



**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 20-007  
Preliminary Plan No. 120200020  
Montgomery Village Whetstone Center  
Date of Hearing: January 30, 2020

APR 14 2020

**CORRECTED RESOLUTION**

WHEREAS, under Montgomery County Code Chapter 50, the Montgomery County Planning Board is authorized to review preliminary plan applications; and

WHEREAS, on July 22, 2019, Lidl US Operations, LLC ("Applicant") filed an application for approval of a preliminary plan of subdivision of property that would create two (2) lots and associated open space parcels on 6.52 acres of land in the Commercial Residential Town (CRT 1.25) zone, located at 19251 Centerway Road, at the intersection of Montgomery Village Avenue and Centerville Road, Montgomery Village ("Subject Property"), in the Montgomery Village/Airpark Policy Area and 2016 *Montgomery Village Master Plan* ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120200020, Montgomery Village Whetstone Center ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, dated January 17, 2020 setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

WHEREAS, on January 30, 2020, the Planning Board held a public hearing on the Application at which it heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on January 30, 2020 the Planning Board voted to approve the Application subject to conditions, on the motion of Commissioner Cichy, seconded by Commissioner Patterson, with a vote of 5-0; Commissioners Anderson, Cichy, Fani-Gonzalez, Patterson, and Verma voting in favor.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Preliminary Plan No. 120200020 to create two (2) lots and associated open space

| parcels on the Subject Property, subject to the following conditions:<sup>1</sup>

### **General Approval**

1. This Preliminary Plan is limited to two lots and associated open space parcels for a maximum of 55,000 square feet of commercial development, with a maximum of 30,000 square feet of commercial development on proposed Lot 36 and a maximum of 25,000 square feet of commercial development on proposed Lot 37.

### **Adequate Public Facilities and Outside Agencies**

2. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for sixty (60) months from the mailing date of this Planning Board Resolution.

### **Outside Agencies**

3. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated January 16, 2020 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
4. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT's requirements for access and improvements.
5. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its stormwater management concept letter dated December 24, 2019 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
6. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS"), Fire Department

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<sup>1</sup> For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner or any successor(s) in interest to the terms of this approval.

Access and Water Supply Section in its letter dated October 24, 2019 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS Fire Department and Water Supply Section may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

### **Concurrent Site Plan Approval**

7. Except clearing and grading associated with building and paving demolition, the Applicant must receive Staff certification of Site Plan No. 820200030 before submitting a record plat application or any clearing or grading on the Subject Property. The number and location of site elements including but not limited to buildings, on-site parking, site circulation, sidewalks and shared pathway is determined through Site Plan review and approval.
8. If a subsequent Site Plan or Site Plan Amendment for the Subject Property substantially modifies the lot or right-of-way configuration or quantities shown on this Preliminary Plan, the Applicant must obtain approval of a Preliminary Plan Amendment before certification of the Site Plan or Site Plan Amendment.

### **Environment**

#### **Forest Conservation**

9. The Applicant must comply with the following conditions of approval of the Preliminary Forest Conservation Plan (PFCP):
  - a) Except for clearing and grading associated with building and paving demolition, the Applicant must record a Certificate of Compliance to use an off-site forest mitigation bank easement in the Montgomery County Land Records before clearing or grading on the Subject Property. The Certificate of Compliance must be in a form approved by the M-NCPPC Office of the General Counsel.
  - b) A Final Forest Conservation Plan (FFCP) that substantially conforms to the PFCP must be approved as part of the Site Plan approval process.
  - c) The Applicant must plant 14 three-inch caliper shade trees native to the Piedmont Region of Maryland on the Property outside of any rights-of-way and outside of any utility easements as mitigation plantings for the loss of trees requiring a variance prior to issuance of use and occupancy. Mitigation Trees must be shown on the Certified Final Forest Conservation Plan.

## **Transportation**

10. The Applicant must construct a 9-foot-wide tree panel and a 10-foot-wide sidepath along the Property frontage of Montgomery Village Avenue, between Centerway Road and Whetstone Drive. A portion of the sidepath may be constructed on the Property, and the Applicant must provide a Public Improvement Easement (PIE) for any portion of the sidepath on the Property. If the Applicant is unable to obtain permission from the adjoining Homeowner's Association (HOA) to construct a portion of the sidepath on the adjoining HOA property (Parcel 4) and record a Public Improvement Easement (PIE) as necessary, the portion of the sidepath along Parcel 4 may be reduced to eight feet and the tree panel may be reduced to approximately 4.8 feet so it can be constructed within the right-of-way. Both of these options should be reflected on the Certified Plans.
11. The Applicant must install a traffic signal and related infrastructure at the intersection of Centerway Road and Club House Road.
12. The Applicant must relocate the existing bus shelter pad into the Property and provide a Public Improvement Easement (PIE) covering the extent of the relocated bus stop, subject to MCDOT review and approval, with final details to be determined at Site Plan.
13. Prior to Site Plan submission for Lot 37, the Applicant must improve vehicular circulation into the Property near the driveway entry at Montgomery Village Avenue.

## **Record Plats**

14. Except for clearing and grading associated with building and paving demolition, there shall be no clearing or grading of the site prior to recordation of plat(s).
15. The record plat must show necessary easements.
16. The record plat must reflect common ingress/egress and utility easements over all shared driveways.
17. Public Open Space must be recorded within a separate lot or parcel with a protective easement or covenant in the land records, in a form approved by the Planning Board, unless the parcel is exempted from recordation under Chapter 50.



18. The plat must include a statement granting public access to the Public Open Space.

### **Certified Preliminary Plan**

19. The Applicant must include the agency approval letters and the Preliminary Plan Resolution on the approval sheet(s).
20. The Certified Preliminary Plan must:
  - a) Contain the following notes:
    - i. Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of Site Plan approval.*
  - b) Show the Public Open Space areas within separate parcels, unless the parcels are exempt from recordation under Chapter 50.
  - c) Label PIE as Public Improvement Easement on road cross sections.
  - d) Show the dimension of the sidepath that is located within the right-of-way as well as the dimension located in the PIE.
  - e) Provide cross sections to show where the PIE varies along Montgomery Village Avenue and identify the locations on the certified preliminary plan.
  - f) Show an updated development standards table based on the addition of the public open space parcels.

BE IT FURTHER RESOLVED that having considered the recommendations and findings of its Staff as presented at the hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.*

The size, width, shape, and orientation of the proposed lots will be appropriate for the location considering the recommendations of the Master Plan. The Preliminary Plan will accommodate the two phases of development on the Subject Property at an appropriate and efficient location. The proposed lots were reviewed for compliance with the dimensional requirements for the CRT Zone as

specified in the Zoning Ordinance. As illustrated below in Table 1, the proposed lots will accommodate the anticipated use and meet all the dimensional requirements for open space, lot, density, height, placement, form, and building type in the zone, with an exception related to the Build-to-Area (BTA). The Planning Board recommends that the modified BTA, as result of a platted utility easement, should be approved under the Site Plan application.

**Table 1 – Development Standards in the CRT Zone**

	<b>Required/ Allowed</b>	<b>Approved Lot 36</b>	<b>Approved Lot 37</b>
<b>1. Site</b>			
Public Open space (min)	10% (19,198 SF)	20% (38,400 SF)	10% ( <del>9,228</del> 19,198 SF)
<b>2. Lot and Density</b>			
Lot area (min)	n/a	3.76 AC (164,097 SF)	1.92 AC (84,011 SF)
Commercial Density (max)	1.0 FAR/ 191,984 SF	0.16 FAR/ 30,000 SF	0.27 FAR/ 25,000 SF
<b>3. Placement</b>			
<u>Principal Building Setback (min)</u>			
Front- Montgomery Village Ave.	0 FT	45 FT	16 FT
Side street-Centerway Rd	0 FT	18 FT	N/A
Side- abutting nonresidential CRT zone	0 FT	100 FT	34 FT
Rear- abutting residential R-90 Zone	37.5 FT	255 FT	155 FT

*2. The Preliminary Plan substantially conforms to the Master Plan.*

The Preliminary Plan substantially conforms to the recommendations of the 2016 Montgomery Village Master Plan (“Master Plan”) which identifies four specific areas as potential redevelopment sites, including the Subject Property. The Master Plan provides both general and site-specific guidance for the Subject Property.

The Subject Property confronts the Montgomery Village Center, which is located directly across Montgomery Village Avenue. The zoning recommendations and design guidance in the Master Plan anticipated complementary redevelopment of both properties, to promote the community’s vision for this area as a mixed-use activity center to become a “great place for all residents to live, work, shop, eat and play.” (p.48) The Master Plan recommended a mixed-use zone with

appropriate density levels to achieve a mix of uses as a framework for a lively pedestrian environment.

The Master Plan's vision is organized by four themes:

- Preserve the Village's Character
- Maintain the Village's Public Recreation and Open Spaces
- Encourage Reinvestment in the Village
- Enhance the Village's Connectivity

For preserving the village's character, the Master Plan recommends, "Ensuring development is compatible in scale and density to adjacent existing residential communities." (p. 51) and to "Consider placing lower density residential uses, if any are proposed in the future, adjacent to existing residences." (p.62). The approved building is located at the corner of Centerway Road and Montgomery Village Avenue; therefore, density is located closer to Montgomery Village Avenue and at the furthest possible point away from the adjacent residential community to the east. In addition, the Applicant will provide a relatively large open space to the east of the proposed building and will utilize the Property's sloped terrain to partially set the proposed building into the ground, which mitigates the scale of the grocery footprint and makes it more compatible with existing residential development along Centerway Road.

For maintaining the village's public recreation and open spaces, the Master Plan recommends, "Creating places for community use that are framed and activated by surrounding development and uses, where the public feels welcome to gather and linger." (p.51). The Project includes two open spaces; one paved plaza near the building's entrance at Montgomery Village Avenue, and a second greener open space adjacent to the property's entrance on Centerway Road. One of these areas is activated by the retail use; activation alternatives should be considered as part of the future site plan for the second open space area, which connects to existing trails.

For encouraging reinvestment in the village, the Master Plan recommends, "Providing compact, mixed-use development patterns that have short blocks and building frontages close to the street." (p.50) and "Creating a recognizable center for the community, with identifiable edges to reinforce the form and identity of the center." (p. 51). The Project is compact, the building has been situated to help anchor the corner of Montgomery Village Avenue and Centerway Road, and the Applicant is currently required to install a traffic signal at the intersection of Centerway Road and Club House Road, thus reducing the block length and improving pedestrian safety. The Project, in conjunction with the Montgomery Village Center project to the west of Montgomery Village Avenue, help to create a stronger, recognizable center within the Montgomery Village community.



The Master Plan states the following recommendations for encouraging reinvestment in village center: 1) Contribute to the establishment of a sustainable and competitive village center (page 50); 2) Provide low-density, compatible development adjacent to existing residential communities (page 50); 3) Create places for community use that are framed and activated by surrounding development and uses, where the public feels welcome to gather and linger (page 51); 4) Utilize both hardscape and landscape areas within the public open space (page 51).

The Project contributes to the establishment of the Montgomery Village Center and has been designed so the building is situated to anchor the intersection of Montgomery Village Avenue and Centerway Road with an open space closest to the residential development to the east.

To enhance the village's connectivity, the Master Plan recommends creating "complete streets, that include building frontages close to the street, landscaping, bike facilities, and pedestrian areas that provide safe pedestrian crossings and include sustainable elements." (p. 51). The Project improves pedestrian and bicycle areas along Centerway Road and Montgomery Village Avenue. This includes connections to the public open spaces provided by the application; improved bike facilities and active fronts along Montgomery Village Avenue; and improved landscape that includes new trees along both frontages.

3. *Public facilities will be adequate to support and service the area of the subdivision.*

a. Roads and Other Transportation Facilities

Transportation access is adequate to serve the approved development by this Preliminary Plan. The Subject Property is served by access from adjacent major roadways, Montgomery Village Avenue and Centerway Road, which are adequate to accommodate traffic anticipated by the proposed redevelopment. Proposed public transportation infrastructure include improvements to the driveway on Montgomery Village Avenue, sidewalks, bikeways and the existing bus stop will be constructed as a result of this Application. The access point along Montgomery Village Avenue will be restricted to right-in and right-out, while the access point along Centerway Road will continue to allow for full movements. The existing sidewalk along Montgomery Village Avenue will be replaced with a ten-foot wide shared-use path that is wide enough for use by bicyclists and pedestrians. Additionally, Section 59.6.2.4 of the Zoning Ordinance requires a minimum of 105 parking spaces and a maximum of 180 parking spaces for the grocery store use, and a minimum of 88 parking spaces and a maximum of 150 parking spaces for the future retail



use. Adequate parking will be provided to support the proposed retail uses, and each proposed lot will independently meet its parking requirements.

b. Local Area Transportation Review (LATR)

The Applicant provided a Local Area Transportation Review (LATR) study based on the projected number of person trips generated by the site. The site currently hosts a vacant office complex. Because the complex was not demolished and has not been vacant for more than twelve (12) years, the Applicant is permitted to credit the office's square footage to determine how many new trips will be added to the network. Table 2 of the Staff Report shows the net number of trips added and removed from the network. The Applicant was not required to perform pedestrian, bicycle, or transit adequacy assessments.

The Montgomery Village/Airpark is designated as a "yellow" policy area; as such, Critical Lane Volume (CLV) is the measure of effectiveness for intersection operations. This methodology assesses the volume of the most constrained lane-group movement through an intersection against a standard for the policy area, which is 1,425 per the most recent Subdivision Staging Policy (SSP). The project will not push studied intersections beyond the 1,425 threshold.

Pedestrian Facilities

As a component of the LATR Review, the Montgomery County Department of Transportation (MCDOT) required the Applicant to provide a signal warrant analysis and Pedestrian Hybrid Beacon (PHB, also known as a "HAWK" signal) warrant analysis for the intersection of Centerway Drive and Site Driveway/Club House Road. The rationale for this request stemmed from the anticipation of the proposed grocery use generating a high degree of pedestrian demand from the housing complexes located due north along Club House Road. The Planning Board concurs with MCDOT regarding this assessment. Further, the consultant's work and further evaluation suggest that a traffic signal is the appropriate signal application at this intersection. As such, the Planning Board has conditioned the Applicant to furnish and install a traffic signal at Centerway Road and Site Driveway/Club House Road.

c. School Capacity

Due to the proposed non-residential use, this Preliminary Plan is not subject to the FY19 Annual School Test.

d. Other Public Facilities and Services

The Property will be served by public water and sewer. This Application has been reviewed by the Montgomery County Department of Permitting Services Fire Department Access and Water Supply, which has determined that the Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses and health services are currently operating within the standards set by the Subdivision Staging Policy resolution currently in effect and will be adequate to serve the Property. Electrical, telecommunications, and gas services are also available to serve the Property.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A.*

A. Forest Conservation

Environmental Guidelines

A Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) was approved by Staff on April 30, 2019 (NRI/FSD No. 420191630). The Property contains no streams or stream buffers, wetlands or wetland buffers, hydraulically adjacent steep slopes, 100-year floodplains, or known habitats of Rare, Threatened and Endangered species. The Property drains to the Great Seneca Creek, which is a Maryland State Use Class I-P stream. This watershed is not in a Special Protection Area. The submitted Preliminary Plan is in conformance with the Montgomery County Planning Department's Environmental Guidelines.

Preliminary Forest Conservation Plan

The Board finds that as conditioned, the Preliminary Forest Conservation Plan complies with the requirements of the Forest Conservation Law. There is no forest existing on this property. Based on the net tract area of 6.582 acres and the CRT zoning designation, development of the Property will result in an afforestation requirement of 1.02 acres. The Application will fulfill the afforestation requirement by obtaining credit equal to planting 1.02 acres of forest, or preserving 2.04 acres of forest, in an approved forest bank.

## B. Forest Conservation Tree Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise such resources must be left in an undisturbed condition.

**Table 2 – Variance Trees to be Impacted**

Tree #	Species	DBH Inches	Percent CRZ Disturbance	Status	Condition
1	Pin oak ( <i>Quercus palustris</i> )	30"	100%	To be removed	Poor
13	Red maple ( <i>Acer rubrum</i> )	38"	100%	To be removed	Fair
26	Eastern white pine ( <i>Pinus strobus</i> )	30"	100%	To be removed	Fair/Good
29	Pin oak ( <i>Quercus palustris</i> )	37"	100%	To be removed	Good
31	Pin oak ( <i>Quercus palustris</i> )	30"	100%	To be removed	Fair
5	Eastern white pine ( <i>Pinus strobus</i> )	31"	30%	To be saved	Fair

### Unwarranted Hardship

Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of its property. In this case, the unwarranted hardship is caused by the necessary layout of the proposed development on the Property and the conditions of the subject trees. The Property is currently developed with a complex of professional offices, surrounded by surface parking, sidewalks, and roadways. The 6 trees requested to be impacted are all located within narrow green strips around the perimeter of the Property between the pavement and the sidewalks. Development of the Property will require demolition of the existing development, grading,



construction of the new building and parking area, frontage improvements, and utility connections. Ultimately, it was determined that the trees, which already show signs of stress and decline due to their limited soil volume, compacted soils, and urban situation, would likely not withstand the additional shock of disturbance due to development. The Planning Board determined that the inability to remove these trees would potentially render the Property undevelopable for this project. Therefore, the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

#### Variance Findings

Section 22A-21 of the County Code sets forth the following findings that must be made by the Planning Board, in order to grant the Variance:

1. *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

Granting the variance will not confer a special privilege on the Applicant as the disturbance of one tree and removal of the five trees is due to the location of the trees and site design requirements. The Application will remove the five trees with mitigation. Therefore, granting of this variance is not a special privilege that would be denied to other applicants.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions, the locations of the trees, and necessary design requirements of this Project.

3. *The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the existing conditions and not as a result of land or building use on a neighboring property.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. The specimen trees being removed are not located within a stream buffer, wetland or special protection area. The Application will mitigate for the removal of these five trees by planting larger caliper trees on-site. Therefore, the Project will not violate State water quality standards or cause measurable degradation in water quality.

#### Mitigation for Trees Subject to the Variance Provision

In the Application, there is one (1) tree proposed for CRZ impact and five (5) trees proposed for removal in a variance request resulting in a total of 165.0 inches of DBH being removed. The Application will provide mitigation for the specimen tree loss by replacing the total number of DBH removed with  $\frac{1}{4}$  of the amount of inches replanted. This results in a total mitigation of 41.25 inches of replanted trees. Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approved replacement of Protected Trees for a total mitigation of 41.25 inches of replanted trees. No mitigation is required for Protected Trees impacted but retained.

#### County Arborist's Recommendation on the Variance

In accordance with Montgomery County Code Section 22A-21(c), the Planning Department forwarded the variance request to the County Arborist. As of the date of the Staff Report and Public Hearing, the County Arborist did not provide a letter in response to the variance request.

#### Variance Recommendation

The Planning Board granted the variance.

5. *All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied.*

This finding is based upon the determination by MCDPS that the Stormwater Management Concept Plan meets applicable standards.

There are no known stormwater management facilities located on the Property. In accordance with 2010 MDE Stormwater Management Regulations, the Project will implement micro-scale Environmental Site Design ("ESD") practices to the maximum extent practicable. The Project will incorporate 16 at-grade micro-bio-



retention facilities, five bio-swale facilities and a green roof, collectively meeting 100% of the ESD volumetric requirement.

BE IT FURTHER RESOLVED that this Preliminary Plan will remain valid for 36 months from its initiation date (as defined in Montgomery County Code Section 50.4.2.G, and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded in the Montgomery County Land Records, or a request for an extension must be filed; and

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is March 4, 2020 (which is the date that the original Resolution was mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

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#### **CERTIFICATION**

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Vice Chair Fani-González, seconded by Commissioner Cichy, with Chair Anderson, Vice Chair Fani-González, and Commissioners Cichy, Patterson, and Verma voting in favor at its regular meeting held on Thursday, April 2, 2020, in Silver Spring, Maryland.



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Casey Anderson, Chairman  
Montgomery County Planning Board



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