

MINUTES
ZONING BOARD OF APPEALS
October 15, 2008

MEMBERS PRESENT: PATRICIA CASTELLI
 WILLIAM MOWERSON
 DANIEL SULLIVAN
 JOHN DOHERTY

ABSENT: NANETTE ALBANESE

ALSO PRESENT: Dennis Michaels, Esq. Deputy Town Attorney
 Ann Marie Ambrose, Official Stenographer
 Deborah Arbolino, Administrative Aide
 Gina Raymond, Clerk Typist

This meeting was called to order at 7: 00 P.M. by Chairman William Mowerson.

Hearings on this meeting's agenda, which are made a part of this meeting, were held as noted below:

PUBLISHED ITEMS

APPLICANTS

DECISIONS

CONTINUED ITEMS:

TRAYNOR 64.20 / 1 / 5.3; R-40 zone	BUILDING HEIGHT AND SIDE YARD VARIANCES APPROVED AS MODIFIED	ZBA#08-87
FLORIO 69.20 / 1 / 10; R-15 zone	CONTINUED	ZBA#08-91

NEW ITEMS:

FERNANDEZ 69.09 / 1 / 1; R-15 zone	FRONT YARD FENCE HEIGHT APPROVED	ZBA#08-92
PECKISH & ESURIENT 77.15 / 1 / 66; R-15 zone	REVERSE DETERMINATION OF BUILDING INSPECTOR §280-a DOES NOT APPLY	ZBA#08-93
VINCENTE 71.17 / 1 / 22; R-22 zone	CONTINUED	ZBA#08-94

OTHER BUSINESS:

The Board acknowledged the application of Robert and Caryn Davis (ZBA#06-31) dated 4/5/06 in which the Board granted variances for front yard and rear yard variances; at the time of the hearing the applicant's testified that they had an existing in-law apartment in the house and the Board requested that they file a covenant for the existing apartment under Section 4.5 of the Town Code. The requested covenant was filed on October 1, 2007 to the satisfaction of the Board.

THE DECISIONS RELATED TO THE ABOVE HEARINGS are inserted herein and made part of these minutes.

The verbatim minutes, as recorded by the Board's official stenographer for the above hearings, are not transcribed.

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 9:30 P.M.

Dated: October 15, 2008

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
ASSESSOR
HIGHWAY DEPARTMENT
SUPERVISOR
TOWN BOARD MEMBERS
BUILDING INSPECTOR (Individual Decisions)
DEPT. of ENVIRONMENTAL MGMT. and ENGINEERING
Rockland County Planning

DECISION

**BUILDING HEIGHT AND ACCESSORY STRUCTURE SIDE YARD
VARIANCES APPROVED AS MODIFIED**

To: Philip Traynor

ZBA # 08-87

283 Sickletown Road
West Nyack, New York 10994

Date: 9 / 28/ 08 & 10 / 15 / 08

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#08-87: Application of Philip Traynor for a variance from Chapter 43, R-40 District, Group E, Section 3.12, Column 12 (Building Height: 6.6' permitted, 15' proposed), and from Section 5.227 (Accessory Structure Side Yard: 30' required, 10' proposed) for a detached one-car garage at an existing single-family residence. The premises are located at 283 Sickletown Road, West Nyack, New York and are identified on the Orangetown Tax Map as Section 64.20, Block 1, Lot 5.3; R-40 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at meetings held on the following Wednesdays, September 17, 2008 and October 15, 2008 at which time the Board made the determination hereinafter set forth.

Robert Hoene, Architect, appeared and testified at the September 17, 2008 meeting.

The following documents were presented:

1. Architectural plans dated June 15, 2008 signed and sealed by Robert Hoene, Architect.

Mr. Mowerson made a motion to open the Public Hearing which motion was seconded by Mr. Sullivan and carried unanimously.

Mr. Hoene testified that the proposal is for a detached one-car garage with additional storage space above and a bathroom in the rear that could be used by the kids when they

are using the pool; that there are other similar garages constructed in the area; that the proposed garage is 10' of the property line and about 40 or 50 feet from the neighbor; that there is a gable roof that permits a small attic for storage; and that he would like a continuance to clarify the variances needed.

Robert Hoene, Architect, and Phillip Traynor testified at the October 15, 2008 meeting.

Robert Hoene testified that when they first appeared before the Board there was a question regarding the height of the building; that they do need a height variance for the proposed garage; that he drew up a quick sketch to show that this is really the best placement of the proposed garage; that if the garage were moved back they would need an additional rear yard variance; that if it was moved over they would need a variance for accessory distance from the main structure; that there is a nice tree on the side of the existing driveway they would like to keep and if they moved the garage over they would lose that tree; that they do not need a floor area ratio variance for the garage; that the position of the garage is locked in by these circumstances; that the height of the garage was proposed at 15' because that is the acceptable height in other zones; that the rear wall could be removed to lower the proposed height to 13.8'; that he would like to keep the pitch of the roof the same so that it matches the existing house; and that he designed the two car garage for the neighbor that is set back into the corner of their property and has a 5' rear yard.

Philip Traynor testified that he needs the small bathroom for the kids to use when they are using the pool; that the existing three car garage is used for the three cars that the family owns; that he has four children and a partial basement and needs the storage area that this garage will provide.

On advice of Mr. Michaels, Attorney to the Zoning Board of Appeals, Mr. Mowerson moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA) Regulations 617.5 (c) (10) which does not require SEQRA environmental review. The motion was seconded by Mr. Sullivan and carried as follows: Mr. Mowerson, aye; Mr. Sullivan, aye; Mr. Doherty, aye; and Ms. Castelli, aye. Ms. Albanese was absent.

Public Comment:

No public comment.

The Board members made personal inspections of the premises the week before the meeting and found them to be properly posted and as generally described on the application.

A satisfactory statement in accordance with the provisions of Section 809 of the General Municipal Law of New York was received.

Mr. Mowerson made a motion to close the Public Hearing which motion was seconded by Ms. Castelli and carried unanimously.

FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, hearing all the testimony and reviewing all the documents submitted, the Board found and concluded that the benefits to the applicant if the variance(s) are granted outweigh the detriment (if any) to the health, safety and welfare of the neighborhood or community by such grant, for the following reasons:

1. The requested side yard and building height variances as modified would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar garages have been constructed in the area.
2. The requested side yard and building height variances as modified would not have an adverse effect or impact on the physical or environmental conditions in the

neighborhood or district.

3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested side yard and building height variances as modified are not substantial.
5. The applicant purchased the property so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not by itself preclude the granting of the area variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested side yard and building height variances is APPROVED AS MODIFIED by removing the proposed nee wall in the garage and lowering the proposed height to 13.8'; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

(i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.

(ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.

(iii) The Board gives no approval of any building plans, including, without limitation, the accuracy and structural integrity thereof, of the applicant, but same have been submitted to the Board solely for informational and verification purposes relative to any variances being requested.

(iv) A building permit as well as any other necessary permits must be obtained within a reasonable period of time following the filing of this decision and prior to undertaking any construction contemplated in this decision. To the extent any variance or Special Permit granted herein is subject to any conditions, the building department shall not be obligated to issue any necessary permits where any such condition imposed should, in the sole judgment of the building department, be first complied with as contemplated hereunder. Occupancy will not be made until, and unless, a Certificate of Occupancy is issued by the Office of Building, Zoning and Planning Administration and Enforcement which legally permits such occupancy.

(v) Any foregoing variance or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this decision or that of any other board of the Town of Orangetown granting any required final approval to such project, whichever is later, but in any event within two years of the filing of this decision. Merely obtaining a Building Permit with respect to construction or a Certificate of Occupancy with respect to use does not constitute "substantial implementation" for the purposes hereof.

The foregoing resolution to approve the application for the requested 10' side yard and 13.8' building height variances was presented and moved by Mr. Sullivan, seconded by Ms. Castelli, and carried as follows: Mr. Mowerson, aye; Mr. Sullivan, aye; Ms.

Castelli, aye; and Mr. Doherty, aye. Ms. Albanese was absent.

The Administrative Aide to the Board is hereby authorized, directed and empowered to sign this decision and file a certified copy thereof in the office of the Town Clerk.

DATED: October 15, 2008

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
OBZPAE
BUILDING INSPECTOR -J.P.

TOWN CLERK
HIGHWAY DEPARTMENT
ASSESSOR
DEPT. of ENVIRONMENTAL
MGMT. and ENGINEERING
FILE,ZBA, PB
CHAIRMAN, ZBA, PB, ACABOR

DECISION

FRONT YARD FENCE HEIGHT VARIANCE APPROVED AS MODIFIED

To: Juan and Lillian Fernandez

ZBA # 08-92

320 Manor Boulevard

Date: 10 / 15 / 08

Pearl River, New York 10965

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#08-92: Application of Juan and Lillian Fernandez for a variance from Chapter 43, R-15 District, Section 5.226 (Front Yard Fence: 4 ½' permitted, 6' proposed) for the installation of a six foot fence at an existing single-family residence. The premises are located at 320 Manor Boulevard, Pearl River, New York, and are identified on the Orangetown Tax Map as Section 69.09, Block 3, Lot 1; R-15 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 15, 2008 at which time the Board made the determination hereinafter set forth.

Juan Fernandez appeared and testified.

The following documents were presented:

1. Survey showing placement of proposed fence.

On advice of Mr. Michaels, Attorney to the Zoning Board of Appeals, Mr. Mowerson moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA) Regulations 617.5 (C)(10) which does not require SEQRA environmental review. The motion was seconded by Mr. Sullivan and carried as follows: Mr. Doherty, aye; Mr. Mowerson, aye; Mr. Sullivan, aye; and Ms. Castelli, aye. Ms. Albanese was absent.

Mr. Mowerson made a motion to open the Public Hearing which motion was seconded by Ms. Castelli and carried unanimously.

Juan Fernandez testified that his house is on a corner lot; that he would like to install a six foot fence for safety reasons; that he has a three old daughter and would feel safer with a six foot fence than with a four feet fence; that he has problems with kids cutting through his backyard; that the corner is constantly littered with broken beer bottles; that the fence would keep the garbage contained and easier to clean up; that he has owned the house for three years; that there are four people in his family, his wife and two daughters; that one daughter is 16 and the other 3 years old; that he would like to plant bushes outside the fence to screen it from the neighbors; that he measured to allow for five feet outside of the fence to plant; that if necessary he could move the fence back because he didn't realize that he couldn't measure from 38' from the house; that he would measure from 36.7' from the house and place the fence 5' in from the property line.

Public Comment:

No public comment.

The Board members made personal inspections of the premises the week before the meeting and found them to be properly posted and as generally described on the application.

A satisfactory statement in accordance with the provisions of Section 809 of the General Municipal Law of New York was received.

Mr. Mowerson made a motion to close the Public Hearing which motion was seconded by Mr. Sullivan and carried unanimously.

FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, hearing all the testimony and reviewing all the documents submitted, the Board found and concluded that the benefits to the applicant if the variance(s) are granted outweigh the detriment (if any) to the health, safety and welfare of the neighborhood or community by such grant, for the following reasons:

1. The requested front yard fence height variance would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicant has two front yards that front onto a busy corner and the applicant has volunteered to plant shrubs on the outside of the proposed fence.
2. The requested front yard fence height variance would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance.
4. The requested front yard fence height variance although substantial shall be screened with plantings.
5. The applicant purchased the property so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not by itself, preclude the granting of the area variance.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: **RESOLVED**, that the application for the requested front yard fence height variance is **APPROVED** with the **FOLLOWING CONDITION:** (1) the proposed fence shall installed five feet inside the property line; and **FURTHER RESOLVED**, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

(i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.

(ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.

(iii) The Board gives no approval of any building plans, including, without limitation, the accuracy and structural integrity thereof, of the applicant, but same have been submitted to the Board solely for informational and verification purposes relative to any variances being requested.

(iv) A building permit as well as any other necessary permits must be obtained within a reasonable period of time following the filing of this decision and prior to undertaking any construction contemplated in this decision. To the extent any variance or Special Permit granted herein is subject to any conditions, the building department shall not be obligated to issue any necessary permits where any such condition imposed should, in the sole judgment of the building department, be first complied with as contemplated hereunder. Occupancy will not be made until, and unless, a Certificate of Occupancy is issued by the Office of Building, Zoning and Planning Administration and Enforcement which legally permits such occupancy.

(v) Any foregoing variance or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this decision or that of any other board of the Town of Orangetown granting any required final approval to such project, whichever is later, but in any event within two years of the filing of this decision. Merely obtaining a Building Permit with respect to construction or a Certificate of Occupancy with respect to use does not constitute "substantial implementation" for the purposes hereof.

The foregoing resolution to approve the application for the requested front yard fence height variance was presented and moved by Ms. Castelli, seconded by Mr. Doherty, and carried as follows: Mr. Mowerson, aye; Mr. Sullivan, aye; Ms. Castelli, aye; and Mr. Doherty, aye. Ms. Albanese was absent.

The Administrative Aide to the Board is hereby authorized, directed and empowered to sign this decision and file a certified copy thereof in the office of the Town Clerk.

DATED: October 15, 2008

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY

TOWN CLERK
HIGHWAY DEPARTMENT
ASSESSOR
DEPT. of ENVIRONMENTAL
MGMT. and ENGINEERING

DECISION

**REVERSE DETERMINATION/ INTERPRETATION OF BUILDING
INSPECTOR: NEW YORK STATE TOWN LAW § 280-a DOES NOT APPLY**

To: Daniel Bertolino (Peckish & Esurient)

ZBA # 08-93

407 North Highland Avenue
Nyack, New York 10960

Date: 10 / 15 / 08

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#08-93: Application of Peckish & Esurient LLC. for of for an exception pursuant to New York State Town Law, Section 280-a (Relation of structure to streets or highways) for the construction a new single-family residence. Premises are proposed to be located at 41 Van Wardt Place, Tappan, New York and are identified on the Orangetown Tax Map as Section 77.15, Block 1, Lot 66; R-15 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 15, 2008 at which time the Board made the determination hereinafter set forth.

Daniel Bertolino, Esq., and Alan Garfinkel, P.E., appeared and testified.

The following documents were presented:

1. Site plan dated 1/28/04 with the latest revision date of 7/11/07 signed and sealed by Alan M. Garfinkel, P.E., Brooker Engineering.

On advice of Dennis D. Michaels, Deputy Town Attorney to the Zoning Board of Appeals, Mr. Mowerson moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA) pursuant to SEQRA Regulations 617.5 (c) (a) 1,12 &/or 13 which does not require SEQRA environmental review. The motion was seconded by Mr. Sullivan and carried as follows: Mr. Doherty; aye; Mr. Mowerson, aye; Mr. Sullivan, aye; and Ms. Castelli, aye. Ms. Albanese was absent.

Mr. Mowerson made a motion to open the Public Hearing which motion was seconded by Mr. Sullivan and carried unanimously.

Daniel Bertolino, Attorney, testified that his client is an LLC. That purchased the property in the spring of 2005; that the address of the property is 41 Van Wardt Place; that the property is approximately $\frac{3}{4}$ of an acre; that they are 300' back from the end of the improved portion of Van Wardt Place; that they were told they need a 280-a because the property does not front on the paved portion of Van Wardt; that there is a right-of-way to the property; that the house plans have been approved by the Historic Areas Board of Review; that they recently got approval from the Rockland County Drainage Agency; that the only left open is the 280-a; and that they agree with the determination of the Attorney to the Zoning Board that a 280-a is not necessary.

Alan Garfinkel, Engineer, testified that this is a pre-existing tax lot; that the drainage has been designed to have 0% increase in stormwater; that swales will be created to eliminate flooding; that there was a public hearing in 2004 with the Rockland County Drainage

Agency; that they went back to FEMA and they are above the flood level and have a community certification letter; and that this project will improve the drainage pattern of the Delorenzo property.

Public Comment:

Ralph Delorenzo testified that in the 60's the lot was subdivided; that there is a private easement to the property; that the property is located on a non dedicated portion of Van Wardt; and that the deed states that there is a 15' easement to the property.

Steve Mattera, 18 Ryerson Place, testified that he has concerns regarding flooding; that the Sparkill Creek already floods and new development will only complicate the problem; that he has owned his property for 10 years and is still not on the tax map; that it took him one year to get approval from the Drainage Agency to build a patio; and that if the creek can't be fixed than development along the creek should be stopped.

Tom Alexiou, 16 Ryerson Place, testified that he is new to the neighborhood and gets water; that he has environmental and safety concerns; that in order to build an entrance to this property over 20 very large trees will have to be removed; that they are very close to his property and without them the water problems will get worse; and that this plan puts a driveway in his backyard.

The Board members made personal inspections of the premises the week before the meeting and found them to be properly posted and as generally described on the application.

A satisfactory statement in accordance with the provisions of Section 809 of the General Municipal Law of New York was received.

Mr. Mowerson made a motion to close the Public Hearing which motion was seconded by Mr. Sullivan and carried unanimously.

FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, hearing all the testimony and reviewing the documents presented, the Board found and concluded that:

1. The requested New York State Town Law § 280-a exception is inapplicable to and unnecessary for this application as per §280-a paragraph 1. "No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or plan,": The Official Map of the Town of Orangetown shows that Van Wardt Place abuts, is contiguous to and extends beyond the extent of the subject property further to the south. The Board viewed and examined the said Official Map which was made part of the record by reference: Town Board Resolution #625 adopted September 17, 2006.
2. Paragraph 2 of § 280-a New York State Town Law states:" Before such permit shall be issued such street or highway shall have been suitably improved to the satisfaction of the town board or planning board, if empowered by the town board in accordance with standards and specifications approved by the town board, as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street or highway" and the Zoning Board recommends that the applicant appear before the Planning Board and/or Town Board, pursuant to said NYS Town Law § 280-a (2); the determination as to which board (i.e., Planning Board or Town Board) exercises jurisdiction over Town street standards and specifications shall be decided by the Building Inspector.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: **RESOLVED**, that the application for the requested New York State Town Law § 280-a exception is **NOT NECESSARY** and the §280-a exception is **NOT REQUIRED**: however the applicant shall comply with NYS Town Law § 280-a (2) regarding

construction of suitable improvements to the street or highway to the satisfaction of Town Board and/or Planning Board; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

(i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.

(ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.

(iii) The Board gives no approval of any building plans, including, without limitation, the accuracy and structural integrity thereof, of the applicant, but same have been submitted to the Board solely for informational and verification purposes relative to any variances being requested.

(iv) A building permit as well as any other necessary permits must be obtained within a reasonable period of time following the filing of this decision and prior to undertaking any construction contemplated in this decision. To the extent any variance or Special Permit granted herein is subject to any conditions, the building department shall not be obligated to issue any necessary permits where any such condition imposed should, in the sole judgment of the building department, be first complied with as contemplated hereunder. Occupancy will not be made until, and unless, a Certificate of Occupancy is issued by the Office of Building, Zoning and Planning Administration and Enforcement which legally permits such occupancy.

(v) Any foregoing variance or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this decision or that of any other board of the Town of Orangetown granting any required final approval to such project, whichever is later, but in any event within two years of the filing of this decision. Merely obtaining a Building Permit with respect to construction or a Certificate of Occupancy with respect to use does not constitute "substantial implementation" for the purposes hereof.

The foregoing resolution to reverse the determination/ interpretation of the Building Inspector concerning his requirement a New York State town Law § 280-a exception was presented and moved by Mr. Mowerson , seconded by Ms. Castelli, and carried as follows: Mr. Sullivan, aye; Mr. Mowerson, aye; Ms. Castelli, aye; and Mr. Doherty, aye. Ms. Albanese was absent.

The Administrative Aide to the Board is hereby authorized, directed and empowered to sign this decision and file a certified copy thereof in the office of the Town Clerk.

DATED: October 15, 2008

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
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FILE,ZBA, PB
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