



# TOWN OF HUDSON

## Zoning Board of Adjustment



Charlie Brackett, Chairman      David Morin, Selectmen Liaison

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### MEETING MINUTES – October 25, 2018 - approved

The Hudson Zoning Board of Adjustment met on October 25, 2018, in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall at 7:00 PM

Chairman Charlie Brackett called the meeting to order at 6:58 PM, stated the purpose of ZBA and the process of receiving public testimony noting that when addressing the Board, at either the lectern or the table with the microphone, to begin by stating your name, with spelling, and home address, noted that the microphones are sensitive and asked everyone to refrain from talking in the audience, that on the shelf by the entry door there are copies of the Agenda and Appeal Forms should anyone disagree with a motion made, that there is no smoking in the building and asked everyone to turn off the ringer on all cell phones.

Members present were: Charlie Brackett (Chair), Gary Dearborn (Regular), Maryellen Davis (Regular). Kevin Houle (Alternate/Clerk) and James Pacocha (Vice Chair). Also present were David Morin, Selectman Liaison, Bruce Buttrick, Zoning Administrator and Louise Knee, Recorder. Excused was Gary Daddario (Regular). Absent was Michael Pitre (Alternate). For the record, Alternate Houle was assigned as a Voting Member for this meeting.

#### **I. PUBLIC HEARINGS - SCHEDULED APPLICATIONS BEFORE THE BOARD**

1. Case 190-188 (10-25-18): Eugene Quattrucci c/o Signs Now NH, Pelham, NH requests an Appeal From An Administrative Decision for VT Lowell Properties LLC, at 36 Lowell Rd., Hudson NH, to replace an existing non-conforming manual changeable copy board sign to an electronic LED changing message sign with an existing setback of approx. 12 ft. where 25 ft. is required. [Map 190, Lot 188, Zoned B; HZO Article VIII §334-31A, Alteration and expansion of nonconforming structures].

Mr. Houle read the Case into the record. Ms. Davis stated that she has done business with the applicant in the past and is of the opinion that she can vote on this Case unless the applicant has an objection. Applicant nodded his approval for Ms. Davis to vote. Mr. Brackett noted that the Case is an Administrative Appeal and that there would be no public testimony.

Mr. Buttrick referenced his Sign Permit denial dated 8/29/2018 and his Staff Report dated 10/15/2018, noted that the existing sign is currently 12' from Lowell Road where 25' is required and therefore is a non-conforming structure and that, in his

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opinion, the change to an illuminated changeable copy board that close to the road could be too bright for the driving public and thought it best to bring the matter before the Board. Mr. Buttrick also added that according to the Zoning Ordinance Article VIII Section 334-31A, Alteration and Expansion of Non-conforming Structures (sign) would require a Variance if the Board deemed the copy change to the sign as an alteration. Mr. Brackett commented that there has been a lot of history regarding sign changes at this location.

Mr. Pacocha stated that in the past the Board has accepted presentation from an appellant, noted that the applicant was present and suggested that the Board allow him to present his appeal.

Charles Raz of Signs Now NH introduced himself and referenced two pictures: the first one depicting the business building with it's openness to Lowell Road and the existing sign 12' from Lowell Road; the second showing the existing sign and the proposed changes to place the "Michelin" and "BF Goodrich" sections below the changeable 52" x 72" section which would be programmable. Mr. Raz stated that there would be no structural changes to the sign, just the movement of the inner sections and the change to an electronic message.

Mr. Raz referenced the sheet of paper submitted with the application that addressed the criteria for the granting of a variance should the Board decide to uphold the Zoning Administrator's denial and deem that a variance would be necessary. The information shared included:

- The sign is/would not be contrary to the public interest as the sign will remain in the same spot with no argument from the general public
- There will be no change to the outside dimension of the sign
- The type of sign proposed and digital medium has been accepted by the Town
- The spirit of the Zoning Ordinance is observed. All other structures, and use, on the site comply
- The sign will only operate during their business hours
- Business hours are 7:30 AM – 5:00 PM Monday through Friday
- Substantial justice would be done and liability reduced and safety enhanced by not having to change the manual letter board or have the letters not work smoothly with the tracks for the letters, especially that close to the road during winter months and inclement weather
- Value to surrounding properties will also be enhanced with the upgraded technology of the new sign
- New sign will have the same properties of the static sign in both usage and brightness
- Proposed sign takes an additional step to and will be lower in NITS than what is allowed in the Ordinance. Ordinance allows 8,000 Nits during the day and 1,600 Nits at night. New sign will can not exceed 1,000 Nits and will be reduced to 700 Nits brightness at night
- Sign has been in the setback for more than ten (10) years
- Sign cannot be moved out of the setback as it would impact the use of a service bay and affect onsite traffic and also be too costly

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Mr. Brackett asked what a “Nit” is and questioned the brightness issue on a major Town road. Mr. Raz stated that a Nit is a unit of brightness and added that the vendor for the proposed sign has a built-in geo-location to regulate dimming the lights at night and added that the shutting off the lights can be manually controlled by the owner.

In response to Ms. Davis’ question, the business owner restated the business hours as 7:30 AM – 5:00 PM Monday through Friday and closed on the weekends, Saturdays and Sundays and agreed that the lights would be turned off when not opened for business. It was noted that the changeable area of the sign would be raised and not be in the driver’s direct eye view.

Mr. Pacocha stated that the Board appears to be treating this as a variance request when in fact it is an appeal of a decision. It was noted that it was not advertised as a variance. Mr. Pacocha stated that he thinks it should come before the Board as a variance as he intends to uphold the Zoning Administrator’s decision and uphold the expansion of the non-confirming use. Mr. Buttrick clarified that it is the sign *structure* that is non-conforming, being in the front setback, and with the proposed change to an electronic and illuminated changeable copy, thought it prudent to deny the sign permit and have the matter come before the Board. Electronic messaging signs are permitted in the ‘B’ Zone. There would be no issue with the change to an electronic presentation if the sign structure were not in the front setback.

Discussion continued and included other signs in the area and the fact that there is and will continue to be space under the sign to facilitate visibility for traffic. Mr. Dearborn expressed concern for setting precedent. Ms. Davis asked if there were any residences within 200’ of this location. There used to be residences, but they do not exist today within 200’ of this location. It was also noted that there is 175’ of frontage on this site and that there are no other signs within 150’ of the existing sign. Mr. Raz confirmed that they can adjust the letter size to meet the maximum of 10” that are allowed by the Ordinance.

Motion made by Mr. Dearborn and duly seconded by Mr. Pacocha to uphold the Zoning Administrator’s decision to deny the Sign Permit. Vote 2:3. Motion failed. Voting in the affirmative were Mr. Dearborn and Mr. Pacocha. Voting in opposition were Ms. Davis, Mr. Houle and Mr. Brackett. Ms. Davis stated that she understands and supports Mr. Buttrick’s action; however, after hearing the testimony and the proposed relocation of the changeable portion above the ‘Michelin’ and ‘Goodyear’ segments which would be above the line of the traveler’s eyes together with the owner’s testimony that it would only be illuminated during business hours and not lit at night, and that the lettering would be no greater than 10” as allowed, would vote to conditionally allow the Sign Permit to be issued.

Motion made by Ms. Davis and duly seconded by Mr. Houle to not uphold the Zoning Administrator’s determination and allow the Sign Permit to be issued with the condition that that the sign only be lit during the business hours of 7:30AM – 5:00 PM Monday through Friday and should the hours of operation change, that a variance would be needed. Vote 3:2. Motion passed. Voting in opposition were Mr. Dearborn and Mr. Pacocha. Voting to conditionally grant were Ms. Davis, Mr. Houle and Mr. Brackett.

2. Case 197-075 (10-25-18): Patrick Albert, 3 Wyeth Drive, Hudson, NH, requests a Variance to build a 8 ft. by 26 ft. farmers porch in the front of the house which will encroach into the required 30 ft. setback by 2 feet 6 inches. [Map 197, Lot 075, Zoned TR; HZO Article VII §334-27, Table of Minimum Dimensional Requirements].

Mr. Houle read the Case into the record.

Mr. Buttrick referenced his Zoning Determination dated 8/24/2018 and his Staff Report dated 10/15/2018, noted that the structure of the house is approximately 33' from its property line, outside the required 30' front setback and that the applicant desires to construct a 8' farmer's porch to the front of the house which would encroach into the front setback by 2'6"

Patrick Albert, 3 Wyeth Drive, introduced himself, stated that he wanted to construct a front porch to his home for enjoyment and addressed the criteria for the granting of a variance. The information shared included:

- The purpose of the porch will enhance the neighborhood and will not interfere with the health and safety of others and will not be contrary to the public interest
- The porch will not alter the essential character of the neighborhood and the spirit of the Ordinance would be observed
- Substantial justice would be done to the property owner and will not harm the general public or other individuals in the neighborhood
- The porch will increase the property value of the house and other houses in the surrounding area
- A porch is a reasonable use of the property, will enhance not only the house but also their lifestyle
- They have already had the plans drawn for the porch and the land surveyed by Jeffrey Land Survey, LLC, which identified the 2+' encroachment

Public testimony opened at 7:41 PM and closed at 7:42 PM. No one addressed the Board.

Mr. Dearborn stated that he viewed the site and does not believe that the two-foot encroachment would have any impact. Mr. Brackett agreed and noted that a porch with a depth of eight feet is, in his opinion, the minimum for any porch. Ms. Davis also agreed, noted that the house was initially constructed in the 1970's where it satisfied the then Ordinance, and continues to meet the intent of the Ordinance with regard to the setbacks (to prevent over crowding, allow emergency vehicle access and conserve density). Ms. Davis also noted that a porch is not a "habitable" structure and that there has been no testimony from any abutter or anyone else.

Motion made by Ms. Davis, duly seconded by Mr. Dearborn to grant the Variance to allow the 8'x26' farmer's porch to encroach the front yard setback by 2'6", with no conditions. Ms. Davis spoke to her motion by stating that it observes the intent of the

Zoning Ordinance and will not be intrusive. Mr. Dearborn stated that two and a half feet is minimum. Vote was 5-0. Motion passed. The 30-day appeal period was noted.

3. Case 253-020 (10-25-18): Todd and Jennifer Caron, 75 Schaeffer Cir, Hudson NH, requests a Variance to build a 1,000 square feet Accessory Dwelling Unit, where 750 square feet max is allowed. [Map 253, Lot 020, Zoned R-1; HZO Article XIII A, §334-73.3, Provisions].

Mr. Houle read the Case into the record.

Mr. Buttrick referenced his Zoning Determination dated 10/9/2018 and his Staff Report dated 10/12/2018, stated the applicant has plans to construct an addition to his home for a 1,000 SF ADU (Accessory Dwelling Unit) and noted that even though 1,000 SF meets the State Law, the Town of Hudson ADU requirement is stricter and allows a maximum of 750 SF for ADU.

Todd Caron introduced himself as the property owner, stated that this project has been ongoing for a while, that they have had their lot surveyed to insure that there would be no infractions to the setbacks, have had plans drawn for the third garage stall to service the ADU addition and thought they had done everything correctly. The surveyor, Jeffery Land Survey, had told him that the Laws of NH had changed slightly and had increased the size for an ADU to 1,000 SF and they met with their contractor and architect and designed plans for the ADU, according to that information. It was when they applied for the Building Permit for the ADU that they discovered that the Town of Hudson had a 750 SF limitation on ADUs. At this time, Mr. Caron said that they are asking for a variance for a 1,000 SF ADU to save them time and expense to redo the plans.

Mr. Caron addressed the criteria for the granting of a Variance and the information shared included:

- That it would not diminish the property values in the neighborhood
- Along with the addition, their plan is to redo the roof and add siding to the house which will not only increase their property value but could also do the same for their neighbors
- The ADU will be to the back of the property and will not be seen by the public from the road
- All setbacks will be met
- Substantial justice would be done

Public testimony opened at 7:48 PM and closed at 7:49 PM. No one addressed the Board.

Mr. Brackett asked and Mr. Caron stated that the ADU would be behind the garage, that there would be no changes to the front of the house and that the second floor of the third stall would become part of the existing family room, accessibly only from the main house and not be part of the ADU. In response to Mr. Dearborn's question, Mr. Caron stated that the ADU would be on the same electric meter and use the same well and four-bedroom septic system. When questioned, Mr. Caron confirmed that the

ADU bedroom would be the fourth bedroom, that the main house has only three bedrooms. Ms. Davis stated that an approved back-up septic plan must be submitted when applying for the Building Permit as it is important to have on file in the event of a system failure and is a State of NH requirement.

In response to Ms. Davis' access question, Mr. Caron stated that there are two entrances to the ADU, one from the garage and another from the hallway that connects to the main house. It was also noted that there is an egress from the hallway to the backyard.

Discussion ensued. The new Zoning Ordinance allows for two Principal Uses with Planning Board Site Plan Review. A two-family dwelling is not permitted in the R-1 Zone. New State Law allows ADUs for single-family houses. The possibility exists that this ADU could eventually turn the structure into a two-family residence. In response to Mr. Dearborn's question, Mr. Caron confirmed that the ADU would be occupied by a family member, his Mother-in-Law

Mr. Pacocha asked if the floor levels were identical between the main house and ADU. Mr. Caron stated that it would be identical and be graded off the garage floor that rests approximately two feet lower. Both the house and the ADU would have a couple of steps up to their main floors from the garage level. Ms. Davis asked if there would be a cellar under the ADU and Mr. Caron stated that there would not be a full cellar, just a crawl space.

Motion made by Mr. Dearborn and duly seconded by Mr. Pacocha to approve the Variance to allow a 1,000 SF ADU. Mr. Dearborn spoke to his motion, noted that it seems the applicant put the cart before the horse but the house is in an area with other large houses and would not be out of character. Mr. Pacocha stated that he has no issues with the plans presented. Mr. Brackett agreed, the plans make it functional and meet all setbacks and other ADU requirements. Vote was 3:2. Motion carries. Voting in opposition were Ms. Davis and Mr. Houle. The 30-day appeal period was noted

4. Case 105-013 (10-25-18): Brenton Cole, of Keach-Nordstrom Associates, Bedford, NH requests two (2) variances at SL Chasse Steel, 3 Christine Drive, Hudson, NH, to: (A) change from an existing non-conforming use to another non-conforming use, and (B) to allow non-permitted uses. [Map 105, Lot 013, Zoned B; HZO Article VIII, §334-30, Changes to or discontinuance of nonconforming uses, and Article V, §334-21, Table of Permitted Principal Uses].

Mr. Houle read the Case into the record.

Brent Cole of Keach Nordstrom Associates introduced himself as representing SLC Developments, also known as SL Chasse Steel. Mr. Cole stated that he and his client have been before the Board several times over the years, in fact, several times already this year and stated that since the last time, SL Chasse Steel has purchased the entire block on Christine Drive. SL Chasse is considered an Industrial Use and is located within the Business (B) Zone and according to the Zoning Ordinance, Industrial Uses are not permitted in the B Zone.

Mr. Cole noted that SL Chasse has been in operation on Christine Drive for more than a decade with industrial uses and every time Mr. Chase wants to expand his business or change his operation he has to come before the Board for a Variance for a now considered non-conforming industrial use.

In order for SL Chasse to occupy 3 Christine Drive, that has frontage along Robinson Road and Christine Drive, he now needs a variance despite the fact that when the Building Permit was issued in 1981 for a steel frame building, it was for an industrial use. The variance is to allow a change from a circuit board manufacturing facility to a CNC (Computer Numeric Control) machine.

Relief is needed from two (2) sections of the Zoning Ordinance. The first is to allow a change of a non-conforming use to another non-conforming use [Hudson Zoning Ordinance Article VIII Section 334-30]. The second is to allow a non-permitted Industrial Use in the B Zone.

Christine Drive has always been an Industrial Park. SL Chasse's business is growing. Whenever there is a change, SL needs to come before the Board because the Zone was changed to the "B" Zone. SL Chasse now owns all the buildings on Christine Drive.

Mr. Buttrick referenced his Staff Report dated 10/12/2018, shared the history of the site and its most recent Use and how he derived that two (2) Variances would be needed per the current Zoning Ordinance. The first Variance would require relief from Article VIII Section 334-30, Changes to or Discontinuance of Non-Conforming Uses, as the operation in the building would be changing from circuit board manufacturing to assemble CNC (Computer Numeric Control) machines as well as weld and fabricate steel frames. The second Variance would require relief from Article V Section 334-21 Table of Permitted Uses. In response to Mr. Pacocha's question, Mr. Buttrick stated that the intended Use, as are the other Uses on Christine Drive, is a Use allowed in the Industrial Zone, but not permitted in the Business Zone

Public testimony opened at 8:12 PM and closed at 8:13 PM. No one addressed the Board.

In response to Board questions, Mr. Cole stated that the new machines are programmable, that the CNC machines will be assembled on site and not used on site, and that his client has been before the Zoning Board four times in the last five years. Discussion continued and focused on the fact that Christine Drive has been Industrial since its beginning, that the area was rezoned to Business after Christine Drive was established, that just Christine Drive cannot be re-zoned to Industrial as that could be construed as "spot zoning". The option to create a list of Industrial Uses pertinent to SLC Developments and submit one variance application for Board review was offered.

Motion made by Ms. Davis and duly seconded by Mr. Pacocha to grant both Variance applications without condition – the Variance to change a Non-conforming Use and the Variance to allow a non-Permitted Use. Ms. Davis noted that the area has always been viewed as Industrial, that it meets the requirements and that the special condition is on the property that was once Industrial and rezoned Business. Mr. Pacocha stated that the site is grandfathered Industrial, that it is futile to keep coming

back to the Board, that the Uses are allowed Industrial Uses and the hardest hardship is on the owner. Vote was 5:0. Variances granted. Thirty-day Appeal period noted.

5. Case 190-038 (10-25-18): Deborah and Harold Freeman, 19 Andrews Ave, Hudson, NH requests three (3) Variances to maintain a replacement shed in the front and side setbacks.[Map 190, Lot 038, Zoned TR; HZO Article VIII §334-31, Alteration and expansion of non-conforming structures; Article VII §334-27, Table of Dimensional Requirements, and Article VII §334-27.1C, General requirements].

Mr. Houle read the Case into the record. Normand Martin introduced himself, stated that he is a Selectman in Town and is an indirect abutter and is before the Board, as a citizen, with the property owner Deborah Freeman.

Mr. Buttrick referenced his Zoning Determination dated 10/5/2018 and his Staff Report dated 10/12/2018, noted that the lot is a corner lot and is a non-conforming lot with regard to frontage and acreage and that the house violates both side and front setbacks. Mr. Buttrick stated that an 8'x10' metal shed existed on site for many years, was removed and an 8'x10' cement slab poured in the exact spot, in the front and side yard setbacks, and it is the applicants intention to replace the shed. Mr. Buttrick stated that three (3) Variances would be needed to replace the shed: (1) Article VIII Section 334-31 alteration (replacement) of a non-conforming structure; (2) Article VII Section 324-027 Table of Dimensional Requirements for placement in the setbacks; and (3) Article VII Section 334-27.1C General Requirements for placement of an accessory structure (shed) in the front yard.

Mr. Martin stated that there has been a shed on this site at that location for seventeen (17) years, that it was a metal shed that became all rusty and dilapidated and the Freemans decided to upgrade their shed and make it more pleasing to the neighborhood and spoke with their neighbor next door who had no objection so they proceeded with the pouring of the cement and installation of the new shed. The neighbor who had no objection does not own the property and it was the property owner who complained and the Freemans were cited. Mr. Martin added that there is no other location on the site to place the shed as it is a small lot with a sloping backyard.

Mr. Martin addressed the criteria for the granting of a variance. The information shared included:

- Granting the request will not be contrary to the public interest – the shed has been in that exact location for over fifteen (15) years and the new shed will be more aesthetically pleasing
- The spirit of the Ordinance will be observed because the shed will be used to store tools and a lawn mower and keep them out of the weather and out of sight
- Substantial justice would be done in the replacement of an eyesore with one of the same size in the exact same location
- Surrounding property values will not be diminished because the existing shed was deteriorating and the new shed is much more aesthetically pleasing



- Hardship is created by the land – it is a small lot, there is no room for a garage, the backyard slopes, the shed is located in the only available spot

Public testimony opened at 8:29 PM. The following individuals addressed the Board:

- (1) Roseann Corosa, 2 Stanley Ave, stated that she owns property at 30 Riverside Ave which is located diagonally from the Freeman's backyard, noted that the shed has been there for a long time and even though it is technically in their front yard it is really on the side of the driveway and not close to the road. The new shed is a real improvement.
- (2) Michael Corosa, 2 Stanley Ave, stated that no matter where the shed would be placed it would be visible from the street and the backyard does slope and he supports granting the variance.
- (3) Deborah Freeman submitted a letter from her direct abutter across the street, Kenneth Cantara, 3 Porter Ave, and read it into the record. "... I own and live at the property directly across the street ... for a number of years there has been a metal storage shed on the east side of their property adjacent to 17 Andrews Ave. Approximately a year ago, the Freemans had a cement pad poured and placed a small shed to replace the metal shed. The new shed is an improvement ... have no issue with the shed's location..."
- (4) Robin Martin, 3 Edgar Court, stated that she agrees with all prior statements, has grown up in the area and is fully supportive of the rusty caving-in metal shed being replaced.

Being no one else to speak, public testimony closed at 8:34 PM.

Mr. Pacocha questioned the third variance and Mr. Buttrick stated that an accessory structure cannot be placed in anyone's front yard. It was noted that the size of the shed would not require a Building Permit because of the small square footage but it does need to meet setbacks. Mr. Dearborn stated that he drove by the neighborhood and there were so many small lots, noted that there is not a garage on this site and commented that every house needs lawn equipment.

Motion made by Mr. Dearborn and duly seconded by Mr. Pacocha to grant the three requested Variances with no conditions. Mr. Dearborn stated that all the lots in the area seem undersized and there were no objections received in testimony. Mr. Pacocha commented on the size of the lot on addition to the house location on the lot and the sloping backyard. Mr. Brackett noted that the new shed is the exact same size and in the exact same location. Vote was 4:1. Ms. Davis opposed noting that the small lot violates the Zoning Ordinance, acknowledged that the shed has been in that location but it is in their front yard and that, in her opinion, is an intrusion on the neighbors. Motion passed. Variance for relief granted to side yard setback, front yard setback and placement of shed in front yard. The 30-day appeal period was noted.

## **II. REVIEW OF MINUTES**

### **1. 09-27-18 Minutes**

Board reviewed the edited version presented and made one additional correction. Motion made by Mr. Dearborn duly seconded by Ms. Davis to approved the 9/27/2018 Minutes as edited and amended. Vote was 3:0:2. Mr. Brackett and Mr. Pacocha abstained as they had not attended the meeting. Motion passed, Minutes approved.

**III. REQUEST FOR REHEARING** – None received for Board consideration

**IV. OTHER**

1. Review of new Legislative Laws

HB 1215: ZBA to utilize one voting method consistently

Discussed. Board reviewed the 8-10-2018 letter written by Town Counsel, David LeFevre. Consensus was to utilize vertical method. Suggestion made to change the Decision Sheet to include the reason, especially for denials. Suggestion made to add space at the bottom for conditions of approval. Question raised whether to add to the Zoning Amendments or enhance the By Laws.

SB 339: Concurring vote of any three Members

Discussed. Board reviewed the 8-10-2018 letter written by Town Counsel, David LeFevre. Question raised whether to include in the Bylaws.

Decision reached to review in more detail at the next ZBA Workshop meeting.

2. Proposed Zoning Ordinance amendments

Board reviewed the Final Draft dated 9-20-2018. Mr. Morin thanked the individuals for their hard work in its preparation, stated that it was presented to the Planning Board, noted that their efforts were appreciated by the Planning Board and Mr. Brackett added that it seemed to strengthen the relationship between the Boards.

Ms. Davis stated that the ADU issue raised earlier in the meeting should be added to the list. Agreement reached that the next ZBA Workshop / Zoning Ordinance Review meeting will be held on 11/15/2018 at 6:30 PM and that the Animal Control Officer be invited to address the issue raised at September's meeting.

Mr. Buttrick reminded everyone that the next ZBA meeting is scheduled for Thursday, November 8, 2018 due to the Thanksgiving Holiday.

Motion made by Ms. Davis, duly seconded by Mr. Dearborn and unanimously voted to adjourn the meeting. The 10-25-2018 meeting adjourned at 9:07 PM.

Respectfully submitted,

Charles J. Brackett, Chair

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