

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

**BZA CASE NO. 21451**

**Application of O’Rayon McKnight  
133 Galveston Place, S.W.  
Square 6239, Lot 89**

**Prehearing Statement in Support of Application**  
*filed pursuant to Subtitle §§ 300.15 and 300.16*

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**I. Overview and Nature of Relief Sought**

On behalf of O’Rayon McKnight (the “**Applicant**”), the owner of the property located at 133 Galveston Place, S.W. (Square 6239, Lot 89) (the “**Property**”), this statement is submitted pursuant to Subtitle X in support of an application for use variances from (i) the matter-of-right uses of Subtitle U § 201.1, and (ii) the nonconforming use requirements of Subtitle C § 204.4 (both pursuant to Subtitle X § 1002), to permit conversion of an existing, semi-detached, two-story plus basement flat to a four-unit apartment house in the R-2 Zone (the “**Project**”).

As discussed herein, the requested relief is justified by the Property’s unique history and surrounding multifamily context, the economic infeasibility of conforming uses, and the absence of any resulting detriment to the public good or the zone plan. The application seeks only to restore the Property its historic four-unit residential use, without expanding the building or introducing any adverse impacts to the neighborhood.

**II. Jurisdiction of the Board**

The Board has jurisdiction to grant the requested use variances pursuant to Subtitle X § 1000.1 of the Zoning Regulations.

**III. List of Exhibits**

- Exhibit A: Excerpt of Zoning Map
- Exhibit B: Prior Certificates of Occupancy for the Property
- Exhibit C: Interior Photographs of the Property
- Exhibit D: Map and Information of Surrounding Uses
- Exhibit E: Comparative Construction Estimates for Single-Family Home and Single-Family Home with Accessory Dwelling Unit (ADU) Uses
- Exhibit F: Construction Estimate to Renovate Property for Apartment House Use
- Exhibit G: Letter from Real Estate Broker Describing Efforts to Sell Property
- Exhibit H: Real Estate Feasibility Study Comparing Single-Family Home, Single-Family Home with ADU, and Proposed Apartment House Uses

#### **IV. Description of the Property and Neighborhood Context**

The Property is located in the Bellevue/Congress Heights neighborhood in the Southwest quadrant of the District in Ward 8. The Property contains approximately 4,536 square feet of land area according to the District tax records.

The Property is located on the north side of Galveston Place, S.W. and is bounded by a 16-foot public alley to the north, private property to the east and west, and Galveston Place, S.W. to the south. A 10-foot building restriction line is located along the southern portion of the Property's frontage on Galveston Place, S.W.

As shown on Exhibit A, the Property is located in the R-2 Zone District. The surrounding area is characterized by property zoned R-2. There are five properties to the southeast of the Property zoned R-3, and the properties to the west of the Property, across Martin Luther King, Jr. Avenue, S.W. are zoned RA-1. Although the surrounding area is primarily zoned R-2, the overwhelming majority of those properties are used as apartment houses.

#### **V. Description of the Existing Building and Project**

The Property is currently improved with a vacant, two-story plus basement building. The building shares a party wall on the western property line and has an 8-foot side yard on the east side, and is thus a semi-detached structure.

The building was constructed prior to 1947 and therefore predates adoption of the 1958 Zoning Regulations. The building was configured and used as a four-unit apartment for at least 40 years, as reflected by the following Certificates of Occupancy ("**CofO**") attached hereto as Exhibit B:

- CofO 115234, dated September 18, 1947, authorizing use of the property as "Apartment House"
- CofO 126161, dated May 28, 1949, authorizing use of the property as "Apartment"
- CofO B56001, dated March 24, 1966, authorizing use of the property as "Apartment House"
- CofO B117729, dated April 15, 1980, authorizing use of the property as "Apartment Building"
- CofO B133125, dated November 5, 1982, authorizing use of the property as "Apartment House – (4 units)"
- CofO B149850, dated June 3, 1987, authorizing use of the property as "Apartment House – 4 units"

At some point, the prior owner converted the building into a two-family dwelling (i.e., a flat). However, the Applicant has not been able to locate any District records, such as a building permit or Certificate of Occupancy, or other supporting documentation reflecting this change of use. As shown on the photographs attached hereto as Exhibit C, the building has been vacant for a number of years and is beginning to deteriorate.

The Applicant purchased the property in 2024 and is now seeking relief to renovate the building and use it for its original, four-unit apartment building use. The Applicant is not proposing to expand or otherwise increase the building’s footprint. Critically, the building’s original configuration as a four-unit apartment house means that renovation for apartment use can largely work within the existing structural framework, whereas conversion to a single-family dwelling or a single-family dwelling with an ADU would require demolition of the existing interior partitions, load-bearing walls, stairways, and utility risers, followed by a complete reconfiguration of the building’s interior — a far more invasive and costly undertaking. Creation of the proposed four units, and the resulting rental revenue, is critical to the Applicant’s ability to undertake the substantial repairs required throughout the building. In contrast, the revenue generated by a single-family dwelling, or even a single-family dwelling with an ADU, would be insufficient to support the level of investment required and is economically unviable.

Upon completion of the Project, the building will be rehabilitated to modern residential standards, allowing the structure to return to productive use and contribute meaningfully to neighborhood stability and vibrancy. The Project will also advance the District’s policy goals of reducing vacant properties and increasing housing supply by converting a vacant structure into four habitable dwelling units.

Other than the use variances requested by this Application, the Project will fully comply with applicable requirements of the Zoning Regulations for the R-2 Zone, and no additional zoning relief is necessary for the Project to move forward.

## **VI. Justifications for Requested Use Variances**

### **A. Burden of Proof**

Under D.C. Code § 6-641.07(g)(3) and 11-X DCMR § 1000.1, the Board is authorized to grant a variance from “the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02” when the following conditions are met:

1. the property is affected by exceptional size, shape, or topography or other extraordinary or exceptional condition or situation;
2. the owner would encounter peculiar and exceptional practical difficulties or undue hardship 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. D.C. Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. D.C. Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); see also *Capitol Hill Restoration Society, Inc. v. D.C. Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

The Zoning Regulations distinguish between area variances and use variances. In this case, the Applicant's request is properly evaluated as a use variance because the Applicant proposes a use that is not permitted as a matter of right or via special exception in the Zone District where the property is located. (11-X DCMR § 1001.4(a)).

Thus, pursuant to Subtitle X § 1002.1, the Applicant must prove that, as a result of the attributes of a specific piece of property described in Subtitle X § 1000.1, the strict application of Subtitle U § 201 would result in exceptional and undue hardship upon the Applicant. As discussed below, and as will be further explained at the public hearing, the subject application meets the three-prong variance test.

## B. Justification

### i. Extraordinary or Exceptional Condition or Situation

The D.C. Court of Appeals held in *Clerics of St. Viator v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 293-94 (D.C. 1974), that the exceptional situation or condition standard goes to the “property”, not just the “land”; and that “property generally includes the permanent structures existing on the land.” Indeed, the Court repeatedly has rejected the idea that the exceptional situation and practical difficulty justifying a variance must arise from the physical aspects of the land. See *Monaco*, 407 A.2d at 1097. Further, it is not necessary that the uniqueness arise from a single situation or condition on the Property. Rather, it may arise from a “confluence of factors.” *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). One of the factors the Board may consider in evaluating whether a property is unique is the property's past zoning history. *Monaco*, 407 A.2d at 1097–98. Here, several factors converge to create an exceptional condition affecting the Property.

First, as described above, the existing building on the Property was developed prior to the adoption of the 1958 Zoning Regulations and was **used for at least 40 years as a four-unit apartment house**. Such use is confirmed by multiples CofOs dating back to 1947. See Exhibit B. Although the building was later reconfigured by a prior owner to contain two dwelling units, the Applicant has not been able to locate any building permits or CofO authorizing conversion or use of the building into a flat. Thus, the only legally-valid, use of the Property according to District records is as a four-unit apartment house.

Second, the building is **currently vacant and has been unoccupied** for a number of years, requiring substantial rehabilitation before it can be reoccupied. Because of the building's existing condition and its original four-unit apartment configuration, converting it into a single-family dwelling — or even a single-family dwelling with an ADU, the other principal residential use permitted as a matter of right in the R-2 zone — would require extensive interior work and reconstruction, and complete reconfiguration of the building's structural, mechanical, electrical, and plumbing systems. This is not a matter of cosmetic renovation; it would require fundamentally rebuilding the interior of the structure to accommodate a use for which it was never designed.

Third, even if the property were able to be converted to **a single-family dwelling, it would be the only such property in the immediate neighborhood.** Indeed, as shown on Exhibit D, of the 56 properties surveyed near the Property, there is one community-based residential facility (CBRF), nine flats, and 46 apartment houses — and zero single-family homes. Thus, the overwhelming majority of the buildings in the immediate neighborhood are apartment houses, and requiring the property to be used as a single-family dwelling, as opposed to its well-documented original use as an apartment house, would actually create an exceptional condition by introducing a use type that does not exist in the surrounding area.

Fourth, the D.C. Court of Appeals has held that “past zoning history can be taken into account in the uniqueness facet of the variance test.” *Monaco* at 1098 (D.C. 1979) The Court has also held that “the extraordinary or exceptional condition need not be inherent in the land, it can be caused by subsequent event extraneous to the land itself.” *De Azcarate vs. District of Columbia Bd. Of Zoning Adjustment*, 388 A.2d. 1233, 1237 (D.C. 1978). These holdings directly apply in this case. The Property was rezoned to R-2 pursuant to Zoning Commission (Z.C.) Order No. 08-12, which rezoned large areas from R-5-A to R-2, R-3, and R-4 zones. At that time, the Office of Planning (“OP”) explained that the rezoning was intended to better align zoning with prevailing neighborhood character and Comprehensive Plan policies, and to prevent the construction of new, infill apartment buildings. The findings stated in the OP Setdown report, dated May 2, 2008, and marked as Exhibit 1 in the public record for Z.C. Case No. 08-12, further underscores this point:

- “While some of existing apartment buildings have recently been rehabilitated or converted into condominiums, new apartment buildings are being proposed and constructed, often on small infill lots throughout the subject area. Many Ward 8 residents, through the Comprehensive Plan process and other neighborhood planning and development forums, **have indicated a desire to protect the lower density areas from further infill apartment development.**”  
See OP Report at Page 2.
- The proposed zoning amendments would allow development of single family homes and duplexes to match the existing neighborhood character, as well as row houses in any, R-3 or R-4 District. **New apartment buildings would not be permitted. Existing apartment buildings would be "grandfathered," meaning they could continue to operate but would not be able to expand.** See OP Report at Page 2.
- Much of the recent development in Ward 8 neighborhoods has consisted of apartment buildings on vacant or abandon parcels located in low/moderate density areas. There are many such parcels still available for future development and under current zoning regulations, more apartment structures are likely to be proposed and constructed. **The proposed zoning map amendments would allow development of single-family homes, duplexes and, in areas proposed to be zoned R-3, row houses consistent with existing neighborhoods character, but would restrict new apartment buildings. Most areas which are already predominantly apartments have been excluded from this proposal.** See OP Report at Page 4.

Thus, it is clear from the record in Z.C. Case No. 08-12 that the goal of the rezoning was to prevent the construction of new apartment buildings on infill lots, and not to preclude the continued use of existing apartment buildings. However, despite the statement that “[m]ost areas which are already predominantly apartments have been excluded from this proposal,” the prevailing built environment on Galveston Place, S.W. then, and continues to be, existing multifamily residential buildings. As a result, the zoning designation imposed through the bulk rezoning fails to reflect either the historic development of the Property or the longstanding and prevailing multifamily development pattern of the surrounding area. This zoning change therefore contributes to the “extraordinary or exceptional condition or situation” in this case because it created a mismatch between the new zone and applicable uses compared to the actual use at this Property at the time of the rezoning and the immediate area.

*ii. Exceptional and Undue Hardship*

To satisfy the second element for a use variance, the Applicant must demonstrate “undue hardship.” The D.C. Court of Appeals has established that the applicant must demonstrate that “reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations.” *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. 1972). The Court of Appeals has held that the “applicant must prove that ‘the property cannot be put to any conforming use with a fair and reasonable return arising out of the ownership thereof.’” *Downtown Cluster of Congregations v. District of Columbia Bd. of Zoning Adjustment*, 675 A.2d 484, 492 (D.C. 1996) (quoting *Palmer*, 287 A.2d at 542). Importantly, it is also proper for the Board to consider economic impacts to an applicant in assessing whether the undue hardship prong has been met. See *id.* (quoting *Gilmartin*, 579 A.2d at 1170 for the proposition that “the BZA may consider economic use of property . . . as a factor in deciding the question of what constitutes an unnecessary burden” (quotations omitted)).

First, the building was originally constructed and used for at least 40 years as a four-unit apartment house. Restricting the Property to a single-family dwelling — or a single-family dwelling with an ADU — would require the Applicant to undertake extensive work to fundamentally alter the existing building structure, and would require the entire building to be brought to current code standards for a use the building was never designed to accommodate. As detailed in the estimate attached hereto as Exhibit E, it would cost \$399,785.17 to renovate the property into a single-family dwelling and it would cost \$339,985.17 to renovate the property for use as a single family home with ADU. However, as shown on the estimate attached hereto at Exhibit F, it would cost \$186,316.20 to renovate and remodel the property back into its original, four-unit apartment house use. Thus, converting the Property from its initially constructed layout as a four-unit apartment house into a single-family dwelling is approximately 114.57% (\$213,468.97) more expensive and converting into a single-family home with an ADU is approximately 82.48% (\$153,668.97) more expensive, depending upon the ultimate contractor and level of finishes selected.

According to the Build King contractor, the estimates attached at Exhibit E and Exhibit F were built by pricing each trade based on the expected scope of work, including material quantities, fixture/equipment counts, labor hours, and layout complexity. The estimates demonstrate that the single-family and single-family with ADU require a substantially larger interior build-out than the four-unit apartment option, which is why interior trade categories are higher. The primary cost

differences are in categories tied to interior reconfiguration, such as demolition, framing, insulation, drywall, plumbing, electrical, and HVAC. These figures were driven by the amount of interior restructuring and labor required for each layout rather than square footage alone. For example:

- Demolition: \$13,052.00/\$11,052.00 vs. \$3,433.00
- Framing: \$93,343.52/\$80,343.52 vs. \$33,357.75
- Plumbing: \$33,941.60/ \$24,941.60 vs. \$14,941.60
- Electrical: \$37,745.60/ \$29,245.60 vs. \$16,745.60
- HVAC: \$45,307.20/ \$36,307.20 vs. \$18,643.00
- Interior work: \$64,989.20/ \$55,689.20 vs. \$34,989.20

Categories such as roofing (\$13,416.81), exterior paint (\$12,393.87), landscaping (\$3,801.10), gutters (\$1,628.71), and exterior work (\$650.00) remain identical because the exterior structure and site scope do not change between the two renovation options. Essentially, the apartment version requires less interior conversion work, while building-level exterior costs remain constant across both concepts.

Second, there is no demand for a single-family dwelling in this neighborhood. Indeed, as indicated in the letter attached hereto as [Exhibit G](#), the Applicant retained a broker who listed the Property for sale in February 2025; actively marketed it to buyers interested in any potential use; reduced the price multiple times; and yet the property failed to generate a viable offer for any matter-of-right use and was ultimately withdrawn from the market in June 2025, i.e., approximately 129 days later. The absence of any interest in the Property for matter-of-right uses — despite sustained marketing efforts and multiple price reductions — is consistent with the neighborhood context, where there are no single-family homes and the prevailing use is multifamily residential. Thus, requiring the Property to either remain as a vacant structure or be renovated for use as a single-family home or single-family home with ADU (for which there is no demonstrated market) constitutes an undue hardship to the Applicant.

Third, both the D.C. Court of Appeals and the BZA have recognized that the financial infeasibility of a project can be an undue hardship. For example, in BZA Case No. [21229](#), for property located in the same square and the same R-2 zone as the Property in this case, the BZA approved a use variance to allow the construction of a new, 11-unit apartment house in the R-2 zone. In that case, the Board credited the applicant’s argument that developing the property into two single-family homes would be economically infeasible due to high construction costs, limited market viability, and financing challenges; whereas constructing an 11-unit apartment building results in a financially viable project. See, Applicant's Prehearing Statement, dated January 30, 2025 at pages 5-9, [Exhibit 19A](#). OP also agreed that the applicant’s inability to put the land to a zoning-compliant use at a reasonable return resulted in an undue hardship to the applicant. See, OP Report, dated February 13, 2025 at page 4, [Exhibit 24](#).

Similarly, in BZA Case No. [20997](#), a case with facts very similar to those in this case, the BZA granted a use variance to allow an applicant to convert a flat into a four-unit apartment building due to the economic infeasibility of renovating and maintaining the property as two units. In recommending approval of the use variance, OP stated:

*b. Undue Hardship*

The exceptional conditions would result in an undue hardship to the owner if the Regulations were strictly followed. The R-3 zone limits the use of the building to a single residential unit, or, at most, two units if the existing C of O can be maintained. According to the data submitted to the record, the cost simply to repair the property, combined with other costs resulting from the fire, would exceed the revenue that could be generated by a two-unit project, and a rehabilitation project would not be viable. Therefore, in order to rehabilitate the property and put it to productive use, the applicant proposes additional units, which would bring the project closer to a break-even point.

See, OP Supplemental Report, dated February 28, 2024 at page 2, [Exhibit 32](#).

The same is true in this case. As indicated in the feasibility analysis attached hereto as [Exhibit H](#), developing the Property for a single-family dwelling or a single-family dwelling with an accessory dwelling unit do not generate a financially viable return under current market conditions. However, returning the existing building to its original, four-unit apartment house use is more financially viable compared to the other uses and produces the least adverse financial outcome. Specifically, the feasibility analysis included the following conclusions:

Scenario	Finding
<b>Scenario A: Single Family (5-BR)</b>	Projected NOI of \$35,885 against a total development cost of \$1,079,764 produces an unlevered yield on cost of 3.3% - approximately 370 basis points below the submarket cap rate floor of 7.0%. The concluded market value on a comparable sales basis (\$475,000) is \$604,764 below total development cost, resulting in a significant equity deficit. Scenario A does not generate a financially viable return under current market conditions.
<b>Scenario B: 1 Unit + 1 ADU</b>	Projected NOI of \$31,456 against a total development cost of \$1,013,984 - the second highest of the three programs - produces an unlevered yield on cost of 3.1%, well below the submarket cap rate floor of 7.0%. Hard construction costs of \$339,985 represent a significant capital commitment relative to the incremental income gained over Scenario A. The equity deficit relative to comparable sales (\$500,000
	concluded value) is \$513,984. Scenario B does not generate a financially viable return under current market conditions.
<b>Scenario C: 4-Unit Building</b>	Projected NOI of \$38,064 against a total development cost of \$844,948 produces an unlevered yield on cost of 4.5% - the highest of the three scenarios, and 250 basis points below the submarket cap rate floor of 7.0%. Scenario C is consistent with the existing four-unit residential development pattern on the subject block, as evidenced by confirmed sales at 58 Galveston Pl SW (four-unit, built 1944) and 64 Galveston Pl SW (four-unit, built 1944). The concluded market value on a comparable sales basis (\$750,000) reflects an equity deficit of \$94,948, the smallest of the three programs by a significant margin. While Scenario C does not achieve a market-standard return, it produces the least adverse financial outcome relative to the capital committed.

Thus, granting the requested use variances to allow the proposed four-unit apartment use enables a viable project to move forward and avoids the undue hardship of leaving the building vacant or requiring a cost-prohibitive conversion to a single-family home or a single-family home with an ADU that is not economically viable.

*iii. No Substantial Detriment to the Public Good or Substantial Impairment to the Intent, Purpose or Integrity of the Zone Plan*

Granting the requested relief would simply allow the existing building to be used as it was previously used for at least 40 years. The Project does not propose any additions or increases in floor area, and the proposal will not alter the building's height, bulk, or physical presence along Galveston Place. Because the building was originally designed and constructed as a four-unit apartment house, returning it to that use will not generate any impacts beyond those contemplated by the building's original design. Thus, there will not be any resulting adverse impacts to light, air, privacy, or neighborhood character.

Rehabilitation of the currently vacant structure will return it to productive residential use, which will benefit the surrounding neighborhood, and will advance broader District housing goals by adding additional housing units in a neighborhood with demonstrated need. The District of Columbia has repeatedly identified the creation of new housing and the reduction of vacant and blighted properties as critical policy priorities. Mayor Bowser's Housing Framework<sup>1</sup> and the District's Comprehensive Plan both emphasize the need to produce housing at all levels of affordability and to bring vacant properties back into productive use, particularly in underserved communities east of the Anacostia River. Small apartment buildings such as the Project provide an important source of naturally occurring affordable housing, which contributes to housing affordability in Ward 8 neighborhoods. By contrast, denying the variance would directly undermine these policy objectives by condemning the Property to continued vacancy and deterioration — effectively removing a viable housing resource from the District's inventory at a time when the city faces an acute housing shortage. The practical consequence of denial is not the creation of a single-family home (for which there is no demand), but rather the perpetuation of a vacant, deteriorating structure that contributes to neighborhood blight and produces no housing whatsoever.

Although the Zoning Regulations generally contemplate that nonconforming uses may eventually be replaced by conforming uses, the Zoning Regulations expressly provide for the variance process, which allows the Board to grant relief where strict application of the zoning regulations would result in exceptional and undue hardship arising from the unique attributes of a property. In this case, the Applicant has demonstrated that such hardship exists as described above.

The requested relief would allow the building to be restored to its original residential intensity as a four-unit apartment house, and is not introducing a new or incompatible use. As described above, the majority of the buildings in the immediate neighborhood are apartment houses and there are no nearby single-family homes. Given the existing apartment house development pattern along Galveston Place, the Project would be consistent with the surrounding

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<sup>1</sup> See <https://housing.dc.gov/>.

neighborhood context. Indeed, in supporting a use variance to construct a new, 11-unit apartment building in the same square as the Property, OP stated:

**No substantial detriment to the public good**

Approval of the requested variance would not result in substantial detriment to the public good. The area has predominantly consisted of apartment complexes since at least the 1940s. Although it was downzoned in 2008, this was to protect nearby single-family homes, not to foster the conversion of multi-family neighborhoods to single family ones. The subject property, however, is surrounded by multifamily buildings and is not close to lower-density properties to result in negative impacts. Providing new market rate and affordable units in a configuration consistent with other buildings on the block, would not pose a substantial detriment to the public good and would, in fact, be a form more consistent with neighborhood character.

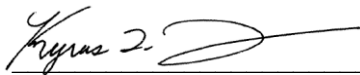
See, OP Report, dated February 13, 2025 at page 4, Exhibit 24 in BZA Case No. 21229.

Finally, according to Subtitle D § 101.6 of the Zoning Regulations, the purpose of the R-2 zone is to: (a) provide for areas with semi-detached houses; and (b) protect these areas from invasion by denser types of residential development. In this case, although the surrounding area is characterized by property zoned R-2, the overwhelming use of those properties are apartment houses. See Exhibit D. Thus, granting the requested relief will not result in an “invasion by denser types of residential development”, but will rather allow the existing building to be used as it was previously used for at least 40 years, as are the majority of the other properties in the neighborhood.

For these reasons, approval of the requested use variances will not substantially impair the intent, purpose, or integrity of the Zoning Regulations or the Zoning Map. To the contrary, granting the variance will affirmatively advance the District’s goals of increasing housing supply, eliminating vacant properties, and revitalizing neighborhoods — outcomes that are fully consistent with the intent and purpose of the zoning framework.

Respectfully submitted,

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