

Board of Adjustment Minutes



**City Council Chambers, Upper Level
June 12, 2007**

Board members Present:

Dina Higgins, Chair
Garrett McCray
Dianne von Borstel
Roxanne Pierson
Craig Boswell
Mike Clements

Board members Absent:

(none)

Staff Present:

Gordon Sheffield
Jeff McVay
Jim Hash
Constance Bachman

Scott Wunderlich
Thomas Huston
Jane DeCola
M. Carnicelli
John Paul Jones

Others Present:

Sian Murtagh
Francis Murtagh
Roy J. Scheidel
Thomas Fedigan
Carlos Aragon
Ira Allen
Randy Pridgeon
Paul Gilbert

The study session began at 4:30 p.m. The Public Hearing meeting began at 5:30 p.m. Before adjournment at 7:15 p.m., the following items were considered and recorded on Board of Adjustment CD #2.

Study Session 4:30 p.m.

- A. The study session began at 4:30 p.m. The items scheduled for the Board's Public Hearing were discussed.

Public Hearing 5:30 p.m.

- A. Consider Minutes from the May 8, 2007 Meeting A motion was made to approve the minutes by Boardmember von Borstel and seconded by Boardmember Pierson. Vote: Passed 6-0
- B. Consent Agenda A motion to approve the consent agenda as read was made by Boardmember Boswell and seconded by Boardmember von Borstel. Vote: Passed 6-0

**Board of Adjustment Meeting
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Case No.: BA07-013

Location: 3215 South Sossaman Road

Subject: Requesting 1) variances to allow reductions in the landscape setbacks and landscape plantings along the north and east property lines; and 2) a Special Use Permit, both to allow the development of athletic facilities in conjunction with a place of worship in the AG zoning district.

Decision: Continued to the July 10,2007 hearing.

Summary: This case was removed from the consent agenda at the request of Thomas Huston, President, Boulder Creek HOA. Mr. Huston presented his concerns and opposition with the proposed sports complex to the Board of Adjustment. Mr. Huston's concerns included a lack of communication between the church and HOA, the amount of change to the ballfield plans over the past two years, lack of site security, and traffic.

Mr. McVay noted that this case was on the agenda to be continued to the July 10, 2007 Board of Adjustment hearing.
The applicant was not in attendance to present the case.

Motion: It was moved by Boardmember Clements, seconded by Boardmember McCray to continue this case for thirty days.

Vote: Passed 6-0

Finding of Fact: N/A

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**Board of Adjustment Meeting
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Case No.: BA07-019

Location: 1040 East Main Street

Subject: Requesting a Substantial Conformance Improvement Permit (SCIP) to allow the redevelopment of a restaurant use in the C-3 zoning district.

Decision: Continued to the July 10,2007 hearing.

Summary: Saul Ramirez and Oscar Tinajero, applicants, presented the requested Substantial Conformance Improvement Permit. They explained that the drive-thru window is very important to the business and concerns related to vehicle queuing are addressed through the speed of service and the fact that vehicles are picking up phoned-in orders.

Boardmembers McCray, Clement, and Boswell stated concerns related to the drive-thru window. Based on the concerns a 30-day continuance was suggested to allow the applicant to further work with staff on alternatives. Boardmember McCray suggested the applicant give serious consideration to alternatives that did not include a drive-thru.

Motion: It was moved by Boardmember McCray, seconded by Boardmember von Borstel to continue this case for 30 days.

Vote: Passed 6-0

Finding of Fact: N/A

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**Board of Adjustment Meeting
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Case No.: BA07-023

Location: 1502 North Crismon Road

Subject: Requesting a variance to allow the total roof area of detached accessory buildings to exceed the maximum allowed in the R1-43 zoning district.

Decision: Approved with conditions

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember Boswell, seconded by Boardmember von Borstel to approve this case with the following conditions:

1. *Compliance with the site plans submitted, except as modified by the conditions below.*
2. *Compliance with all requirements of the Building Safety Division in the issuance of building permits.*

Vote: Passed 6-0

Finding of Fact:

- 1.1 The approved aggregate detached accessory building roof area is 154 percent of the primary dwelling.
- 1.2 The subject property is zoned R1-43, which requires a minimum lot size of one acre in size. The subject lot is approximately three times that at 127,122 square feet.
- 1.3 The 12x12 shade structure that is located in the northwest coral is large enough to protect two horses from the environments. 12x12 is the standard size of a stall in a barn and is not larger than the typical shade/shelters elsewhere. While the total area of the structures under roof will be greater than the 100 percent allowed it would remain very low in total lot coverage at approximately 12.4 percent.
- 1.4 The overall lot coverage is approximately 12 percent, while the same roof area on a standard R1-43 lot would result in lot coverage of 23.5 percent. The addition of the new shop will provide the applicants with the ability to secure equipment used for the care and maintenance of the property.
- 1.5 The original subdivision that created the subject parcel is a pre-existing condition not created by the applicants.
- 1.6 Strict compliance with Code would not preclude the intended purpose of the storage shed. However, compliance with the Code would require the attachment of such storage shed to the primary dwelling, which would be difficult to architecturally integrate and result in a clumsy use of the site.
- 1.7 The variance allows construction of a detached accessory building, a privilege available to all residential properties. Roof area for detached structures that exceeds 100 percent of the primary dwelling is not a privilege available to other property owners without the benefit of a variance.

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**Board of Adjustment Meeting
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Case No.: BA07-024

Location: 1821 South Country Club

Subject: Requesting a Special Use Permit for a modification of a Comprehensive Sign Plan in the C-3 zoning district.

Decision: Approved with conditions

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember Boswell, seconded by Boardmember von Borstel to approve this case with the following conditions:

1. *Compliance with the Comprehensive Sign Plan submitted.*
2. *Sign 2, "TL Quik Mart → Entrance," shall require review and approval of Design Review Board staff for compliance with Design Guidelines.*
3. *The Special Use Permit shall expire if not exercised, or if a building permit has not been issued within one (1) year of the official action.*
4. *Compliance with all requirements of the Building Safety Division in the issuance of sign permits.*

Vote: Passed 6-0

Finding of Fact:

- 1.1 The proposed modification to the CSP will provide increased sign area for the new monument sign. Based on current Code maximums, the current frontage on Country Club road would allow 30 feet of aggregate sign height.
- 1.2 The applicant is proposing a six feet tall monument sign that will contain a three-foot by eight-foot double sided back lit cabinet box, which will replace the existing non-conforming sign that was present at the time the owners bought the property.
- 1.3 Attached signage will include 36.40 square feet of signage on the west and east elevations of the fuel canopy as well as 23 square feet of signage on the northern elevation and 20.16 on the western elevation of the C-store, which are visible from Country Club Drive. Two attached signs of 18.20 square feet each are proposed on the fuel canopy.
- 1.4 When reviewing the proposal in light of the aggregate sign area proposed, staff finds the modification would result in only a 24 square foot increase in aggregate sign area along with a six-foot increase in aggregate sign height.
- 1.5 The proposed CSP essentially transfers detached sign area and height from Juanita Avenue frontage to the frontage along Country Club Drive. Staff finds that the proposed CSP modification will have negligible impact on surrounding properties and is consistent with the intent of the approved CSP.

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Case No.: BA07-025

Location: 950 South Drew Street

Subject: Requesting a variance to allow a carport enclosure to encroach into the required side yard in the R1-6 zoning district.

Decision: Denied

Summary: The applicant is requesting a variance to allow an existing carport enclosure to encroach into a required side yard. The carport enclosure, which would be located on the south side of the property, was constructed without building permits and is currently the subject of a Code Compliance case (COD2007-01280). Senior Planner Jeff McVay reminded the Board that, although the carport enclosure exists, they should review this case as if it were still just a plan on paper, giving neither penalty nor concern for having to maintain the applicant's investment. As shown on the site plan and described in the narrative, the carport enclosure is attached to the dwelling and would be utilized as livable space. He also stated that, as an attached structure, the Zoning Code requires it to be located entirely within the building setbacks. The proposed site plan provides a one-foot setback from the south property line, where Code requires a minimum building setback of five feet. The subject parcel is 4,948 square feet and located within the R1-6 Zoning District, which requires a minimum lot size of 6,000 square feet.

As justification for the requested variance, the applicant, Thimas Fedigan, noted: 1) most homes in the neighborhood have carports built with a one-foot setback; 2) many homes have enclosed those carports; 3) the homes and carports were constructed around 1948; 4) enclosing the carport increased livable space from 620 to 908 square feet, which provides sufficient room for a disabled tenant to maneuver a wheelchair; and 5) the home to the south is 15 feet from the carport. Mr. Fedigan felt the request was consistent with what had occurred on similar properties in the vicinity

As proposed, the carport enclosure would require the granting of a variance. The Board of Adjustment must find the following in granting a variance:

1. There are special conditions that apply to the land or building.
2. The special condition was pre-existing and not created by the property owner.
3. That strict compliance with the Code would deprive the property of privileges enjoyed by other properties in the same zoning district.
4. The variance would not constitute a special privilege unavailable to other properties in the vicinity and zoning district of the subject property.

Mr. McVay indicated that staff had reviewed the request in relation to the Americans with Disabilities Act and Fair Housing Act and determined that granting a variance is not required to provide "reasonable accommodation", in this instance. He stated that, while staff appreciates the applicant's request and the intended goal, sufficient justification related to the land, which could

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justify the request, has not been provided.

Mr. McVay also stated that a carport enclosure would require the review and approval of building permits, and that the approval of a building permit may require fire-rated construction. In order to properly determine the appropriate construction type, Building Safety division staff may require the construction of an exterior wall that extends above the roofline as a 30-inch parapet or the reconstruction of existing walls to properly fire-rate the wall construction, eaves, and overhangs. This type of construction may not be compatible with the architecture of the home and result in additional impact to the neighbor to the south. If granted, a variance does not waive any requirements of the Building Safety Division.

Motion: It was moved by Boardmember Pierson, seconded by Boardmember von Borstel to deny this case.

Vote: Passed 5-1

Finding of Fact:

- 1.1 The carport enclosure will result in a one-foot side setback where five feet is required. By Code, such additions must be located within the buildable lot area. The applicant has proposed the carport enclosure to increase livable space from 620 to 908 square feet, which provides sufficient room for a disabled tenant to maneuver a wheelchair.
- 1.2 The justification provided by the applicant does not constitute a unique condition related to the land and provision of a variance would grant a special privilege not available to other residential properties within the City. In this instance, the granting of a variance is not required to provide "reasonable accommodation" in relation to the Americans with Disabilities Act and Fair Housing Act.
- 1.3 The subject property would no longer comply with the parking regulations of the Zoning Ordinance, which requires single residences provide two, independently accessible parking spaces not located within the required front yard. Parking would be accommodated on the existing driveway and within the front setback.
- 1.4 A carport enclosure would require the review and approval of building permits. The approval of a building permit may require fire-rated construction. This type of construction may not be compatible with the architecture of the home and result in additional impact to the neighbor to the south. If granted, a variance does not waive any requirements of the Building Safety Division.

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Case No.: BA07-026

Location: 435 North Grand

Subject: Requesting 1) a Special Use Permit; and 2) a variance to encroach into the required side yard, both in conjunction with a detached accessory living quarters in the R1-6 zoning district.

Decision: **Case has been withdrawn.**

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember Boswell, seconded by Boardmember von Borstel to withdraw this case.

Vote: Passed 6-0

Finding of Fact: N/A

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Case No.: BA07-027

Location: 2539 East Javelina Avenue

Subject: Requesting a variance to allow a covered entry porch to encroach into the required front yard in the R1-6 zoning district.

Decision: Approved with conditions

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember Boswell, seconded by Boardmember von Borstel to approve this case with the following conditions:

1. *Compliance with the site and landscape plans submitted.*
2. *The variance shall expire if not exercised, or if buildings permit has not been issued within one (1) year of official action.*
3. *Compliance with all requirements of the Building Safety Division in the issuance of building permits.*

Vote: Passed 6-0

Finding of Fact:

- 1.1 The approved variance allows a covered entry porch addition to encroach 4'-2" into the required front setback. Because the addition exists, the Board reviewed this case as if it were still just a plan on paper, giving neither penalty nor concern for having to maintain the applicant's investment.
- 1.2 The applicant intends the addition to provide some architectural interest to the home, which was developed as a plain and characteristic tract home. Surrounding homes have similar features that add to the dimensional contrast of the home and are in harmony with other homes in the area.
- 1.3 The addition encroaches into the setback from Javalina Avenue. Javalina Avenue is a low traffic collector road that will not be affected by the addition, physically or visibly.
- 1.4 The tract home pattern of development utilized in this area is pre-existing and not self-imposed. The home was in its present state at the time of purchase in November of 2006.
- 1.5 Current Code allows such porch additions to encroach three feet into the required front yard. The applicant is requesting an encroachment of 4'-2". Such encroachment would not constitute the granting of a special favor.

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Case No.: BA07-028

Location: 5153 East Road Runner Drive

Subject: Requesting variances to allow: 1) encroach into the required setback from adjacent R1-43 zoning district, 2) encroach into the required setback from adjacent M-1 zoning district, and 3) a reduction in foundation base width all related to the development of a hangar in the M-1-AF zoning district.

Decision: Approved with conditions

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember Boswell, seconded by Boardmember von Borstel to approve this case with the following conditions:

- 1 *Compliance with the site and landscape plans submitted.*
- 2 *Compliance with all requirements of the Design Review Board.*
3. *A minimum five-foot (5') wide at-grade foundation base that utilizes stamped or colored concrete, brick pavers, or other material approved by the Design Review Board shall be provided along the west building wall.*
4. *Compliance with all requirements of the Building Safety Division in the issuance of building permits.*
5. *The variance shall expire if not exercised, or if a building permit has not been issued within one (1) year of the official action.*

Vote: Passed 6-0

Finding of Fact:

- 1.1 The 12,000 SF hangar facility will consist of 9,600 SF of hangar space 1,600 SF of general office and 1,600 of shops space to be constructed on a 0.591 acres lot owned by the City of Mesa and leased by Hangar One LLC.
- 1.2 The site is located in the Falcon Field Airport and is part of an over all Airfield Overlay that is designed for specific uses relating to aviation. The ability of this lot to have direct access to runways for storage and maintenance of aircraft is unique to parcels in this specific land use application therefore posing a special circumstance.
- 1.3 The existence of R1-43 zoning to the south represents an additional unique condition that requires substantial setbacks. The existence of a booster station and M-1 zoned land to the east that will not be developed in the future also represent unique conditions not created by the applicant.
- 1.4 The zoning is pre-existing since the time of annexation on 4 December 1978, consequently, the need for a variance is not self-imposed. The setbacks as stipulated in the Zoning Ordinance would make the lot unbuildable.
- 1.5 The provision of full setbacks from the east property line has a detrimental affect on the

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buildable area, while the existing land to the east that will not be developed in the future provides substantial setback. Additionally the provision of standard foundation base and foundation base landscaping along the west-building wall is not compatible with the intended aircraft use.

- 1.6** The requested variance allows the property to be developed in a manner that is consistent with the rest of the Falcon Field Airport developments. The variance would not grant any special privilege unavailable to neighboring properties that do not have the same development conditions and will result in a hangar development that is consistent with that of neighboring properties.

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Case No.: BA07-029

Location: 1130 North Higley Road

Subject: Requesting a Special Use Permit to co-locate three antennae/BTS and three microwave dishes on an existing monopole in the C-2 zoning district

Decision: Approved with conditions

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember Boswell, seconded by Boardmember von Borstel to approve this case with the following conditions:

1. *Compliance with the site and landscape plans submitted, except as modified by the conditions below.*
2. *The antennas shall utilize a canister mount that matches the existing monopole or the site shall utilize an alternative camouflaging, either of which shall receive approval of the Zoning Administrator prior to application for building permits.*
3. *Compliance with all requirements of the Building Safety Division in the issuance of building permits.*

Vote: Passed 6-0

Finding of Fact:

- 1.1 The current Special Use Permit, approved by Zoning Administrator case ZA04-032, authorizes a 60-foot Stealth monopole and associated ground equipment to be used for wireless communications.
- 1.2 The applicant will co-locate a three sector, three antennas, and three-dish array. The proposed array would be nearly flush mounted on the outside of the pole, which the Board finds inconsistent with the intent of the stealth monopole that was originally approved by the City of Mesa.
- 1.3 Although the monopole has a current Special Use Permit (ZA04-032) and is authorized in the lease agreement to sublease any portion of the site, the Board is concerned that the co-location of the equipment using any method other than that of complete concealment would be not be compatible with the intent of the current Special Use Permit and would be detrimental to surrounding properties.

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Case No.: BA07-030

Location: The 10400 to 10700 block of East Southern Avenue - South Side

Subject: Requesting a Special Use Permit for a Comprehensive Sign Plan for Mountain Vista Marketplace in a C-2-PAD-DMP and C-2-BIZ-PAD-DMP Zoning Districts.

Decision: Approved with conditions

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember Clements, seconded by Boardmember von Borstel to approve this case with the following conditions:

1. *Compliance with the sign plan submitted, except as modified by the conditions listed below.*
2. *Anchor A (undetermined user) shall be allowed three (3) attached signs and an aggregate sign area not to exceed three hundred and twenty (320) square feet.*
3. *Anchor B (Super Target) shall be allowed six (6) attached sign, and an aggregate sign area not to exceed six hundred (600) square feet.*
4. *Anchor B (Super Target) shall be allowed one additional attached sign facing US 60 with a maximum sign area not to exceed one hundred-sixty (160) square feet.*
5. *Anchors A (undetermined user) and B (Super Target) shall be allowed an unlimited number of modifier signs placed at ten feet (10') or lower above finished floor grade (measured at the top of the letter). Each modifier sign may utilize individual letters that are no more than twelve inches (12") in the height of the actual letter.*
6. *"Hotel Tenant" shall be allowed four (4) attached signs with an aggregate attached sign area not to exceed four hundred and eighty (480) square feet.*
7. *Each "Value Retail Tenants" A through E shall be allowed three (3) attached signs with an aggregate attached sign area of one hundred and sixty (160) square feet.*
8. *Each "Value Retail Tenants" F through P shall be allowed two (2) square feet of sign area per one (1) lineal foot of building frontage not to exceed two-hundred and forty (240) square feet aggregate sign area, divided between a maximum of four (4) attached signs.*
9. *Each "Value Retail Tenants" F through P shall be allowed one additional attached sign facing US 60 with a maximum sign area not to exceed eighty (80) square feet.*
10. *Each "Value Retail Tenants" shall be allowed three (3) modifier signs placed at ten feet (10') or lower above finished floor grade (measured to the top of the letter). Each modifier sign may utilize individual letters that are no more than twelve inches (12") in the height of the actual letter.*
11. *Each "Office Tenant" shall be allowed attached signage that complies with current Sign Ordinance maximums.*
12. *Temporary signs shall be allowed in accordance with Section 11-19-7 of the Mesa Zoning Ordinance.*
13. *Compliance with all requirements of the Building Safety Division with regard to the issuance of sign permits.*

Vote: Passed 6-0

Finding of Fact:

- 1.1 In total for all street frontages, the Zoning Ordinance would allow an aggregate of 358.25 feet of total sign height and 3,582.5 square feet in aggregate sign area for detached signs.

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- 1.2** In total for all street frontages, the adopted Comprehensive Sign Plan includes an aggregate of 207' 4" in height and 958.75 square feet in sign area, distributed between 24 detached signs. No single street frontage would have aggregate sign height or area that exceeds current Code maximums and no single detached sign would exceed 12 feet in height or 80 square feet in sign area.
- 1.3** The Comprehensive Sign Plan includes attached sign area for Anchor Tenants, Hotel Tenant, and Value Retail Tenants, which are significantly greater than would be allowed by current Code. Increased sign area has been justified by the need for attached signs to be in proportion to the scale of the building and complementary to building architecture; the distance of buildings from adjacent street frontages; frontage on the US 60 freeway; and detached sign numbers, height, and area significantly less than could be allowed by Code.
- 1.4** The CSP includes an unspecified number of signs with an aggregate sign area of 500 square feet for Anchor A. Anchor A has sufficient visibility from both Southern Avenue and Signal Butte Road. Given this visibility, the adopted conditions of approval specify: 1) a total of three attached signs with a maximum aggregate sign area of 320 square feet, and 2) an unlimited number of modifier signs on the entrance elevation placed at 10 feet or lower above finished floor grade and that utilize a maximum letter size of 12 inches.
- 1.5** The CSP includes an unspecified number of signs with an aggregate sign area of 1,170 square feet, which includes one sign of 322 square feet facing the US 60 freeway for Anchor B. Anchor B has very good visibility from both Signal Butte Road and the US 60 freeway. Given this visibility, the adopted conditions of approval specify: 1) a total of six attached signs with a maximum aggregate sign area of 600 square feet, 2) one sign with a maximum sign area of 160 square feet facing the US 60 freeway, and 3) an unlimited number of modifier signs on the entrance elevation placed at 10 feet or lower above finished floor grade and that utilize a maximum letter size of 12 inches.
- 1.6** The CSP had included an unspecified number of signs with an aggregate sign area of 800 square feet for the Hotel Tenant. At five stories in height the Hotel has very good visibility from all street frontages and the US 60 freeway. Given this visibility, the adopted conditions of approval include a total of four attached signs with an aggregate sign area not to exceed 480 square feet.
- 1.7** The CSP includes numbers of signs consistent with Code maximums and varying maximum aggregate sign areas based on store frontage for Value Retail Tenants. Staff conditions of approval recommend: 1) a total of three attached signs with at two square feet per one lineal foot of building frontage with a maximum aggregate sign area of 240 square feet, 2) tenants with US 60 frontage are allowed one sign with a maximum sign area of 80 square feet facing the US 60 freeway, and 3) a maximum of three modifier signs on the entrance elevations placed at 10 feet or lower above finished floor grade and that utilize a maximum letter size of 12 inches.
- 1.8** The Comprehensive Sign Plan includes numbers and sign area for Freestanding and Inline Retail Tenants that are generally consistent with current Code.
- 1.9** The Comprehensive Sign Plan did not specify attached sign numbers or aggregate sign areas for Office Tenants. The adopted conditions of approval allow Office Tenants to comply with current Code.

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- 1.10** A Freeway Landmark Monument Sign has been included in the Comprehensive Sign Plan for informational purposes only and will be reviewed through a separate Council Use Permit request.

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Respectfully submitted,

Jeffrey McVay, AICP
Senior Planner
Secretary, Board of Adjustment

Minutes written by Constance Bachman, Planning Assistant

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