area but still have the same  
22 characteristics; that is, they have recessed

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1 ground floor areas that are adjacent to public  
2 space, public sidewalks. So, it just expands  
3 the range of the current regulation.

4 The other thing it does is the  
5 wording of the current regulation is such that  
6 people may read it and think they can still  
7 get the 25 percent credit. That was  
8 eliminated in 2004 also. So, it really  
9 streamlines the whole thing and it's  
10 refocusing on enabling people to eliminate  
11 arcades if they care to.

12 VICE-CHAIRMAN SCHLATER: If I'm an  
13 owner of a downtown office building and I'm  
14 already at my maximum FAR, but I want to  
15 enclose the arcades, are they allowed to do  
16 that under the text right now?

17 MR. JACKSON: Yes, they are.

18 VICE-CHAIRMAN SCHLATER: Okay.  
19 Thank you.

20 CHAIRPERSON HOOD: Thank you,  
21 Vice-Chairman.

22 Any other questions?

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1 (No audible response.)

2 CHAIRPERSON HOOD: Okay. Do we  
3 have any other reports of any other government  
4 agencies?

5 (No audible response.)

6 CHAIRPERSON HOOD: Not seeing any,  
7 do we have anyone here from the ANC, from any  
8 ANCs that would like to testify in this case?

9 (No audible response.)

10 CHAIRPERSON HOOD: Okay. I don't  
11 have a list, but I do have two persons'  
12 testimony in support. So, I'm going to ask  
13 them to come forward. And that is Mr. Ronald  
14 Taylor and Ms. Ellen McCarthy.

15 And anyone else who's here in  
16 support, if you can come forward at this time.

17 Okay. So, we will begin with Ms.  
18 McCarthy and end with Mr. Taylor. You all  
19 will be our panel for support, and we will  
20 start with you, Ms. McCarthy.

21 MS. McCARTHY: Mr. Chairman, if we  
22 could start with Mr. Taylor, that would be

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1 great. And we are just keeping our testimony  
2 very short tonight just to hit the highlights.

3 CHAIRPERSON HOOD: Okay. Mr.  
4 Taylor, we'll start with you.

5 MR. TAYLOR: Good evening, Mr.  
6 Chair and Members of the Zoning Commission.  
7 My name is Ronald Taylor and I am the Director  
8 of Facilities and Office Services for the  
9 American Council on Education.

10 I'm here tonight to support the  
11 proposed text amendment to permit building  
12 owners to fill in open arcades. I'm  
13 representing the American Council on  
14 Education, a not-for-profit organization  
15 founded in 1918 which serves as a consensus  
16 leader on higher education issues and a major  
17 coordinating body for the nation's higher  
18 education institutions. Our members are  
19 college university presidents at institutions  
20 of higher education serving more than 80  
21 percent of America's students enrolled in  
22 programs for higher education. We serve a

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1 broad range of institutions, public and  
2 private, community colleges and four-year  
3 institutions.

4 Our current initiatives include a  
5 wide variety of programs including improving  
6 awareness and utilization of the GED,  
7 increasing responsiveness of colleges and  
8 universities to the needs of veterans,  
9 providing outreach and leadership training to  
10 increase the diversity of the senior officials  
11 in American higher education and expanding the  
12 internationalization of U.S. educational  
13 institutions and many others.

14 We are a 501(c)(3) organization  
15 which owns the building where our office is  
16 located at 1 Dupont Circle. In addition to  
17 serving as our headquarters, our building, the  
18 National Center for Higher Education, houses  
19 15 other non-profit higher education  
20 associations.

21 As a result of their membership in  
22 the National Center for Higher Education the

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1 base rent for the space they occupy cannot  
2 exceed 75 percent of market value. Therefore,  
3 it is essential for ACE to obtain a reasonable  
4 rate of return on our ground level space. At  
5 the ground floor we have several retail and  
6 service tenants. Unfortunately, when our  
7 building was designed by the Office of  
8 Architect Vlastimil Koubek in the 1970s public  
9 policy and architectural practice encouraged  
10 the use of open arcades at the ground level.  
11 Our building featured these types of arcades  
12 around virtually the entire perimeter.

13 As the Office of Planning report  
14 notes, recessing store fronts behind columns  
15 removed from the main route of pedestrians did  
16 nothing for street vitality and did nothing to  
17 encourage strong retailers.

18 The Council is very pleased to be  
19 a part of the wonderful neighborhood of Dupont  
20 Circle and has always tried to be a good  
21 neighbor. Several years ago we filled in a  
22 portion of the arcade and leased the space to

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1 James Hoban's Restaurant which has  
2 dramatically increased the street vitality  
3 along the northeast façade of our building.  
4 We would like to do the same with the  
5 remainder of the building but we've been  
6 stymied in our desire to fill in the arcades  
7 because of zoning limitations.

8 We currently have another  
9 restaurant tenant interested in locating here  
10 if we can provide a more attractive setting  
11 and we are pleased that the Office of Planning  
12 has taken the lead and proposed a text  
13 amendment before you tonight which will allow  
14 us to rectify this outmoded design concept and  
15 provide retail more suitable to the  
16 pedestrian-oriented character of our  
17 neighborhood.

18 In an effort to bring this other  
19 restaurant to the community, ACE has already  
20 invested a considerable amount of resources  
21 including lost rent from two previous retail  
22 tenants, costs associated with demolition and

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1 legal fees. In addition, preliminary  
2 estimates to fill in the arcade space exceeds  
3 \$150,000, an investment we are willing to make  
4 to add to the vitality of the historical  
5 Dupont Circle area. Our past experience  
6 filling in the arcade for Hoban's has been  
7 very positive with no complaints or adverse  
8 impacts reported by our neighbors and we look  
9 forward to repeating that experience if the  
10 Commission will approve the requested text  
11 change. Because we have a tenant actively  
12 interested in the space, we would greatly  
13 appreciate whatever the Commission could do to  
14 expedite the approval of this case.

15 Thank you for taking the time to  
16 hear my testimony.

17 CHAIRPERSON HOOD: Okay. Thank  
18 you very much, Mr. Taylor. If you'll just  
19 hold your seat, we may have some questions.  
20 We'll wait to hear Ms. McCarthy's testimony.

21 Ms. McCarthy?

22 MS. MCCARTHY: Thank you, Mr.

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1 Chairman. Good evening, Members of the  
2 Commission.

3 Basically to cut to the chase,  
4 urban open arcades are an idea whose time has  
5 come and gone, if it ever really came in the  
6 first place. They're not consistent with  
7 modern retailing. They don't enhance street  
8 life. They result in discontinuous dark  
9 spaces that can appear threatening and trap  
10 trash and debris.

11 The proposed text amendment is  
12 unlikely to have any adverse impacts as the  
13 total increased square footage that we're  
14 talking about for each individual building is  
15 quite minor. In the case of ACE it's less  
16 than 2,000 square feet. However, because it  
17 will transform building frontages, eliminating  
18 unattractive dark façades and providing a more  
19 visible and attractive location for retail, it  
20 will result in improved retail for the  
21 community, increased revenue for the District  
22 from higher property employment and sales/food

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1 and beverage taxes. It will dramatically  
2 enhance the pedestrian quality of several  
3 blocks.

4           Particularly, if you'll notice  
5 from the map that's in my testimony from the  
6 Office of Planning, many of the places where  
7 the commercial districts, C-3-C and above, are  
8 outside the Central Employment Area happen to  
9 be in places in what used to be called the new  
10 downtown, the western side of downtown, where  
11 we've got a lot of new high-rise residential  
12 development. And there has been quite a bit  
13 of demand on the part of those new residents,  
14 and there will be more joining them in terms  
15 of the redevelopment of the west end library  
16 and Square 54 and others. There's been quite  
17 a bit of demand for increase in improved  
18 retail in that area. So, allowing those  
19 buildings that are of high density commercial  
20 zoning but are outside the boundaries of the  
21 CEA will be a real benefit for existing  
22 residents of that area and the new residents.

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1           As a result of these clear public  
2 benefits, I'd ask the Commission to please  
3 provide preliminary approval tonight and ask  
4 that the National Capital Planning Commission  
5 expedite its review so final approval can be  
6 provided as soon as possible.

7           Thank you very much.

8           CHAIRPERSON HOOD: Thank you, Ms.  
9 McCarthy.

10           Commissioners, any questions of  
11 this panel? Any questions?

12           (No audible response.)

13           CHAIRPERSON HOOD: Okay. I want  
14 to thank you, Mr. Taylor and Ms. McCarthy. We  
15 appreciate it very much.

16           Okay. Do we have anyone who's  
17 present who would like to testify in  
18 opposition of this case?

19           (No audible response.)

20           CHAIRPERSON HOOD: Okay. Not  
21 seeing anyone move forward.

22           I guess, Commissioners, I think

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1 it's pretty straightforward. We have a  
2 complete record. We have the Office of  
3 Planning's report which was the same report  
4 used as the setdown for us. Also, we have two  
5 statements in the record of full support of us  
6 moving ahead with this text.

7 Let me open up for comments or  
8 questions. Commissioner May?

9 COMMISSIONER MAY: First of all,  
10 let me speak out for just a moment for  
11 Vlastimil Koubek.

12 CHAIRPERSON HOOD: I wondered if  
13 he had a representative, because I'd never  
14 heard of that --

15 COMMISSIONER MAY: I actually  
16 support what the Office of Planning is trying  
17 to do here. I'm not ready to completely  
18 abandon the idea that an arcade can be a good  
19 thing. Certainly there are examples of  
20 historic arcades in Europe that are good  
21 places. Unfortunately, the attempt by most  
22 modern architects to recreate something like

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1 that didn't work very well, like many of the  
2 ideas of modern architects, particularly when  
3 they weren't really the best ones. And there  
4 are some advantages to open arcades even as it  
5 is, including things like covered bike  
6 parking, and you all know how important things  
7 like bike parking are to me.

8 But nonetheless, I'm ready to  
9 support this change. I don't think that  
10 overnight we're all of a sudden going to have  
11 everyone of these arcades boxed in. And so,  
12 I think it generally will be a good thing.  
13 There are certainly complications that are  
14 going to make it so that some of them maybe  
15 never get filled in really well. I mean, this  
16 building here is a particularly difficult  
17 architectural challenge in that regard because  
18 it's a two-story arcade. What do you do about  
19 that second story and so on. But generally  
20 speaking I'm in favor.

21 CHAIRPERSON HOOD: Okay. Any  
22 other comments?

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1 (No audible response.)

2 CHAIRPERSON HOOD: Okay. What  
3 we're going to do at this time is someone like  
4 to make a motion?

5 COMMISSIONER MAY: I'm in favor,  
6 but I'm not ready to make the motion. I'll  
7 follow.

8 CHAIRPERSON HOOD: Okay. Mr.  
9 Turnbull, thank you. I was kind of wanting an  
10 architect --

11 COMMISSIONER TURNBULL: Yes.

12 CHAIRPERSON HOOD: -- but I don't  
13 want to see him messing up city.

14 COMMISSIONER TURNBULL: Well,  
15 thank you, Mr. Chair, for the opportunity.

16 Mr. Chair, I would like to propose  
17 that we approve Case No. 10-16, a proposed  
18 zoning text amendment to allow closure of open  
19 arcades as discussed by the Office of Planning  
20 and referenced. And can I have a second?

21 COMMISSIONER MAY: Second.

22 CHAIRPERSON HOOD: Okay. Good.

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1 Thank you, Mr. Turnbull and Commissioner May.

2 It's been moved and properly  
3 seconded. Any further discussion?

4 (No audible response.)

5 CHAIRPERSON HOOD: All those in  
6 favor? Aye.

7 VICE-CHAIRMAN SCHLATER: Aye.

8 COMMISSIONER MAY: Aye.

9 COMMISSIONER TURNBULL: Aye.

10 COMMISSIONER SELFRIDGE: Aye.

11 COMMISSIONER TURNBULL: Not  
12 hearing any opposition, Ms. Schellin, would  
13 you please record the vote?

14 MS. SCHELLIN: Yes, staff records  
15 the vote five to zero to zero to approve  
16 proposed action in Zoning Commission Case No.  
17 10-16. Commissioner Turnbull moving;  
18 Commissioner May seconding, Commissioners  
19 Hood, Selfridge and Schlater in support.

20 CHAIRPERSON HOOD: Okay. Ms.  
21 Schellin, do we have anything else before us?

22 MS. SCHELLIN: Not hearing-wise.

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1 CHAIRPERSON HOOD: Okay.

2 Commissioner May?

3 COMMISSIONER MAY: I just wanted  
4 to thank Mr. Taylor and Ms. McCarthy for their  
5 testimony, and the photographs especially I  
6 think were very useful.

7 CHAIRPERSON HOOD: Okay. Thank  
8 you.

9 Okay. What we're going to do now,  
10 we're going to take about 10-minute break in  
11 between the hearing and our special public  
12 meeting. So, if you'd bear with us, we should  
13 be back in 10 minutes.

14 And, Ms. Schellin, could you make  
15 sure that we're back in 10 minutes?

16 MS. SCHELLIN: Yes, sir.

17 CHAIRPERSON HOOD: Okay. This  
18 hearing is adjourned.

19 (Whereupon, the hearing was  
20 concluded at 6:55 p.m.)  
21

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