

**TOWN OF WILMINGTON**  
**DEVELOPMENT REVIEW BOARD**  
**FINDINGS OF FACT AND STATEMENT OF FINDINGS**  
**WILMINGTON, VERMONT 05363**

A request for a permit was made to the Board by: **Hermitage Members Club, Inc**

Owner/Applicant(s) Mailing Address: 10 Gatehouse Trail, Wilmington VT 05363

Address of the subject property: **10 Gatehouse Trail, Wilmington VT**

Tax Map: # **HAYSTACK.SKI**

A copy of the request is filed in the office of the Board and is referred to as: **#2021-003**

**Description of Case per Public Notice:**

Application # **2021-003**: Owner: Hermitage Members Club; Agent: Ham Hodgman, P.E., Stevens & Associates, Inc. Proposal to amend PUD Master Plan including updated information on completed projects & future projects.

Applicable Code Sections:

Article II: Sections 222, 223, 224, 228

Article IV: Sections 420, 423, 440, 450 F, D

Article VI: Sections 602, 603, 606, 608 A, 609, 610 C1, 620

Article VII: Sections 710, 721 A, B, E, F, 730, 731, 732 F

Notice for a public hearing was published in the Valley News on: **February 11, 2021**

Notice was posted in three public places on: **February 9, 2021**

A copy of the notice was mailed to the applicant on: **February 11, 2021**

A copy of the notice was mailed to the abutters on: **February 11, 2021**

**DRB Hearing Date: March 1, 2021**

**Continuance Hearing Date: March 15, 2021.**

**Appeal period for this Case expires on: April 17, 2021**

**Approval expires on: March 17, 2023**

The following presented testimony as the applicant or on behalf of the Applicant or as an Interested Person:

## **EXHIBITS**

The following Exhibits were placed in evidence by the Applicant or their Agent:

1. Letter from Ham Hodgman, P.E. dated 1/15/21 and including the Application 2021-003 as well as plans, drawings, photos of current buildings and earlier Permit Applications
2. List of Abutters
3. Map of parcels from the Vermont Natural Resources Atlas dated July 20, 2020

## **ARTICLE II: ADMINISTRATIVE PROCEDURES**

Section 222 A. Conditional Uses: 1, 3, 4 and 5

Section 223 Development Review Board Site Plan and Design Review

Section 224 Development Review Board Site Plan and Design Review Submission Requirements

Section 228 State & Federal permits & Development Review Board

**Finding of Facts:** This standard has been met, all exhibits have been received & verified. Case is being presented to DRB prior to Act 250 review.

**Conclusions of Law:** Article II is met

## **ARTICLE IV: DISTRICTS & USES**

Section 420 Uses

Section 423 Conditional Uses

Section 440 District & District Requirements

**Finding of Facts:** The current use of the buildings valid in current district.

**Conclusions of Law:** Article IV is met

## **ARTICLE IV (CON'T) –**

Section 450: Districts

A) Conservation

B) Village (a) within the HDRD and (b) outside the HDRD have unique dimensional requirements

C) Residential

D) Resort Residential

E) Commercial/Residential

F) Resort Commercial/Residential

## **DISTRICT**

**Finding of Fact:** Subject property is in the Resort Commercial/Resident District

**Conclusions of Law:** Section 450 is met.

## **USES**

**Finding of Facts:** The Primary Use is resort.

**Conclusions of Law:** The proposed Uses are Conditional Uses in this district.

## **Article VI Flood Hazard District**

### **Section 602 (A-C): Lands to Which These Regulations Apply**

These regulations apply to development in all areas of the town identified as special flood hazard in and on the most current flood insurance studies and maps published by the Dept. of Homeland Security, FEMA, and National Flood Insurance Program (NFIP), as provided by the ANR pursuant to 10 V.S.A. section 753. The base flood elevations and floodway limits (zones A1 – A30, AE and

AH) provided by the NFIP shall be used to administer provisions of the regulation. If none is provided by the NFIP then information available from the state or federal agencies or other sources shall be obtained and reasonably utilized.

**Conclusions of Law:** Property is not in flood hazard district. Needs have been met.

### **Section 603 Development Permit Required**

A Permit is required, to the extent authorized by State Law, for all proposed construction or other development, including the placement of manufactured homes, in areas of special flood hazard. Conditional Use written decision and approval is required from the Development Review Board for all Uses, except those defined as Permitted Uses in section 610, prior to being Permitted by the Zoning Administrator. Such development and subdivisions shall be reviewed to assure that such proposals minimize potential flood damage, and public facilities and utilities such as sewer, gas, electrical and water systems are constructed so as to minimize flood damage, and adequate drainage is provided to reduce exposure to flood hazards.

**Findings of Fact:** Property is not in flood hazard.

**Conclusion of Law:** Section 603 has been met.

### **Section 606: Conditional Uses**

Except for the permitted uses as defined in Section 605, all other Uses listed for the zoning district that fall within any designated flood hazard area may be permitted only upon granting a Conditional Use Permit by the Development Review Board.

**Findings of Fact:** Property is not in flood hazard.

**Conclusion of Law:** Section 606 has been met.

### **Section 608: Conditional Use Application Requirements**

Application submission requirements shall include:

- A. Two (2) copies of plans drawn to scale showing the nature, location, dimensions and elevations of, and distance between, the body of water and the proposed construction or land development.
- B. Existing and proposed Structures including the elevation of the lowest habitable floor including basement and confirmation as to whether such Structure contains a basement.
- C. Proposed fill and/or storage of materials.
- D. Proposed flood proofing measure and the level to which any structure will be flood-proofed.
- E. The relationship of the proposal to the location of the channel.
- F. The extend of the flood hazard area and the base flood elevation utilizing the best information available.
- G. For all subdivision and development which requires a Permit under Sections 602 & 603 and which involves more than 50 Lots or 5 acres, whichever is the lesser, the base flood elevation for that portion that lies within Zone A.

**Findings of Fact:** Property is not in flood hazard.

**Conclusion of Law:** Section 608 has been met.

### **Section 609: Review Procedures**

- A. Upon receipt of an application and plans, the Zoning Administrator shall transmit one copy to the State National Floodplain Insurance Program Coordinator at the Vermont Agency of Natural

Resources, Department of Environmental Conservation, River Management Section in accordance with 24 V.S.A 4424.

B. In accordance with 24 V.S.A 4424, no Permit may be granted prior to the expiration of a period of thirty (30) days following the mailing of a report to the Agency under item (A) above.

C. In riverine situations, the Development Review Board shall notify adjacent communities and the Stream Alteration Engineer at The Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section at least 30 days prior to written decision and approval of any alteration or relocation of a watercourse and submit copies of such notification to the Administrator of the National Flood Insurance Program. In granting its written decision and approval, the Board shall be assured that the flood carrying capacity of the alerted or relocated portion of any watercourse is maintained.

The applicant shall provide evidence of review by the state Permit Specialist for the applicable agency and ensure that all necessary Permits are obtained from applicable Federal, State or Municipal agencies identified by the Permit Specialist.

**Findings of Fact:** Property is not in flood hazard.

**Conclusion of Law:** Section 609 has been met.

### **Section 610: Development Standards – Flood Fringe Areas C (1)**

**Finding of Facts:** New construction and existing buildings to be substantially improved shall have the lowest floor, including basement, elevated to or above the base flood elevation or together with attendant utility and sanitary facilities to be designed so that below the base flood elevation & the Structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

**Findings of Fact:** Property is not in flood hazard.

**Conclusion of Law:** Section has been met.

### **Section 620: Flood Hazard Definitions**

**Findings of Fact:** Property is not in flood hazard.

**Conclusion of Law:** Section has been met.

## **ARTICLE VII: STANDARDS**

### **Section 710: Use Performance Standards**

**A. Vibration:** No continuous, permanent, ongoing, or frequent vibration that is discernible at the property line.

**Findings of Fact:** Testimony provided by agent.

**Conclusions of Law:** This Use Performance Standard is met.

**B. Noise:** Continuous, permanent, ongoing or frequent noise in excess of that of a normal conversation must not exist at the property line. Recurring periodic noise in excess of that of a normal lawn mower at the property line is allowed provided it does not occur between the hours of 9PM and 7AM and does not significantly detract from or diminish other property's allowed use or land development.

**Findings of Fact:** Testimony provided by agent.

**Conclusions of Law:** This Use Performance Standard is met.

**C. Air Emissions for Commercial Operations:** There shall be no emission of dust, ash, smoke or

other particulate matter that can:

1. Cause damage to human or animal health, vegetation, or property by reason of concentration or toxicity.
2. Contaminate the property or beyond the property boundaries.
3. Have solid or liquid particulates in concentrations exceeding state standards.
4. Cause odorous matter in quantities as to be offensive

**Findings of Fact:** Testimony provided by agent.

**Conclusions of Law:** This Use Performance Standard is met

**D. Injurious or Noxious Practices:** No operations or use shall create electromagnetic, liquid or solid refuse or waste, heat, cold, dampness, explosive, fire, glare, or other hazard which will cause injury or damage to human or animal health, vegetation, or property.

**Findings of Fact:** Testimony provided by agent.

**Conclusions of Law:** This Use Performance Standard is met

### **SECTIONS 721: GENERAL STANDARDS**

In all districts, all Conditional Use development shall protect from undue adverse effects. No Land Development or Use shall result in an undue adverse effect on any of the following:

**A: The Capacity of Existing or Planned Community, Municipal or Educational Facilities**

**B. Traffic on Roads and Highways**

**C: Bylaws and Ordinances in Effect**

**D. Utilization of Renewable Energy**

**E. Air Quality**

**F. Character of the Area**

The character, aesthetics, and scenic value of the neighborhood and area affected, as defined by the purpose or purposes of the zoning district within which the project is located and specifically stated policies and standards of this ordinance and the Town Plan.

**Findings of Fact:** Testimony provided by agent.

**Conclusion of Law:** General standard is met.

**Findings of Fact:** The purpose of the Resort Commercial/Residential District is to: encourage clustered economic development while preserving designated open spaces and historic village settlement patterns thus preventing sprawl and roadside strip development. PUDs are encouraged within the Resort/Commercial District and such types of development must meet the PUD requirements as well as consider physical and environmental limitations, such as flood hazard areas, wildlife habitat, steep slopes and traffic volume and flow.

**Conclusions of Law:** Proposed change of use is consistent with the defined purpose of the Resort Commercial/ Residential District and is consistent with the character of the area.

**Conclusion of Law:** General standard is met.

### **SECTION 730: CONDITIONAL USE – SPECIFIC STANDARDS**

**A. Lighting and Glare:** Shall be shielded and downcast. Glare and reflection is prohibited if it is an unreasonable nuisance to other property owners or tenants, does not contribute to aesthetics, scenic value or character of the area, or could impair vision of pedestrians or drivers.

**Findings of Fact:** Lighting will be downcast for all elements of project. Maintenance building will have exterior lighting on motion sensors with delay.

**Conclusions of Law:** Standard 730 A is met.

**B. Safety:** Shall minimize physical hazards where there are potential safety hazards.

**Findings of Fact:** Testimony provided by agent.

**Conclusions of Law:** Standard 730 B is conditionally met

**C. Traffic and Pedestrian Safety:** Pedestrian walkways to ensure safe and efficient navigation by foot or bicycle. Special consideration shall be made for children's safety. Traffic patterns will be review for safety, ease of flow and efficiency.

**Findings of Fact:** Testimony provided by agent. Pedestrian walkways will be used for Grenoble building #8 for access to rear parking lot.

**Conclusions of Law:** Standard 730 C is conditionally met

**D. Commercial Parking and Loading:** Commercial parking and loading areas in all districts shall:

1. **Provide off-street parking** (except in the Historic Design Review District)

2. **Parking spaces shall be 10 x 18** (smaller allowed only if need for added spaces outweighs the risk and public inconvenience of smaller spaces). Special consideration shall be given to safety, pedestrian and disabled persons concerns when smaller spaces are allowed.

3. **Minimum number of spaces:** One (1) parking space for each 200 sq. ft. retail.

4. **Drive-up Windows:** no waiting lines in public ROW

5. **Minimize visual impact of parking/loading areas**

6. **Buffer parking areas** if needed for safety or aesthetics

7. **Public Road Access:** minimize traffic interruption, provide for auto and pedestrian safety

8. **Rainwater, Snow, and Ice Removal/Storage:** Plan for snow/ice removal, runoff, safety.

9. **Safety:** Minimize physical hazards, provide safe pedestrian and vehicular movement with unobscured views, especially visibility at intersections, pedestrian safety, convenience, emergency access.

10. **Neighboring properties:** integrate circulation and parking with neighboring properties. Work to maximize for efficiency, safety, and attractive solutions.

**Finding of Facts:** Testimony provided by agent.

**Conclusions of Law:** Standard 732 D is met.

**E. Road Development:** New roads, public and private, shall conform to the town's Highway Ordinance.

**Findings of Fact:** Testimony provided by agent, roads conform to requirements.

**Conclusions of Law:** Section 730 E is not applicable

**F. Landscaping, Screening and Development:** Shall "preserve the rural and agricultural character and ambiance of the community". Natural features characteristic of the town's rural and agricultural nature shall be preserved. Landscaping and Screening shall be used to preserve and protect the aesthetic and scenic value of the town, its neighborhoods, residents, and neighboring properties.

**Findings of Fact:** Testimony provided by agent.

**Conclusions of Law:** Standard 730 F is conditionally met

**G. Land and Water Management:** Protect properties, transportation systems, and public safety by

a. Safe and appropriate water management including water supply/availability, stormwater retention/absorption, and impervious surface/runoff management.

b. prevent and control against water pollution

c. make provision for management of erosion, preservation of rivers & streams, river/stream bank management, wetland protection, waterway and channels management, and agricultural land protection,

**Findings of Fact:** Testimony provided by agent.

**Conclusions of Law:** Standard 730 G is conditionally met

**H Wastewater and Potable Water:** A permit may be issued upon receipt of evidence there is a wastewater and potable water permit. If none is received with a submitted application, the Permit will be conditioned on receipt of a wastewater and potable water permit at which time a final Permit will be issued. DRB shall instruct the applicant on their responsibility to obtain state and federal permits and may condition their decision on obtaining such permits.

**Findings of Fact:** Testimony provided by agent.

**Conclusions of Law:** Standard 730 H is conditionally met

**I. Natural Resources and Features:** Existing vegetation, native species, native trees, scenic views, river access and other natural features shall be preserved to the extent possible and to the extent that they will enhance and promote the natural assets of the town. Clearing of land to create pastureland and scenic spaces/vistas is allowed provided it does not have an unreasonable impact on natural resources. Development shall blend with the topography, vegetation, and natural land features. It shall not have an undue adverse impact on natural features, natural resources or renewable energy. This includes no adverse impact on forested lands, streams and stream banks, steep slopes, wetlands, watersheds, floodplains, soil unsuitable for development, impervious surfaces essential to stormwater detention, agricultural lands, open scenic lands, scenic vistas, scenic features, unique natural or manmade features, and renewable energy sources.

**Findings of Fact:** Testimony provided by agent.

**Conclusions of Law:** Standard 730 I is conditionally met.

**J. Wildlife Protection:** No adverse impact on wildlife habitats or corridors.

**Findings of Fact:** Testimony provided by agent.

**Conclusions of Law:** Standard 730 J is conditionally met

**K. Shoreland Protection:** Compliance with Shoreland Protection Act if development is within 250 feet of a body of water greater than 10 acres.

**Findings of Fact:** Testimony provided by agent.

**Conclusions of Law:** Standard 730 K is not applicable.

**L. Flood Hazard Protection:** Development must comply with the provisions of Article VI Flood Hazard District.

**Findings of Fact:** Testimony provided by agent.

**Conclusions of Law:** Standard 730 L is met.

**M. Energy Resources:** Commercial Development shall comply with the Vermont Commercial Building Energy Standards

**Findings of Fact:** Testimony provided by agent.

**Conclusions of Law:** Section 730 M is met.

**N. Technical Review Costs:** Applicant may be required to pay reasonable costs of technical review.

**Findings of Fact:** There are no technical review costs.

**Conclusions of Law:** Section 730 N is not applicable.

**Section 731: Planned Unit Development Specific Standards**

Planned Unit Developments are a conditional Use and must satisfy the standards of Conditional Use as defined in Sections 710 through 740 above. In addition to meeting the Standards of a Conditional Use, a Planned Unit Development (PUD) must meet the Specific Standards that follow. In the case of any conflict between Specific Standards of the PUD and other Standards of this ordinance, the more specific PUD Standard shall take precedence over any similar or conflicting Standard of this ordinance.

A. Minimum Acreage: No application for a PUD shall be considered for approval unless a minimum of two (2) acres of land is contained in any proposal.

**Findings of Fact:** Project is over two acres of land.

B. Contiguous Lands: No application for PUD shall be considered for approval unless all land contained in any proposal is contiguous.

**Findings of Fact:** All land is contiguous.

C. Open space Preservation: At least forty (40) percent of the total area of the property shall be dedicated to or reserved as usable common outdoor living space and open land. Open Space shall not include streets, driveways and parking areas. The preservation of Open Space, recreation areas, and/or parks shall be in perpetuity.

**Findings of Fact:** Over 40% of total area is reserved for open space.

D. Total Number of Units: The total number of units approved for a project shall not exceed the number of residential units or commercial square footage allowed if the land were subdivided into Lots in accordance with the Zoning Regulations for the districts in which such land is located, except as defined in Increased Density (E) below.

**Findings of Fact:** Current project is for 8 units.

E. Increased Density: To create open lands, the Development Review Board may approve greater densities than those defined within the Districts of this ordinance.

Approval of density in excess of:

1. One Primary Use Dwelling per acre (Single Family, Two Family, or Duplex, Multi – Family, Mixed Use, or Seasonal), or
2. One Primary Use Commercial Structure per two (2) acres

F. Building Setbacks:

1. Buildings abutting the perimeter of the PUD a parcel shall have a setback of at least fifty feet (50) from the Lot Line of the PUD.
2. Side Yard Setback: all residential buildings abutting an interior street, private or public, within the PUD shall be set back twenty (20) from the street.
3. If a side yard abuts a residentially zoned property or Use or a public or private street, a continuous natural or landscaped setback of twenty feet (20) is required between the commercial/industrial building and the residence. This setback shall be not Used for parking.
4. Front Yard Setback: A building fronting on a street must be located a minimum of twenty (20) from the back of sidewalk, or back of curb if a sidewalk is not planned at the location.
5. Rear Yard Setback: if a rear yard of a commercial building abuts a commercial or industrial Use or zoning district, a minimum rear yard setback of ten feet (10) is required. If a rear yard abuts a residential Use or residentially zoned property, a rear yard setback of twenty feet (20) shall be provided. This setback shall not be Used for parking or drives and shall be landscaped.



**Findings of Fact:** All setbacks are exceeded.

G. Municipal Facility Burden: The cumulative effect of a phased PUD shall not cause transportation networks, municipal facilities, educational facilities or other public services to be unduly burdened.

**Findings of Fact:** Testimony provided by agent, Fire Department & Town Manager provided testimony with regards to plans in place to eliminate burdens for fire & police.

Utilities: All electric and telephone facilities, fire alarm conduits, street light wiring, and other wiring, conduits, and similar facilities or utilities shall be placed underground by the developer for any development primarily for or occupied by dwellings. The Development Review Board or Sewer Commission may require easements necessary for the orderly extension of public utilities for future adjacent developments. These extensions shall be underground wherever possible.

**Findings of Fact:** All utilities will be underground.

H. Pedestrian Walkway Requirements: Sidewalks may be required within a PUD. In addition, the Development Review Board may require additional sidewalks in order to improve pedestrian access to buildings and protect pedestrian safety throughout the development. When requiring additional sidewalks, the Board shall consider the following criteria:

1. Number, location, types and Use (s) of buildings proposed
2. Amount of Traffic generated by the proposed Use

**Findings of Fact:** All proposed units have direct access from parking. Additional parking behind building # 8 can be accessed via sidewalk from building entrance.

I. Private Roads: Private roads may be allowed within a PUD when specifically approved by the Development Review Board. Any new road, public or private, within a PUD shall conform to The Wilmington Town Highway Ordinance.

**Findings of Fact:** Road in Grenoble will be 30' wide.

**Conclusion of Law:** Section 731 is met.

### **Section 732: Other Specific Standards**

#### **F. Ponds/ Water Impounds:**

Ponds/ Water Impounds must obtain a zoning Permit from the Zoning Administrator. If not received within the submitted application, the Zoning Administrator may issue an initial Permit conditioned upon receipt of the following:

1. A Project Review Sheet from the State Permit Office.
2. Evidence of written compliance with regulations of any department indicated on the Project Review Sheet.

**Findings of Fact:** Agent must provide evidence of Project Review Sheet & written compliance to Zoning administrator.

**Conclusion of Law:** General standard is met.

### **CONDITIONS:**

The application for development is **approved** with the following conditions, restrictions, requirements, limitations and specifications.

1. Except as otherwise required to accommodate the conditions of this decision, development will be executed in accordance with Exhibits 1-3 and the testimony provided. Any changes to the plans will require an administrative approval from the Zoning Administrator and/or a review by the Development Review Board, in conformance with the ordinance.
2. Grenoble property is limited to 8 units with 30 parking spaces. Additional units or parking

- spaces must be approved by Development Review Board.
3. Final approval is contingent on approval of applicable State of Vermont licenses & permits.
  4. Applicant must provide to town Police & Fire contact information for support; this contact information must be monitored 24 hours/365 days.
  5. Per testimony provided by agent, scope must include sidewalk from the entrance of building #8 to the 6 parking spots located at the rear of the building for pedestrian access.
  6. When impound pond is approved by State of Vermont, written compliance & Project Review Sheet must be presented to Zoning Administrator with 30 days.
  7. Downcast lighting for exterior of maintenance shed to be on motion sensor with delay.
  8. Signage for Valley Trail must be posted by Gate House with trail access.
  9. At least 3 parking spaces must be indicated with signage for public use to Valley Trail, these parking spaces must be maintained year round.
  10. Wastewater permit for maintenance shed must be provided to zoning administrator within 30 days of approval.
  11. Final Wilmington Fire Department & Wilmington Police Departments plans must be presented to zoning administrator within 30 days of approval.
  12. Public access to maintenance area must be restricted; final equipment of access restriction to be approved by Wilmington Fire Department.

The applicant is responsible for obtaining all state and federal permits.

**If unused, this Approval expires 2 years from the date of issue.** A request for extension may be made in writing to the Development Review Board before the expiration date. Such request shall be in the form of an APPLICATION FOR EXTENSION.

There is a thirty (30) day appeal period from the date of signature before this Approval becomes final. In addition, all fees must be paid and a Zoning Permit *must* be issued prior to the commencement of any work requested in this application. When a Zoning Permit is issued, there is an additional fifteen (15) day appeal period before the Permit becomes final. Work may commence when the Permit has been issued and all Appeal periods have ended.

This approval *does not relieve you*, as applicant, from obtaining any and ALL applicable State and other local permits.

Town of Wilmington, Zoning Administrator reserves the right to monitor compliance with this decision and all decisions issued by the Development Review Board

IN FAVOR of granting the APPROVAL FOR the above referenced application, with whatever restrictions, requirements, limitations or specifications are contained herein:

Cheryl LaFlamme  
Charles Foster  
Mary Brady

OPPOSED:

None

ABSTAINING:

None



For the Board: Cheryl LaFlamme, Chairperson

Date: 3/16/21

from the date this decision is issued. If you fail to appeal this decision, your right to challenge this decision at some future time may be lost because you waited too long. You will be bound by the decision, pursuant to 24 VSA 4472(d) (exclusivity of remedy; finality).

**This approval does not relieve the Applicant of the responsibility to obtain all other applicable approvals that may be required by Federal, State, and local laws and ordinances.**

1

The applicant has submitted a request for approval of a proposed project. The project involves the construction of a new building on a site located at [redacted]. The site is currently zoned [redacted]. The proposed building is [redacted]. The applicant has provided a site plan and other information to support the request. The project is consistent with the [redacted] and the [redacted]. The project will not have any adverse effects on the [redacted]. The project is in the public interest and should be approved. The applicant is responsible for obtaining all other applicable approvals from Federal, State, and local agencies.

The applicant has also submitted a request for approval of a proposed project. The project involves the construction of a new building on a site located at [redacted]. The site is currently zoned [redacted]. The proposed building is [redacted]. The applicant has provided a site plan and other information to support the request. The project is consistent with the [redacted] and the [redacted]. The project will not have any adverse effects on the [redacted]. The project is in the public interest and should be approved. The applicant is responsible for obtaining all other applicable approvals from Federal, State, and local agencies.

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