

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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IN THE MATTER OF: :

Office of Planning -- Text :
Amendment to Subtitle C, : Case No.
Chapter 10, Inclusionary : 04-33I
Zoning (IZ), and :
Corresponding Text :
Amendments to Subtitles D, E, :
F, G, H, and K :

Thursday,
September 20, 2018

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

The Public Hearing of Case No. 04-331 by the District of Columbia Zoning Commission convened at 6:30 p.m. in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001, Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson
ROBERT MILLER, Vice Chairperson
MICHAEL G. TURNBULL, FAIA, Commissioner
(AOC)
PETER G. MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director,
Development Review & Historic
Preservation

JOEL LAWSON

ART RODGERS

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MAXIMILIAN TONDRO, ESQ.

The transcript constitutes the minutes from the
Public Hearing held on September 20, 2018.

(6:33 p.m.)

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CHAIRMAN HOOD: Okay. We're ready to get started.
Good evening, ladies and gentlemen. This is a public hearing
of the Zoning Commission for the District of Columbia.

Today's date is September the 20th, 2018. My name
is Anthony Hood. We are located in the Jerrily R. Kress
Memorial Hearing Room.

Joining me this evening are Vice Chair Miller,
Commissioner May, Commissioner Turnbull. We're also joined
by the Office of Zoning staff, Ms. Sharon Schellin; as well
as the Office of Attorney General, Mr. Tondro; as well as the
Office of Planning, Ms. Steingasser, Mr. Rodgers and Mr.
Lawson.

The proceeding is being recorded by a court
reporter and is also webcast live. Notice of today's hearing
was published in the DC Register and copies of that
announcement are available to my left on the wall near the
door.

The hearing will be conducted in accordance with
provisions of 11 Z DCMR Chapter 5, as follows: preliminary
matters, presentation by the Office of Planning, reports of
other government agencies, reports of the ANCs, the citywide
organizations and persons in support, organizations and
persons in opposition, organizations and persons who are
undeclared.

1 The following time constraints will be maintained
2 in this meeting: Petitioner has up to 60 --- I mean, the
3 Office of Planning has up to 60 minutes --- I don't believe
4 we need that, probably better to have a discussion;
5 organizations, five minutes; individuals, three minutes.

6 All persons wishing to testify before the
7 Commissioners in this hearing are asked to register at the
8 witness kiosk. If you need some assistance, you can see Ms.
9 Schellin. Also, we ask that you fill out the two witness
10 cards.

11 The staff will be available throughout the hearing
12 to discuss procedural questions. Please turn off all
13 electronic devices at this time so as not to disrupt these
14 proceedings. At this time, the Commission will consider any
15 preliminary matters.

16 Ms. Schellin, do we have any preliminary matters?

17 MS. SCHELLIN: No, sir.

18 CHAIRMAN HOOD: Okay. Let's turn it over to the
19 Office of Planning.

20 Mr. Rodgers.

21 MR. RODGERS: Good evening and thank you, Chairman
22 Hood and members of the Zoning Commission.

23 I am Art Rodgers, the senior housing planner for
24 the Office of Planning. I'm here tonight to briefly present
25 the Office of Planning's final recommendations to 04-33I, and

1 will also take a moment to respond to some of the written
2 testimony submitted to the record.

3 As stated in OP's report, the intent of 04-33I was
4 to achieve certain goals, including correcting errors and
5 omissions, technical corrections, reorganize certain
6 sections, place zone-specific requirements into the zone
7 subtitles, clarify certain language, and also fill a gap in
8 Section 1005, Development Standards Regarding the Location
9 of IZ Units.

10 OP makes all these recommendations in close
11 coordination with the Zoning Administrator, the Department
12 of Housing and Community Development, and the Office of the
13 Attorney General.

14 The goal is to give the IZ zoning regulations a
15 more logical and understandable structure and reinforce both
16 the Zoning Commission's intent and the practice of
17 administering IZ over the past nine years.

18 I'll now take a moment to address some of the
19 issues raised by the written comments submitted to the
20 record.

21 First, Exhibit 7 submitted by Goulston & Storrs,
22 they raised three issues. The first has to do with when IZ
23 applies to the existing development.

24 OP believes that the current Section 1005.6
25 already sufficiently provides the flexibility needed to

1 potentially concentrate the affordable units in the new
2 addition if the existing units of the structure are currently
3 occupied at the time of the permit application.

4 Issue 2 was also raised by DCBIA, was the concern
5 about prohibiting IZ units from the cellar space.

6 OP believes this is addressed as a gap in the
7 existing development standards and reinforces the intent of
8 the Zoning Commission with regards to the unit standards and
9 also the degree of anonymity provided to IZ households.

10 Issue 3 raises an oversight of eliminating the
11 exemption for projects in the Southeast Federal Center. We
12 actually agree with what Goulston & Storrs pointed out.

13 In the process of reorganizing the section, we
14 inadvertently neglected to move the exemption for the
15 Southeast Federal Center into the Southeast Federal Center
16 zone subtitle, and so we believe that that should be placed
17 into that section.

18 We'll work with OAG to review the --- to review
19 that and come up with appropriate language.

20 However, with Walter Reed, we felt that Section
21 918.1 already provides an exemption from IZ within the Walter
22 Reed zone and, again, we'll work with OAG to give that
23 further review.

24 Exhibit 8, submitted by Marilyn Simon, with
25 similar submission from the Committee of 100, raised three

1 issues.

2 The first issue concerned how OP is suggesting
3 1001.1 be rephrased with regards to bonus density by striking
4 that --- quote, that potentially may be, unquote, and
5 replaced it with is.

6 Again, we believe that this is closer to the
7 Zoning Commission's intent and the practice of administering
8 IZ over the last nine years.

9 They also raise concern about the exemption for
10 the MU-13, which was the old W-2. In this case, OP agrees.

11 OP inadvertently admitted the reference to the
12 exemption that it should only apply to the Georgetown
13 Historic District within the MU-13. And so, that should be
14 added to the language.

15 And then the third issue was regards to the
16 proposed amendments 1003.2, which clarifies that stick
17 construction in the mid- to high-rise zones uses the eight
18 percent or the 50 percent of the bonus density requirement.

19 Again, OP just thinks that this clarifies and is
20 in closer alignment with the original intent of the Zoning
21 Commission and the practice of applying IZ over the last nine
22 years.

23 Finally, they do also raise an issue with how this
24 will affect the review of PUDs. We would just point out that
25 in Subtitle X Section 305.5(g)(1), OP's recommended amendment

1 gives the Commission guidance with regards to those public
2 benefits and how the change in the net impact of the IZ units
3 should be evaluated. And so, we feel that gives sufficient
4 protection.

5 As I said earlier, OP will work with the OAG to
6 refine the language and incorporate the Zoning Commission's
7 proposed actions in order to publish the Notice of Proposed
8 Rulemaking.

9 This concludes my testimony and I'd be happy to
10 answer any questions the Commission may have.

11 CHAIRMAN HOOD: Thank you very much, Mr. Rodgers.
12 And also, thank you for going over some of the submissions
13 that we had given because those may help us with some of our
14 questions, but I'm sure we may have some follow-up, but let's
15 see if we have any questions or comments.

16 Okay. If not, we can hear from the public, and
17 then we'll come back after we hear from the public. Or if you
18 want to go now --- okay. Why don't we do that.

19 Ms. Schellin, do we have a list --- well, we don't
20 really need a list. I've got three people I'm looking at,
21 so why don't all three come forward, cut out all the
22 formality, the list, and all that.

23 We'll start, Ms. Petti, we'll let you go first.

24 MS. SCHELLIN: No. Since you submitted it, they
25 have it. Yeah.

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1 MS. PETTI: Okay. Good evening. I'm Caroline
2 Petti and I'm here representing the Committee of 100 this
3 evening. Thank you for the opportunity to comment.

4 We essentially have two broad comments. I'm
5 abbreviating them here, but you'll find a detailed
6 explication in our written comments, which were submitted
7 earlier today.

8 The first is a comment we made two years ago in
9 the context of Case No. 04-33G, some of you may remember,
10 when some very important changes were being made to the IZ
11 regulations.

12 At that time, the Committee of 100 questioned why
13 the IZ set-aside requirements for stick-built construction
14 were tied to a height limit of 50 feet or less. There did
15 not seem to be a rationale for that.

16 OP had indicated that changes in stick-built
17 construction was, quote, enabling developments in zones that
18 permit heights of 75 feet to use the less expensive stick
19 construction to achieve the full height where previously they
20 would have needed steel and concrete.

21 In light of those comments, we suggested a simple
22 fix that would strike the text linking the 10 percent set-
23 aside to 50 feet or less zones.

24 During the Commission's discussion on this
25 comment, several Commissioners expressed interest in the

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1 Committee of 100's comments and asked OP whether it had
2 merit.

3 OP indicated that while they had modeled several
4 combinations, they had not tested increasing the set-aside
5 requirements for stick-built construction over 50 feet tall.

6 In the interest of time and the desire to finalize
7 the action before the Commission that night, the Commission
8 decided to ask OP to look at the Committee of 100's comment,
9 quote, and if we have to do another tweak, among many tweaks
10 that we do up here, we can do that later.

11 We would like to suggest that now might be a good
12 time. We still haven't seen a rationale or an analysis, yet
13 the 50 feet or less linkage persists. It's in the proposal
14 before us this evening.

15 In fact, the proposal before us seems to compound
16 the problem by adding new text linking the eight percent set-
17 aside for concrete and steel to zones higher than 50 feet.

18 We fail to see the purpose of associating zones
19 or height limits with the IZ set-asides.

20 The eight and ten percent already reflect the cost
21 differences between stick-built and concrete-and-steel
22 construction. The underlying zone of the construction is
23 irrelevant.

24 Our second comment has to do with the changes OP
25 is proposing to address affordable housing in the context of

1 PUDs.

2 There's very little explanation for these proposed
3 changes, other than at set-down OP described the goal as to
4 ensure that, quote, affordable units proffered as PUDs are
5 treated automatically as IZ units.

6 As you know, PUD developers are increasingly
7 willing to proffer affordable housing beyond the required IZ
8 minimum. This is a good thing.

9 It's then up to the Zoning Commission to evaluate
10 whether these proffers are truly public benefits.

11 For example, how does the proffered affordable
12 housing measure --- how does the proffered affordable housing
13 measure up in terms of things like longevity of the
14 affordability, monitoring an enforcement by DHCD, how the
15 units are marketed to the public, selecting eligible
16 households, covenants. These are all important components
17 of the IZ program. Which of these should apply to proffered
18 affordable housing?

19 If they haven't already opined, we think it would
20 be very useful to hear from the Department of Housing and
21 Community Development on the proposed changes. Thank you,
22 again, for the opportunity to comment.

23 CHAIRMAN HOOD: All right. Thank you.

24 Before we get to Ms. Simon, let me ask, Ms.
25 Steingasser, has the Department of Housing and Community

1 Development opined on this?

2 MS. STEINGASSER: Yes. We've been working very
3 closely with both them and the Office of Attorney General on
4 both the policy and the legal issues.

5 CHAIRMAN HOOD: So, they've already had input into
6 what we have.

7 MS. STEINGASSER: Yes, sir.

8 CHAIRMAN HOOD: Okay. All right.

9 Any questions of Ms. Petti? Do we want to do one
10 at a time? Let's do one at a time, because there's quite a
11 bit.

12 Any questions of MS. Petti?

13 VICE CHAIRMAN MILLER: I don't have any questions,
14 but --- Mr. Chairman, but on the second point that you
15 raised, I raised that concern previously about making sure
16 that when developers proffer deeper levels or greater amounts
17 of affordable housing, we should facilitate that and not make
18 it more difficult.

19 And there seems to be --- I'll have dialog with
20 OP about whether or not this is making it more difficult.

21 There seems to be something that's going in the
22 --- it appears to be going in the wrong direction, from my
23 standpoint. So, I appreciate your raising that issue.

24 CHAIRMAN HOOD: Okay. Any other questions or
25 comments?

1 Mr. Rodgers. Oh, I'm sorry.

2 MR. RODGERS: Yes. Actually, to that, I think
3 there's two points I'd like to raise.

4 First, the change into the definitions that added
5 the Zoning Commission was specifically so that when proffered
6 units were approved, they would immediately go into DHCD's
7 IZ administrative process.

8 VICE CHAIRMAN MILLER: Yeah. I didn't have a
9 problem with that part of it.

10 MR. RODGERS: Right. Correct.

11 And then, I would draw your attention to our
12 second amendment, to --- which I didn't really address, but
13 our second amendment in Subtitle X 305.5 --- I think it's
14 (g)(2) -- which states: an Application proposing Inclusionary
15 Units with deeper affordability than that would be required
16 by IZ for the existing zone or for the proposed zone if
17 amendment is sought, shall propose only a household income
18 level published in the Rent and Price Schedule per the IZ Act
19 that is in effect as of the date of the Application was
20 filed.

21 So, that gives both the Zoning Commission and DHCD
22 the ability to align the target affordability that achieve
23 the deeper affordability through a PUD with the price and
24 rent schedule that DHCD publishes.

25 So, that was to facilitate when PUDs do achieve

1 this deeper affordability.

2 VICE CHAIRMAN MILLER: So, is the current rent
3 schedule -- just as an example, as published, does it include
4 40 percent AMI level --- the 30 percent AMI level?

5 MR. RODGERS: Yes. It includes multiple target
6 AMIs.

7 VICE CHAIRMAN MILLER: So, it is there?

8 MR. RODGERS: Yes.

9 VICE CHAIRMAN MILLER: Okay. Well, then, my
10 concern is not there. I thought that it was only including
11 the 50 and 80 and it would have to wait for something due to
12 be published later, but you're saying it's already --- it is
13 there?

14 MR. RODGERS: Correct.

15 VICE CHAIRMAN MILLER: Okay. That alleviates my
16 concerns about that. Thank you.

17 CHAIRMAN HOOD: Mr. Rodgers, I'm trying to
18 remember, was it -- one of the officer's points, was the
19 Committee of 100's submission where you mentioned that there
20 was an oversight --- I forgot which amendment you agreed with
21 with the Committee of 100.

22 MR. RODGERS: Yes. That was the exemption for the
23 MU-13, which was the old W-2 Zone.

24 CHAIRMAN HOOD: Okay. Right. Okay.

25 MR. RODGERS: And, as I said, we inadvertently

1 left out that it should be limited to only the Georgetown
2 Historic District.

3 CHAIRMAN HOOD: Okay. Okay. I also saw that
4 somewhere else, but, okay, that's good.

5 Any other questions and follow-up comments?

6 All right. Let's go to Ms. Simon --- did you have
7 anything, Ms. Petti, you wanted to add to any discussion you
8 heard?

9 MS. PETTI: Only just to clarify that that last
10 comment that was referred to about the W Zone was actually
11 Marilyn Simon's comment and not Committee of 100's.

12 CHAIRMAN HOOD: Oh, okay.

13 MS. SIMON: I'm on the Committee of 100, but --

14 CHAIRMAN HOOD: Oh, okay. All right. I noticed
15 it somewhere. So, that was --- actually, I thought it was
16 the Committee of 100. I'm sorry.

17 MS. PETTI: And the only other comment that I
18 would make is that with respect to --- Mr. Rodgers said
19 something about giving the Commission the authority to
20 immediately incorporate in an order proffered affordable
21 housing into the IZ program.

22 And I'm not an attorney, by any means, but my
23 reading of the definition, as proposed, simply gives the
24 Commission the authority to do, more or less, what it wants
25 to do with respect to the proffered affordable housing.

1 And that might be okay, but it's --- I mean, if
2 you read it in the definition of inclusionary unit and
3 inclusionary development, it doesn't say anything about, you
4 know, anything approved and incorporated in a Zoning
5 Commission order shall immediately be considered under the
6 IZ program.

7 CHAIRMAN HOOD: I will ask the Office of Planning
8 to look at that, what Ms. Petti has mentioned, but I know
9 that when I hear that they've already talked to DHCD and
10 others, that gives me pause, but let's look at that.

11 MS. STEINGASSER: We will, and we'll work with
12 OAG, because it was actually at their initiative ---
13 initiation that we brought this forward, so we'll make sure
14 that that captures exactly what Ms. Petti is speaking to.

15 CHAIRMAN HOOD: Okay. Sounds good.

16 MS. PETTI: Thank you.

17 CHAIRMAN HOOD: Any other questions?

18 Thank you. Okay. Ms. Simon.

19 MS. SIMON: My name is Marilyn Simon. Thank you
20 for this opportunity to comment on these proposed text
21 amendments and for reviewing these amendments today before
22 the hearing.

23 OP has descried many of the proposed amendments
24 as simple corrections, clarification and reorganization and
25 maintain that they do not reflect changes in policy or

1 substantial changes.

2 However, on closer review, several of these
3 proposed amendments do involve substantial changes and would
4 result in reductions in the required IZ set-aside for some
5 projects.

6 As such, they should have been advertised as a
7 reduction in the IZ set-aside requirements.

8 I will discuss two of these changes; the
9 definition change that generally reduces the required set-
10 aside for matter of right and design review projects in
11 particular; and the amendment that affects when a project is
12 eligible for the reduced set-aside requirement in Section
13 1003.2.

14 In the current regulations, there is a clear
15 formula for calculating the set-aside requirement which is
16 based on either the residential square footage or the
17 achievable bonus density.

18 Achievable bonus density is generally 20 percent
19 of the matter of right allowable square footage.

20 This proposal does not clarify the formula. It
21 changes the formula and generally will result in a reduction
22 in the amount of IZ we get.

23 As such, it needs to be in a new public notice to
24 advertise that this is a reduction in the IZ set-aside and
25 get public comment on that.

1 On the other --- I'm skipping MU-13. Section
2 1003.2 states that when a project is eligible for the reduced
3 IZ requirement based on higher costs associated with concrete
4 and steel construction, OP's intent was given in an earlier
5 OP statement in case 04-33G, where OP and the Zoning
6 Administrator sought to allow a reduced requirement only when
7 steel and concrete construction was used to frame more than
8 50 percent of the dwelling units.

9 In the initial IZ, you had the 50 percent height
10 which was being used as a proxy, but you moved to actually
11 looking at it.

12 In advancing this goal, the proposed amendment
13 would allow --- instead of advancing the goal, the proposed
14 amendment would allow the reduced requirement based on zone
15 for buildings that are stick-built and could obtain the lower
16 requirement based only on a map amendment.

17 The result is some perverse reductions in the set-
18 aside for largely stick-built projects.

19 My written testimony includes an example where a
20 PUD with a map amendment results in a reduction in the IZ
21 set-aside requirement from 3,750 to 3,500 even as the scale
22 of the building is increased by 68 percent and it would be
23 using less costly construction material --- construction
24 methods than for more than half the residential units.

25 Instead of adding the zone language to 1003.2, I

1 suggest that the zone language should be deleted from 1003.1
2 to remove the current ambiguity, and my proposed edit is
3 included in my written testimony. Thank you.

4 CHAIRMAN HOOD: Okay. Ms. Simon, did you finish?

5 MS. SIMON: Yes.

6 CHAIRMAN HOOD: Okay.

7 MS. SIMON: Thank you for the extra time.

8 CHAIRMAN HOOD: Believe me, if it was --- since
9 there wasn't a crowd in here, we didn't mind giving you extra
10 time. So, we're okay with that.

11 Let's do it, again, as we did with Ms. Petti, Ms.
12 Simon. Any questions or comments?

13 Ms. Simon, in your Amendment 1 where you talk
14 about "we are reducing 20 percent of the gross floor area
15 ratio permitted as a matter of right," can you expound upon
16 that?

17 MS. SIMON: Okay. The current definition
18 basically has the --- okay. If you have a matter of right
19 project in a C2A or MU-4 Zone, you would end up with a bonus
20 density of FAR 0.5 and 20 percent of that would be your IZ
21 set-aside requirement.

22 So, the formula is basically you're looking at how
23 much you've increased from an FAR of 2.5 to three, multiplied
24 by the land area, and take 20 percent of that, and that's
25 what you're required.

1 If the developer, instead, built a building, a PUD
2 that was not an FAR of 3 but an FAR of 2.8, with this new
3 definition it would be a lower amount that you would be
4 taking 20 percent of.

5 You would only be taking 20 percent of the 0.3
6 increase in FAR rather than the 0.5 increase in FAR.

7 So, basically, since for all matter of right and
8 design review projects you are looking at applying the
9 formula of 75 percent of the bonus density, that number would
10 be going down if you're taking a number that's lower than
11 what we're currently calculating.

12 Now, that may or may not be a good policy. I'm
13 not speculating on that today, I'm just saying that if you
14 are going to be reducing how much IZ people have to provide,
15 you need to advertise it as a reduction and not have a public
16 notice that says this does not constitute a substantive
17 change.

18 CHAIRMAN HOOD: Okay. So, we do --- regarding
19 this, you're saying we need to re-advertise as a reduction
20 and make it more clear.

21 Is that what I'm --- I'm trying to ---

22 MS. SIMON: On that one amendment, yes.

23 CHAIRMAN HOOD: Yeah. Just that one amendment,
24 because I think --- I mean, 13 is taken.

25 MS. SIMON: Because it's all --- the language is

1 clear. It's not a clarification.

2 CHAIRMAN HOOD: And you heard what I said. They
3 vetted this through DHCD and Office of Attorney General, so
4 we had an expert --- well, experts look at it, and that
5 didn't come across ---

6 MS. SIMON: I think that was the Section Subtitle
7 X that they vetted.

8 Did you vet this one, too?

9 MS. STEINGASSER: All amendments get vetted
10 through ---

11 MS. SIMON: Oh.

12 MS. STEINGASSER: --- through the Agency.

13 CHAIRMAN HOOD: And did that conversation come up?
14 Because normally I know OAG is usually honest about if we
15 have to readvertise something.

16 MR. RODGERS: Yes. In this case, it was really
17 the Zoning Administrator and how the change from the 58 to
18 ZR16 was creating confusion.

19 And so, we went back and looked at the Zoning
20 Commission's original intent and basically concluded that the
21 IZ requirement was basically proportional to the bonus
22 density that was achieved on the site, and that's why the
23 correction was made.

24 MS. SIMON: My recollection is that the original
25 language had an actual definition of achievable bonus density

1 that was not the bonus density utilized, but the bonus
2 density that was 20 percent of the increased FAR.

3 Of course, achievable might mean that if you have
4 a peculiarly-shaped site or an odd topography and you
5 actually could not get that full amount, then you would get
6 less.

7 But from the 04-33, the original case, I believe
8 they defined achievable bonus density.

9 CHAIRMAN HOOD: So, what I'm going to ask is
10 before we do final, let's look at what -- Ms. Simon's and
11 versus what we have now unless we have it handy, but I would
12 like to be able to look at both of them if we can just submit
13 that before we --- whenever we make our decision.

14 I don't know if anybody else is interested, but
15 I appreciate the work that Ms. Petti and Ms. Simon has done.
16 I want to make sure that we take it under due consideration.
17 You too, once I get to you too Ms. Mazo.

18 VICE CHAIRMAN MILLER: Mr. Chairman, I just wanted
19 to comment on that, too. I wasn't here, I don't know what
20 the original intent was, but I don't know why --- why
21 wouldn't we want to clarify it in the other direction too so
22 that we're getting more IZ than less?

23 MR. RODGERS: In which direction? Well, again, it
24 was based on the economic analysis that we originally did and
25 the impact of the affordability requirements and how bonus

1 density should try to balance that.

2 And if you'd like, I actually looked up the
3 definition of achievable bonus density from the 1958 version
4 of the code, and I could read that at this point, if you
5 want.

6 VICE CHAIRMAN MILLER: Okay. Yeah. Sure.

7 MR. RODGERS: Sure.

8 VICE CHAIRMAN MILLER: And provide it on the
9 record, but, still, I guess I would --- maybe in a later
10 submission that you may be making as to whatever the intent
11 was originally, why we wouldn't want to clarify it in the
12 other direction, what's achievable as opposed to what's ---
13 even if they don't use it all. So, if you can even provide
14 that and ---

15 MR. RODGERS: In a supplemental?

16 VICE CHAIRMAN MILLER: Yeah.

17 CHAIRMAN HOOD: Yeah, that's what --- you're going
18 to read it now, but I still have to --- I need to be able to
19 look at it again.

20 MR. RODGERS: Okay. From the 1958 version of the
21 code, achievable bonus density is the amount of the bonus
22 density permitted under Section 2604 that potentially may be
23 utilized within a particular inclusionary development
24 notwithstanding constraints resulting from the physical
25 characteristics of the land or restrictions imposed by the

1 district or federal laws and agencies.

2 And so, to that effect, it was acknowledging that
3 there are sometimes limits on how much bonus density can be
4 achieved on the site.

5 MS. SIMON: Right. But it is going for --- if you
6 can physically build a full 20 percent increase, it is based
7 on that calculation even if you only build 15 percent.

8 MR. RODGERS: At the time back in 2006 -- and it
9 is testing my memory -- the only way that we could really
10 test what was achievable is what was delivered and -- because
11 site constraints and design and things like that make it very
12 difficult to prove conclusively that there was bonus density
13 left on the site.

14 CHAIRMAN HOOD: I just want to make sure that we
15 don't have to readvertise and we're not --- I'm sure we're
16 not intentionally trying to mislead, but, again, Ms. Simon,
17 what gives me a comfort level is that the experts looked at
18 it, but I also appreciate the work that you put in.

19 So, that's why I just want to make sure we verify
20 what we're doing to make sure that we are not going down that
21 slippery slope. Okay?

22 VICE CHAIRMAN MILLER: And this Commissioner's
23 current position -- regardless of whatever previous position
24 -- is that if there's ambiguity, I'd rather --- and I think
25 maybe you're saying there isn't ambiguity because of what you

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1 just read to me, but if there is ambiguity, I'd rather
2 clarify it in the direction where we get more IZ than less.

3 It's just a little --- it's usually just a small
4 amount that we're talking about here, but ---

5 CHAIRMAN HOOD: Okay. All right. Any other
6 questions or comments?

7 Thank you very much, Ms. Simon. Let me go to Ms.
8 Mazo and then I can do another round, and then we'll call it.

9 Ms. Mazo.

10 MS. MAZO: Hi. Good evening. Samantha Mazo of
11 the law firm of Cozen O'Connor. I have provided my testimony
12 in hard copy. It was not able to get filed electronically.

13 I'm really here just to address three topics, two
14 of which are minor. The third, I'm sure, has been a topic
15 of conversation in the past, and I'm sure there's a reason
16 why it's not there.

17 The first of these is as an administrator, as an
18 implementer and someone who has spent a lot of time beating
19 their head against the wall filling out the CIZ forms -- the
20 certificate of inclusionary zoning forms -- I realize how
21 difficult the process is in terms of the interagency aspects
22 of the IZ program.

23 The program is administered by DHCD. DHCD creates
24 the form itself and then goes back and forth with Office of
25 the Zoning Administrator before the form gets filed -- gets

1 finalized.

2 And so, to that end, I thought a minor tweak to
3 the zoning regulations that are being suggested here would
4 just be a clear reference to the DHCD regulations in terms
5 of the calculation of the set-asides and the units.

6 And I say that because as someone who has filled
7 out the DIZ forms often, there are certain requirements in
8 the DHCD regulations that go into how those forms are filled
9 out.

10 And, also, in terms of how those numbers are
11 actually reached, and at least to have a cross-reference in
12 the zoning regulations to the DHCD regs at 14 DCMR, you know,
13 you can just reference them generally, I think, would be
14 helpful both for the practitioners as well as for the public
15 to kind of understand or get a better understanding and grasp
16 on how those numbers are finally created and finally
17 delivered. So, that's number one.

18 Number two, just generally vesting --- I would
19 like to see that there is some specific vesting language that
20 is proposed.

21 I haven't seen any and I know, in the past, either
22 regulations have become effective at a certain date and to
23 allow kind of a phase in time. I would like that here.

24 And the reason I raise that is because in talking
25 to Mr. Goldstein at DCRA, I know he's already looking at some

1 of the definitions in these text amendments now in terms of
2 reviewing current forms and it would just be helpful just to
3 have a vesting period.

4 And then the third is really probably not
5 appropriate, and I agree, not appropriate for this zoning
6 text amendment --- maybe one for a later text amendment or
7 a later deep dive into IZ -- but just trying to come to
8 grasps and come to grips with a potential matter of right
9 process that would allow the processing of a project that
10 provides some larger percentage of IZ.

11 We suggested 25 percent -- you know, it could be
12 higher, it could be lower --- that would follow the process
13 of potentially the large track review process or a process
14 that would be administered by OP -- sorry to put that back
15 on your guys' shoulders -- but would involve neighbor comment
16 --- a comment period, but would also involve interagency
17 review and discipline for projects that do provide an
18 additional level of affordability in IZ to allow those
19 particular projects to obtain additional density in order to
20 accommodate those IZ units, as well as additional height.

21 You know, what we're proposing here is kind of an
22 open foray potentially to start the conversation on this type
23 of process, but it's something where we believe something
24 along these lines could help the district satisfy its own
25 goals in terms of addressing the current affordable housing

1 crisis, as well as to provide comfort to communities and to
2 the ANC's and also to the Office of Planning that there would
3 be some oversight. So, those are my three suggestions.
4 Thanks.

5 CHAIRMAN HOOD: Okay. Thank you, Ms. Mazo.

6 Again, as we've done with the previous two
7 witnesses, colleagues, any questions or comments?

8 I do want to ask about the vesting. Let me ask
9 the Office of Planning, has that come up in discussion?

10 That usually always comes up, but, in this case,
11 have we gotten to that point yet or ---

12 MS. STEINGASSER: We've not, and I don't think we
13 would recommend vesting in this case.

14 The --- first of all, the case has been out there
15 for almost ten months and I don't --- there's nothing in the
16 amendments that would affect the project --

17 CHAIRMAN HOOD: Okay.

18 MS. STEINGASSER: -- that would hold the project
19 up in any way. And we have been working with the Office of
20 the Zoning Administrator on all of these definitions and
21 forms and things, so I don't --- it's not the same as when
22 we promulgated brand new regulations. This is more
23 reformatting and a clarification.

24 CHAIRMAN HOOD: Okay. All right.

25 Did you want to add something?

1 MS. MAZO: Just on that point, on the vesting --
2 and I agree, in most part, with Ms. Steingasser -- but there
3 are some slight tweaks that could impact projects that are
4 currently going through the development process and, in
5 particular, the change in these regulations that IZ units
6 cannot be located in the cellar.

7 And there are certainly projects that I have
8 worked with --- worked on that are in the building permit
9 process where there are IZ units in the cellar.

10 And so, to that end on some of those minor tweaks,
11 I think that some sort of vesting provision would be helpful,
12 or the alternative would just be a clear language in the
13 regulation that this began applying at some date certain.

14 And so, if there are tweaks to currently recorded
15 IZ covenants that document where different units are or
16 people have gone through DHCD and they have a unit in the
17 cellar, if that has to be redone, that would just be helpful
18 for us to know.

19 MS. STEINGASSER: I hear you. We're happy to talk
20 to DHCD about how to address the cellar issue specifically.

21 CHAIRMAN HOOD: Okay. Any other questions, Vice
22 Chair Miller?

23 VICE CHAIRMAN MILLER: Yeah. Thank you, Mr.
24 Chairman.

25 And the cross-referencing to the DHCD regulation

1 seems like a good idea, but if you check with DHCD on that --

2 MS. STEINGASSER: Yeah. That really does seem
3 like a good idea.

4 VICE CHAIRMAN MILLER: And on the cellar, I heard
5 what Mr. Rodgers said initially, but I'm not sure why we
6 wouldn't permit IZ units to be in the cellar if market rate
7 units are in the cellar.

8 As long as it's not over-concentrated and that
9 it's in proportion, I'm not sure why, from a policy matter,
10 we would not.

11 MR. RODGERS: In our --- what we did is we sampled
12 a number of projects and found that there was a pattern of
13 locating IZ units in the cellar.

14 And I think we grew concerns especially when the
15 -- they were small projects, it was the -- it was only the
16 IZ unit in the cellar and there was only --- because there
17 was only one --- there may be one IZ unit total, and it was
18 fairly consistently put in the cellar, and that was --- rose
19 up to a level of concern that we thought it was a ---
20 recommended a ---

21 VICE CHAIRMAN MILLER: I can see that being a
22 level of concern, but maybe we can tweak it or refine it so
23 that it addresses more narrowly that type of circumstance.

24 MS. STEINGASSER: Well, the other issue we had is
25 the issue of equity. I mean, we have not gone after the top

1 floor and we've not gone after the penthouse. We've allowed
2 that the IZ doesn't need to be in the big moneymakers.

3 And with that same issue, we have not --- we've
4 recommended they not be in the cellars, that they really be
5 interspersed in the body of the building so that there really
6 is no distinction.

7 If we went down the path that DCBIA or some of
8 these other submittals say, we'd be having 50 percent IZ
9 units in the penthouse.

10 I mean, it --- if we want to bring it all in, then
11 we bring it all in, but we have taken the position --- the
12 Zoning Commission has always been in that same place that
13 they need to be disbursed in the body of the building. And
14 so, that --- yeah, to that same issue of the cellars.

15 COMMISSIONER MAY: But, you know, what I'm sort
16 of reading between the lines here is that maybe it makes
17 sense that with smaller projects, I mean, you know, in cases
18 when there is, you know, there are less than five IZ units,
19 they can't be in the cellar or something like that, but that
20 might be a better --- a more sensible way to restrict it; is
21 that right?

22 VICE CHAIRMAN MILLER: Right. That's what I was
23 thinking about and ---

24 COMMISSIONER MAY: I mean, I don't know what the
25 right number is, but where we have seen the problem and the

1 problems that Mr. Rodgers cited were smaller projects.

2 MS. STEINGASSER: That's where we've seen them
3 most, but, again, I stress, you know, there's that equity
4 issue.

5 We're not going after the cream of the crop, and
6 we're not ---

7 COMMISSIONER MAY: Right. And I appreciate that
8 and I don't think they should be on the top.

9 MS. STEINGASSER: Yeah.

10 COMMISSIONER MAY: You know, they are still
11 subsidized units and so it makes sense that they not
12 necessarily be all of, you know, the best units, but if they
13 are --- if somebody is selling or renting market rate units
14 in the cellar -- I mean, I think about the, you know, Senate
15 Square and places like that where there are some very nice
16 units that are in the cellar.

17 MS. STEINGASSER: There are. And I'm just going
18 to argue one other point and then I will ---

19 COMMISSIONER MAY: Sure.

20 MS. STEINGASSER: Cellar units do not count
21 towards FAR, you know. In a way, they're already units that
22 are a bit of ---

23 COMMISSIONER MAY: They're already free.

24 MS. STEINGASSER: They're already free. And so,
25 to have them count as the IZ units just seemed a bit of a

1 double dip in a way that we found to be uncomfortable.

2 COMMISSIONER MAY: Well, maybe what we should be
3 doing is counting --- basically saying that if you want to
4 put cellar units --- IZ units in the cellar, you have to
5 calculate the IZ requirement to include the cellar space.

6 MS. STEINGASSER: We do count the cellar space for
7 IZ units.

8 COMMISSIONER MAY: It counts towards the IZ
9 calculation.

10 MS. STEINGASSER: Towards the trigger units.

11 COMMISSIONER MAY: Well, then I don't see --- so,
12 then it's not free space.

13 MR. RODGERS: Yes, I mean it counts --- it counts
14 -- let me suggest that it counts toward the minimum eight to
15 ten percent requirement.

16 It does not get counted -- because it's not FAR,
17 it does not get counted to the bonus density requirement.

18 And so, it does not apply if --- it does not get
19 counted in the bonus density calculation of the 50 to 75
20 percent bonus density.

21 So, it only happens when there is --- when the
22 project doesn't receive that much bonus density that it gets
23 established into the eight to ten percent.

24 COMMISSIONER MAY: Okay. So, now I'm just really
25 confused by that. I didn't come in here with a full brain

1 tonight, so ---

2 MR. RODGERS: And I apologize ---

3 COMMISSIONER MAY: -- I'm a little slow.

4 MR. RODGERS: -- I don't think I explained it
5 correctly.

6 So, the regulations say it's eight to ten percent
7 of the residential use of the building and so, therefore,
8 that would include the cellar space.

9 It does not get counted in the bonus density
10 calculation because it is not gross floor area. It is in the
11 cellar. And so, therefore, it only counts on establishing
12 the base and not the maximum amount.

13 COMMISSIONER MAY: So, they're getting less GFA
14 than they would if they --- if the cellar space were
15 included.

16 MS. STEINGASSER: They're getting less IZ bonus,
17 but they're getting ---

18 COMMISSIONER MAY: IZ bonus.

19 MS. STEINGASSER: -- the GFA that's not counted
20 against their ---

21 COMMISSIONER MAY: Maybe we need to sort of see
22 an example to understand. I mean, I appreciate the --

23 MR. RODGERS: Yeah. We can provide that.

24 COMMISSIONER MAY: -- equity issue, but, again,
25 you know, if there are going to be ten market rate units in

1 the cellar, it seems to me it wouldn't be unreasonable to
2 have one of those --- that there be one IZ unit in the
3 cellar.

4 MS. STEINGASSER: Well, if we want --- I mean, we
5 can look at putting a percent limit on how many can be there
6 or how much.

7 COMMISSIONER MAY: Yeah.

8 MS. STEINGASSER: You're kind of twisting my arm,
9 but --

10 COMMISSIONER MAY: No, no, no. And I'm not making
11 any decisions here or ---

12 MS. STEINGASSER: Yeah.

13 COMMISSIONER MAY: Obviously, the whole Commission
14 has to weigh in on this, but ---

15 MS. STEINGASSER: In mean, those are market rate
16 units, but their market rate and the cost of construction and
17 everything is slightly different than the market rate at the
18 top ---

19 COMMISSIONER MAY: Right. And they might --- they
20 probably get less --- they may be market rate, but they're
21 market rates for cellar units, which is going to be less.

22 MS. STEINGASSER: Right. Right. So, there's
23 already a different equity ---

24 COMMISSIONER MAY: Yes.

25 MS. STEINGASSER: -- in construction and leasing

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1 as well.

2 COMMISSIONER MAY: Right.

3 MS. STEINGASSER: So, that's why we put them in
4 the middle -- put them in the body.

5 VICE CHAIRMAN MILLER: I appreciate Ms.
6 Steingasser's equity arguments. I think that they make some
7 sense.

8 The current IZ regs have an explicit provision
9 that we --- they don't have to be on the top floor --- I'm
10 not talking about the penthouse --- they don't have to be on
11 the top floor in terms of being --- in terms of the
12 interpretation of what's proportionate or just the practice
13 has been that we have not required and they don't -- and
14 obviously, a developer wouldn't want to do it, but ---

15 MR. RODGERS: The requirement is -- for the Zoning
16 Administrator to apply is that they not be overly
17 concentrated.

18 VICE CHAIRMAN MILLER: Overly concentrated. The
19 proportionate argument.

20 MR. RODGERS: Yeah. And so, they look at each
21 floor and how many units are on each floor.

22 And if they can --- if they feel comfortable that
23 it's not overly concentrated on any one floor, there is no
24 requirement that they be on any particular floor, whether ---
25 and so, it's purely that concentration.

1 COMMISSIONER TURNBULL: Yeah. I think in most of
2 the PUDs -- we've looked at placement, also, and we've had
3 a number of cases where we said, hey, you've got five of them
4 over a loading dock area and we think that that's a little
5 bit -- so, I think when we look at it too --- and I think
6 you're right.

7 I think it's sort of like this inherent, unwritten
8 law that it never goes --- we've never seen anybody volunteer
9 them for the penthouse or the top floor or we've never seen
10 them at the lower levels. You're right. It has been --- so,
11 and I think your equity argument is very good.

12 I would tread very carefully myself. I think the
13 argument that if there's ten or more in a cellar area market
14 rate, it might be possible to have one, but I think that's
15 going to be on a case by case --- I mean, it's a very
16 difficult thing.

17 I don't know how you put it in language to do
18 that, but I'll --- I would --- I'll trust Ms. Steingasser to
19 look at this very carefully then.

20 VICE CHAIRMAN MILLER: Yeah. If we were going to
21 go that way, I think that there would have to be a size, a
22 numerical description and maybe there has to be that
23 requirement if you're going to use the cellar space for IZ,
24 you have to use the top floor for IZ.

25 Maybe that's the equity right there, but I don't

1 want to make it more complicated than what you're trying to
2 accomplish, but that's just one idea off the top of my head
3 ---

4 MS. STEINGASSER: I like that approach.

5 VICE CHAIRMAN MILLER: -- off the top of the
6 building head.

7 It's not about the penthouse --

8 MS. STEINGASSER: No.

9 VICE CHAIRMAN MILLER: -- because we have separate
10 --- we have different --- more --- we have a different type
11 of requirement for that.

12 CHAIRMAN HOOD: Any more questions or comments up
13 here?

14 I will say that we do have a letter from DCBIA
15 which talks about asking us not to adopt 1005.7, which this
16 kind of discussion about the cellar that we're having.

17 Let me go back to Ms. Petti. You had something
18 you wanted to add earlier?

19 MS. PETTI: Yes. Thank you for the opportunity.

20 With respect to the comment I made about the set-
21 asides and my question about the rationale for connecting the
22 set-asides to the 50 feet, I just wanted to be sure that I
23 understood.

24 It seemed that the Office of Planning is not
25 amenable to making that change. And I'm not sure --- I think

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1 the only reason I heard was that because it's --- because of
2 how we've been doing things and we shouldn't change the way
3 we've been doing things, but just so I understand, if you
4 could repeat the rationale for not making the change we're
5 suggesting.

6 MR. RODGERS: And that's applying the ten percent
7 requirement to heights up to, say, 70 feet.

8 Is that what you're referring to?

9 MS. PETTI: In didn't put an end limit on it, but
10 beyond 50 feet, yes.

11 MR. RODGERS: Yeah. So, the intent of 04-33I was
12 simply corrections and reorganization. It was not really
13 intended to be a significant change in policy or approach to
14 inclusionary zoning and so at that stage, that's why it was
15 not considered.

16 MS. SIMON: But it did actually make a significant
17 change in 1003.2 because that one said you only get the
18 reduction if you're using concrete and steel, and it didn't
19 care whether or not you asked for a map amendment from MU-4
20 to MU-5 kicking you into the lower requirement.

21 I gave a specific example where you actually end
22 up with less IZ after you get a PUD with a map amendment.

23 CHAIRMAN HOOD: Okay. Let's make sure --- let's
24 look into that as well to make sure that we don't need to do
25 anything --- I'd just like for us to revisit that because I

1 think that is very important when our residents take as much
2 time --- and whoever, our parties take as much time as some
3 of the information I read.

4 So, that let me know that a lot of work went into
5 these testimonies and I really appreciate that. So, that's
6 why -- that's kind of the way --- why I did this today like
7 we did it.

8 We didn't have a crowd tonight, so we were able
9 to kind of do a little one on one and back and forth. So,
10 I'm going to ask for that last issue, that we look at it, Mr.
11 Rodgers, as well.

12 MS. PETTI: And, Chairman Hood, may I just say,
13 in addition, just to remind you that we did raise this issue
14 two years ago and I don't think I would be here tonight if
15 it weren't for the fact that the commissioners, several of
16 you, were very receptive to the idea at that time and charged
17 OP with looking at it two years ago.

18 And there, it made sense to --- you wanted to
19 finalize the significant changes that were being made to the
20 IZ regs at that time and didn't want delay, so it was
21 understandable, but here we are again and ---

22 CHAIRMAN HOOD: Right. So, Ms. Petti, so we won't
23 go back there again, I'm going to ask you -- and I can ask
24 you because I know you -- could you --- do you mind finding
25 the transcript ---

1 MS. PETTI: Oh, sure.

2 CHAIRMAN HOOD: -- I hate to give you work to do

3 ---

4 MS. PETTI: Yeah.

5 CHAIRMAN HOOD: -- and submit that to us? That
6 would be very --- not the whole transcript, just what we --

7 MS. PETTI: Yeah. Yeah. Just that portion.

8 CHAIRMAN HOOD: That would be very helpful.

9 MS. PETTI: I meant to do that, but I ---

10 CHAIRMAN HOOD: That would be very helpful.

11 MS. PETTI: Okay. And it's also part of the
12 order.

13 CHAIRMAN HOOD: Okay. So, we won't see this for
14 the third time. We can deal with it accordingly. Okay?

15 MS. PETTI: Thank you.

16 CHAIRMAN HOOD: Thank you so much. All right.

17 Anything else?

18 All right. Vice Chairman Miller.

19 VICE CHAIRMAN MILLER: So, again, like the
20 achievable bonus density clarification, I think --- you know,
21 if the kind of recommendation that's being made, if it can
22 be resolved in the favor of requiring more IZ than less, I
23 think --- and without harming --- well, if it can be resolved
24 in more IZ than less, I think that that would be a good
25 direction to go.

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1 The other thing I just wanted to ask is unrelated.
2 I know this is supposed to be mostly technical corrections
3 and refinements.

4 Are you --- I think we had looked --- we had
5 talked about looking at other IZ changes, the one that came
6 to mind as I was reading through the OP report -- not that
7 it was mentioned there -- was the --- in the case of
8 conversions, I think, we were talking about maybe requiring,
9 I think right now, conversions in the RF zone to apartment
10 buildings.

11 I think you saw the other requirements that the
12 fourth unit, and then every other unit, has to be at the 50
13 percent level, and I think we had had some preliminary
14 discussion.

15 I don't know if I'm --- I might not be recalling
16 that particular provision correctly, but we had talked about
17 --- maybe this is the conversion zoning case that we talked
18 about doing every -- the fourth and every unit beyond ---
19 from four on would have to be at the lower level.

20 MR. LAWSON: Hi. Joel Lawson with the Office of
21 Planning.

22 I just want to clarify the regulations now do
23 require that. It requires the fourth and every second one.

24 VICE CHAIRMAN MILLER: Right.

25 MR. LAWSON: So, are you suggesting that we relook

1 at the regs to require every unit after the fourth one be
2 inclusionary ---

3 VICE CHAIRMAN MILLER: Yes.

4 MR. LAWSON: -- zoning?

5 VICE CHAIRMAN MILLER: Yes.

6 MR. LAWSON: Okay.

7 VICE CHAIRMAN MILLER: And we ---

8 MR. LAWSON: I understand.

9 VICE CHAIRMAN MILLER: -- had some discussion, I
10 can't remember in what forum, whether it was a training
11 session or whether it was a case that came up or ---

12 MR. LAWSON: I think this is the first I've heard
13 of that one ---

14 VICE CHAIRMAN MILLER: Okay.

15 MR. LAWSON: -- but we'll definitely --

16 VICE CHAIRMAN MILLER: Okay.

17 MR. LAWSON: -- add that to the list.

18 VICE CHAIRMAN MILLER: Okay. Thank you.

19 CHAIRMAN HOOD: Okay. Any other questions or
20 comments?

21 All right. I want to thank you three for coming
22 down and also those who provided --- DCBIA, I know, provided
23 testimony as well to the record.

24 Ms. Schellin, do we have anything else?

25 All right. I want to thank everybody, Office of

1 Planning, Office of Attorney General and the residents and
2 all those who supplied or provided testimony to this case.
3 We appreciate all the work that's been done on everyone's
4 side, so we greatly appreciate it.

5 So, with that, I will now declare this hearing
6 adjourned.

7 (Whereupon, the above-entitled matter went off the
8 record at 7:27 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCZC

Date: 09-20-18

Place: Washington, DC

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
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