

**BEFORE THE BOARD
OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA**

**APPLICATION OF
HABITAT FOR HUMANITY OF
WASHINGTON DC, INC.
SQUARE 4047, LOT 57**

**BZA APPLICATION NO. 19231
HEARING DATE: APRIL 5, 2016
ANC 5D01**

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of Habitat for Humanity of Washington DC, Inc. (“Habitat” or the “Applicant”) in support of its application to the Board of Zoning Adjustment (“BZA” or “Board”) for area variances from the lot width requirements of 11 DCMR § 401.3 and the off-street parking space requirements of 11 DCMR § 2101.1, to permit the construction of four new flats¹ (eight units total), each sold as a single-family inclusionary zoning (“IZ”) unit, in the R-4 District on the northwest portion of 1814 Central Place, NE (Square 4047, Lot 57) (the “Property”).

The flats proposed by this BZA application are being provided to meet the requirements of Zoning Commission (“Z.C.”) Order No. 15-01, as described below. The proposed development is appropriate for the Property, fully compatible with the surrounding area, and not inconsistent with either the Comprehensive Plan or the Zoning Regulations.

¹ “Flat” is defined in the Zoning Regulations as a “two-family dwelling.” “Dwelling, two-family” is defined as “a dwelling used exclusively as a residence for two families living independently of each other. A two-family dwelling is a flat.” See 11 DCMR § 199.1.

II.
JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the requested variances pursuant to 11 DCMR § 3103.

III.
BACKGROUND

A. The Applicant

Habitat for Humanity is an international non-profit and non-governmental organization that was founded in 1976 to build decent and affordable housing across the world. Habitat for Humanity's international operational headquarters are located in Americus, Georgia; however, Habitat for Humanity's local offices coordinate all aspects of home building, including fundraising, site selection, family selection and support, construction, and mortgage servicing. Since its founding, Habitat for Humanity has helped more than four million people construct, rehabilitate, or preserve homes, making Habitat for Humanity the largest not-for-profit builder in the world.

Habitat for Humanity of Washington DC (the Applicant) is the local Habitat affiliate. The Applicant has operated in Washington, DC for over 25 years and has built and rehabilitated over 200 homes for over 300 District residents, making a life-changing impact on the lives of families in all four quadrants of the District.

B. Related Planned Unit Development

Pursuant to Zoning Commission Order No. 15-01, dated July 13, 2015, and effective on August 21, 2015, the Zoning Commission for the District of Columbia approved a planned unit development ("PUD") and a zoning map amendment for property located at 320 Florida Avenue, NE (Square 3587, Lot 4), submitted by Level 2 Development ("Level 2"). The PUD site was approved to be developed as a mixed-use building with ground floor retail and residential units above.

As part of the public benefits and amenities associated with the PUD, Level 2 committed to contributing “\$107,000 per unit to DC Habitat to co-develop a minimum of approximately 13,747 net square feet in 13 off-site affordable housing units.” *See* Z.C. Order No. 15-01, Decision No. B(1)(a).

Z.C. Order No. 15-01 imposed several requirements on development of the off-site affordable units. First, the Order requires that a minimum of 7,747 square feet (seven units) of the total off-site units must be located within the boundaries of Advisory Neighborhood Commission (“ANC”) 5D; and that a minimum of 6,000 square feet (six units) of the total off-site units must be located in Ward 5, with a priority area of ANC 5D. *See* Z.C. Order No. 15-01, FF No. 36. Second, the Order requires that all 13 of the off-site units must be sold to households earning an average of no more than 50% of the area medium income (“AMI”). *Id.* at Decision No. B(1)(a). Third, the Order requires that the off-site affordable units must have an average size of not less than approximately 1,000 square feet, and an average of approximately 2.5 bedrooms. *Id.* at Decision No. B(1)(c). Fourth, the Order requires that building permit applications must be filed for all of the off-site affordable units prior to the issuance of a certificate of occupancy for the PUD. *Id.* at Decision No. B(1)(e)(i). As described below, these conditions to the PUD Order significantly constrain Habitat’s ability to create zoning-compliant lot widths and to meet the off-street parking requirements.

The eight units proposed to be constructed pursuant to this BZA application will help to satisfy Level 2’s and Habitat’s commitment to construct the 13 off-site affordable housing units. All of the eight units proposed for the Property are located in ANC 5D, will be sold to households earning no more than 50% of the AMI, and will each have three bedrooms.

C. 1833 Central Place – Companion Application

The Applicant simultaneously filed a companion BZA application with the present case for property located at 1833 Central Place, NE (Square 4044, Lot 10), which is located directly across Central Place from the Property. The Applicant proposes to subdivide 1833 Central Place into two new record lots and construct one flat (two units) on each new lot, thus developing four new units. The flats at 1833 Central Place will be identical to the flats proposed for the Property, and the Applicant requested the same zoning relief (variances from the lot width and off-street parking requirements) for 1833 Central Place as it did for the Property. The flats at 1833 Central Place will also count towards the off-site affordable housing requirement set forth in Z.C. Order No. 15-01.

D. 1814 Central Place – The Property

1814 Central Place is located on Lot 57 in Square 4047 in the northeast quadrant of the District. Square 4047 is bounded by Gallaudet Street, NE to the north, Central Place, NE to the east, Capitol Avenue, NE to the south, and Kendall Street, NE to the west. The Property is located on the west side of Central Place, NE, and has approximately 23,963 square feet of land area. The Property is bounded by private property to the north, south, and west, and Central Place, NE to the east, with no alley access.

The southern portion of the Property is presently improved with the Trinity Baptist Church and its associated surface parking; the northern portion of Lot 57 is vacant. The Applicant proposes to construct the proposed flats on the vacant portion of the Property (hereinafter referred to as the “Site”) and to subdivide the Site so that each flat is constructed on its own record lot. Following subdivision, the portion of the Property that will be devoted to the flats will have approximately 60 linear feet of frontage on Central Place, NE (approximately 15 linear feet per

new record lot), and approximately 7,200 square feet of land area (approximately 1,800 square feet per new record lot).

E. Zoning

The Site is zoned R-4. The maximum permitted building height in the R-4 District for new construction of three or more immediately adjoining two-family dwellings built concurrently on separate lots is 40 feet and three stories. 11 DCMR § 400.1. The maximum permitted lot width for a flat in the R-4 District is 18 feet, and 16 feet for IZ units as a special exception. 11 DCMR §§ 401.3 and 2604.3. The maximum permitted lot occupancy is 60%. 11 DCMR § 403.2. No maximum density is prescribed. 11 DCMR § 402.4. One off-street parking space is required for each flat in the R-4 District. 11 DCMR § 2101.1.

F. Project Description

As shown on the architectural plans and elevations attached hereto as Exhibit B, the Applicant proposes to develop the Site with four flats (eight units). Each flat will be constructed to a maximum height of 32 feet, 2 inches and three stories, and will have approximately 2,646 square feet of gross floor area to be divided between the two units. The flats will be 15 feet in width and approximately 65 feet, 10 inches in depth. The flats will be split in half, such that the first level and the rear portion of the second level will be devoted to one unit, and the third level and the front portion of the second level will be devoted to a second unit. Each unit will have three bedrooms. Off-street parking will not be provided.

Consistent with Z.C. Order No. 15-01, all of the new units will be for-sale and devoted to households earning up to 50% of the AMI. The proposed residential use for the Site is consistent with its zoning designation and with the surrounding residential uses in the neighborhood.

IV.
THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

Area variances are requested from the lot width requirements of 11 DCMR § 401.3 and the on-site parking requirements of 11 DCMR § 2101.1.

A. Standard for Approving an Area Variance

Under D.C. Code §6-641.07(g)(3) and 11 DCMR § 3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

- (1) the property is unusual because of its size, shape or topography or other extraordinary or exceptional situation or condition;
- (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; and
- (3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

See French v. District of Columbia Board of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); see also, *Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). As discussed below, and as will be further explained at the public hearing, the Applicant meets the three-prong test.

B. The Property is Unusual Because of its Size, Shape, or Topography and is Affected by an Exceptional Situation or Condition

The phrase “exceptional situation or condition” in the above-quoted variance test may arise from a confluence of factors which affect a single property. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). The exceptional situation or condition applies not only to the land, but also to the existence and configuration of a building on the land. *See Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment*, 320 A.2nd 291, 294 (D.C. 1974).

In this case, the Site is an interior lot with 60 linear feet of street frontage, private property on three sides, and no alley access. The larger Property is the largest lot in Square 4047 and is partially improved with the Trinity Baptist Church and its associated surface parking, which restrict the size and location of the proposed new lots. Due to these existing improvements, there is only 60 linear feet and 7,200 square feet of land area on which to develop the flats, which directly impacts the ability to provide matter-of-right lot widths.

In addition, and as described above, Z.C. Order No. 15-01 imposed strict conditions on development of the PUD's associated off-site affordable units, which are the subject of this BZA application. Those conditions create an exceptional situation or condition and a resultant practical difficulty for the Applicant to create zoning-compliant lot widths and on-site parking spaces. The D.C. Court of Appeals has held that there is no requirement that the uniqueness "inheres in the land at issue." *Gilmartin*, 579 A.2d at 1168, *citing Capitol Hill Restoration Society v. D.C. Bd. of Zoning Adjustment*, 534 A.2d 939, 942 (D.C. 1987). To the contrary, a "difficulty which sets a property apart from its neighbors need not be physical but can stem from the zoning history of the case." *Monaco v. D.C. Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979). The uniqueness test means that a property "must be subject to some difficulty not shared by the entire neighborhood," not that the "difficulty must be a physical condition." *Id.* at 1098, *citing Taylor v. D.C. Bd. of Zoning Adjustment*, 308 A.2d 230 (1973). For example, private restrictive covenants "may be considered in their own right as an extraordinary condition of a particular piece of property, since they effectively restrict design, height, and use." *Monaco v. D.C. Bd. of Zoning Adjustment*, 407 A.2d 1091, 1099 (D.C. 1979)), and "historical factors, a relationship with Congress, and past actions of the BZA and Zoning Commission create an extraordinary or

exceptional situation or condition so as to fulfill the statutory variance requirement.”] *Monaco*, 407 A.2d at 1095-96.

Furthermore, “[i]ncreased expense and inconvenience to applicants for a variance are among the proper factors for BZA’s consideration.” *Gilmartin*, 579 A.2d at 1171. “While a commercial user before the BZA might not be able to establish uniqueness in a particular site’s exceptional profit-making potential, we consider that the BZA may be more flexible when it considers a non-profit organization which is a well-established element of our governmental system... public need for the use is an important factor in granting or denying a variance and the apparently objective standards of the enabling acts are applied differently to the several kinds of uses.” *Monaco*, 407 A.2d at 1098. For example, in approving an application from Randle Highlands Manor LP (which partnered with the Anacostia Economic Development Corporation) for a variance from the side yard requirements to allow 10 new single-family dwellings on a single subdivided lot, the Board stated that “the area variances are not sought to ensure any profit, but rather to enable the development of affordable housing at a site designated by the District of Columbia government for that purpose.” BZA Order No. 17316, p. 12. Similarly, in approving an application from KS FBC, LLC for a height variance to develop an apartment house addition to an existing church, the Board asserted that the “burden of proof for variance relief as to the first two elements is lessened for non-profits or public service organizations.” BZA Order No. 18272, p. 8.

The case law and BZA precedent referenced above is directly applicable to the present BZA application. Z.C. Order No. 15-01 requires Habitat to construct (i) a minimum of 7,747 square feet (seven units) of affordable housing within the boundary of ANC 5D, reserved for households earning up to 50% of the AMI; and (ii) a minimum of 6,000 square feet (six units) of affordable housing located in Ward 5, with a priority area of ANC 5D, also reserved for households

earning up to 50% of the AMI. *See* Z.C. Order No. 15-01, FF No. 36. The off-site homes are required to have an average size of not less than approximately 1,000 square feet, and an average of approximately 2.5 bedrooms. *Id.* at Decision No. B(1)(c). Moreover, building permit applications for the off-site affordable units must be filed prior to the issuance of a certificate of occupancy for the PUD. *Id.* at Decision No. (B)(1)(e)(i).

These conditions to the PUD Order significantly limit the types of properties available for Habitat to purchase and construct the off-site affordable units. For example, the requirement that seven units be located in ANC 5D and six units be located in Ward 5, with a priority to ANC 5D, severely restricts the ability for Habitat to find affordable, appropriately-sized land on which to construct the homes. Given the current market conditions, properties within ANC 5D's boundaries are particularly expensive, and vacant lots are difficult to find.² The limited number of sites that are for-sale and available for redevelopment have existing widths, areas, and access-points, onto which Habitat must fit the affordable homes, while still complying with the minimum number of bedrooms and square feet required by the PUD Order. If Habitat was permitted to construct the homes in other areas of the District, it would be easier to find larger lots that could potentially be divided into zoning-compliant lot widths and provide adequate space for on-site parking. Instead, the Applicant is limited to the existing sites that are available in ANC 5D.

Moreover, given that Z.C. Order No. 15-01 requires the future homes on the Site to be sold at 50% of the AMI, the Applicant is forced to increase the density on the new lots, which impacts their width. The current IZ sales pricing for single family homes is approximately \$206,000, compared to approximately \$450,000 to \$550,000 for market rate single family homes. *See* Inclusionary Zoning Affordable Housing Program 2015 Maximum Rent and Purchase Price

² The Site's acquisition cost alone was just under \$900,000, which is indicative of the competitive market in ANC 5D and Ward 5 in general.

Schedule. Without reducing the lot widths in order to increase the Site's density, the affordability requirements make the project financially unfeasible for Habitat to build. Requiring Habitat to create fewer new lots on the Site (and thus fewer affordable units) in order to comply with the lot width requirements would prevent Habitat from creating any new lots, thus limiting affordable housing in an area in dire need of it. Doing so would also prevent Habitat and Level 2 from complying with the requirements set forth in the PUD Order to provide affordable housing within ANC 5D. Alternatively, if Habitat was a for-profit builder and/or had no restrictions on development, it could take advantage of the competitive market and sell the future homes at market rate with larger, zoning-compliant lot widths and parking spaces, thus supporting the high acquisition costs.

Finally, Z.C. Order No. 15-01 requires that the affordable units have an average size of not less than approximately 1,000 square feet, and an average of approximately 2.5 bedrooms. *See* Z.C. Order No. 15-01, Decision No. B(1)(c). This condition requires Habitat to construct housing that is affordable for families. If Habitat was permitted to construct smaller units and still comply with the PUD Order, then it could more easily divide the Site into new lots that comply with the lot width requirements. However, in order to construct units that have an average area of 1,000 square feet and 2.5 bedrooms, the Applicant is limited in the type of dwelling unit that it can construct, thus triggering the lot-width minimum requirements.

C. **Strict Application of the Zoning Regulations Would Result in a Practical Difficulty to the Owner**

To meet the standard for practical difficulty, "[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A. 2d 535, 542 (D.C. 1972). In area

variances, such as those requested in this case, applicants are not required to show "undue hardship" but must satisfy only "the lower 'practical difficulty' standards." *Tyler v. D.C. Bd. of Zoning Adjustment*, 606 A.2d 1362, 1365 (D.C. 1992), citing *Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990). Finally, it is well settled that the BZA may consider "... a wide range of factors in determining whether there is an 'unnecessary burden' or 'practical difficulty'...." *Gilmartin*, 579 A.2d at 1171, citing *Barbour v. D.C. Bd. of Zoning Adjustment*, 358 A. 2d 326, 327 (D.C. 1976). *See also*, *Tyler v. D.C. Bd. of Zoning Adjustment*, 606 A.2d 1362, 1367 (D.C. 1992). Thus, to demonstrate practical difficulty, the Applicant must show that strict compliance with the regulations is burdensome, not impossible.

1. Lot Width

The Zoning Regulations require a lot width of 18 feet for a flat in the R-4 District, and 16 feet for IZ units as a special exception. *See* 11 DCMR §§ 401.3 and 2604.3. The Applicant proposes to create four new record lots on the Site that are each 15 feet in width—which is only one foot less than the minimum with required for an IZ unit. The Applicant notes that under the new Zoning Regulations ("ZRR"), which will go into effect on September 5, 2016, a minimum lot width of 15 feet is permitted for an IZ flat in the RF-1 District, which is the District to which the current R-4 District will convert. *See* Subtitle E § 201.1.

Due to the Site's total street frontage of 60 feet and its land-locked condition, it is practically difficult for the Applicant to divide the Site into four 16 foot wide lots. At 60 feet wide, the maximum achievable width for each proposed record lot is 15 feet ($60/4 = 15$). Due to the existing church and surface parking on the southern portion of the Property, and the existence of private property on three sides of the Site, the land area available for the new lots cannot be increased or extended in any direction. The Applicant tried to purchase more land area from the

church in order to create zoning-compliant record lots, but the church would not sell more than the 7,200 square feet of land area for which the Applicant has a contract to purchase (which amounts to approximately 30% of the 23,963 square foot Property).

If the Applicant subdivided the 60-foot wide Site into three lots instead of four (resulting in six units instead of eight), then each lot would have a compliant lot width. However, as described above, doing so would prevent Habitat from constructing the units at all, since selling six units at 50% of the AMI makes the project financially unfeasible. If Habitat was somehow able to make up the financial difference and proceed with three lots instead of four, the result would be to reduce the amount of affordable housing provided and slow down the process of developing off-site affordable units pursuant to the PUD Order, which requires that building permit applications must be filed for the off-site affordable units before Level 2 can obtain a certificate of occupancy for the associated PUD. *See* Z.C. Order No. 15-01, Decision No. B(1)(d).

Moreover, the proposed 15-foot width for each subdivided lot is only one foot less than the width permitted for IZ units as a special exception under 11 DCMR § 2604.3 (and is permitted as a matter-of-right under the ZRR), such that the proposed record lots are consistent with the spirit and intent of the Zoning Regulations.

2. Parking

Section 2101.1 of the Zoning Regulations requires one off-street parking space for each two dwelling units for flats in the R-4 District. Thus, the Applicant is required to provide one off-street parking space on each proposed lot (four total). In this case, the Applicant cannot provide any on-site parking spaces as follows:

- a. The Applicant cannot provide parking at the rear of the Site. Due to the Site's landlocked condition with no alley access, it is impossible for vehicles to access the Site's rear.
- b. The Applicant cannot provide parking at the front of the Site. Sections 2116.2 and 2116.4 of the Zoning Regulations prohibit surface parking in front yards. Thus, the only other option is to provide access from the front of the Site into a front-loaded garage. However, front-loaded garages are not a viable option since they would take up a significant portion of the each flat's living space, thus eliminating one of the three required bedrooms and negatively impacting the efficiently-designed floor plans.

The Applicant also notes that under the new Zoning Regulations, parking is not required for a flat if the lot does not have access to an open, improved, and public alley with a minimum width of 10 feet. *See* Subtitle C § 702.3(a). Thus, the lack of on-site parking at the Site will be permitted as a matter-of-right once the ZRR is implemented in September, 2016.

D. The Requested Relief Will Not Result in a Substantial Detriment to the Public Good Nor a Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan

The requested relief can be granted without harm to the public good and without threat to the integrity of the zone plan. The construction of four new flats (eight units) that will be set aside for-sale to households earning an average of no more than 50% of the AMI will be a great benefit to the surrounding community and to the District as a whole. The new units will contribute to the vibrancy of the neighborhood, will infill the vacant portion of the Property, and will fully support the District's housing and affordable housing goals.

The proposed lot widths will not result in a detriment to the public good or zone plan. The 15-foot lot widths are consistent with lot widths in the surrounding neighborhood and are only one

foot short of the minimum 16-foot lot width permitted for IZ units as a special exception. At 120 feet deep, each new lot is large enough to accommodate units designed for families with three bedrooms and generous living spaces. If the Applicant created zoning-compliant lot widths, it would have to eliminate one of the proposed record lots, thus resulting in two fewer affordable units and contradicting the District's goal of increasing housing and affordable housing, particularly family housing at 50% of the AMI. In addition, each proposed lot will have a 39.5 foot rear yard where a 20 foot rear yard is required, plus a 14 foot, 8 inch front yard, which will result in significant open space. Moreover, each new lot will still meet the minimum lot area and lot occupancy requirements, thus providing substantial square footage, and each flat will comply with all Building Code requirements.

Regarding the off-street parking requirements, the lack of on-site parking spaces will not result in a detriment to the public good or zone plan. The Site is conveniently located near multiple Metrobus lines, including the D3, D4, D8, and E2 lines, which all have stops located approximately 0.1 mile from the Site. The Site is situated in close walking distance to a variety of amenities, including grocery stores (Mom's Organic Market is located approximately 0.4 miles away), schools, parks, and eating and drinking establishments, such that many new residents will not need to use a car for many daily activities. Moreover, there is significant on-street parking available throughout the neighborhood surrounding the Site, such that future residents and their visitors will be able to park on the street without causing any appreciable impacts to the existing on-street parking conditions.

Pursuant to DDOT's report (Exhibit 25 in the case record), which indicated no objection to approval of the requested variance, the project "will have no adverse impacts on the travel conditions of the District's transportation network." Finally, and as further described below, the

Applicant notes that it received unanimous support from the ANC for both the lot width and off-street parking variances.

Overall, the design of the proposed flats respects the existing residential character of the neighborhood, will incorporate new, high-quality architecture at affordable prices, and will infill a vacant portion of the Property. These endeavors are consistent with *Policy LU-1.4.1* of the Comprehensive Plan for the National Capital, which encourages “infill development on vacant land within the city, particularly in areas where there are vacant lots that create “gaps” in the urban fabric and detract from the character of a commercial or residential street. Such development should complement the established character of the area and should not create sharp changes in the physical development pattern.” 10A DCMR § 307.5. In this case, the Applicant is constructing new affordable infill housing on a vacant lot that is consistent with the character of the surrounding neighborhood and will blend in well with surrounding development patterns.

V. **COMMUNITY SUPPORT**

The Applicant has worked extensively with the community and is pleased to have support for the project from ANC 5D. On February 9, 2016, at its regularly scheduled, duly noticed public meeting, with a quorum of commissioners and the public present, ANC 5D voted unanimously (7-0-0) to support the application. The ANC’s letter of support is included in the record at Exhibit 23.

VI.
EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION

- Exhibit A: A portion of the Zoning Map showing the Site
- Exhibit B: Architectural Plans and Elevations
- Exhibit C: Outlines of Testimony
- Exhibit D: Resume of Expert Witness

VII.
WITNESSES

- A. Suzanne Slater, Habitat for Humanity of Washington DC
- B. Nick Mroczkowski, Stoiber + Associates

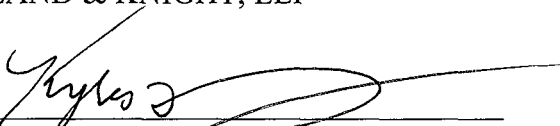
VIII.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for variance relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests the Board to grant the application.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By: _____


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