



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: November 17, 2017
Project Number: 261678550-001
File Number: SDAB-D-17-213

Notice of Decision

- [1] On November 9, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 18, 2017**. The appeal concerned the decision of the Development Authority, issued on October 4, 2017, to refuse the following development:

Construct an Accessory building (detached Garage, 18.29m x 12.19m).

- [2] The subject property is on Plan 5496HW Lot 13, located at 21003 - 97 Avenue NW, within the (RR) Rural Residential Zone. The Lewis Farms Area Structure Plan and the Webber Greens Neighbourhood Structure Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit; and
 - The Development Officer’s written submission.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – Google overhead photograph; and
 - Exhibit B – Four Signatures in support from neighbours.

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, Ms. O. Rullo

- [8] Ms. Rullo was accompanied by Mr. D. Naroski, the property owner directly to the west.
- [9] She and her husband bought the subject property last year. There is a 960 square foot house as well as a dilapidated unfinished single car garage. The garage is not usable.
- [10] They require a variance in height to store their motorhome inside of the garage. They wish to install 12 foot high garage doors and add radiant heat.
- [11] In her opinion, the excess height will not affect neighbours as the lot is very large and the proposed garage will be located in the middle of the property. There are many large trees along the property lines and throughout the property which would screen the proposed development from neighbouring properties.
- [12] A Google overhead photograph (marked *Exhibit A*) was shown which confirmed that the property has many trees. Ms. Rullo pointed to two existing driveways, the existing house and garage, and the location of the proposed development.
- [13] Ms. Rullo submitted a signature of support from the most affected neighbour located immediately east. Mr. Naroski and two neighbours provided signatures of support, marked *Exhibit B*.

ii) Position of the Development Officer, Ms. S. Watts

- [14] Ms. Watts did not attend the hearing and the Board relied on her written submission.

Decision

- [15] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:
1. The development shall be constructed in accordance with the stamped and approved drawings.
 2. Eave projections shall not exceed 0.46m into required Setbacks or Separations spaces less than 1.2m. (Reference Section 44.1(b))
- [16] In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:

1. The maximum allowable Height of 4.3 metres, pursuant to section 50.3(3) is varied to allow an excess of 1.59 metres, thereby increasing the maximum allowable Height to 5.89 metres.

Reasons for Decision

- [17] The proposed development is Accessory to a Permitted Use in the (RR) Rural Residential Zone.
- [18] The proposed Garage will have minimal impact on adjacent properties due to the large size of the Site. The proposed development is under the maximum Site Coverage permitted. All of the Setbacks are in excess of the minimum required.
- [19] Four adjacent property owners indicated their support for the development and the property owner directly to the west appeared at the hearing. No written opposition was submitted to the Board and no one appeared in opposition.
- [20] The Development Authority does not have the authority to vary Height; however, the Development Authority, in her written submission, indicated that the Site is very large and the proposed Garage would have minimal impact.
- [21] Based on the above, the Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Brian Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board Members In Attendance:

Ms. P. Jones; Ms. N. Hack; Mr. A. Nagy; Ms. K. Thind

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.



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Date: November 17, 2017
Project Number: 225942496-002
File Number: SDAB-D-17-214

Notice of Decision

- [1] On November 9, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 13, 2017**. The appeal concerned the decision of the Development Authority, issued on September 29, 2017, to refuse the following development:

Demolish existing Freestanding Off-premise Sign & install a Minor Digital Off-premises Freestanding Sign (6.1 m x 3 m - facing east).

- [2] The subject property is on Plan 3025MC Blk 59A Lot 6, located at 8632 - Yellowhead Trail NW, within the (IB) Industrial Business Zone. The Yellowhead Corridor Area Structure Plan applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submissions;
 - A Transportation Services memorandum; and
 - The Appellant’s written submissions.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, Mr. D. Ezeard of Media City, accompanied by the property owner of the subject Site, Mr. J. McNish

- [7] They are proposing to replace a sign that was previously owned by Pattison Outdoor Advertising (“Pattison”) with another single-sided sign that is similar in size and placement. The sign they are replacing has already been removed from the site. There is another sign on the site and it also single-sided but faces the opposite direction. There are no other digital signs within 100 metres of the proposed sign.
- [8] The proposed sign was refused by the Development Officer because there is another sign within 50 metres. The sign the Development Officer refers to was purchased by Mr. McNish from Pattison. When Mr. McNish purchased this sign there was a written agreement stating that no third party advertising could be put on the sign. The Bill of Sale submitted with the appeal was referred to which states this condition.
- [9] When Mr. McNish bought the vertical sign from Pattison, they did not revoke the permit; therefore, the Development Officer viewed this sign as an off-premises sign when in reality it is being used as an on-premises sign.
- [10] They believe there are less than two years remaining before the existing development permit expires. They are willing to cancel the existing development permit and apply for an on-premises sign. The sign currently contains old advertising that is peeling off.
- [11] The City’s Transportation Department has no objections to the proposed sign.
- [12] They do not object to any of the conditions listed in the Development Officer’s written submission.

ii) Position of the Development Officer, Ms. B. Noorman

- [13] Ms. Noorman did not attend the hearing and the Board relied on her written submission.

Decision

- [14] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:
1. The Development Permit for the existing Vertical Pattison Sign on the southeast corner of the subject Site shall be cancelled by the Appellant prior to erecting the proposed Minor Digital Off-premises Sign.

2. The Development Permit for the proposed development will expire on November 24, 2022.
3. The proposed Sign shall comply in accordance to the approved plans submitted.
4. Ambient light monitors shall automatically adjust the brightness level of the Copy Area based on ambient light conditions. Brightness levels shall not exceed 0.3 footcandles above ambient light conditions when measured from the Sign face at its maximum brightness, between sunset and sunrise, at those times determined by the Sunrise / Sunset calculator from the National Research Council of Canada; (Reference Section 59.2(5)(a))
5. Brightness level of the Sign shall not exceed 400 nits when measured from the sign face at its maximum brightness, between sunset and sunrise, at those times determined by the Sunrise/Sunset calculator from the national research Council of Canada; (Reference Section 59.2(5)(b))
6. Minor Digital Off-premises Signs shall have a Message Duration greater than or equal to 6 seconds. (Reference Section 7.9(8))
7. The Sign shall be located so that all portions of the Sign and its support structure are completely located within the property and no part of the Sign may project beyond the property lines unless otherwise specified in a Sign Schedule. (Reference Section 59.2(12))
8. The following conditions, in consultation with Transportation Services (City Operations), shall apply to the proposed Minor Digital Off-premises Sign, in accordance to Section 59.2.11:
 - a. That, should at any time, City Operations determines that the sign face contributes to safety concerns, the owner/applicant must immediately address the safety concerns identified by removing the sign, de-energizing the sign, changing the message conveyed on the sign, and or address the concern in another manner acceptable to City Operations.
 - b. That the owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by City Operations within 30 days of the notification of the safety concern. Failure to provide corrective action will result in the requirement to immediately remove or de-energize the sign.
 - c. The proposed sign shall be constructed entirely within private property. No portion of the sign shall encroach over/into road right-of-way.

ADVISEMENT:

1. Should the Applicant wish to display video or any form of moving images on the sign, a new Development Application for a Major Digital sign will be required. At that time, City Operations will require a safety review of the sign prior to responding to the application.

Reasons for Decision

- [15] The proposed development, a Freestanding Minor Digital Off-premises Sign is a Discretionary Use in the (IB) Industrial Business Zone.
- [16] The separation distance issue identified in the Development Officer's written submission has been alleviated with the cancellation of the Vertical Pattison Off-premises Static Sign on the southeast corner of the property. Therefore, the proposed development completely complies with the *Edmonton Zoning Bylaw*.
- [17] The proposed development will be one-sided facing east toward westbound traffic on Yellowhead Trail and City of Edmonton Transportation Services indicated that they do not object to the proposed Sign.
- [18] It is the opinion of the Board that the proposed development will not add to a proliferation of Signs as there were previously two Off-premises Signs on the subject Site.
- [19] No objections were received by the Board and no one appeared at the hearing in opposition.
- [20] Based on the above, the Board finds that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Brian Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. P. Jones; Ms. N. Hack; Mr. A. Nagy; Ms. K. Thind

Important Information for the Applicant/Appellant

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2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.



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Date: November 17, 2017
Project Number: 255537408-001
File Number: SDAB-D-17-215

Notice of Decision

- [1] On November 9, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 13, 2017**. The appeal concerned the decision of the Development Authority, issued on September 29, 2107, to refuse the following development:

Construct an Accessory building (shed, 3.00m x 3.10m), existing without permits.

- [2] The subject property is on Plan 6143NY Blk 30 Lot 28, located at 15031 - 69 Street NW, within the (RF1) Single Detached Residential Zone. The Mature Neighbourhood Overlay applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submission;
 - Four letters of opposition to the proposed development from adjacent property owners;
 - Two letters of support for the proposed development from adjacent property owners; and
 - A large submission from an affected property owner in opposition to the proposed development.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[6] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, Mr. G. Nestor.

[7] Mr. Nestor was accompanied by Ms. R. Serben.

[8] After reading the various submissions from an adjacent property owner Mr. Nestor was unclear about the exact issue before the Board. The Presiding Officer explained that the proposed development was refused because of the deficiency in the Side Setback and that is what the Board has the jurisdiction to deal with today.

[9] Mr. Nestor had been informed by City employees that he could build right up to the fence with no issue unless a complaint was received. He felt that he had not received proper direction regarding the various processes required by the City to obtain a permit and was provided with conflicting information.

[10] He was initially not aware that the shed had to be less than 100 square feet and originally built it to be 130 square feet. He reduced it to 100 square feet once he was made aware of this regulation. The shed has existed since 2008 and he does not understand why there are issues with it now.

[11] Ms. Serben explained that when they purchased the home almost 20 years ago it had been vacant for several years and was a derelict property. They have worked to improve the property but this took some time as they had four young children when they moved in.

[12] Ongoing complaints from an adjacent property owner to Bylaw Enforcement began within two months of moving into the property. These consistent and unfounded complaints have affected their quality of life.

[13] In their opinion, the shed does not affect the neighbours. Ms. Serben indicated that they did not go door to door to ask for support for their appeal but several neighbours came to them to offer support.

[14] It is difficult to take an accurate measurement from the shed to the property line because the neighbour's fence is rotting and leaning into their yard.

[15] They dispute that the shed or the chimney ever collapsed. The shed may have looked like it collapsed when they took it apart to make it smaller. The structure is a steel shed with engineered trusses, has siding, and sits on a concrete floor. It is located at the rear of the property and is surrounded by trees.

[16] They have permits and licenses for everything inside the shed including the gas line and the kiln. Everything has been approved and they have talked to a firefighter regarding safety.

- [17] The chimney has been inspected numerous times and they were advised that the recent windstorms in Edmonton would have caused it to fall down if it was unsafe. Their neighbour to the north also has a chimney in their yard.
- [18] Bylaw Enforcement indicated they could paint the shed any colour they wanted. They have not done this to be respectful of the neighbours.
- [19] At the request of the Presiding Officer, a drawing submitted by the Development Officer was displayed. Mr. Nestor confirmed that the dotted line in front of the shed depicts the edge of the concrete slab on which the shed is located.
- [20] Mr. Nestor confirmed that while the site plan indicates that the shed is 30 inches from the property line the correct measurement is 27 inches. When he made the drawing, he had incorrectly assumed that the fence ran along the property line.

ii) Position of an Affected Property Owner in Support of the Appellant

- [21] Mr. A. Ballash lives across the alley from the Appellants and about two houses up. He has lived in the area longer than either of the two parties present today and knows the alley and the shed well. In his opinion, the shed is not a danger to anyone.

iii) Position of Affected Property Owners Opposed to the proposed development

- [22] Mr. F. and Mrs. N. MacDonald live next door to the Appellant and are opposed to the development.
- [23] Mr. MacDonald provided a large submission to the Board as well as several addendums prior to the hearing.
- [24] They are not really dealing with just a shed as it contains a kiln which poses many more dangers. While the Appellants dispute that the shed or the chimney ever collapsed, Mr. MacDonald provided a letter from another neighbour directly across the lane from the Appellants indicating that the shed has collapsed at least twice.
- [25] The MacDonalds are uncomfortable working in the corner of their property adjacent to the shed. It is a massive structure with nothing to support it from falling. The bricks are loose and there is no mortar in between them. It is just a matter of time before there is another incident. The first time the chimney collapsed the entire roof came down and the bricks toppled onto the fence and pushed it to the north. There are still broken bricks left stuck in the fence.
- [26] The first collapse occurred in 2013 but the shed did not really become an issue to them until they tried to sell their property in 2014. They had an offer which included a caveat to clean up the property next door, the kiln in particular. The sale fell through because

they had to tell the potential purchaser that the shed next door had fallen down twice. As a result of this they began contacting Bylaw Enforcement.

- [27] According to his measurements, the current Side Setback is only 0.65 metres.
- [28] The Side Setback is a concern because distance makes a difference when an unstable chimney exists. The law is there for a reason and if the law says the Side Setback must be 0.9 metres that is what it should be. He would prefer that the shed be moved over by three metres.
- [29] There are safety concerns associated with the kiln. When it is running it is a fire hazard to his trees. In their opinion, proper permits are not in place. He made three different phone calls to 311 and was informed that there is nothing on record to indicate the kiln is certified. Gas appliances require CSA certification and he does not believe there are records confirming this.

iv) Rebuttal of the Development Officer, Mr. B. Langille

- [30] Mr. Langille did not appear and the Board relied on his written submission.

v) Rebuttal of the Appellants

- [31] The two bricks that are in the Side Setback did not fall off of the chimney. They were put there intentionally to prevent the ladder from sinking into the mud.
- [32] The chimney is only 15 feet tall, not 20 feet as stated in Mr. MacDonald's submission. If the chimney was unsafe, the recent 100 kilometre per hour winds would have taken it down by now. Mr. MacDonald also has a 15 foot chimney on a wood burning fireplace in his yard.
- [33] Over the last three years several other adjacent neighbours have sold their homes without any problems.
- [34] The kiln was bought from a previous art gallery owner and is CSA approved. They always take every precaution to be safe.
- [35] They do not believe that increasing the Side Setback by seven inches would make any difference, but they would move the shed if required by the Board.

Decision

- [36] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied to subject to the following conditions:

1. This Development Permit authorizes the development of an Accessory building (shed, 3.00 metres by 3.10 metres). The development shall be constructed in accordance with the stamped and approved drawings.
2. An Accessory building or structure shall not exceed 4.3 metres. (Reference Section 6.1(54) and 50.3(2))
3. Eave projections shall not exceed 0.46 metres into required yards or Separations spaces less than 1.2 metres. (Reference Section 44.1(b))

Advisement:

1. Unless otherwise stated, all above references to section numbers refer to the authority under the *Edmonton Zoning Bylaw 12800*.
- [37] In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:
1. The minimum required Setback between the (north) Side Lot Line and the proposed shed is 0.9 metres. The proposed Setback is 0.76 metres and a deficiency of 0.14 metres is allowed. (Section 50.3(5)(b)).

Reasons for Decision

- [38] The proposed development is Accessory to a Permitted Use in the (RF1) Single Detached Residential Zone
- [39] Most of the issues raised by both the Appellant and the adjacent property owner to the north were related to personal issues, not planning issues.
- [40] The shed, from photographic evidence, appears to be a standard metal shed design. It does have a fired kiln inside and the Appellants have advised that the kiln has all of the necessary certifications from the appropriate authorities. However, the Board makes no finding if additional permits are required.
- [41] The adjacent property owner to the north did not indicate how the 0.14 metre variance would affect them, but raised concerns regarding the Height of the chimney associated with the kiln; however, this is not a factor in the evaluation of the Height of an Accessory building. The Height of the Accessory building is less than 4.3 metres and the chimney is not included in this calculation per section 52.2(a) and section 52.2(b) of the *Edmonton Zoning Bylaw*:

Section 52.2(a):

In any Zone other than a Residential Zone, the following features shall not be considered for the purpose of Height determination: chimney stacks, either free-

standing or roof mounted, steeples, belfries, domes, or spires, monuments, elevator housings, roof stairways, entrances, water or other tanks, ventilating equipment, skylights, fire walls, plumbing stacks, receiving or transmitting structures, masts, flag poles, clearance markers, Solar Collectors or other similar erections;

Section 52.2(b)

in any Residential Zone, those features specified in subsection 52.2(a) shall not be considered for the purpose of Height determination, except that the maximum Height of receiving or transmitting structures, where these are Satellite Signal Receiving Antennae or Amateur Radio Antennae and Support Structures, shall be calculated in accordance with the regulations of subsections 50.5 and 50.6, respectively, of this Bylaw. The maximum Height for all other receiving or transmitting structures, other than those which may normally be required for adequate local television reception, shall be the maximum Height in the Zone, and not the maximum Height for Accessory buildings in Residential Zones specified in subsection 50.3(2).

- [42] The Board did receive a variety of commentary from surrounding neighbours in support of and against this development. The Board makes no finding on the mixed neighbourhood input.
- [43] It is the Board's position that the Setback variance will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Brian Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. P. Jones; Ms. N. Hack; Mr. A. Nagy; Ms. K. Thind

Important Information for the Applicant/Appellant

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