COUNTY OF YORK
MEMORANDUM

DATE: January 5, 2010 (PC Mtg. 1/13/10)

TO: York County Planning Commission

FROM: Timothy C. Cross, AICP, Principal Planner

SUBJECT: Application No. ZT-128-10, York County Board of Supervisors

ISSUE

The Board of Supervisors sponsored this application at its November 17, 2009 meeting to allow the consideration of Zoning Ordinance text amendments establishing requirements and performance standards governing the construction and operation of accessory small wind energy systems in the County.

BACKGROUND

Several months ago the Board referred this issue to the Planning Commission after some citizens had expressed an interest in installing residential wind turbines on their property but were not able to because the Zoning Ordinance does not provide for them. The Commission conducted a work session on September 30 to discuss the various planning and zoning issues surrounding these systems. There was considerable discussion and debate, and a wide range of opinions were expressed. Some Commission members felt that a Special Use Permit should be required in every case while others wanted to allow them by right, or with an administrative height waiver, in some instances. Some wanted to provide an opportunity for such systems in all zoning districts while others wanted to limit these opportunities to certain districts only. Ultimately, the general consensus of the five members in attendance was to move forward with a recommendation to permit these systems as an accessory use in every zoning district – residential, commercial, and industrial – but only with a Special Use Permit. In addition, the commissioners agreed that 1) the minimum setback should be equal to the total height of the tower, including rotors, thereby ensuring that if a turbine tower were to fall down it would not fall on neighboring properties or street rights-of-way, 2) systems should be permitted in rear yards only, and 3) there should be no limit in the number of towers permissible on a single piece of property as long as it is large enough to accommodate the setbacks.

The language sponsored by the Board reflects the Commission's recommendation with one exception. Given the range of ideas and opinions expressed at the work session and the fact that two members were not able to attend and participate in the discussion, staff' recommended that the Board sponsor Zoning Ordinance text amendments that are somewhat less restrictive than the Commission recommended. Specifically, the proposed language would allow accessory turbine towers up to forty feet in height – or, for roof-mounted turbines, up to 25 percent greater than the district maximum – with an administrative exemption rather than a use permit. Staff's purpose in recommending this ap-

proach was to preserve flexibility for the Commission and the Board of Supervisors to make changes to the draft amendments as they work their way through the review/public hearing process without having to re-advertise the application.

CONSIDERATIONS/CONCLUSIONS

1. One issue that generated significant discussion at the September work session is whether small wind energy systems should be permitted as a matter of right in some cases. It is important to note that wind turbines come in many shapes and sizes. Although the general perception is of a two- or three-blade turbine mounted on a 60-foot to 100-foot tower, there are other types of wind turbines that, while they generate less wind energy, are smaller and much less visible. One model, in fact, is only thirty feet (30') tall – less than the 35-foot maximum building height allowed in all of the County's single-family residential zoning districts.

   To allow accessory wind turbine towers as a matter of right, at least up to a certain height, would be consistent with the County's general approach to accessory uses, a wide range of which are permitted as a matter of right in conjunction with residential and commercial/industrial uses. These accessory uses, most of which can be as tall as the principal structure, include carports, garages, utility and storage sheds, dog pens with up to four animals, beehives, private kennels (in the RR and RC zoning districts only), skateboard ramps, tennis and basketball courts, and barns. Radio and television antennas are permitted up to a maximum height of one hundred feet (100') with an administrative exemption. Section 24.1-273(g) of the Zoning Ordinance specifies that no accessory building or structure shall exceed the maximum height limitation established for the district or the height of the structure to which it is accessory, whichever is less, and most accessory structures are permitted to be located within five feet (5') of the side and rear property boundaries. In staff's opinion, a 30-foot wind turbine located at least 30 feet from all property lines is relatively unobtrusive compared to a 3- or 4-car two-story garage located five feet (5') from the property line.

2. Another major issue is whether small wind energy systems should be permitted, either as a matter of right or with a Special Use Permit, in every zoning district. At the work session, some commissioners expressed concern about the aesthetic impact of allowing multiple tall structures on relatively small lots within a high-density neighborhood of single-family detached homes. Given the proposed provision establishing the height of the tower as the minimum building setback, taller towers will be limited to larger, wider lots with enough land to accommodate them, regardless of how the property is zoned. For example, in the R13 (high-density single-family residential) zoning district, a typical 90' by 150' lot in a conventional subdivision would not be able to accommodate a wind turbine tower any taller than 45 feet. In the R20 (medium-density single-family residential) zoning district, a typical 100' by 200' lot could accommodate a tower up to fifty feet (50') in height. With the setback provision as proposed, the specter of numerous tall wind turbine towers on small lots in a residential neighborhood is not a realistic one.
   If there is one zoning district in which it might be appropriate to prohibit wind turbine towers altogether, staff believes it is the Yorktown Village Activity (YVA) district,

which applies to all land within the Yorktown village. Although a colonial windmill in the area of Yorktown known as Windmill Point once served as a signature landmark for the town, modern turbines and the towers on which they are mounted are not consistent with the historic village character that the YVA provisions – as well as the Historic Yorktown Design Guidelines – are intended to protect and promote. As a practical matter, most of the lots in Yorktown are probably too small for a wind turbine tower of any appreciable size; however, there are some privately owned properties that could conceivably accommodate towers as tall as ninety feet (90') – much taller than 25-foot maximum height specified by Section 24.1-327(d)(6) of the Zoning Ordinance for structures in the YVA district other than single-family detached homes. For these reasons, staff has proposed a modification to the sponsored text amendments to prohibit wind turbines in the YVA district.

3. The draft ordinance language sponsored by the Board includes performance standards proposed by staff based on the Commission discussion at the September work session, other localities' wind turbine ordinances, and various model ordinances. One of the proposed standards deals with noise, about which there was much discussion at the work session. The issue, which was never fully resolved, was whether the ordinance should specify a maximum noise standard or simply refer to the general noise standard that applies throughout the County. Staff knows of no reason to single out wind turbines by subjecting them to a special noise standard and therefore has recommended language stating that "Small wind energy systems shall be operated in compliance with the provisions of Section 16-19, Unnecessary or excessive noise, of the York County Code." (As the Commission is aware, because of a recent Virginia Supreme Court ruling that overturned Virginia Beach's noise ordinance, which is similar to York County's, the County Attorney is working on revisions to the County's noise ordinance to address its deficiencies.)

   Other standards are proposed to address aesthetic issues (no signage, flags, streamers, or decorative items, lighting, or obtrusive colors) and safety issues (ten feet of clearance between the rotors and the ground; conformance with the building and electrical codes; design standards to prevent unauthorized climbing; engineer's certification requirements; requirements for removing unsafe or unused structures). Some localities have insurance requirements, but staff sees no need for such a provision since the proposed setback requirements protect neighboring properties from being harmed by a falling tower.

4. Staff has received comments on the draft amendments from representatives of the wind power industry. Comments were received from a company called Mariah Power, which manufactures the Windspire®, which is a vertical-axis turbine typically measuring only thirty feet (30') in height with a cylindrical rotor measuring four to six feet (4'-6') in diameter. Specifically, this manufacturer expressed concern about the proposed provisions limiting wind turbine towers to rear yards and requiring such towers to either be fenced or be designed so as not to be climbable for twelve feet (12'). Since the base pole on which the Windspire® is mounted is ten feet (10') tall, the manufacturer requested that the twelve-foot (12') limit be reduced to ten feet. While several localities set the limit at twelve feet (12'), the American Wind Energy Asso-

ciation (AWEA) recommends a limit of ten to twelve feet, and Virginia Beach's wind energy system ordinance contains no special performance standards to address the unauthorized climbing of wind turbine towers.

This manufacturer also expressed concern about the proposal to allow wind turbines in rear yards only, noting that the Windspire® can be used as an aesthetic piece or even as artwork, in which case it would most likely be placed in the front yard. In general, the Zoning Ordinance does not allow accessory buildings or structures – other than statues, arbors, trellises, flagpoles, fences, walls, and roadside stands, which are all exempt – to be located closer to the front lot line than the principal building façade provided that where the principal building is set back more than fifty feet (50'), accessory structures are subject to a minimum setback requirement of fifty feet (50'). One problem with the rear yard requirement as applied to wind turbines is that it would likely prevent wind energy systems on waterfront properties that have the greatest potential for wind energy (e.g., Calthrop Neck, Seaford, and Dare). Many of these properties are large with deep front yard setbacks but have rear yards that are in the Chesapeake Bay Resource Protection Area (RPA), where development opportunities are limited. This problem can be addressed with the proposed use permit requirement for wind energy systems taller than forty feet (40'), which would allow the Planning Commission and Board of Supervisors to consider the specific site characteristics when reviewing and establishing conditions for a proposed wind turbine tower. The question, then, is whether or not wind turbines up to forty feet (40') in height, which could be permitted administratively under the proposed amendments, should be limited to rear yards. It should be noted that none of the Virginia localities that have wind turbine ordinances has a specific requirement limiting wind energy systems to rear yards, perhaps because the height/setback requirements (i.e., minimum setback equal to or greater than the tower height) limits their proximity to surrounding properties and ensures that taller towers will only be on larger lots and subject to greater setback requirements. Nevertheless, given the variety of turbine designs and styles, to allow them in front yards – even at heights of forty feet (40') or less – could have an adverse visual impact on neighboring properties; therefore, staff recommends that front or side yard locations only be allowed with a Special Use Permit. This would allow for consideration of the unique site characteristics and public comment before such a request can be approved.

The owner of a local firm – CoolSystems – that offers a range of alternative energy products and services, including wind turbines, also expressed concern about the proposal to limit small wind energy systems in rear yards only as well as noting the impracticality of roof-mounted turbines for residential applications. Indeed, all of the available literature suggests that most single-family detached homes are not structurally capable of supporting a rooftop wind turbine; however, they may be more feasible for commercial and industrial buildings, so staff recommends that the ordinance provide for them in some fashion. (Virginia Beach has a similar provision allowing roof-mounted turbines to exceed the customary maximum building height requirements.)

RECOMMENDATION

Based on the considerations and conclusions noted, staff recommends that the Commission forward the sponsored Zoning Ordinance text amendments to the Board of Supervisors with a recommendation of adoption, with the following modifications:

- Prohibition of small wind energy systems in the YVA zoning district
- Modify the requirement that such systems be permitted only in rear yards by inserting a provision under which the Board of Supervisors could allow front or side yard locations by Special Use Permit
- Requirement that the base of the tower not be climbable for a distance of ten feet (10') rather than twelve feet (12')

This can be accomplished through the adoption of proposed Resolution No. PC10-1. Alternatively, should the Commission wish to require a Special Use Permit for all small wind energy systems as discussed at the September 30 work session, that can be accomplished by deleting the proposed amendments to Section 24.1-231 and the highlighted portion of Section 24.1-274(a). The proposed resolution can, of course, be further revised to accommodate any other changes the Commission chooses to make to the zoning text amendment language proposed by staff.

Attachments:

- Excerpts of Planning Commission work session minutes, September 30, 2009
- Adopted Resolution No. R09-161 (text amendments sponsored by the Board of Supervisors)
- Proposed Resolution No. PC10-1 (text amendments with revisions proposed by staff)

MINUTES
YORK COUNTY PLANNING COMMISSION
Work Session
York Hall East Room, 301 Main Street
September 30, 2009

MEMBERS
Christopher A. Abel
Nicholas F. Barba
Anne C. H. Conner
John R. Davis
M. Sean Fisher
Alexander T. Hamilton
Alfred E. Ptasznik, Jr.

CALL TO ORDER

Chair John R. Davis called the work session to order at 7:00 PM.

ROLL CALL

The roll was called and all members were present with the exception of Ms. Conner and Mr. Barba. Staff members present were J. Mark Carter, Timothy C. Cross, Amy Parker, Earl Anderson, and James E. Barnett, Jr., County Attorney.

INTRODUCTION

Chair Davis stated that the purpose of the work session was to discuss zoning issues surrounding small wind energy systems and also to discuss the Route 17/Lakeside Drive development activity and the Certified Planning Commissioners Training Program.

DISCUSSION

Mr. Cross referred to the discussion paper on small wind energy systems that had previously been distributed to the Commission He said the requests that brought this issue to the County's attention involved residential wind turbines and stated that staff is seeking guidance from the Planning Commission on the questions raised in the discussion paper.

Mr. Fisher said he was concerned that the Zoning Ordinance is already too extensive and thought it would be better to modify the height requirements for radio antenna, flagpoles, cell towers and other tall structures than to create a new section for small wind turbines. He also recommended that small wind systems be subject to a generally applicable noise standard rather than a specific noise standard created for wind turbines.

Mr. Barnett said the County's noise ordinance needs to be changed because of a recent Virginia Supreme Court ruling that overturned another locality's noise ordinance that was similar to the County's, and that a draft rewrite of the noise ordinance is being circulated among County staff. He stated that there are various ways to approach the noise issue but that at this point he does not know which will be incorporated into the final ordinance. He indicated that noise from a small wind turbine could be restricted by a specific standard or simply be subject to the general standards once the noise ordinance is finalized.

Mr. Ptasznik opined that just as there are specific standards and conditions for other specially permitted uses, there should also be specific criteria for acceptable turbine noise levels as well as lot sizes and setbacks. He said he had read that sound from small wind turbines was similar to sound emitted by a running washing machine. He also stated that he felt small wind turbines should only be permitted in certain zoning districts and only with a Special Use Permit.

Mr. Abel said it would be difficult to set an acceptable noise level for each individual noise generator and that all uses should fall within a uniform parameter under the noise ordinance. He said that a bigger concern would be that residents who oppose cell towers might also oppose the wind turbines. He added that he had heard that ice accumulation on the blades of a wind turbine could also be a problem and that there should be setback requirements to keep them far enough away so as to prevent injuries caused by ice coming off of the rotating blades.

Mr. Cross commented that all the literature he has read on wind turbines indicates that icing is not a problem, particularly for small residential systems.

Mr. Hamilton said that there should be a height limitation as well as a lot size requirement.

Discussion took place about the minimum lot sizes in the various zoning districts.

Mr. Davis asked his fellow commissioners if they were all in favor of small wind turbines. They all responded in the affirmative.

Mr. Hamilton said it was important to look at alternative energy sources and this was an indication of new technology.

Mr. Cross asked if the Commissioners wanted to specify circumstances under which wind turbine towers would be permitted as a matter of right. He added that some systems are only 30 feet tall – less than the maximum building height in all of the County's residential zoning districts – and suggested that should be taken into consideration when deciding what can be permitted as a matter of right.

Mr. Davis asked if the approval to build and operate a small wind turbine would run with the land. He also asked if the turbine could be illuminated or have signage. **Mr. Cross** said most ordinances prohibit signage on the wind turbines and do not allow illumination unless required by the FAA. **Mr. Barnett** said the wind turbine approval would run with the land and not be limited to an individual property owner.

Mr. Abel said that the turbines would be self-regulating as they would need to be placed in areas where there is adequate wind flow (e.g., waterfront property) and noted that much of the County is heavily wooded, which would make many properties unlikely candidates for utilizing wind power.

Mr. Davis asked where the demand was coming from. **Mr. Cross** indicated that the County has received three inquiries from residents who live on waterfront property.

Mr. Ptasznik said he would like all requests to go through the Special Use Permit process. He asked how many other jurisdictions in the state have ordinances for small wind turbines. **Mr. Cross** responded that the cities of Virginia Beach and Suffolk as well as the counties of Rockingham and Halifax address wind turbines in their zoning ordinance. He added that those localities have established minimum setback requirements equal to or fifty percent (50%) greater than the height of the tower.

Discussion continued regarding zoning districts where small wind energy systems could be permitted. **Mr. Ptasznik** said he was willing to support wind turbines but was concerned that there could be a possibility of a wind turbine on every lot in a residential development and did not think zoning districts with small lots should be allowed to have them. He indicated that a small wind turbine could last approximately 20-30 years.

Mr. Hamilton said he also would like every request for a wind turbine system go through the Special Use Permit process, at least initially. He said the ordinance can always be amended in the future depending on the demand for wind turbines. He also indicated that the cost to build a wind turbine may decrease in the future, which could increase the demand. He said a phasing concept should be incorporated to protect the County.

Mr. Abel agreed that performance standards should be incorporated into the Zoning Ordinance and reviewed every few years depending on the market for wind turbines. **Mr. Carter** indicated that the Zoning Ordinance is amended regularly as new issues arise and circumstances change.

Mr. Carter commented that if tower setbacks are based on height, many properties in the County would be too small to have one. Such an approach, he suggested, would allow the physical characteristics of the site, rather than the zoning district, to dictate whether or not a particular location is appropriate for a small wind energy system.

Mr. Fisher said that he did not think any residential zoning district should be disqualified from having a small wind turbine and said as long as a property can accommodate the required setbacks, any property owner should be able to apply for a Special Use Permit.

Mr. Cross said that in the four localities that have language addressing small wind turbines, one makes a direct reference to noise, two make references and list them, and Suffolk was the only locality that does not address noise at all. He said that the literature indicates that turbines are not particularly noisy from a distance, especially if that distance is fifty feet (50') or more, which is the height – and thus the minimum setback, under the proposed standard – of most turbine towers.

Mr. Davis asked if there are any guidelines specifying that a tower must be removed after a certain period of disuse. **Mr. Cross** responded that different localities have different standards, ranging between about six months and two years.

Mr. Fisher recommended if a Special Use Permit is going to be required, the opportunity should be provided in every zoning district, including commercial and industrial districts. He also added that there should be a required minimum setback of 100 percent of the turbine height and that the turbines should only be allowed in the rear of the property. **Mr. Abel** agreed.

Mr. Abel asked if people would be permitted to establish wind farms on their property. **Mr. Carter** responded that opportunities for wind farms could be provided, however, this is a different issue and needed to be addressed separately.

Ms. Amy Parker asked if more than one wind turbine would be permitted on a single property. The consensus of the Commission was in the affirmative.

Mr. Carter said it was up to the Commission to decide on what requirements would be and once drafted the information would be sent to the Board of Supervisors to be sponsored. He reminded the Commission that if the Board sponsors the text amendment, there would be a public hearing before

the Planning Commission and that recommendation gets forwarded to the Board of Supervisors for final approval.

Mr. Carter summarized the discussion, stating his understanding that the Commission's recommendation is to allow small wind energy systems as an accessory use in every zoning district but only with a Special Use Permit. He added that the Commission's consensus was to allow such systems in rear yards only and to establish the total tower height, including blades, as the minimum setback requirement.

It was agreed that staff would prepare a draft to reflect the Commission's consensus and forward it by email for review. Assuming that the draft is found acceptable for further consideration by the Commission members, staff will prepare the material necessary for the Board of Supervisors to formally sponsor and initiate a text amendment application. The Commission agreed with this approach.

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R09-161

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Resolution

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the 17th day of November, 2009:

Present	Vote
Walter C. Zaremba, Chairman	Yea
Donald E. Wiggins, Vice Chairman	Yea
Sheila S. Noll	Yea
George S. Hrichak	Yea
Thomas G. Shepperd, Jr.	Yea

On motion of Mrs. Noll, which carried 5:0, the following resolution was adopted:

A RESOLUTION TO SPONSOR AN APPLICATION TO AMEND CHAPTER 24.1, ZONING, OF THE YORK COUNTY CODE TO ESTABLISH REQUIREMENTS AND PERFORMANCE STANDARDS FOR ACCESSORY SMALL WIND ENERGY SYSTEMS

WHEREAS, rising energy costs and concerns about the nation's reliance on foreign oil and fossil fuels have led to new interest, both in York County and throughout the nation, in alternative and renewable energy sources, including wind energy; and

WHEREAS, wind energy is an abundant, renewable, and non-polluting energy resource; and

WHEREAS, national and state energy policy call for increased use of renewable energy sources such as wind and solar power; and

WHEREAS, several property owners in the County have expressed interest in constructing accessory small wind energy systems on their properties to supply energy for home and/or vehicular use but could not be permitted because the Zoning Ordinance does not provide for such structures;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the 17th day of November, 2009, that it does hereby sponsor an application, pursuant to Section 24.1-113(a)(2) of the York County Zoning Ordinance, to amend Chapter 24.1, Zoning, of the York County Code to read and provide as follows:

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ARTICLE I. IN GENERAL

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Sec. 24.1-104. Definitions.

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Skirting. A weather-resistant material used to enclose the space from the bottom of a manufactured home to grade.

Small wind energy system. A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics which is intended primarily to generate electricity or to reduce on-site consumption of utility power by means of wind power.

Solid waste disposal site or landfill. Areas which are utilized for the ultimate disposition of solid wastes as defined in chapter 19 of this Code, and also specifically including waste plant material, stumps or construction materials resulting from land-clearing and development activities.

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ARTICLE II. GENERAL REGULATIONS

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Sec. 24.1-231. Exemptions from height regulations.

(a) The zoning administrator may grant administrative exemptions to the district height regulations to permit reasonable increases in height for the following situations:

(1) Church spires, belfries, cupolas, monuments, chimneys, water towers, fire towers, cooling towers, electric substation components, radio and television antennas may be permitted to exceed the height stipulated in the district regulations by no more than twenty-five percent (25%) if attached to a building, or to a maximum of one hundred feet (100') if free-standing. Wind turbines may be erected to a height not more than 25% greater than the district maximum if roof-mounted, or to maximum of 40 feet if free-standing. The preceding height increase opportunities shall not apply to dish antennas, signs and flagpoles, or other similar structures. The zoning administrator shall determine whether a proposed height increase is necessary to serve a functional purpose as opposed to merely drawing attention to the structure.

(2) Parapet walls or similar structures may exceed the maximum height limit by not more than eight feet (8'). Such walls or structures shall not be used as, for, or to support signs. Pitched roofs on structures located in commercial and industrial zoning districts may exceed the maximum height limit by up to twenty-five percent (25%) provided that the zoning administrator determines that the actual number of building floors with habitable space is no greater than would be allowed with a flat roofed structure and provided further that the fire chief has reviewed and approved the proposed structure and site design to ensure appropriate accessibility for effective fire containment and control, including specifically the location of fire lanes to facilitate the positioning of fire-fighting apparatus and equipment during an emergency response.

(3) Except as noted above, no accessory building or structure shall exceed the maximum height limitation established for the district or the height of the structure to which it is accessory, whichever is less, provided, however, that buildings which are accessory to a single-story building may be constructed to a maximum height not exceeding 1.25 times the height of the principal building. In cases where this is permitted, the accessory building shall be separated from the principal building by a distance of at least twenty feet (20').

(4) Buildings and structures used in conjunction with a bona fide agricultural use in an RC or RR district shall be exempt from the height limits specified for those districts. This exemption shall not apply to buildings constructed in conjunction with horsekeeping activities as a residential accessory use.

(b) The board, after conducting a duly advertised public hearing, may authorize exemptions to the height regulations which exceed those which may be authorized administratively, as provided in subsection (a) above. In granting exemptions, the board may impose reasonable conditions. No exemption shall be granted which violates the terms of the airport safety management overlay district.

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Sec. 24.1-271. Accessory uses permitted in conjunction with residential uses.

The following accessory uses shall be permitted in conjunction with residential uses. No accessory use, activity, or structure, except fences, shall be constructed or conducted until the principal use of the lot has commenced, or the construction of the principal building/structure has commenced and is thereafter diligently and continuously pursued to completion. Land uses not listed in this section and not deemed similar to a listed use pursuant to subsection (~~n~~o) shall be deemed not allowed as residential accessory uses:

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(m) Craft sales or shows subject to the following provisions:

(1) Items offered for sale shall be limited to those which have been made or crafted by the participants as a hobby or avocation as distinguished from items which are made in the conduct of a home occupation;

(2) Participation in such sales or shows shall be limited to an occupant of the premises and not more than four (4) non-occupants. For the purposes of this section, participation shall be construed to mean the offering for sale of items made or crafted by an occupant or participating non-occupant, whether or not that individual is physically present on the premises during the conduct of such sale or show;

(3) Not more than one (1) such sale or show event shall be conducted on a premises in any given calendar year. For the purposes of this section, the duration of any sale or show event shall be limited to six (6) days within a period of ten (10) consecutive days;

(4) Such sales and shows may be conducted only upon authorization by the zoning administrator of a temporary permit subsequent to application and payment of a five dollar ($5.00) nonrefundable processing fee by an occupant of the premises upon which such sale or show is proposed to be conducted. The zoning administrator shall make a determination with respect to approval or denial of applications within ten (10) working days of submission and shall consider the following:

a. the proposed location of the sale or show and the probable impact on adjacent land uses;

b. the ability of the structure in which such sale will be conducted to accommodate safely the number of persons likely to patronize such event;

c. the ability of the streets in the immediate vicinity of such residential property to accommodate adequately and safely the traffic and parking demand anticipated to be associated with such event without disruption of normal traffic circulation and emergency access needs.

(5) In the event the zoning administrator determines that the conduct of such craft sale or show at the proposed location would adversely affect the surrounding land uses because of the disruption to the normal and essential traffic circulation needs of the immediate vicinity, or the safety and welfare of participants, patrons, neighbors, or the general public, the applica-

tion for temporary permit shall be denied. No application for a temporary permit shall be deemed to have been received for processing unless accompanied by a nonrefundable processing fee in the amount of five dollars ($5.00).

(n) Small wind energy systems~~.~~ subject to the standards set forth in s~~S~~ection Nos. 24.1-231 and 274 of this chapter.

(o~~n~~) Other uses and structures of a similar nature which are customarily associated with and incidental to residential uses as determined by the zoning administrator.

Sec. 24.1-272. Accessory uses permitted in conjunction with commercial and industrial uses.

The following accessory uses shall be permitted in conjunction with commercial and industrial uses. No accessory use, activity, or structure, except fences, shall be constructed until the principal use of the lot has commenced, or the construction of the principal building/structure has commenced and is thereafter diligently and continuously pursued to completion. Land uses not listed in this section and not deemed similar to a listed use pursuant to subsection (~~k~~l) shall be deemed not allowed as commercial or industrial accessory uses:

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(j) Incidental monitoring equipment or devices designed to monitor general conditions or specific processes or events or both.

(k) Small wind energy systems subject to the standards set forth in s~~S~~ection Nos. 24.1-231 and 274 of this chapter.

(l~~k~~) Other uses and structures of a similar nature which are customarily associated with and incidental to commercial or industrial uses, as determined by the zoning administrator.

Sec. 24.1-273. Location, height, and size requirements.

Except where other provisions of this chapter are more restrictive, the following requirements shall apply to the location, height, and size of all accessory uses or structures in all districts, including the planned development district unless the approving ordinance for such district (project) has established alternative or supplementary requirements:

(a) With the exception of statues, arbors, trellises, flagpoles, fences, walls or roadside stands, accessory buildings or structures shall not be located closer to the

front lot line than the principal building façade provided, however, that where the setback of the principal building exceeds fifty feet (50'), accessory buildings and structures shall be subject only to a fifty-foot (50') minimum setback requirement.

(b) Accessory buildings or structures located closer to the front lot line than the rear of the principal building shall observe the side yard requirements applicable to the principal building. When the rear façade of the principal building has more than one plane, the accessory building side yard requirements shall be determined based on accessory building location in relation to those rear facades as depicted in Figure II-7.1, Appendix A.

(c) An accessory building or structure attached to a principal building by any wall or roof construction, or located within ten feet (10') of any principal building, shall be considered a part of the principal building and shall observe all yard regulations applicable thereto. Setback and spacing requirements for accessory in-ground swimming pools shall be measured to the edge of the water. Setback and spacing requirements for above-ground pools shall be measured to the outer edge of the pool wall or any above-ground decking surrounding the pool.

(d) Accessory buildings and structures shall observe minimum side and rear yard setbacks of five feet (5') except where the provisions of this chapter specifically require otherwise and provided, however:

(1) There shall be no side and rear yard requirements for fences or walls; and

(2) There shall be no rear yard requirement for docks, piers or boathouses; however, a setback of ten feet (10') from side lot lines, or extensions thereof into bodies of water, shall be observed. All such uses shall be subject to applicable permitting requirements of the Virginia Marine Resource Commission and United States Army Corps of Engineers.

(e) Roadside stands shall be set back at least twenty feet (20') from any road right-of-way.

(f) The above listed requirements shall not apply to the parking or storage of small cargo or utility trailers, recreational vehicles and similar equipment; however, no such trailer, vehicle, or equipment shall be stored within twenty feet (20') of any public road right-of-way, unless in a driveway.

(g) Except as authorized by section 24.1-231 or section 24.1-274 of this chapter, no accessory building or structure shall exceed the maximum height limitation established for the district or the height of the structure to which it is accessory, whichever is less, provided, however, that buildings which are accessory to a single-story building may be constructed to a maximum height not exceeding 1.25 times the height of the principal building. In cases where this is permitted, the

accessory building shall be separated from the principal building by a distance of at least twenty feet (20') and shall observe a minimum side and rear yard setback of ten (10) feet rather than the normally applicable five (5) feet.

(h) With the exception of barns and similar structures associated with a bona fide agricultural/farming operation, the building footprint (i.e., lot coverage) of a structure accessory to a residential use shall not exceed the area of the building footprint of the principal residential structure.

(i) Accessory structures shall be located on the same lot as the principal structure. Where adjoining lots are under single ownership and an accessory structure is proposed to be located so as to straddle an interior property line, or where the accessory and principal structures would be on different lots, the owner shall be responsible for preparing and recording, prior to issuance of a building permit, a survey plat to vacate the interior lot line(s) as necessary to ensure the principal and accessory structures are located on the same lot.

Sec. 24.1-274. Special standards applicable to accessory small wind energy systems.

The following requirements and performance standards shall apply to all accessory small wind energy systems:

(a) Small wind energy systems meeting the height limitations set forth in section 24.1-231(a)(1) shall be subject to administrative review and approval by the zoning administrator, and shall be approved if meeting all requirements of this section. Any small wind energy system in excess of those height allowances shall be subject to review and approval pursuant to the special use permit procedures and requirements set forth in section 24.1-115 of this chapter.

(b) Every application for a small wind energy system shall be accompanied by scaled elevation drawings of the proposed system, including colors and specifications, and certification from a licensed professional engineer that the support structure of the system will have the structural integrity to carry the weight and wind loads of the small wind energy system.

(c) The height of any small wind energy system shall be measured from ground level to the highest point of the turbine rotor at its highest elevation.

(d) The minimum setback of any small wind energy system shall be equal to the height of the system. Guy wire anchors shall not be permitted in any front or side yard.

(e) The minimum distance between the ground and any protruding blades utilized on a small wind energy system, as measured at the lowest point of the arc of the blades, shall be ten feet (10').

(f) Small wind energy systems shall be permitted only in a rear yard.

(g) Other than safety and warning signs, no signage, flags, streamers, or decorative items shall be attached or affixed to any component of the system.

(h) Turbines and support structures shall be predominantly white, off-white, gray, or a similar non-obtrusive color.

(i) No portion of a small wind energy system shall be illuminated unless required by the Federal Aviation Administration.

(j) All small wind energy systems and the construction and installation thereof shall conform to the applicable requirements of the Uniform Statewide Building Code.

(k) Building permit applications for small wind energy systems shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.

(l) Small wind energy systems shall be operated in compliance with the provisions of Section 16-19, Unnecessary or excessive noise, of the York County Code.

(m) The applicant shall provide evidence that the proposed height of the small wind energy system tower does not exceed the height recommended by the manufacturer or distributor of the system.

(n) The applicant shall provide evidence in writing that the provider of electric utility service to the site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant intends, and so states on the application, that the system will not be connected to the electricity grid.

(o) In order to prevent unauthorized climbing, the supporting tower shall be enclosed with a six-foot tall privacy fence or the base of the tower shall not be climbable for a distance of twelve (12) feet.

(p) The small wind energy system's generators and alternators shall be constructed so as to prevent the emission of radio and television signals and shall comply with the provisions of Section 47 of the Code of Federal Regulations, Part 15 and subsequent revisions governing said emissions.

(q) Any small wind energy system found to be unsafe by the building official shall be repaired by the owner to meet applicable federal, state, and local safety standards or removed within six months. If use of any small wind energy system ceases for a continuous period of one year, the County shall notify the owner of the property on which the system is located by certified mail that a removal notice is forthcoming. Within thirty (30) days of such notification, the landowner shall either provide evidence that the system has been in operation or set forth reasons for the operational difficulty and the corrective measures being taken or proposed to restore operability. The landowner shall either take corrective action or dismantle and remove the system within six (6) months thereafter.

Secs. 24.1-275~~4~~ - 24.1-279. Reserved.

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A Copy Teste:

_____
Mary E. Simmons
Deputy Clerk

PLANNING COMMISSION
COUNTY OF YORK
YORKTOWN, VIRGINIA

Resolution

At a regular meeting of the York County Planning Commission held in the Board Room, York Hall, Yorktown, Virginia, on the ____ day of _____, 2010:

Present | Vote

John R. Davis, Chair
Christopher A. Abel, Vice Chair
Alexander T. Hamilton
M. Sean Fisher
Nicholas F. Barba
Alfred E. Ptasznik, Jr.
Anne C. H. Conner

On motion of _____, which carried ___, the following resolution was adopted:

A RESOLUTION TO RECOMMEND APPROVAL OF AN APPLICATION TO AMEND CHAPTER 24.1, ZONING, OF THE YORK COUNTY CODE TO ESTABLISH REQUIREMENTS AND PERFORMANCE STANDARDS FOR ACCESSORY SMALL WIND ENERGY SYSTEMS

WHEREAS, rising energy costs and concerns about the nation's reliance on foreign oil and fossil fuels have led to new interest, both in York County and throughout the nation, in alternative and renewable energy sources, including wind energy; and

WHEREAS, wind energy is an abundant, renewable, and non-polluting energy resource; and

WHEREAS, national and state energy policy call for increased use of renewable energy sources such as wind and solar power; and

WHEREAS, several property owners in the County have expressed interest in constructing accessory small wind energy systems on their properties to supply energy for home and/or vehicular use but could not because the Zoning Ordinance does not provide for such structures; and

WHEREAS, on November 17, 2009, the York County Board of Supervisors sponsored Application No. ZT-128-10, pursuant to Section 24.1-113(a)(2) of the York County Zoning Ordinance, to amend Chapter 24.1, Zoning, of the York County Code to establish requirements and performance standards for small wind energy systems; and

WHEREAS, said application has been forwarded to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on this application; and

WHEREAS, the Commission has carefully considered the public comments with respect to this application;

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the ____ day of _____, 2010, that it does hereby transmit Application No. ZT-128-10 to the York County Board of Supervisors with a recommendation to amend Chapter 24.1, Zoning, of the York County Code to read and provide as follows:

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ARTICLE I. IN GENERAL

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Sec. 24.1-104. Definitions.

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Skirting. A weather-resistant material used to enclose the space from the bottom of a manufactured home to grade.

Small wind energy system. A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics which is intended primarily to generate electricity or to reduce on-site consumption of utility power by means of wind power.

Solid waste disposal site or landfill. Areas which are utilized for the ultimate disposition of solid wastes as defined in chapter 19 of this Code, and also specifically including waste plant material, stumps or construction materials resulting from land-clearing and development activities.

***

ARTICLE II. GENERAL REGULATIONS

***

Sec. 24.1-231. Exemptions from height regulations.

(a) The zoning administrator may grant administrative exemptions to the district height regulations to permit reasonable increases in height for the following situations:

(1) Church spires, belfries, cupolas, monuments, chimneys, water towers, fire towers, cooling towers, electric substation components, radio and television antennas may be permitted to exceed the height stipulated in the district regulations by no more than twenty-five percent (25%) if attached to a building, or to a maximum of one hundred feet (100') if free-standing. Wind turbines may be erected to a height not more than 25% greater than the district maximum if roof-mounted, or to a maximum of 40 feet if free-standing. ~~This~~ The preceding height increase opportunities shall not apply to dish antennas, signs and flagpoles, or other similar structures. The zoning administrator shall determine whether a proposed height increase is ~~reasonable and serves~~ necessary to serve a functional purpose as opposed to ~~beyond~~ merely drawing attention to the structure.

(2) Parapet walls or similar structures may exceed the maximum height limit by not more than eight feet (8'). Such walls or structures shall not be used as, for, or to support signs. Pitched roofs on structures located in commercial and industrial zoning districts may exceed the maximum height limit by up to twenty-five percent (25%) provided that the zoning administrator determines that the actual number of building floors with habitable space is no greater than would be allowed with a flat roofed structure and provided further that the fire chief has reviewed and approved the proposed structure and site design to ensure appropriate accessibility for effective fire containment and control, including specifically the location of fire lanes to facilitate the positioning of fire-fighting apparatus and equipment during an emergency response.

(3) Except as noted above, no accessory building or structure shall exceed the maximum height limitation established for the district or the height of the structure to which it is accessory, whichever is less, provided, however, that buildings which are accessory to a single-story building may be constructed to a maximum height not exceeding 1.25 times the height of the principal building. In cases where this is permitted, the accessory building shall be separated from the principal building by a distance of at least twenty feet (20').

(4) Buildings and structures used in conjunction with a bona fide agricultural use in an RC or RR district shall be exempt from the height limits specified for those districts. This exemption shall not apply to buildings con-

structed in conjunction with horsekeeping activities as a residential accessory use.

(b) The board, after conducting a duly advertised public hearing, may authorize exemptions to the height regulations which exceed those which may be authorized administratively, as provided in subsection (a) above. In granting exemptions, the board may impose reasonable conditions. No exemption shall be granted which violates the terms of the airport safety management overlay district.

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Sec. 24.1-271. Accessory uses permitted in conjunction with residential uses.

The following accessory uses shall be permitted in conjunction with residential uses. No accessory use, activity, or structure, except fences, shall be constructed or conducted until the principal use of the lot has commenced, or the construction of the principal building/structure has commenced and is thereafter diligently and continuously pursued to completion. Land uses not listed in this section and not deemed similar to a listed use pursuant to subsection (~~n~~o) shall be deemed not allowed as residential accessory uses:

***

(m) Craft sales or shows subject to the following provisions:

(1) Items offered for sale shall be limited to those which have been made or crafted by the participants as a hobby or avocation as distinguished from items which are made in the conduct of a home occupation;

(2) Participation in such sales or shows shall be limited to an occupant of the premises and not more than four (4) non-occupants. For the purposes of this section, participation shall be construed to mean the offering for sale of items made or crafted by an occupant or participating non-occupant, whether or not that individual is physically present on the premises during the conduct of such sale or show;

(3) Not more than one (1) such sale or show event shall be conducted on a premises in any given calendar year. For the purposes of this section, the duration of any sale or show event shall be limited to six (6) days within a period of ten (10) consecutive days;

(4) Such sales and shows may be conducted only upon authorization by the zoning administrator of a temporary permit subsequent to application and payment of a five dollar ($5.00) nonrefundable processing fee by an occupant of the premises upon which such sale or show is proposed to be conducted. The zoning administrator shall make a determination with respect to approval or denial of applications within ten (10) working days of submission and shall consider the following:

a. the proposed location of the sale or show and the probable impact on adjacent land uses;

b. the ability of the structure in which such sale will be conducted to accommodate safely the number of persons likely to patronize such event;

c. the ability of the streets in the immediate vicinity of such residential property to accommodate adequately and safely the traffic and parking demand anticipated to be associated with such event without disruption of normal traffic circulation and emergency access needs.

(5) In the event the zoning administrator determines that the conduct of such craft sale or show at the proposed location would adversely affect the surrounding land uses because of the disruption to the normal and essential traffic circulation needs of the immediate vicinity, or the safety and welfare of participants, patrons, neighbors, or the general public, the application for temporary permit shall be denied. No application for a temporary permit shall be deemed to have been received for processing unless accompanied by a nonrefundable processing fee in the amount of five dollars ($5.00).

(n) Small wind energy systems~~.~~ subject to the standards set forth in s~~S~~ection Nos. 24.1-231 and 274 of this chapter.

(o~~n~~) Other uses and structures of a similar nature which are customarily associated with and incidental to residential uses as determined by the zoning administrator.

Sec. 24.1-272. Accessory uses permitted in conjunction with commercial and industrial uses.

The following accessory uses shall be permitted in conjunction with commercial and industrial uses. No accessory use, activity, or structure, except fences, shall be constructed until the principal use of the lot has commenced, or the construction of the principal building/structure has commenced and is thereafter diligently and continuously pursued to completion. Land uses not listed in this section and not deemed similar to a listed use pursuant to subsection (~~k~~l) shall be deemed not allowed as commercial or industrial accessory uses:

***

(j) Incidental monitoring equipment or devices designed to monitor general conditions or specific processes or events or both.

(k) Small wind energy systems subject to the standards set forth in s~~S~~ection Nos. 24.1-231 and 274 of this chapter.

(l~~k~~) Other uses and structures of a similar nature which are customarily associated with and incidental to commercial or industrial uses, as determined by the zoning administrator.

Sec. 24.1-273. Location, height, and size requirements.

Except where other provisions of this chapter are more restrictive, the following requirements shall apply to the location, height, and size of all accessory uses or structures in all districts, including the planned development district unless the approving ordinance for such district (project) has established alternative or supplementary requirements:

(a) With the exception of statues, arbors, trellises, flagpoles, fences, walls or roadside stands, accessory buildings or structures shall not be located closer to the front lot line than the principal building façade provided, however, that where the setback of the principal building exceeds fifty feet (50'), accessory buildings and structures shall be subject only to a fifty-foot (50') minimum setback requirement.

(b) Accessory buildings or structures located closer to the front lot line than the rear of the principal building shall observe the side yard requirements applicable to the principal building. When the rear façade of the principal building has more than one plane, the accessory building side yard requirements shall be determined based on accessory building location in relation to those rear facades as depicted in Figure II-7.1, Appendix A.

(c) An accessory building or structure attached to a principal building by any wall or roof construction, or located within ten feet (10') of any principal building, shall be considered a part of the principal building and shall observe all yard regulations applicable thereto. Setback and spacing requirements for accessory in-ground swimming pools shall be measured to the edge of the water. Setback and spacing requirements for above-ground pools shall be measured to the outer edge of the pool wall or any above-ground decking surrounding the pool.

(d) Accessory buildings and structures shall observe minimum side and rear yard setbacks of five feet (5') except where the provisions of this chapter specifically require otherwise and provided, however:

(1) There shall be no side and rear yard requirements for fences or walls; and

(2) There shall be no rear yard requirement for docks, piers or boathouses; however, a setback of ten feet (10') from side lot lines, or extensions thereof into bodies of water, shall be observed. All such uses shall be

subject to applicable permitting requirements of the Virginia Marine Resource Commission and United States Army Corps of Engineers.

(e) Roadside stands shall be set back at least twenty feet (20') from any road right-of-way.

(f) The above listed requirements shall not apply to the parking or storage of small cargo or utility trailers, recreational vehicles and similar equipment; however, no such trailer, vehicle, or equipment shall be stored within twenty feet (20') of any public road right-of-way, unless in a driveway.

(g) Except as authorized by section 24.1-231 or section 24.1-274 of this chapter, no accessory building or structure shall exceed the maximum height limitation established for the district or the height of the structure to which it is accessory, whichever is less, provided, however, that buildings which are accessory to a single-story building may be constructed to a maximum height not exceeding 1.25 times the height of the principal building. In cases where this is permitted, the accessory building shall be separated from the principal building by a distance of at least twenty feet (20') and shall observe a minimum side and rear yard setback of ten (10) feet rather than the normally applicable five (5) feet.

(h) With the exception of barns and similar structures associated with a bona fide agricultural/farming operation, the building footprint (i.e., lot coverage) of a structure accessory to a residential use shall not exceed the area of the building footprint of the principal residential structure.

(i) Accessory structures shall be located on the same lot as the principal structure. Where adjoining lots are under single ownership and an accessory structure is proposed to be located so as to straddle an interior property line, or where the accessory and principal structures would be on different lots, the owner shall be responsible for preparing and recording, prior to issuance of a building permit, a survey plat to vacate the interior lot line(s) as necessary to ensure the principal and accessory structures are located on the same lot.

Sec. 24.1-274. Special standards applicable to accessory small wind energy systems.

The following requirements and performance standards shall apply to all accessory small wind energy systems:

(a) Small wind energy systems meeting the height limitations set forth in section 24.1-231(a)(1) shall be subject to administrative review and approval by the zoning administrator, and shall be approved if meeting all requirements of this section. Any small wind energy system in excess of those height allowances shall be

subject to review and approval pursuant to the special use permit procedures and requirements set forth in section 24.1-115 of this chapter.

(b) Every application for a small wind energy system shall be accompanied by scaled elevation drawings of the proposed system, including colors and specifications, and certification from a licensed professional engineer that the support structure of the system will have the structural integrity to carry the weight and wind loads of the small wind energy system.

(c) Small wind energy systems shall not be permitted in the YVA zoning district.

(d) The height of any small wind energy system shall be measured from ground level to the highest point of the turbine rotor at its highest elevation.

(e) The minimum setback of any small wind energy system shall be equal to the height of the system. Guy wire anchors shall not be permitted in any front or side yard.

(f) The minimum distance between the ground and any protruding blades utilized on a small wind energy system, as measured at the lowest point of the arc of the blades, shall be ten feet (10').

(g) Unless otherwise provided for by the Board of Supervisors through the approval of a special use permit, small wind energy systems shall be permitted only in a rear yard.

(h) Other than safety and warning signs, no signage, flags, streamers, or decorative items shall be attached or affixed to any component of the system.

(i) Turbines and support structures shall be predominantly white, off-white, gray, or a similar non-obtrusive color.

(j) No portion of a small wind energy system shall be illuminated unless required by the Federal Aviation Administration.

(k) All small wind energy systems and the construction and installation thereof shall conform to the applicable requirements of the Uniform Statewide Building Code.

(l) Building permit applications for small wind energy systems shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.

(m) Small wind energy systems shall be operated in compliance with the provisions of Section 16-19, Unnecessary or excessive noise, of the York County Code.

(n) The applicant shall provide evidence that the proposed height of the small wind energy system tower does not exceed the height recommended by the manufacturer or distributor of the system.

(o) The applicant shall provide evidence in writing that the provider of electric utility service to the site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant intends, and so states on the application, that the system will not be connected to the electricity grid.

(p) In order to prevent unauthorized climbing, the supporting tower shall be enclosed with a six-foot tall privacy fence or the base of the tower shall not be climbable for a distance of ten (10) feet.

(q) The small wind energy system's generators and alternators shall be constructed so as to prevent the emission of radio and television signals and shall comply with the provisions of Section 47 of the Code of Federal Regulations, Part 15 and subsequent revisions governing said emissions.

(r) Any small wind energy system found to be unsafe by the building official shall be repaired by the owner to meet applicable federal, state, and local safety standards or removed within six months. If use of any small wind energy system ceases for a continuous period of one year, the County shall notify the owner of the property on which the system is located by certified mail that a removal notice is forthcoming. Within thirty (30) days of such notification, the landowner shall either provide evidence that the system has been in operation or set forth reasons for the operational difficulty and the corrective measures being taken or proposed to restore operability. The landowner shall either take corrective action or dismantle and remove the system within six (6) months thereafter.

Secs. 24.1-275~~4~~ - 24.1-279. Reserved.

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