

DISTRICT DEPARTMENT OF TRANSPORTATION

NOTICE OF FINAL RULEMAKING

The Director of the District Department of Transportation, pursuant to the authority of section 3(b) and 5(3)(D) of Department of Transportation Establishment Act of 2002, effective May 21, 2002, D.C. Law 14-137, D.C. Official Code § 50-921; Mayor's Order 2002-102 (June 12, 2002); and the Motor Vehicle Parking Regulation Amendment Act of 1999, D.C. Law 13-97, effective May 9, 2000, hereby gives notice of the amendment of chapter 24 Title 18 "Vehicle and Traffic Regulations" related to Residential Permit Parking. The amendments allow the Director to add blocks into the program and allow the Director to increase or decrease the two-hour grace period under the Residential Parking Program. Proposed rulemaking action to adopt these amendments was published on March 26, 2004 (51 DCR 3305).

Title 18 DCMR, chapter 24 is amended as follows:

A. By amending § 2411.1 to read as follows:

2411.1 Except as provided in § § 2411.2, 2412, and 2414, parking a motor vehicle on a residential permit parking street within the same zone shall be restricted, as follows:

- (a) To a consecutive two (2) hour period between 7:00 a.m. and 9:00 p.m. Monday through Saturday within the boundaries of Historic Georgetown, and in Ward 5 in the area of 30th Street, N.E., between South Dakota Avenue and Central Avenue, N.E., and Yost Place, N.E., between Vista Street and Bladensburg Road, N.E., between 7 a.m. and midnight; and between 7 a.m. and 8:30 p.m., in all other areas of the District, unless the motor vehicle displays a valid residential permit parking sticker for the designated areas. The residents of specific blocks may petition to change the times for their residential parking permit designation pursuant to § 2411.14.
- (b) The provisions § 2411.1(a) shall apply only to the extent that funds are available to cover the additional costs of personnel and equipment needed to enforce these restrictions.
- (c) Notwithstanding § 2411.1(a), motor vehicles shall have a valid residential permit parking sticker to park at all times in the following locations:

B. By amending § 2411.4(c) to read as follows:

(c) A petition has been submitted to the Director supporting its designation as a residential permit parking street. A petition is not necessary, and the Director may initiate a block for inclusion in the program where:

- (i) There are no residences with addresses on a block which abuts the side or rear of residences included in the program, or on a block which abuts a park or recreational facility;
- (ii) The block to be designated is within 5 blocks of a commercial district or any other private or public facility that accommodates 500 people or more, such as a theatre, concert hall, convention center, stadium, nightclub, university, or any other major traffic generator; or
- (iii) There is less than twenty percent of free curb space available for resident parking.

C. By adding subsection § 2411.19 to read as follows:

2411.19 The following blocks shall be added to the Residential Parking Program pursuant to 2411.4 (c):

A.

These blocks in the Northwest Quadrant will be included in the Residential Permit Parking Program and will be restricted where appropriate with "Two Hour Parking, 7A.M. to 8:30 P.M., Monday through Friday, Zone 2 Permit Holders Excepted"

| STREET | BLOCKS IN RESIDENTIAL PROGRAM | Side |
|------------------------|---------------------------------------|-------------|
| K Street | 200, 300, 400, 500 | Both Sides |
| L Street | 400 | Both Sides |
| M Street | 1100 | Both Sides |
| Massachusetts Avenue | 1100, 1200 | Both Sides |
| N Street | 1100, 1200 | Both Sides |
| New York Avenue | 300,400 | Both Sides |
| O Street | 400 | Both Sides |
| Q Street | 400, 500, 600, 700 | Both Sides |
| R Street | 500, 600, 700, 800,1000 | Both Sides |
| S Street | 600 between 6th and Wiltberger Street | Both Sides |
| Vermont Avenue | 1700 | Both Sides |
| 3 rd Street | 800 | Both Sides |
| 4 th Street | 800, 900, 1000 | Both Sides |
| 5 th Street | 900, 1000 | Both Sides |
| 6 th Street | 900 | Both Sides |
| 7th Street | 1500 | Both Sides |
| 9th Street | 1500, 1600 | Both Sides |

| | | |
|-------------|------------|------------|
| 11th Street | 1500, 1600 | Both Sides |
| 12th Street | 1100, 1600 | Both Sides |
| 13th Street | 1200 | Both Sides |

B.

These blocks in the Northwest Quadrant will be included in the Residential Permit Parking Program and will be restricted where appropriate with "Two Hour Parking, 7A.M. to 8:30 P.M., Monday through Saturday, Zone 2 Permit Holders Excepted"

| STREET | BLOCKS IN RESIDENTIAL PROGRAM | SIDE |
|-------------------------|--------------------------------------|-------------|
| L Street | 500, 600, 900, 1000 | South Side |
| M Street | 500, 600, 900, 1000 | South Side |
| N Street | 500, 600, 700, 800, 900, 1000 | South Side |
| Naylor Court | 1300 | All |
| Massachusetts Avenue | 900, 1000 | Both Sides |
| New York Avenue | 500, 600 | Both Sides |
| O Street | 500, 600, 700, 800, 900, 1000 | Both Sides |
| P Street | 500, 600, 700, 800, 900, 1000 | Both Sides |
| 5th Street | 1000, 1100, 1200, 1300, 1400 | Both Sides |
| 6th Street | 1000, 1100, 1200, 1300, 1400 | Both Sides |
| 7th Street | 1000, 1100, 1200, 1300, 1400 | Both Sides |
| 8th Street | 1300, 1400 | Both Sides |
| 9th Street | 1000, 1100, 1200, 1300, 1400 | Both Sides |
| 10 th Street | 1000, 1100, 1200, 1300, 1400 | Both Sides |
| 11th Street | 1000, 1100, 1200, 1300, 1400 | Both Sides |

C.

These blocks in the Northwest Quadrant will be included in the Residential Permit Parking Program and will be restricted where appropriate with "Two Hour Parking, 7A.M. to 8:30 P.M., Monday through Friday, Zone 1 and 2 Permit Holders Excepted"

| | | |
|----------|---|------------|
| S Street | 600 blk; between Wiltberger Street and 7th Street, 700, 800 | Both Sides |
|----------|---|------------|

D.

These blocks in the Northwest
Quadrant will be included in the
Residential Permit Parking Program
and will be restricted where
appropriate with "Two Hour Parking,
7A.M. to 8:30 P.M., Monday through
Friday, Zone 2 and 5 Permit Holders
Excepted"

| | | |
|-------------------|------------------------|------------|
| New Jersey Avenue | 1300, 1400, 1500, 1600 | Both Sides |
|-------------------|------------------------|------------|

E.

These blocks in the Northwest
Quadrant will be included in the
Residential Permit Parking Program
and will be restricted, where
appropriate, with "Zone 2 Permitted
Parking Only, 7A.M. to 8:30 P.M.,
Monday through Saturday."

| | | |
|----------|--------------------------|------------|
| L Street | 500, 600, 900, 1000 | North Side |
| M Street | 500, 600, 700, 900, 1000 | North Side |
| N Street | 500, 600, 700, 900, 1000 | North Side |

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
ORDER NO. 02-28
Z.C. Case No. 02-28
(Text Amendments – 11 DCMR)
(Police Department – General and Local Facilities)
January 12, 2004

The Zoning Commission for the District of Columbia, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; 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); and having referred the proposed amendments 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 the following amendments to § 199 (Definitions), Chapters 2, 5, 6, 9, and 21 of the Zoning Regulations (Title 11 DCMR). The amendments establish police department uses as distinct permitted uses, with corresponding parking requirements. The Commission took final action to adopt the amendments at a public meeting held on January 12, 2004.

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

Existing Regulations

The existing regulations do not provide for a use that adequately meets the needs of the Metropolitan Police Department (“MPD”). Therefore, any expansion of existing MPD facilities or establishment of such facilities outside of the Central Area (see 11 DCMR § 106.5) must rely on an existing use category or obtain variance relief. In the past, such a use has also been accommodated by an emergency text amendment (Z.C. Order No. 922, June 10, 2000). This has proved to be a barrier to MPD’s plans to locate and expand their facilities so as to better meet the immediate policing needs of the citizens.

Description of Text Amendment

The Commission initiated this rulemaking in response to a petition filed by the Metropolitan Police Department (the “Applicant”). The rulemaking seeks to accommodate MPD uses by allowing local police facilities as a matter of right in all districts, while allowing general facilities by special exception in residence districts and as a matter of right in all other districts, except that

vehicle maintenance facilities and equestrian units would be permitted only as special exceptions.

Because these uses involve the parking of large numbers of vehicles during shift changes, but otherwise do not require a significant number of parking spaces, the spaces may be arranged so that some of the spaces are temporarily blocked by other parked vehicles (otherwise known as "stacked parking").

Relationship to the Comprehensive Plan

The amendment is not inconsistent with the goals of the Comprehensive Plan and is consistent with the following sections of the Comprehensive Plan: § 101.1(i), which promotes enhanced public safety; § 102.3, which advocates improving public facilities in order to stabilize the District's neighborhoods; § 110, which generally sets enhanced public safety as one of the highest priorities of the District and specifically advocates a continued improvement in the District's responsiveness to public requests for emergency police assistance; § 606, which encourages public facilities to locate so as to provide optimum service; and the plans for the individual wards (see §§ 1216.1, 1217.1 (a) and (c), 1313.1(a), 1405.4(a)(2)(F), 1516.1, 1616.1, 1617.1(b), 1717.1, 1817.1(a) and (d), and 1917.1(a)).

Public Hearing

The Commission held a public hearing on the proposed text amendment on October 23, 2003.

On October 3, 2003, the Applicant, represented by the law firm of Holland and Knight, submitted into the record a letter that advocated several minor changes to the advertised text. These changes were considered at the hearing and were well within the scope of the subject matter originally advertised.

Prior to the public hearing, ANCs in Ward 6 submitted letters in opposition to the proposed rule, based upon votes taken at their regularly scheduled and properly noticed meetings, with quorums present. Their opposition was centered on the proposal to allow local facilities as a matter of right in residential areas. Specifically, ANC 6B stated its concern that a Neighborhood Command Center, or district or command headquarters, each of which is a type of Police Department Local Facility under the definitions proposed, would be so large as to have a significant impact on the neighboring community. It therefore recommended that such local facilities be allowed only by special exception in residential areas. ANC 6C stated its general opposition to allowing Police Department Local Facilities as a matter of right in residential districts or in commercial districts abutting residential districts. ANC 6A recommended that general and local facilities be permitted in residential districts only by special exception.

By report dated October 14, 2003, the Office of Planning expressed its support for the proposed text amendment. The Office of Planning stated that MPD local facilities should be allowed as a matter of right in residential districts, because they are "less intensive than general facilities and operate within a more specific geographic area," and are therefore compatible with a residential neighborhood.

Following the public hearing, the record was held open until October 30, 2003, to allow the Applicant to submit additional information on its parking needs at specific facilities and to submit a revised text that reflected the concerns expressed by the Commission.

Proposed Action

At its November 12, 2003, public meeting, the Commission took proposed action pursuant to 11 DCMR § 3027.2 to approve the advertised rulemaking. The approved text included several of the changes to the advertised text that were recommended by the Applicant in its October 3, 2003, submission, as well as other minor and clarifying modifications to that text. Such changes and modifications included: refining the definitions, clarifying the parking requirements for existing facilities, adding a special exception for an equestrian unit, and adding to the special exception criteria for vehicle maintenance facilities and equestrian units, both of which are types of general facilities.

The Commission did not propose that local facilities be subject to the special exception process in or around residential areas, as advocated by the ANCs in Ward 6. The Commission is mindful of the ANCs' concerns, however, the Commission believes that local facilities have been, and will continue to be, effectively integrated into residential communities and that existing density restrictions will eliminate the risk that these facilities will have an adverse impact on the surrounding residential area. In high crime residential areas, an expanded presence of such facilities may even spark the rejuvenation of such communities and, therefore, have a beneficial impact on the surrounding residential community. Also, as alluded to by MPD at the public hearing for this case, requiring that these local facilities pass through the special exception process may unduly restrict the placement of such facilities, whose location is a critical component in MPD's efforts to combat crime and better meet residents' needs.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on November 28, 2003, at 50 DCR 10150, for a 30-day notice and comment period.

The proposed rulemaking was referred to the National Capital Planning Commission ("NCPC") under the terms of § 492 of the District of Columbia Charter. NCPC, by report dated December 30, 2003, found that the proposed text amendments would not adversely affect the federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

Final Action

The Commission took final action to adopt the rulemaking at a special public meeting on January 12, 2003. No substantive changes were made to the advertised text.

Based on 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 purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

The Office of the Corporation Counsel has determined that this rulemaking meets its standards of legal sufficiency.

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

- A. Section 199, DEFINITIONS, subsection 199.1; is amended to add new definitions to read as follows:

Police Department General Facility - a building and associated land used for facilities of the Metropolitan Police Department which operate across the District as a whole, including, but not limited to, the Department's headquarters, vehicle maintenance facilities, laboratories, training units, special operations, tactical units, equestrian units, canine squads, bomb squads, and harbor units. This definition does not include Metropolitan Police Department helicopter and radio transmission facilities.

Police Department Local Facility - a building and associated land used as 1) a headquarters or substation for one of the local districts of the Metropolitan Police Department or 2) a Metropolitan Police Department facility that operates within a specific area of the District, such as a Regional Command Center or a Neighborhood Policing Center.

Regional Command Center - a Police Department Local Facility used for community outreach or administrative control and managerial services for operations, for a specific geographic area that encompasses two or more districts or commands of the Metropolitan Police Department.

Neighborhood Policing Center - a Police Department Local Facility used as a liaison and resource center for a specified area in the District.

- B. Chapter 2, R-1 RESIDENCE DISTRICT USE REGULATIONS, is amended as follows:

- (a) Section 201, USES AS A MATTER OF RIGHT (R-1), subsection 201.1, is amended by adding a new paragraph (r) to read as follows:

(r) Police Department Local Facility.

- (b) A new section 224 is added to read as follows:

224 EXPANSION OF POLICE DEPARTMENT GENERAL FACILITIES

224.1 The expansion of a Police Department General Facility in existence as of May 23, 1990, shall be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section.

224.2 The expansion shall be within the height, area, and bulk requirements of the underlying zone.

224.3 The expansion shall not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area, and the expansion of a vehicle maintenance facility shall also not have an adverse impact on the neighborhood because of fumes.

C. Chapter 5, SPECIAL PURPOSE DISTRICTS, is amended as follows:

(a) Section 501, USES AS A MATTER OF RIGHT (SP), subsection 501.1 is amended by adding new paragraphs (i) to read as follows:

(i) **Police Department General Facility, except as provided in § 504.**

(b) A new Section 504 is added to read as follows:

504 POLICE DEPARTMENT GENERAL FACILITY

504.1 A vehicle maintenance facility or equestrian unit shall be permitted in an SP District if approved by the Board of Zoning Adjustment as a special exception under § 3104, subject to the provisions of this section.

504.2 The vehicle maintenance facility or equestrian unit shall be located so that it is not likely to become objectionable to adjoining or nearby property because of noise or fumes.

D. Chapter 6, MIXED USE (COMMERCIAL RESIDENTIAL) DISTRICTS, is amended as follows:

(a) Section 601, USES AS A MATTER OF RIGHT (CR), subsection 601.1, is amended by adding a new paragraphs (u) and (v) to read as follows:

(u) **Police Department Local Facility.**

(v) **Police Department General Facility, except as provided in § 607.**

(b) A new Section 607 is added to read as follows:

607 POLICE DEPARTMENT GENERAL FACILITY

607.1 A vehicle maintenance facility or equestrian unit shall be permitted in a CR District if approved by the Board of Zoning Adjustment as a special exception under § 3104, subject to the provisions of this section.

607.2 The vehicle maintenance facility or equestrian unit shall be located so that it is not likely to become objectionable to adjoining or nearby property because of noise or fumes.

E. Chapter 9, WATERFRONT DISTRICT, is amended as follows:

(a) Section 901, USES AS A MATTER OF RIGHT (W), subsection 901.1 is amended by adding new paragraphs (v) and (w) to read as follows:

(v) Police Department Local Facility.

(w) Police Department General Facility, except as provided in § 917.

(b) A new section 917 is added to read as follows:

917 POLICE DEPARTMENT GENERAL FACILITY

917.1 A vehicle maintenance facility or equestrian unit shall be permitted in a W District if approved by the Board of Zoning Adjustment as a special exception under § 3104, subject to the provisions of this section.

917.2 The vehicle maintenance facility or equestrian unit shall be located so that it is not likely to become objectionable to adjoining or nearby property because of noise or fumes.

F. Chapter 21, is amended as follows:

(a) Section 2101 SCHEDULE OF REQUIREMENTS FOR PARKING SPACES, subsection 2101.1 is amended by adding the following uses:

| USES | NUMBER OF SPACES REQUIRED |
|--|---|
| <u>Police Department General Facility or Local Facility (established after January 12, 2004, not including the expansion of facilities existing as of January 12, 2004):</u> | |
| <u>All R Districts, C-1, C-2-A, C-3-A</u> | <u>In excess of 2,000 ft.², 1 space for each 600 ft.² of gross floor area and cellar floor area</u> |
| <u>All other Districts</u> | <u>In excess of 2,000 ft.², 1 space for each 1,800 ft.² of gross floor area</u> |

(b) Section 2117 ACCESS, MAINTENANCE AND OPERATION, is amended as follows:

(1) Subsection 2117.4 is amended to read as follows:

2117.4 Except as provided in §§2117.15 **and 2117.16**, each required parking space shall be accessible at all times directly from improved streets or alleys or shall be accessible from improved streets and alleys via graded and unobstructed private driveways that form an all-weather impervious surface. Improved streets and alleys providing access to required parking spaces shall have a minimum width of ten feet (10 ft.) and be paved in compliance with the standards of the D.C. Department of Transportation.

(2) A new subsection 2117.16 is added to read as follows:

2117.16 Required parking spaces for a Police Department General Facility or Police Department Local Facility may be arranged so that all spaces are not accessible at all times.

Vote of the Zoning Commission taken at its public meeting on November 12, 2003, to **APPROVE** the proposed rulemaking: **3-0-2** (Carol J. Mitten, Anthony J. Hood, and Peter G. May to approve; James H. Hannaham and John G. Parsons not present, not voting).

This order was **ADOPTED** by the Zoning Commission at its public meeting on January 12, 2004, by a vote of **3-0-2** (Carol J. Mitten, Anthony J. Hood, Peter G. May; John G. Parsons, having not participated in the case, not voting; 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 _____.

**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.

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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 COMMERCIAL 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; . . .

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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.

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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.

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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:

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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).