

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY

JULY 17, 2024

+ + + + +

The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 9:30 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
LORNA L. JOHN, Vice-Chairperson
CARL BLAKE, Member
CHRISHAUN S. SMITH, NCPC Designee

ZONING COMMISSION MEMBERS PRESENT:

ROBERT MILLER, Vice-Chairperson
TAMMY STIDHAM, NPS Designee

OFFICE OF ZONING STAFF PRESENT:

KEARA MEHLERT, Secretary
PAUL YOUNG, A/V Production Specialist

OFFICE OF PLANNING DEVELOPMENT REVIEW STAFF PRESENT:

RON BARRON
MICHAEL JURKOVIC
CRYSTAL MYERS

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OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from
the Regular Public Meeting held on July 17, 2024.

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

(9:39 a.m.)

CHAIRPERSON HILL: Good morning ladies and gentlemen, the Board of Zoning Adjustment. Today is July 17th, 2024's hearing. Please come to order. My name is Fred Hill. I am Chairman of the District of Columbia Board of Zoning Adjustment.

Joining me today are Board Members Vice Chair Lorna John, Carl Blake and Chrishaun Smith and Zoning Commissioners Rob Miller and Tammy Stidham. Today's meeting and hearing agenda are available on the Office of Zoning's website.

Please be advised that this proceeding is being recorded by a Court Reporter. And is also webcast live via Webex and YouTube Live. The video of the webcast will be available on the Office of Zoning's website after today's hearing.

Accordingly, everyone who is listening on Webex or by telephone will be muted during the hearing. Also please be advised that we do not take any public testimony at our decision meeting sessions.

If you're experiencing difficulty accessing Webex or with your telephone call in, then please call our OZ Hotline number at (202) 727-5471 to receive Webex login calling instructions.

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1 At the conclusion of the decision meeting
2 session, I shall, in consultation with the Office of
3 Zoning, determine whether a full or summary order may be
4 issued. A full order is required when the decision it
5 contains is adverse to a party including an affected ANC.

6 A full order may also be needed if the Board's
7 decision differs from the Office of Planning's
8 recommendation. Although the Board favors the use of
9 summary orders whenever possible, an applicant may not
10 request the Board to issue such an order.

11 In today's hearing session, everyone who is
12 listening on Webex or by telephone will be muted during
13 the hearing, and only persons who have testified up -- who
14 have signed up to participate or testify will be unmuted
15 at the appropriate time.

16 Please state your name and home address before
17 providing oral testimony or your presentation. Oral
18 presentations shall be limited to a summary of your most
19 important points. When you're finished speaking, please
20 mute your audio so that your microphone is no longer
21 picking up sound or background noise.

22 Once again, if you're experiencing difficulty
23 accessing Webex or with your telephone call in, or if
24 you've forgotten to sign up 24 hours prior to this
25 hearing, then please call our OZ Hotline number (202) 727-

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1 5471.

2 It's also listed on the screen. All persons
3 planning to testify either in favor or opposition should
4 have signed up in advance. They'll be called by name to
5 testify. If this is an appeal, only parties are allowed
6 to testify.

7 By signing up to testify, all participants
8 completed the oath or affirmation as required by Y 408.7.
9 Requests to enter evidence in the time in online virtual
10 hearings such as written testimony or additional
11 supporting documents, although they're on live video which
12 may not be presented as part of the testimony, may be
13 allowed pursuant to subtitle Y 103.13 provided that:

14 One, the person making the request to enter an
15 exhibit explains A, how the proposed exhibit is relevant,
16 B, the good cause that justifies allowing the exhibit into
17 the record, including an explanation of why the requester
18 did not file the exhibit prior to the hearing pursuant to
19 Y 206.

20 And C, how the proposed exhibit would not
21 unreasonably prejudice any parties. The order for special
22 exception and variances are pursuant to Y 409. The order
23 and procedures for appeals are pursuant to Y 507.

24 At the conclusion of each case, an individual
25 who is unable to testify because of technical issues may

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1 file a request for leave to file a written version of the
2 planned testimony to the record within 24 hours following
3 the conclusion of public testimony in the hearing.

4 If additional written testimony is accepted,
5 then parties will be allowed a reasonable time to respond
6 as determined by the Board. The Board will then make its
7 decision at its next meeting session, but no earlier than
8 48 hours after the hearing.

9 Moreover, the Board may request additional
10 specific information to complete the record. The Board
11 and its staff will specify at the end of the hearing
12 exactly what's expected and the date all persons must
13 submit the evidence to the Office of Zoning.

14 No other information shall be accepted by the
15 Board. Finally, the District of Columbia Administrative
16 Procedures Act requires that the public hearing on each
17 case be held in the open for the public.

18 However, pursuant to Section 405 B and 406 of
19 that Act, the Board may, consistent with its Rules of
20 Procedures and the Act, enter into a closed meeting on a
21 case for purposes of seeking legal counsel on a case
22 pursuant to D.C. Official Code Section 2-575 B(4) and/or
23 deliberate on a case pursuant to D.C. Official Code
24 Section 2-575 B(13).

25 But only after applying the public notice, in

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1 the case in which closed meeting after obtaining roll call
2 vote. So, Madame Secretary, do we have any preliminary
3 matters?

4 MS. MEHLERT: Good morning, Mr. Chairman and
5 Members of the Board. Today, in terms of scheduling
6 changes, Application No. 21143 of Trustees for Harvard
7 University has been postponed to October 23rd, 2024.

8 With late filings, the Chairman has reviewed
9 and granted waivers to allow late filings into the
10 applicable case record pursuant to Subtitle Y, Section
11 206.7 and Section 103.13.

12 Any other late filings during the course of
13 today's live hearing should be presented before the Board
14 by the Application or parties or witnesses after the case
15 is called. Any other preliminary matters will be noted
16 when the case is called.

17 CHAIRPERSON HILL: Okay, great. Thank you.
18 Good morning, everybody. Nice to see everybody in this
19 virtual world. Let's see, I think we're kind of jumping
20 around a little bit.

21 I don't think this is going to take long,
22 Commissioner Stidham. First, we'll just, I think you're
23 kind of on this for this minor modification. We'll see
24 what happens then.

25 Then we'll go to Commissioner Miller for a

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1 decision. And then we'll come back, Commissioner Stidham,
2 for you for the remainder of the day. So, Madame
3 Secretary, could you just quickly call a minor
4 modification?

5 MS. MEHLERT: Sure, this is at the Board
6 Meeting Session. It's Application No. 20280-A of
7 Nathaniel Lewis. This is a request pursuant to Subtitle Y
8 § 703 for a minor modification of the Order issued on July
9 15th, 2022 in Application No. 20280 to add an area of
10 variance from the street under requirements of Subtitle C
11 § 303.4.

12 This is for the enlargement of an existing
13 residential building and conversion to an apartment house
14 on a new record lot. It is located in the RF-1 zone at
15 622 I Street NE, Square 857, Lots 32 and 113.

16 And the applicant just submitted revised
17 application documents last night.

18 CHAIRPERSON HILL: Okay, great. Thanks. So,
19 I'm sure all of you had a chance to review this. And I
20 think we're going to have to pull this off because I think
21 it actually is a modification of significance.

22 In addition to that, you know, we don't have a
23 report from the Office of Planning, and then there's a
24 letter in opposition from the ANC that I thought was also
25 well written.

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1 So Madame Secretary, unless anyone has, per the
2 regulations, any one of us can pull this off of the
3 decision meeting and put it in a hearing. Does anyone
4 have any issues with that and if so, raise your hand?

5 Okay, I don't see anybody having an issue with
6 that. Madame Secretary, when can we schedule this?

7 MS. MEHLERT: We can put this on the November
8 6th hearing.

9 CHAIRPERSON HILL: Okay, November 6th. Okay.
10 It's always nice to know what you're going to be doing in
11 November. Okay, that's that. Commissioner Stidham, if
12 you would excuse us for a minute, we'll bring in
13 Commissioner Miller and then we'll see you momentarily.

14 You, Madame Secretary, may call -- good
15 morning, Commissioner Miller. You may call our decision.

16 MS. MEHLERT: Sure, so next is Appeal No. 21082
17 of Wardman Hotel Strategy Team, Madhusudan Ramachandran
18 and Ronaldo Wallenberg. This is an appeal pursuant to
19 Subtitle X § 1100 challenging decisions made on October
20 23rd and 26th, 2023, by the Department of Buildings Zoning
21 Administrator to issues Building Permits Nos. B2307474 and
22 B2305655.

23 These permits are for a new residential
24 development with approximately 860 dwelling units on a
25 single record block, both in RA-2 and RA-4 zones at 2650

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1 Woodley Road NW and 2601 Calvert Street NW, Square 2132,
2 Lots 855 and 856.

3 This appeal was heard on May 15th, and
4 participating are Chairman Hill, Vice Chair John, Mr.
5 Blake, and Commissioner Miller. And as a preliminary
6 matter, the Appellant filed a motion to re-open the record
7 to allow a supplemental closing statement.

8 CHAIRPERSON HILL: Okay, thanks. So let's talk
9 about this preliminary matter first in terms about re-
10 opening the record. I mean, I don't think it's necessary
11 for any more information. I mean, I think that, you know,
12 we've had, the hearing went on for four to six hours.

13 I can't even recall. It went on for a very
14 long time. And then we also re-opened the record because
15 there was, we actually had an additional hearing so that
16 the, there was some disconnect or controversy with the
17 conclusion that was initially proposed by the appellant.

18 And then some opposition from that from the
19 Department of Buildings and I believe the intervener. And
20 so we had another hearing to give everyone an opportunity
21 to clarify anything they might have wanted to and, you
22 know, I went through what I believed was the conclusion in
23 that it wasn't, it was a conclusion.

24 It wasn't necessarily a rebuttal. And so that
25 conclusion is in the record. I don't think that we need

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1 to hear any more conclusions from the appellant. I think
2 we have plenty of information to make a decision.

3 And this has gone on for, you know, now two,
4 three hearings and also I mean six hours is a very
5 substantial hearing with a very full record. So I'm not
6 in support of re-opening the record.

7 But I will go around the table to hear if
8 anyone has anything else to add. And I will start with
9 you, Mr. Blake, if I might.

10 MEMBER BLAKE: Well, Commissioner, I agree with
11 what you said on this matter, but I would also indicate
12 that the appellant has not demonstrated good cause really
13 for re-opening the record. And for that reason, I would
14 be inclined to deny that.

15 CHAIRPERSON HILL: Thank you. Commissioner
16 Miller?

17 COMMISSIONER MILLER: Thank you, Mr. Chairman.
18 I will defer to your stance on this Mr. Chairman. I mean,
19 the intervener property owner and the Department of
20 Buildings, as I understand it, did not have an objection
21 to the record being opened.

22 And I agreed with their assessment that no new
23 information was provided. It was a summary of everything
24 else that we've heard. So, I personally have no problem
25 re-opening the record for their summary conclusion again.

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1 But I will defer to you, Mr. Chairman.

2 CHAIRPERSON HILL: Thank you, Commissioner
3 Miller. Vice Chair John?

4 VICE CHAIRPERSON JOHN: The record should not
5 be re-opened. At the end of the hearing, we ask for
6 written closing statements, and the appellant submitted a
7 rebuttal and closing.

8 And so the Board gave the other parties the
9 opportunity to respond to the rebuttal. So there is a
10 closing argument already in the record from the appellant.
11 And at the last hearing, neither DOB or the property owner
12 had any questions of the appellants.

13 So there was no other information in the record
14 after the parties submitted their closing statements. So
15 we only re-open the record that one time because the
16 appellant included a rebuttal statement when the Board
17 only asked for closing statements.

18 So we had to give the other parties an
19 opportunity to respond. There's nothing new in the record
20 after that so I'm not in support of re-opening the record,
21 and I don't believe there is any cause, good cause, to do
22 that. Thank you.

23 CHAIRPERSON HILL: Thank you, Vice Chair John.
24 All right, I'm going to make a motion then to deny the
25 motion to re-open the record by the appellant and ask for

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1 a second. Ms. John?

2 VICE CHAIRPERSON JOHN: Second.

3 CHAIRPERSON HILL: The motion has been made and
4 seconded, Madame Secretary. If you could give roll call.

5 MS. MEHLERT: Please respond to the Chair's
6 motion to deny the appellant's motion to re-open the
7 record. Chairman Hill?

8 CHAIRPERSON HILL: Yes.

9 MS. MEHLERT: Vice Chair John?

10 VICE CHAIRPERSON JOHN: Yes.

11 MS. MEHLERT: Board Member Blake?

12 (No audible response.)

13 MS. MEHLERT: Commissioner Miller?

14 COMMISSIONER MILLER: Yes.

15 MS. MEHLERT: Staff will record the vote as
16 four to zero to one to deny the appellant's motion to re-
17 open on the motion made by Chairman Hill and seconded by
18 Vice Chair John with one Board Member not participating.

19 CHAIRPERSON HILL: Okay, so now let's discuss
20 the case. As I mentioned, I think it went on for four to
21 six hours. I mean, it was a very lengthy hearing. And we
22 heard a lot of different arguments, discussions from the
23 appellant, from the property owner, from the Department of
24 Buildings, from the ANC and the ANC, again, was not in
25 support of this appeal.

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1 And had gone through an extensive number of
2 hearings about this project, and they had voted in favor
3 of this project. Now, that's not what the appeal was
4 before us. The appeal, again, was that the Zoning
5 Administrator made an error.

6 And to me what this all came down to was really
7 just Subtitle B 309 which is single or separate buildings.
8 And I'm going to read it. So B 309.1 for purposes of this
9 chapter, structures that are separated from the ground up
10 by common division walls or contain multiple sections
11 separated horizontally such as wings or additions are
12 separate buildings.

13 Structures or sections shall be considered part
14 of a single building if they are joined by a connection
15 that is a) fully above grade, b) enclosed, c) heated and
16 artificially lit and d) either, one, common space shared
17 by users of all portions of the building such as a lobby
18 or recreation room, loading dock or service bay, or two,
19 space that is designed and used to provide free and
20 unrestricted passage between separate portions of the
21 building such as an unrestricted doorway or walkway.

22 So I think, you know, a) all of those, there's
23 three connections between the different buildings and our
24 different wings, I should say. And a) they're all fully
25 above grade, b) they're all fully enclosed, c) they're all

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1 heated and artificially lit and this is the part, it's an
2 either or.

3 It's either d) one common space shared by users
4 or two, space that is designed and used to provide free
5 and unrestricted passage. So I do believe that it is two
6 which is that space that is designed and used to provide
7 free and unrestricted passage. And I mean that for all of
8 them.

9 Right? The one that was I think the most
10 controversial was the one that was a connection between
11 the new condominium building that was the old Wardman
12 Hotel and the middle wing. And the middle wing, like the
13 different wings. Right?

14 So that connection, I mean, I believe meets all
15 the criteria, and the zoning administrator and has been
16 the view of the Board for as long as I've been here, is
17 that the space doesn't have to be open to the public. It
18 doesn't have to be unlocked to the public.

19 It doesn't have to be unlocked for any of the,
20 necessarily the people, you know, it could be just
21 passageway for maintenance people. It could be passage
22 open for other people that are working in the building.

23 So I think that, you know, it is a single
24 building. So therefore, I think all of the other issues
25 that have been brought before us are moot. And I think

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1 that the building had measuring point, you know, their
2 measuring it from the correct wing of the building that
3 they're choosing to measure it from.

4 And so I didn't see anywhere in the arguments
5 made by the appellants that the Zoning Administrator had
6 erred. So again, I think that for me again it just all
7 comes back to B 309. And I'm going to be voting to deny
8 the appeal. Mr. Blake, may I hear your thoughts?

9 MEMBER BLAKE: Sure, Mr. Chair. I agree with
10 your analysis. Thank you, very much for reviewing the B
11 309. I will certainly be voting to deny the appeal. I
12 was not persuaded by the appellant's argument that the
13 ZA's interpretation of B 309 D(2) is in conflict with the
14 plain language of the regulation.

15 And I credit the testimony of the -- provided
16 by the ZA, the intervener. I think the Office of Planning
17 in concluding that the ZA's interpretation of that free
18 and unrestricted passage does not require that access to
19 the connection be provided to all users of all portions of
20 the building.

21 Rather, the connection just has to provide
22 authorized users the ability to get from one side to the
23 other. I think this is consistent with the text of the
24 intent and the established interpretation of the Zoning
25 Regulations by this Board and that which has been upheld

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1 by the Courts.

2 The arcade and the breezeway satisfy the
3 requirements of B 309.1 D(2). That is there are spaces
4 that are designed and used to provide free and
5 unrestricted passage between separate portions of the
6 building.

7 The property is on a record lot that has five
8 tax assessment lots. The property is split between R-2
9 and R-4, RA-4. The majority of the site is RA-2. The
10 subject property is comprised of four primary sectors
11 linked by three subordinate structures all of which meet
12 the criteria for a meaningful connection.

13 Therefore, the ZA's determination that there is
14 one building at the subject property for zoning purposes
15 is correct. And I believe that the project meets the
16 development standards for the RA-2 zone including the
17 building height and setback requirements. And for that
18 reason, I'll be voting to deny the appeal.

19 CHAIRPERSON HILL: Thank you, Mr. Blake.
20 Commissioner Miller?

21 COMMISSIONER MILLER: I appreciate your
22 comments and those of Board Member Blake with which I
23 agree. I think the ZA has reasonably interpreted the
24 zoning regulations in a way that finds that the building
25 connection, that the connections are to satisfy the

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1 connections to said to qualify as one building under the,
2 under the zoning regulations.

3 And therefore the setback requirement, it is
4 one building height measuring point associated with the
5 building, and this building meets that setback
6 requirement. So I, you know, it may be that the
7 regulations need given the amount of time we spent on this
8 and in other cases, it may need further clarification to
9 ensure that such connections really are functional.

10 And that they're not a way to just work around
11 the regulations to get to one building, but I think they
12 do based on the past interpretation and the text and
13 thereafter previous application, I think the regulations
14 are satisfied in this case.

15 It is one building and with meaningful
16 connections and the setback requirement has been
17 established in accordance with the regulations, and it
18 meets the height requirement. So, I'm inclined to deny
19 the appeal as well. Thank you very much.

20 CHAIRPERSON HILL: Thank you. Vice Chair John?

21 VICE CHAIRPERSON JOHN: Thank you, Mr.
22 Chairman. I agree with all of the comments. I'll just
23 add a few thoughts. So, I agree that the primary issues
24 with these four structures on the lot, the Woodley, the
25 Wardman Towers, and the new buildings can be considered

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1 one building for zoning purposes under the meaningful
2 connection criteria of Subtitle B 309 in which you read.

3 The parties no longer dispute that the fitness
4 center meets the meaningful connection standard, and so
5 the only issue then is whether the arcade and the
6 breezeway qualify under B 309.1 D(2) as space that is
7 designed and used to provide free and unrestricted passage
8 between separate portions of the building such as an
9 unrestricted doorway or walkway. I think that language is
10 very clear.

11 The appellant argues that the breezeway and the
12 arcade only provide access between the Woodley and
13 building B and the Wardman Towers in Building A
14 respectively. And because the four buildings or
15 structures are not connected so that one could access all
16 of the structures from one end to the other, there is no
17 meaningful connection.

18 I believe that's a very restricted
19 interpretation of the regulation. And then all is replied
20 is that there must be connections between separate
21 portions of the structure.

22 And this is a standard, as everyone has noted,
23 that the Board has applied in previous cases, and I
24 believe Section 309 B, 309.2 also underscores that
25 interpretation by requiring that a single building shell

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1 may contain multiple uses or dwelling units that do not
2 share access which is what we have here. There are
3 different uses within the structures.

4 In previous appeals, the Board has approved
5 connections with stores at either end that can be used by
6 persons authorized to have access to the connection, which
7 I think is correct.

8 If the structures satisfy the meaningful
9 connection requirement, then they're considered a single
10 building for zoning purposes and must comply with the
11 setback requirements of Subtitle F 203.6.

12 And that Section 6 of the building or structure
13 shall be removed from all lines of its lot for a distance
14 equal to the height of the building or structure above the
15 natural adjacent natural or finished grade, whichever is
16 the lower in elevation.

17 The appellant offers a tortured reading of that
18 provision based on a notion that the tax lots have to be
19 considered whereas here we've already decided that this is
20 one building for zoning purposes.

21 So then, the building height is 90 feet.
22 There's not much dispute about that based on the building
23 height measuring point criteria in Section B through 8.
24 And in this case, that building, the HMP, is taken on the
25 north side of the building.

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1 And that's shown in Exhibits 35, Page 24 which
2 shows then how the project meets the 90-foot setback
3 requirement based on the building height in the RA zone.
4 So, I agree in substance with what everyone else has said.

5 And I don't believe that the Department of
6 Buildings erred in issuing the building permit, and
7 because we have also addressed the issue of standing in a
8 previous hearing, I don't believe I need to add any
9 additional comments. So I would dismiss the appeal.

10 CHAIRPERSON HILL: Thank you, Vice Chair John.
11 Thank you for all of those additional comments, and thank
12 you for my, thank you to the colleagues, my colleagues for
13 all of your help in this analysis.

14 I'm going to make a motion to deny Appeal No.
15 21082 as caption read by the Secretary and ask for a
16 second Ms. John?

17 VICE CHAIRPERSON JOHN: Second.

18 CHAIRPERSON HILL: The motion is made and
19 seconded. Madame Secretary, if will you take a roll call
20 please.

21 MS. MEHLERT: Please respond to the Chair's
22 motion to deny the appeal. Chairman Hill?

23 CHAIRPERSON HILL: Yes.

24 MS. MEHLERT: Vice Chair John?

25 VICE CHAIRPERSON JOHN: Yes, to deny.

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1 MS. MEHLERT: Member Blake?

2 MEMBER BLAKE: Yes.

3 MS. MEHLERT: And Commissioner Miller?

4 (No audible response.)

5 MS. MEHLERT: The Staff will record the vote as
6 four to zero to one to deny Appeal 21082 on the motion
7 made by Chairman Hill and seconded by Vice Chair John with
8 one Board Member not participating.

9 CHAIRPERSON HILL: Thank you. Well,
10 Commissioner Miller, I hope you're somewhere fun. And if
11 you're not somewhere fun, then I hope you survive your
12 day.

13 COMMISSIONER MILLER: Thank you, Mr. Chairman.
14 And I hope you survive your day. I think you'll have more
15 difficulty than I will. So, enjoy it.

16 CHAIRPERSON HILL: Okay great. All right, you
17 have a good day, Commissioner. All right, Vice Chair
18 John, I'm out. I'm not on the next one. Okay?

19 VICE CHAIRPERSON JOHN: That's correct.

20 CHAIRPERSON HILL: Okay.

21 VICE CHAIRPERSON JOHN: Thank you, Mr.
22 Chairman.

23 CHAIRPERSON HILL: Thank you.

24 VICE CHAIRPERSON JOHN: Thank you. So this is,
25 are you going to call the case, Ms. Mehlert?

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1 MS. MEHLERT: Yes. I can call the next one.
2 This is still in the Board's meeting session. Application
3 No. 21144 of Taco Bell of America, LLC. This application
4 is pursuant to Subtitle X, § 901.2 for special exceptions
5 under Subtitle D § 5201 from the rear yard -- oh, sorry,
6 I'm reading the wrong one. Hold on one second.

7 Okay. As amended, the self-certified
8 application pursuant to Subtitle X § 901.2 for special
9 exception under Subtitle U § 513.1(e) to permit a fast
10 food establishment use on the first floor and under
11 Subtitle C § 1506.1 and the penthouse wall enclosure
12 requirements of Subtitle C § 1503.1 and the penthouse wall
13 setback requirements at Subtitle C § 1504.1
14 d).

15 This is for a fast food establishment use on
16 the first floor of an existing two-story attached
17 building. This was previously heard on July 3rd and
18 participating are Vice Chair John, Mr. Blake, Mr. Smith,
19 and Commissioner Imamura.

20 VICE CHAIRPERSON JOHN: Thank you. So I'll go
21 ahead and start the discussion. So, this is a request as
22 we've just heard for special exception relief for fast
23 food restaurant in a MU-4 zone.

24 That's 411 8th Street SW, under Subtitle U §
25 513.1(E). The application also seeks relief from the

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1 penthouse requirements of C § 1506.1. So, I'm in support
2 of the application, and in this case, fast food
3 establishments are permitted in the MU-4 zone.

4 If they meet the requirements of U 513.1 as we
5 noted earlier. And I believe the applicant did a very
6 good job in presenting its case on how the application
7 meets this requirement. It was fairly straightforward.

8 And I also agree with the Office of Planning's
9 analysis of how the application meets the criteria for
10 relief of both special exceptions. So, what was the more
11 contentious issue, was the conditions proposed by the
12 applicant, the ANC and the parties who proposed several
13 conditions that -- some were zoning-related and some were
14 not.

15 The zoning-related which were intended to
16 mitigate any potential adverse impacts if the Board were
17 to approve the application. So, I am I support of
18 granting the application.

19 And I do agree that these additional conditions
20 are necessary to mitigate any potential adverse impact.
21 So, some of these conditions were not within the scope of
22 the Board's authority.

23 And so, at the end of the hearing, the Boards
24 recommended to the parties that they should be amended,
25 and the conditions that were within the Board's authority

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1 should be separated.

2 And so the applicant did propose additional
3 conditions and these, I believe, are contained in Exhibit
4 40A. Now, with respect to the conditions that are not
5 within the scope of the Board's authority, those
6 conditions are memorialized in a Memorandum of Agreement
7 in Exhibit 41.

8 Those conditions should not be part of this
9 order if the Board approves the application.
10 Additionally, the ANC's letter was not very clear, and it
11 read as if the ANC was in support only if the Board
12 adopted all of the regulations in the previous proposed
13 conditions, all of the conditions as previously proposed.

14 So then the ANC amended its letter in Exhibit
15 42 and now appears to express unqualified support of the
16 project with no zoning-related issues and concerns. The
17 Office of Planning does not recommend any additional
18 conditions other than what's been proposed.

19 I also note that the architect of the capital
20 has no objection to the application. The applicant also
21 requested design flexibility which would allow the
22 applicant to incorporate any changes that HPO or HBRB
23 might recommend.

24 I propose that the Board grant this design
25 flexibility, but it should be conditioned that any changes

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1 made to the approved plans that would require additional
2 zoning relief must be approved by the Board.

3 And so I will ask the attorneys to include this
4 condition in their appropriate legal and with language if
5 the Board approves the application. So I will pause here
6 and hear from the other Board Members starting with Board
7 Member Smith.

8 MEMBER SMITH: I do, by and large, agree with
9 all of the statements that you've stated. I was fairly
10 content with the application of how the application meets
11 the standards as far as the grant, special exceptions that
12 were being requested.

13 I think the major sticking point as you stated
14 were some of the conditions, and I hope everyone can hear
15 me okay because I know I have problems with the sound.

16 VICE CHAIRPERSON JOHN: Yes.

17 MEMBER SMITH: But some of the conditions,
18 being that they were outside of the purview of this Board.
19 And the applicant has, the applicant and the property
20 owner has worked with the surrounding neighborhood within
21 the square to come to a decision to put together an MOU
22 that they will collectively be giving the party of or some
23 of those conditions that the neighborhood would like to
24 see and the property owner and the applicant have agreed
25 to as part of those negotiations.

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1 So, I'm happy to come to that conclusion and
2 that decision, and we will not necessarily be
3 memorializing that within the record, but that is
4 something that can be enforced going forward.

5 As for the standings for us to grant special
6 exception, I believe that they have sufficiently
7 demonstrated that they meet all the standards of the
8 special exception requirements posed here with the
9 conditions that mitigate noise and issues of road and
10 trash control.

11 I do believe that the operation, the general
12 person intent of the zoning regulations and also will not
13 adversely affect the surrounding properties with those
14 particular conditions.

15 With that, I give the Office of Planning and
16 Staff Report great weight and will support the application
17 as well.

18 VICE CHAIRPERSON JOHN: Thank you, Board Member
19 Smith. Board Member Blake?

20 MEMBER BLAKE: Thank you, Vice Chair John.
21 I'll be in support of this application. I believe the
22 applicant has met the burden of proof for the penthouse
23 wall enclosure requirement relief as well as the setback
24 requirements for the penthouse.

25 As it relates to the fast food restaurant on

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1 the first floor, I do believe the applicant has also met
2 the burden of proof there to be granted the relief.
3 Subject to the conditions included in Exhibit 40A.

4 However, I would like to strike number 15 which
5 has the minor flexibility and design, and as you pointed
6 out, incorporate that via language in the ordering
7 paragraph. And I would also recommend referencing the MOA
8 in Exhibit 41 in the order.

9 I give great weight to the Office of Planning's
10 report, ANC, give great weight to their revised and
11 updated report and also acknowledge the person's report
12 and the Office -- the Architect of the Capitol. No
13 objection.

14 VICE CHAIRPERSON JOHN: Thank you. Board
15 Member Blake, can you remind me what Condition 15 says.

16 MEMBER BLAKE: Condition 15 is the minor flex
17 design flexibility.

18 VICE CHAIRPERSON JOHN: Okay.

19 MEMBER BLAKE: Where the applicant is granted
20 the minor flexibility. Rather than have it there, as you
21 point out, we would have it in the ordering paragraph
22 language in the order, so therefore, we would not
23 necessarily need to have it there.

24 VICE CHAIRPERSON JOHN: Okay. And Board Member
25 Smith, are you fine with that recommendation?

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1 MEMBER SMITH: Yes, I'm fine with it.

2 VICE CHAIRPERSON JOHN: Okay. So with that
3 change, we will delete condition 15 and include that
4 provision in the order which would grant the minor
5 flexibility based on the conditions that Board Member
6 Blake mentioned.

7 And that we typically allow where there's a
8 situation where the applicant needs to complete the HBRB
9 application, but there can be no changes to the plans
10 shown at Exhibit 22D that would require any additional
11 zoning relief.

12 So, on that condition, I will go ahead and make
13 a motion to approve Application 21144 and ask for a second
14 of Board Member Blake.

15 MEMBER BLAKE: Second.

16 VICE CHAIRPERSON JOHN: Board Member Smith?
17 Oh, I'm sorry. Ms. Mehlert, would you ask for, to take
18 the roll call?

19 MS. MEHLERT: Yes, please respond to the Vice
20 Chair's motion to approve the application with conditions
21 as listed in Exhibit 40A except for number 15 regarding
22 the design flexibility which will be included in the
23 ordering paragraph. Vice Chair John?

24 VICE CHAIRPERSON JOHN: Yes.

25 MS. MEHLERT: Commissioner Smith?

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1 MEMBER SMITH: Yes.

2 MS. MEHLERT: Mr. Blake?

3 MEMBER BLAKE: Yes.

4 MS. MEHLERT: And there is an absentee ballot
5 from Dr. Imamura whose vote is to approve the application
6 with such conditions as the Board may impose. Staff would
7 record the vote as four to zero to one to approve
8 Application 21144 with conditions on the motion made by
9 Vice Chair John and seconded by Mr. Blake with one Board
10 Member not participating.

11 VICE CHAIRPERSON JOHN: Thank you. Chairman
12 Hill, you're up.

13 CHAIRPERSON HILL: Okay. I think we have
14 Commissioner Stidham back with us. And I think that it
15 was there, are we, I don't see the Order in front of me.
16 I'm sorry. Is it the party request that's next?

17 MS. MEHLERT: Yes.

18 CHAIRPERSON HILL: Okay, Madame Secretary, you
19 can call that when you get a chance.

20 MS. MEHLERT: And the next in the Board's
21 meeting session is an advance for a status request for
22 Application No. 21151 of Dinesh Tandon and Nidhi Tandon.
23 This is a self-certified application pursuant to Subtitle
24 X § 901.2 for a special exception under Subtitle C § 204.9
25 to allow a change from one nonconforming use to another

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1 nonconforming use as well as pursuant to Subtitle X § 1002
2 for an area variance from Subtitle C § 204.9(b) to allow a
3 nonresidential use.

4 Project is a change in the nonperforming use of
5 a first flooring cellar of an existing two-story building
6 from retail convenience store to a restaurant. It's
7 located in the RF-1 zone at 2324 North Capitol Street NW,
8 Square 3124, Lot 143.

9 And I'll note that the hearing for this case
10 was originally scheduled for July 24th. It has already
11 been postponed to October 9th. And again, this is an
12 advanced request for parties' status in opposition from
13 Evelyn Brown.

14 CHAIRPERSON HILL: Okay. Is Ms. Brown here?
15 Ms. Brown, can you hear me?

16 (No audible response.)

17 CHAIRPERSON HILL: Ms. Brown, can you hear me?
18 Ms. Brown? Maybe you're on mute, Ms. Brown. Can you all
19 hear me?

20 (No audible response.)

21 CHAIRPERSON HILL: Okay. Let's keep waiting
22 for -- oh, I don't see any mute now with Ms. Brown so
23 maybe.

24 MS. BROWN: Can you hear me?

25 CHAIRPERSON HILL: Yes.

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1 MS. BROWN: Okay. I'll turn my phone off
2 because I had communication problems, so I'll shut the
3 cell phone off.

4 CHAIRPERSON HILL: Okay.

5 MS. BROWN: Thank you. Give me a second.
6 Okay, yes.

7 CHAIRPERSON HILL: Great. Could you introduce
8 yourself for the record, Ms. Brown?

9 MS. BROWN: My name is Evelyn Brown. I live at
10 2318 North Capitol Street NW. My house is three blocks
11 south of the Hillview Market.

12 CHAIRPERSON HILL: Okay great. I'm sorry, you
13 mean three houses south?

14 MS. BROWN: Yes, three houses south. I'm
15 sorry. Yes.

16 CHAIRPERSON HILL: Okay. No problem.

17 MS. BROWN: Thank you.

18 CHAIRPERSON HILL: You're welcome. So I guess
19 if you could explain why you think that you would be more
20 likely significantly distinctly or uniquely affected by
21 this proposed zoning action than other persons in the
22 general public.

23 MS. BROWN: Yes. Okay, well I am within, I
24 think I'm about 60 feet from the existing property, which
25 is at the corner of North Capitol and Bryant. There are a

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1 number of issues which I have included in my response to
2 the statement that things such as the garbage, we have an
3 infestation of rats, there is the issue of the loading and
4 unloading of both customers and supply vehicles that will
5 actually be accessing a shared alley.

6 The property currently has two parking spaces
7 for which the applicant has indicated --

8 CHAIRPERSON HILL: Ms. Brown? Ms. Brown, I'm
9 sorry, I just to interrupt you for one second.

10 MS. BROWN: Okay.

11 CHAIRPERSON HILL: Right. You're kind of
12 speaking a little bit more to the actual application so --

13 MS. BROWN: Okay. I'm sorry.

14 CHAIRPERSON HILL: That's okay. You believe
15 that you're more uniquely different than the general
16 public because of your proximity to the proposed zoning
17 change as well as -- do you share an alley?

18 MS. BROWN: Yes.

19 CHAIRPERSON HILL: Okay, so you share an alley.
20 Okay. Does my Board have any questions for Ms. Brown?

21 VICE CHAIRPERSON JOHN: No, Mr. Chairman.

22 CHAIRPERSON HILL: Okay. All right, then do my
23 Board need any more, right, any questions to make a
24 decision? You all are good it sounds like. Correct?

25 (No audible response.)

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1 CHAIRPERSON HILL: Okay, hearing none. Okay,
2 Ms. Brown, what I'm going to do now is I'm going to excuse
3 you from the hearing room, and then we're going to
4 deliberate as to whether or not you will get party status.

5 If you do get party status, the way that would
6 work is that during the day of the hearing, Ms. Mehlert,
7 when is this hearing scheduled?

8 MS. MEHLERT: October 9th.

9 CHAIRPERSON HILL: October 9th, so during the
10 day of the hearing, you'd be able to testify or give your
11 presentation with the same amount of time that the
12 applicant has to give their presentation. So if the
13 Applicant goes 30 minutes, you'll get 30 minutes.

14 MS. BROWN: Okay.

15 CHAIRPERSON HILL: And then you'll have an
16 opportunity also to ask questions of the applicant.
17 You'll also have an opportunity to ask questions of the
18 Office of Planning --

19 MS. BROWN: Okay.

20 CHAIRPERSON HILL: And then participate as a
21 member in the hearing. If you're denied party status,
22 then you will still have an opportunity to testify as a
23 member of the public.

24 It's just that you'll have three minutes to
25 give your testimony and then the Board will still be able

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1 to ask questions of you.

2 MS. BROWN: Okay.

3 CHAIRPERSON HILL: Okay? All right, well then
4 I'm going to go ahead and excuse you, Ms. Brown, and you
5 can go ahead and continue to listen to the deliberations
6 and see what happens.

7 MS. BROWN: Thank you.

8 CHAIRPERSON HILL: Thank you. Okay. Ms.
9 Mehlert, can you hear me?

10 MS. MEHLERT: Yes.

11 CHAIRPERSON HILL: I know there was another
12 person that we had denied party status to. Was there
13 anyone else that we still had to do party status with?

14 MS. MEHLERT: Yes, for this case, there are,
15 there are three more individuals who have requested party
16 status and those are scheduled for next week's meeting.

17 CHAIRPERSON HILL: Okay. All right, give me a
18 second. All right, give me one minute. Okay can you, do
19 you happen to have those names handy?

20 MS. MEHLERT: So their names are Richard Smith,
21 Malini Tolat and Maya Kavalier.

22 CHAIRPERSON HILL: Thank you. Richard. Okay,
23 I'm sorry. Richard Smith, Maya Kavalier and who is the
24 last one?

25 MS. MEHLERT: Malini Tolat.

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1 CHAIRPERSON HILL: Okay. Mr. Young, could you
2 bring in, could you please bring back in Ms. Brown? Hi,
3 Ms. Brown. Can you hear me again? Oh, great. Can you
4 hear me, Ms. Brown? I can see you now. You're on mute I
5 think, Ms. Brown. That's all right. No hurry.

6 MS. BROWN: Unmute. Okay.

7 CHAIRPERSON HILL: Okay. Great, perfect. Do
8 you know Richard Smith, Maya -- and I'm going to -- Candow
9 -- Maya Kavalier and Melanie Talbot -- or Malini Tolat?

10 MS. BROWN: Yes, I do.

11 CHAIRPERSON HILL: Okay, you know all three of
12 them?

13 MS. BROWN: I know all three. One lives
14 directly across the alley right across from the Hillview
15 Market. The other two applicants are, I think they're
16 directly across Bryant Street, number I think 15, numbers
17 17 --

18 CHAIRPERSON HILL: Okay.

19 MS. BROWN: Bryant.

20 CHAIRPERSON HILL: Okay.

21 MS. BROWN: Yes, I do know them.

22 CHAIRPERSON HILL: Okay, so Ms. Brown, so
23 what's happening is next week we're going to determine
24 their party status. Right? So if you get party status,
25 and if they get party status, if you all since you know

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1 each other, if you guys could coordinate so that --

2 MS. BROWN: Yes.

3 CHAIRPERSON HILL: -- you could present at one
4 time and not repeat whatever, you know, everybody will
5 give their testimony and that way it will be more
6 beneficial to the Board and it will be, you know, it will
7 expedite the process.

8 So, as you're listening here, just go ahead and
9 make note of that. That they're going to get their
10 opportunity to be heard next week. And if you all do get
11 party status, and even if you don't all get party status,
12 I did notice that some of your witnesses are some of these
13 people. So, you know, --

14 MS. BROWN: Yes.

15 CHAIRPERSON HILL: -- it seems like you guys
16 are already kind of coordinating so --

17 MS. BROWN: Yes.

18 CHAIRPERSON HILL: -- just something to think
19 about, and I'm going to go ahead and excuse you again.
20 Okay?

21 MS. BROWN: Okay.

22 CHAIRPERSON HILL: Thank you, Ms. Brown. Okay.
23 All right. So, I got to tell you, I was kind of on the
24 fence and so -- about the party status. I mean, I think
25 that Ms. Brown is, you know, an argument could be made

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1 that she's more uniquely affected due to the proximity to
2 the potential zoning change and that they share an alley.

3 But sometimes, I'm just like the distance to
4 things, I don't know whether, anyway, I think it's close
5 enough. I'm going to probably vote in favor of the party
6 status.

7 And then hope, as I mentioned before, that if
8 the other potential parties can coordinate next week that
9 would be helpful. But that's kind of where I am, and I'm
10 going to go around the room and start with Mr. Smith if I
11 might.

12 MEMBER SMITH: Chair Hill, about this question
13 about, you know, being on the fence, that distance, and
14 normally we see a lot of people, you know, try to apply
15 because of the distance.

16 But I think this one is fairly unique in the
17 sense that this is a request for a change in use. The
18 change from what would be commercial, I mean residential
19 to -- well for retail convenience stores to restaurant
20 which I think has its own unique impact given that most of
21 what's around it is residential.

22 Given the impacts of what restaurant would have
23 residential property, so I am inclined to give her a party
24 stat.

25 VICE CHAIRPERSON JOHN: Okay, thanks, Mr.

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1 Smith. Mr. Blake?

2 MEMBER BLAKE: Mr. Chair, I'm in support of
3 granting party status. You may recall last week I was
4 initially in support of Ms. Mendels and giving party
5 status as well given the nature of a restaurant, full-
6 service restaurant as Mr. Smith pointed out as opposed to
7 simply a convenience store.

8 I think the nature of a restaurant provides
9 certain issues with, you know, parking, that expand a
10 larger territory than just next door. So, for that
11 reason, I was in favor of granting party status.

12 And I do recognize that some of the other
13 additional people who may be seeking party status may
14 actually even be closer. So, proximity is an issue, but I
15 do believe that this applicant has met the threshold, at
16 least in my mind, to grant party status.

17 CHAIRPERSON HILL: Great. Thank you.
18 Commissioner Stidham?

19 COMMISSIONER STIDHAM: Also with granting party
20 status, I think that between the change in use and the
21 shared alley, I think that it makes a lot of sense in this
22 case.

23 CHAIRPERSON HILL: Okay, thank you. Vice Chair
24 John?

25 VICE CHAIRPERSON JOHN: Thank you, Mr.

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1 Chairman. I am also in support and I agree with all of
2 the comments so far.

3 CHAIRPERSON HILL: Okay, great. All right,
4 then I'm going to go ahead and make a motion to approve --
5 or sorry. Approve? Yes, approve party status or the
6 request for party status to Ms. Brown and -- Evelyn Brown
7 -- and ask for a second, Ms. John?

8 VICE CHAIRPERSON JOHN: Second.

9 CHAIRPERSON HILL: Motion made and seconded.
10 If you could take a roll call, Madame Secretary.

11 MS. MEHLERT: Please respond to the Chair's
12 motion to grant party status in opposition to Evelyn
13 Brown. Chairman Hill?

14 CHAIRPERSON HILL: Yes.

15 MS. MEHLERT: Vice Chair John?

16 VICE CHAIRPERSON JOHN: Yes.

17 MS. MEHLERT: Mr. Smith?

18 (No audible response.)

19 MS. MEHLERT: Mr. Blake?

20 MEMBER BLAKE: Yes.

21 MS. MEHLERT: And Commissioner Stidham?

22 COMMISSIONER STIDHAM: Yes.

23 MS. MEHLERT: Staff would record the vote as
24 five to zero to zero to grant party status to Evelyn Brown
25 on the motion made by Chairman Hill and seconded by Vice

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1 Chair John.

2 CHAIRPERSON HILL: Okay, great. And when is
3 this hearing again?

4 MS. MEHLERT: October 9th.

5 CHAIRPERSON HILL: Okay. All right, I am not
6 on the next one again, Ms. John, so I'm going to jump off.

7 VICE CHAIRPERSON JOHN: Okay. Can you call the
8 next case for me? That's the --

9 MS. MEHLERT: Yes.

10 CHAIRPERSON HILL: And before you call it, Ms.
11 Mehlert, do you guys want to take a break after this case?
12 Or do you --

13 VICE CHAIRPERSON JOHN: Actually, I was going
14 to suggest we take a short break now. How much time were
15 you thinking of to --?

16 CHAIRPERSON HILL: Just a quick break. Go
17 ahead, 10, 15 minutes.

18 VICE CHAIRPERSON JOHN: Okay, thank you.

19 CHAIRPERSON HILL: Okay. All right then,
20 anyway, anyway we'll take a break, come back for 10, 15
21 minutes. Then I'll go away again. Okay. Thank you.

22 VICE CHAIRPERSON JOHN: Thank you.

23 (Whereupon, the above-entitled matter went off
24 the record at 10:33 a.m.)
25

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In the matter of: Public Meeting

Before: DC BZA

Date: 07-17-24

Place: teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate complete record of the proceedings.



Court Reporter

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