

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC MEETING

+ + + + +

WEDNESDAY
MAY 8, 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
CHRISHAUN S. SMITH, NCPC Designee
CARL H. BLAKE, District Resident Appointee

ZONING COMMISSION MEMBERS PRESENT:

TAMMY STIDHAM, NPS Designee

OFFICE OF ZONING STAFF PRESENT:

KEARA MEHLERT, Secretary to the BZA
PAUL YOUNG, A/V Production Specialist

OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

SARAH BAJAJ, ESQ.
COMETRIA COOPER, ESQ.
CARISSA DEMARE, ESQ.
RYAN NICHOLAS, ESQ.

The transcript constitutes the minutes from the Regular Public Meeting held on May 8, 2024.

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

(9:35 a.m.)

CHAIRPERSON HILL: Good morning, ladies and gentlemen, Board of Zoning Adjustment. Today is May 8th. The public hearing will please come to order.

My name is Fred Hill, Chairman of the District of Columbia Board of Zoning Adjustment. Joining me today are Board members Lorna John, Carl Blake, and Chrishaun Smith, and Zoning Commissioner Tammy Stidham.

Today's meeting and hearing agenda are 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 call-in instructions.

At the conclusion of decision meeting session, I shall, in consultation with the Office of Zoning, determine whether a full or summary order may be issued.

1 A full order is required when the decision it contains is
2 adverse to a party, including an affected ANC. A full
3 order may also be needed if the Board's decision differs
4 from the Office of Planning's recommendation. Although
5 the Board favors the use of summary orders whenever
6 possible, an applicant may not request the Board to issue
7 such an order.

8 In today's hearing session, everyone who's
9 listening on Webex or by telephone will be muted during
10 the hearing, and only persons who have signed up to
11 participate or testify will be unmuted at the appropriate
12 time. Please state your name and home address before
13 providing oral testimony or your presentation. Oral
14 presentations should be limited to a summary of your most
15 important points. When you're finished speaking, please
16 mute your audio so that your microphone is no longer
17 picking up sound or background noise.

18 All persons planning to testify either in favor
19 or in opposition should have signed up in advance. They
20 will be called by name to testify. If this is an appeal,
21 only parties are allowed to testify. By signing up to
22 testify, all participants complete the oath or affirmation
23 as required by Y 408.7.

24 Requests to enter evidence at the time of the
25 online virtual hearing, such as written testimony or

1 additional supporting documents other than live video,
2 which may not be presented as part of testimony, may be
3 allowed pursuant to Subtitle Y 103.13, provided that the
4 person making the request to enter an exhibit explain, A),
5 how the proposed exhibit is relevant, B), the good cause
6 that justifies allowing the exhibit into the record,
7 including an explanation of why the requester did not file
8 the exhibit prior to the hearing pursuant to Y 206, and,
9 C), how the proposed exhibit would not unreasonably
10 prejudice any parties. The order of procedure for special
11 exception and variances are pursuant to Y 409.

12 At the conclusion of each case, an individual
13 who was unable to testify because of technical issues may
14 file a request for leave to file a written version of the
15 planned testimony to the record within 24 hours following
16 the conclusion of public testimony in the hearing. If
17 additional written testimony is accepted, the parties will
18 be allowed a reasonable time to respond as determined by
19 the Board.

20 The Board will then make its decision at its
21 next meeting session, but no earlier than 48 hours after
22 the hearing. Moreover, the Board may request additional
23 information, specific information to complete the record.
24 The Board and the staff will specify at the end of the
25 hearing exactly what is expected and the date when persons

1 must submit the evidence to the Office of Zoning. No
2 other information shall be accepted by the Board.

3 Finally, the District of Columbia
4 Administrative Procedures Act requires that the public
5 hearing on each case be held in the open before the
6 public. However, pursuant to Section 405(b) and 406 of
7 that Act, the Board may, consistent with its rules and
8 procedures and the Act, enter into closed meeting on a
9 case for purposes of seeking legal counsel on a case
10 pursuant to D.C. Official Code Section 2-575(b)(4) and/or
11 deliberating on a case pursuant to D.C. Official Code
12 Section 2-575(b)(13), but only after filing the necessary
13 public notice and, in the case of an emergency closed
14 meeting, after taking a roll call vote.

15 Madam Secretary, do we have any preliminary
16 matters?

17 MS. MEHLERT: Good morning, Mr. Chairman and
18 members of the Board. There's one agenda change for
19 today. That's Application Number 21109 of Jemal's
20 Corcoran, LLC, has been postponed to July 3rd, 2024.
21 Also, the Chairman has reviewed and granted a waiver to
22 allow late filings into the record -- old case record
23 pursuant to Subtitle Y, Section 206.7, and Section 103.13.

24 Any other late filings during the course of
25 today's live hearing should be presented before the Board

1 by the applicant or parties or witnesses after the case is
2 called. Any other preliminary matters will be noted when
3 the case is called today.

4 CHAIRPERSON HILL: Thank you. So you may go
5 ahead and call our first case.

6 MS. MEHLERT: First case in the Board's meeting
7 session today is on the expedited review calendar. It's
8 Application Number 21122 of the 3363 Chestnut Revocable
9 Trust, under agreement dated June 27, 2023. This is a
10 self-certified application pursuant to Subtitle X, Section
11 901.2, for a special exception under Subtitle D, Section
12 5201, on the accessory structure building area
13 requirements of Subtitle D, Section 1105.3

14 This project is to construct additions to two
15 existing accessory structures in the year yard of an
16 existing detached principal dwelling with three accessory
17 structures. Project is located in the R-1B/GT and R-3/GT
18 zones at 3238 R Street, Northwest, Square 1280, Lot 1015.

19 CHAIRPERSON HILL: Okay. Okay. All right.
20 Well, good morning, everybody. I see everybody. I think
21 we probably all know or are familiar with this location or
22 have had an opportunity to visit, I would think. And I
23 reviewed the record and the analysis that the Applicant
24 had provided us, as well as that of the Office of Planning
25 and the ANC.

1 As you have seen from the record, this is an
2 expansion of a few of the buildings there. And I think
3 that, actually, the Office of Planning's report I found
4 the most helpful in terms of their analysis of the
5 expansion and then also the regulations that we are
6 supposed to look at in terms of determining if this is
7 meeting the criteria for us to grant the relief. I do
8 believe it is meeting the criteria for us to grant the
9 relief, and I'm going to be voting in favor of the
10 application.

11 Mr. Smith, do you have anything you'd like to
12 add?

13 MEMBER SMITH: I have nothing to add. I agree
14 with your testimony regarding this case, Chairman Hill.
15 I'm supportive as well.

16 CHAIRPERSON HILL: Thank you.

17 Mr. Blake?

18 MEMBER BLAKE: I'm in support of the
19 application. I believe the Applicant has met the burden
20 of proof, and I'll be voting in favor.

21 CHAIRPERSON HILL: Thank you.

22 Commissioner Stidham? You're on mute,
23 Commissioner. Yep. Now we can hear you.

24 COMMISSIONER STIDHAM: Okay. Sorry. What I
25 said is I agree with what's already been stated and will

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1 be voting in support as well.

2 CHAIRPERSON HILL: Thank you.

3 Vice Chair John?

4 VICE CHAIR JOHN: I have nothing to add, Mr.
5 Chairman. I agree with your comments, as well as -- I
6 would give great weight to OP's analysis and
7 recommendations.

8 CHAIRPERSON HILL: Thank you.

9 All right. I'm going to go ahead and make a
10 motion to approve Application Number 21122 as captioned
11 right by the Secretary and ask for a second.

12 Ms. John?

13 VICE CHAIR JOHN: Second.

14 CHAIRPERSON HILL: The motion has been made and
15 seconded.

16 Madam Secretary, if you could take the roll
17 call, please.

18 MS. MEHLERT: Respond to the Chair's motion to
19 approve the application.

20 Chairman Hill?

21 CHAIRPERSON HILL: Yes.

22 MS. MEHLERT: Vice Chair John?

23 VICE CHAIR JOHN: Yes.

24 MS. MEHLERT: Mr. Smith?

25 (No audible response.)

1 MS. MEHLERT: Mr. Blake?

2 MEMBER BLAKE: Yes.

3 MS. MEHLERT: And Commissioner Stidham?

4 COMMISSIONER STIDHAM: Yes.

5 MS. MEHLERT: Staff records the vote as five to
6 zero to zero to approve Application 2122 on the motion
7 made by Chairman Hill and seconded by Vice Chair John.

8 CHAIRPERSON HILL: You may call our next one.

9 MS. MEHLERT: Next case in the meeting session
10 is Application Number 19887A of Janet Stedman. This is a
11 request pursuant to Subtitle Y, Section 703, for a
12 modification of consequence to modify a condition of
13 approval adopted in BZA Order Number 19887 issued April
14 1st, 2019.

15 This is to eliminate condition number 10 of the
16 original order and allow a storage shed located on the
17 exterior of the building to be used as trash storage. The
18 project is located in the RF-1 zone at 1724 North Capitol
19 Street, Northwest, Square 3105, Lot 72. And as a
20 preliminary matter, I will note the Applicant submitted a
21 motion to postpone the Board's decision.

22 CHAIRPERSON HILL: Okay. Where's the motion to
23 postpone?

24 MS. MEHLERT: In Exhibit 19.

25 CHAIRPERSON HILL: Okay. The motion to

1 postpone is from the ANC, or is it just from the
2 Commissioner?

3 MS. MEHLERT: Oh, it's from the Applicant. It
4 sounds like they were going to be traveling today, so they
5 wanted, I guess, to postpone the Board's --

6 CHAIRPERSON HILL: Oh. I'm sorry. Okay. I
7 guess -- I'll look to my fellow Board members. I mean, I
8 guess I, when I was reviewing this, was a little confused
9 as to whether or not this is something we would have the
10 Applicant before us for.

11 Do you all think you have enough information or
12 you will have enough information to vote on this without
13 speaking to anybody? Anybody can speak. I'll wait.

14 VICE CHAIR JOHN: So the only question I had,
15 which I don't know if the Board needs to answer -- the
16 architectural plans show that there's a shed, but the
17 Applicant is not seeking relief to modify the plans. So,
18 if the shed wasn't on the original application and the
19 Applicant needs zoning relief, then I think the Applicant
20 would have to come back to the Board if there is no
21 request in this application for zoning relief.

22 So that's the only area I am unclear of. But I
23 didn't think I needed to speak to the Applicant to grant
24 relief -- to consider the relief for removal of the
25 condition based on OP's analysis and recommended change,

1 to just clarify the condition.

2 COMMISSIONER STIDHAM: They were going to
3 continue to use the shed, correct?

4 VICE CHAIR JOHN: Pardon?

5 COMMISSIONER STIDHAM: They were going to
6 continue to use the shed?

7 VICE CHAIR JOHN: Yes. Yes. They want to use
8 the shed for trash instead of storing it indoors.

9 CHAIRPERSON HILL: Okay. And I guess this is
10 the one that the motion -- there was a motion to postpone
11 from the ANC; correct, Madam Secretary?

12 VICE CHAIR JOHN: From the Applicant.

13 CHAIRPERSON HILL: There's one from the
14 Applicant, and then it looks like there's also with the --
15 that's right.

16 MS. MEHLERT: Yeah. The Board's decision was
17 postponed by two weeks previously. It was originally
18 scheduled on April 24th.

19 CHAIRPERSON HILL: Oh. Okay.

20 MS. MEHLERT: And so the ANC had requested
21 that.

22 VICE CHAIR JOHN: So the ANC submitted a
23 report.

24 MEMBER BLAKE: Mr. Chair?

25 VICE CHAIR JOHN: Yep. Go ahead. I'm sorry.

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1 MEMBER BLAKE: Vice Chair John, if you're done,
2 I have a comment.

3 VICE CHAIR JOHN: Yes, I'm finished.

4 MEMBER BLAKE: Okay. I did review this, and I
5 do think that the consent calendar doesn't require,
6 obviously, testimony from an applicant. In this
7 particular case, though, I first would deny the request to
8 -- and address the application right now. From my
9 perspective, I think the application should be removed
10 from the consent calendar and placed on the hearing
11 schedule for a future date.

12 This is actually fairly -- it's a use -- the
13 original one was a use variance, but this modification is
14 actually fairly significant. As it's written, I believe
15 the modification should be denied because they're
16 basically saying remove the trash requirement for the
17 restaurant in a residential zone. A modification is
18 proposed by the Office of Planning, which may be what they
19 intended to request.

20 It might be possible, but there are a number of
21 questions that really do need to be answered to do that.
22 For example, is this on public property or is it private
23 property? If it's not on private property, the approval
24 would be speculative and the request would not be possible
25 without a permit for public space.

1 And there are a number of concerns that are
2 raised by ANC in the report, as Vice Chair John mentioned,
3 regarding the use of outside trash storage. The bottom
4 line is if there's an issue with rats if it's inside, it's
5 going to be even worse in the alley. And there's not
6 enough information for us to determine what special
7 treatment would be necessary to mitigate the impact of a
8 shed outside, given all the rats and all the issues that
9 actually come out of that.

10 So, for these reasons, I'd like to have it
11 moved to the hearing calendar where it would be treated
12 under Y 704 and more of just a modification of
13 significance, and we get the input from all the parties
14 involved.

15 CHAIRPERSON HILL: Okay. That's fine with me.

16 If anybody has any other concerns, could you
17 speak up now just so the Applicant knows?

18 VICE CHAIR JOHN: I guess my only question is
19 whether or not the Applicant -- whether or not the shed is
20 an amendment to the original fence that the Board
21 approved. But I did not review the original order, so --
22 or the architectural plans in that original order.

23 My recollection is that the Applicant requested
24 a use variance, and so there was no exterior change to the
25 building. So I decided I could view the application as a

1 straight request for a modification of the condition. And
2 so the only question is whether or not outside storage
3 could be allowed, and we do allow outside storage on many
4 applications. So -- but I'm not opposed to having a
5 limited scope hearing if that's what's being recommended.

6 CHAIRPERSON HILL: Okay.

7 Madam Secretary, do you know when we might be
8 able to put this on our hearing agenda?

9 MS. MEHLERT: So we would need to notice the
10 hearing, all those procedures. And at this point, we're
11 scheduling for after the Board's August recess, so
12 September 11th or September 18th, really.

13 CHAIRPERSON HILL: Okay. Which day seems
14 better, the 11th or the 18th?

15 VICE CHAIR JOHN: May I suggest September 11th?

16 CHAIRPERSON HILL: Sure. Okay. All right.
17 So, then, 9/11 it is.

18 And if you can let the Applicant know to take a
19 look at this portion of the hearing so they hear what the
20 Board's concerns were and questions. Okay?

21 Let's see. Okay. Okay. You may call our next
22 one.

23 MS. MEHLERT: Last case in the Board's meeting
24 session is Application Number 21103 of Developer RE1, LLC.
25 This is a self-certified application pursuant to Subtitle

1 X, Section 901.2, for special exceptions under Subtitle G,
2 Section 5200.1, from the rear yard requirements in
3 Subtitle G, Section 207.6, and the closed court
4 requirements of Subtitle G, Section 209.1.

5 This project is a 47-unit apartment house with
6 below-grade parking and a new four-story detached building
7 in the MU-4 zone. It's located at 71 Kennedy Street,
8 Northwest, Square 3389, Lot 138. And the Board previously
9 heard this case at the April 24th public hearing. The
10 Board closed the record except for an updated ANC 4B
11 resolution, which was submitted in Exhibit 70, and
12 participated on by Vice Chair John, Mr. Blake, Mr. Smith,
13 and Commissioner Stidham.

14 CHAIRPERSON HILL: Okay, guys. I'm off this,
15 so I'm going to go ahead and mute and stop my video. And
16 I will return when you're done.

17 VICE CHAIR JOHN: Thank you. So, as was noted,
18 this is an application for special exception relief to
19 provide new rear yard and for two closed courts that do
20 not meet the minimum square feet and width requirements,
21 to construct a new 47-unit apartment building with one
22 level of parking and no retail space.

23 This relief was essentially approved in a
24 previous order for an application which contained two
25 levels of below-ground parking and retail space. The

1 previous order expired, and the new owner has eliminated
2 one level of parking and retail space on the ground floor.
3 The ground floor retail space was replaced with
4 apartments.

5 During the hearing, there was a strong
6 neighborhood opposition to the removal of the retail
7 space. And the Applicant explained -- provided reasons
8 for not being able to continue to have two levels of
9 parking because of the conditions, you know, to actually
10 dig down that far to provide two levels. There was
11 technical issues that arose when they looked at the
12 project again.

13 So, while the ANC approved of the revised
14 application, the Board continued the decision to allow the
15 ANC to submit a report from the full ANC. And this report
16 was submitted with no issues and concerns. As the Board
17 concluded before, I believe this application meets the
18 criteria for relief for the two courts and rear yard
19 relief, as the Office of Planning's report explains.

20 Notably, there are no windows on the party wall
21 of the adjoining building next to the larger court. And
22 there is no impact to light, air, or privacy while
23 allowing light into the units in the apartment building.
24 There is also no impact to the abutting property from the
25 smaller court because -- again, because of the location of

1 the court compared to the abutting property.

2 So, with respect to rear yard relief in the MU-
3 4 zone, the analysis is basically based on the impact of
4 the windows relative to adjacent buildings as well as
5 parking and loading requirements, which the application
6 also satisfied.

7 Now, DDOT recommended a condition regarding the
8 paving of the alley, the paper alley. And essentially,
9 DDOT would like the Board to adopt a condition that would
10 require the Applicant to enter into a horizontal public
11 use agreement with DDOT outlining the process for a design
12 review, construction, inspection, and acceptance of the
13 alley.

14 This condition is entirely outside of the scope
15 of the Board, and I would not recommend including it in
16 the order, assuming we approve the application. So I'll
17 pause here and see if anyone has any other comments.

18 Mr. Blake?

19 MEMBER BLAKE: Sure. I agree with your
20 analysis, Vice Chair John, with regard to the courts and
21 rear yard. Obviously, the courts are designed to allow
22 for light and air into the units of the building opening
23 into it, and the concerns really focus on the potential
24 impacted privacy on the neighborhood properties. And as
25 you pointed out, there is really no impact on the

1 neighboring properties because there are no windows that
2 face the building to the north and no windows from the
3 abutting properties that face the smaller court.

4 With regard to the rear yard requirements,
5 again, the issue focuses on privacy and also the key
6 provision -- service provision functions, such as parking
7 and loading, which -- there's adequate parking proposed
8 and, in fact, more than required. And the loading is not
9 required, and none is proposed.

10 So the project meets the other development
11 standards of the MU-4 zone, which permit moderate density
12 mixed use. And as you pointed out, several members of the
13 public expressed concern that the current design would not
14 be -- there would not be any retail space on the ground
15 floor. And it's clear that the MU-4 zone allows, but it
16 does not require, the inclusion of retail space. You can
17 have all retail. You can have all residential. You can
18 have some combination of both.

19 The application and the relief sought here do
20 not require retail or provide a mechanism to demand it.
21 So, that said, I agree with the analysis provided by the
22 Office of Planning give great weight for its
23 recommendation for approval. I also commend the efforts
24 of Commissioner Brooks for efforts to engage the community
25 and give great weight to the report of ANC 4B.

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1 And I agree with you that the DDOT condition is
2 outside of the purview of the Board, and I would not
3 include that. I'll be voting in favor of the application.

4 VICE CHAIR JOHN: Thank you, Mr. Blake.

5 Commissioner Stidham?

6 COMMISSIONER STIDHAM: I think Board Member
7 Blake covered things very well. I agree that it meets the
8 requirements of the zone, and there's nothing that we can
9 do to require them to add retail to their space. So I'm
10 prepared to support this.

11 VICE CHAIR JOHN: Thank you.

12 Board Member Smith?

13 MEMBER SMITH: I agree with the analysis of all
14 of my colleagues regarding this case. I do believe they
15 met the burden of proof for us to grant the special
16 exceptions to the rear yard requirements -- minimum rear
17 yard requirements and closed court requirements.

18 Mr. Blake stated the reasons why it would not
19 have any detrimental negative impact on the surrounding
20 properties, given that they are still going to have some
21 form of a closed court. It would just be slightly smaller
22 than minimum per the regulations. But it does allow an
23 adequate amount of light and air to the windows that will
24 be located facing the court as well as the rear yard.

25 The major concerns that was raised by the

1 neighborhood primarily relate to parking and retail. We
2 cannot require them to place retail here. What we're
3 charged here as part of these two special exceptions
4 relate to closed courts and rear yard. The use is
5 allowed, whether it has retail or doesn't have retail.
6 And I think along the corridor there, there are adequate
7 buildings that are zoned along the Kennedy Street corridor
8 that could accommodate some additional retail that would
9 support the surrounding neighborhood.

10 Regarding parking, those concerns were also
11 raised by the neighborhood, and I believe I talked to them
12 at the hearing on the 24th and that they are meeting the
13 minimum parking requirement. So we cannot force them to
14 go above that minimum requirement without additional
15 information regarding very high impact related to parking.

16 And I believe that any retail that may be
17 located there would exacerbate the issues regarding
18 parking that was raised by the neighborhood. So I think
19 it's a problem that would -- I think retail would create
20 some additional issues, more than it would solve, at this
21 particular site.

22 So, other than that, I do believe that they've
23 met the burden of proof. And I would give OP staff's
24 report great weight and would support the application.

25 VICE CHAIR JOHN: Thank you, Board Member

1 Smith.

2 And I would just add that this is an
3 application for special exception for two areas of relief.
4 And the general rule is that if the application meets the
5 criteria for granting the rear yard and closed court
6 requirements, then the application should ordinarily be
7 granted.

8 So, as Board Members Smith and Blake have
9 noted, exploring the addition of retail or trying to force
10 an applicant to include retail where the applicant is only
11 seeking two minor special exception relief would not be
12 acting within the scope of the Board's authority.

13 So, with that said, I will make a motion to
14 approve Application Number 21103 as captioned and read by
15 the Secretary and ask for a second.

16 Mr. Blake?

17 MEMBER BLAKE: Second.

18 VICE CHAIR JOHN: Madam Secretary, would you
19 please take the roll call?

20 MS. MEHLERT: To the Vice Chair's motion to
21 approve the application.

22 Vice Chair John?

23 VICE CHAIR JOHN: Yes.

24 MS. MEHLERT: Board Member Smith?

25 MEMBER SMITH: Yes.

1 MS. MEHLERT: Board Member Blake?

2 MEMBER BLAKE: Yes.

3 MS. MEHLERT: And Commissioner Stidham?

4 (No audible response.)

5 MS. MEHLERT: Staff records the vote as four to
6 zero to one to approve Application 21103 on the motion
7 made by Vice Chair John and seconded by Board Member
8 Blake, with one Board member not participating.

9 VICE CHAIR JOHN: Thank you.

10 (Whereupon, the above-entitled matter went off
11 the record at 10:05 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DCZC

Date: 05-08-24

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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