

ORDINANCE NO. ORD-2015-18

**AN ORDINANCE TO AMEND CERTAIN PROVISIONS OF THE
ZONING ORDINANCE FOR WASHINGTON COUNTY, MARYLAND
AND TO REENACT SAID ORDINANCE WITH CHANGES RELATING
TO ITS TEXT**

(RZ-15-003)

RECITALS

The Board of County Commissioners of Washington County, Maryland (the "Board") adopted the Zoning Ordinance for Washington County, Maryland (the "Ordinance") on January 23, 1973, and it became effective on April 2, 1973.

The Washington County Department of Planning and Zoning filed an application requesting that amendments be made to the text of the Ordinance. The amendments proposed will return a Planned Unit Development (PUD) zoning district to the Ordinance as Article 16A, to be used only for administration of the PUDs that currently exist on the Zoning Maps (i.e. Woodbridge, Youngstoun, Emerald Pointe, Rosewood, South Pointe, St. James Village North and Fountainview). Additional amendments are proposed for the existing Article 16, the MX or Mixed Use District.

These amendments are necessary to clarify the Board's long-standing approach to administration of PUDs, which allowed for major and minor changes—under certain circumstances—to the concept and development plans governing the buildout of the developments. The need for these amendments was demonstrated in *Arnao et al. v. Washington County Board of County Commissioners and Emerald Pointe, Inc.*, Washington County Circuit Court Case No. 21-C-14-50330-AA, wherein the Court held that the Zoning Ordinance as in effect at the relevant time did not provide the Board with authority to consider or allow a major change in the concept plan of an approved PUD.

The Board believes it to be in the best interests of the citizens of Washington County for the amendments to be enacted.

The Washington County Planning Commission (the "Planning Commission") held a public meeting for the purpose of taking comments on the proposed amendment on June 1, 2015, pursuant to public notice duly given. The Planning Commission subsequently recommended approval of the amendments.

The Board held a public hearing for the purpose of taking testimony on the proposed amendments on August 4, 2015, pursuant to public notice duly given.

Following the public meeting and public hearing, the Board considered the recommendations of the Planning Commission and the Planning Department staff, and materials received, if any, as part of the public meeting and public hearing. The Board conducted this review in a public session.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED that certain provisions of the Zoning Ordinance, as amended, be further amended as follows:

RZ-15-003

(1) ARTICLE 16 – “MX” MIXED USE DISTRICT is amended as follows:

- **Section 16.1(d) – Principal Permitted Uses is amended by correcting “HC to HI” to the MXC and MXE Districts under the Commercial Uses column.**
- **Section 16.4(e) is deleted in its entirety.**
- **Section 16.5 Review and Approval Process is amended as follows:**

Section 16.5(b)(2.) is amended and shall read as follows:

Section 16.5 Review and Approval Process

(b)

2. Zoning Approval: If the applicant decides to proceed, a formal application for a Mixed Used District shall be filed following the Concept Plan review. The application shall be accompanied by the Concept Plan, revised to address any Planning Commission and other review agency comments and concerns. The application shall include a clear indication of the residential density requested in the Mixed Use District and any needed modifications to lot area, setbacks, or buffers.

The Board of County Commissioners and the Planning Commission shall hold public hearings, jointly or separately. Within sixty (60) days after the public hearing before the Board of County Commissioners and receipt of the Planning Commission’s recommendation, the Board of County Commissioners shall render a decision on the mixed use zoning application. Zoning approval constitutes tentative approval of density and design features as shown on the Concept Plan.

- **Section 16.7 Design Standards is amended as follows:**

Sections 16.7(j)2. and 16.7(k) are amended and shall read as follows:

Section 16.7 Design Standards

- (j) Traffic Circulation and Parking

2. The capacity of existing streets and highways serving a mixed use development shall be considered by the Planning Commission in determining density. Density resulting in traffic capacity being exceeded on streets and highways shall not be permitted without a developer's agreement to improve the affected streets to provide adequate capacity.

(k) Phasing: In order to ensure that the mixed use development develops uniformly, each phase shall independently conform to the density established by the Planning Commission for the entire land area covered by the mixed use designation.

➤ **Section 16.8 Changes to an Approved Mixed Use District is added and shall read as follows:**

Section 16.8 Changes to an Approved Mixed Use District

It is the intent of this Article that the establishment of the Mixed Use District not be a speculative device. However, it is also the intent that an approved Mixed Use Development may need to change in response to changing community needs and conditions, and that change must follow an appropriate public review process similar to that which occurred prior to Mixed Use District approval and as set forth herein.

Recognizing that flexibility in the site design is inherent in the Mixed Use District process and that the long term development of such a project may prompt the need for changes in the approved plans for the property, the following procedures are established to accommodate a requested change.

(a) Upon a request from a developer for a change to the approved Mixed Use Development Plan, the Planning Commission shall determine if the requested change is a major or minor change to the Concept Plan reviewed by the Board of County Commissioners as part of the establishment of the Mixed Use District or as part of subsequent changes to the Mixed Use District Concept Plan. The establishment and subsequent approved changes to the Mixed Use District by the Board of County Commissioners is considered a tentative approval of density and design features as shown on the Concept Plan. The Planning Commission shall make the determination that a change is major or minor through evaluation of whether or not the change is in accordance with the Concept Plan on file as reviewed by the Board of County Commissioners.

1. Minor changes to the approved Mixed Use Development Plan (Preliminary or Final) may be approved by the Planning Commission without the need for an additional public hearing. The Planning Commission may approve minor design changes of up to a ten percent (10%) change in the minimum or maximum numerical limitations on the mixture of uses as specified in the table in Section 16.1(d) without an additional

public hearing. The Planning Commission and the Board of County Commissioners shall use the criteria at Section 16.7 in the analysis and determination of the final mix of uses.

As a result of the requested change, the Planning Commission may establish other requirements deemed necessary to satisfy the purpose of this Article. Cumulative "minor" change requests may result in the determination by the Planning Commission that there has been a major change to the Concept Plan on file and require the developer to follow the process established for major change in the Mixed Use Development Plan.

2. Major changes to the approved Mixed Use Development Plan (Preliminary or Final) as determined by the Planning Commission shall also require a change to the Concept Plan and therefore require a new public hearing.

- i. The public hearing shall be conducted in accordance with established rezoning practices and schedules in effect at the time of the request. The concept plan that illustrates the proposed change to the Mixed Use District shall include the information, as applicable to the change, listed in 16.6(a). That concept shall contain a clear delineation of the area of the approved Mixed Use District that is the subject of the change request indicating the approved land use and the requested land use.

3. Such major changes shall be reviewed by the Planning Commission for compatibility with this Article. The Planning Commission shall conduct a public information meeting to receive comments from interested parties to assist in the evaluation of the proposed major change. Following the public information meeting, the Planning Commission shall forward a recommendation to the Board of County Commissioners. The Commissioners shall hold a public hearing on the matter to determine whether or not the change meets the intent and requirements of this Article and establish findings of fact that consider:

- i. The purpose of the Mixed Use District;
 - ii. The applicable policies of the adopted Comprehensive Plan;
 - iii. The compatibility of the proposed changes of the Mixed Use District with neighboring properties;
 - iv. The effect of the proposed changes to the Mixed Use District on community infrastructure; and
 - v. Consistency with the intent and purpose for the establishment of the Mixed Use District which is to permit flexibility and creativity in design, provide a compatible and complementary mixture of uses,

promote efficient use of the land, provide a harmonious variety of housing choices, community services and amenities and the promotion of adequate recreation, open space and scenic attractiveness.

In no event shall a major change result in the removal of the Mixed Use District. A denial of the requested major change shall then require adherence to the previously approved Mixed Use Development Plan.

➤ **Section 16.9 Plan Review Following a Mixed Use District Concept Plan Change is added and shall read as follows:**

Section 16.9 Plan Review Following a Mixed Use District Concept Plan Change

After the Planning Commission has made a determination that a proposed change to an approved Mixed Use District is major or minor and a public hearing process has been followed as described in Section 16.8 if the change was determined to be major, the remaining steps in the multi-step review process shall be as applicable and necessary according to Section 16.5 Review and Approval Process and Section 16.6 Content and Format of Applications.

➤ **Section 16.10 Additional Mixed Use District Guidelines is added and shall read as follows:**

Section 16.10 Additional Mixed Use District Guidelines

(a) The Planning Commission may grant modifications to minimum building setbacks for projections into established yards as part of an approved Mixed Use District for the following:

1. Bay windows, chimneys, entrances, vestibules, balconies, eaves, and leaders extending into any required yard not more than four (4) feet provided that such projections (excepting eaves) are not over ten (10) feet in length.
2. Minor building infringements as a result of surveying or stake out errors into any required yard not more than two (2) feet.
3. The setback modifications granted in 1. and 2. above shall be processed as minor changes and shall apply to all units in the Mixed Use District or a specified section of the Mixed Use District. They may not be requested or approved for a singular property owner.
4. The Planning Commission may delegate this setback modification authority to an appropriate designee for expedient plan review purposes.

(2) ARTICLE 16A – “PUD” PLANNED UNIT DEVELOPMENT is added and shall read as follows:

ARTICLE 16A – “PUD” PLANNED UNIT DEVELOPMENT

Section 16A.0 Purpose

The intent of this Article is to manage the implementation of regulations for existing approved PUD Developments within the framework of the Urban Growth Area Rezoning of 2012. All PUD Floating Zones approved by the Board of County Commissioners prior to July 1, 2012 shall maintain their validity in accordance with this Article. This Zoning District is not available for new application on any property within the jurisdiction of Washington County.

Section 16A.1 Principal Permitted Uses

The following uses are permitted in a PUD District subject to the limitations approved by the Board of County Commissioners as part of the rezoning application process or approved revisions subsequent to the initial rezoning application approval.

- (a) All residential uses permitted in the RT, RS, RU, and RM Districts;
- (b) Commercial uses permitted in the BL District;
- (c) Civic, cultural, and educational uses;
- (d) Places of Worship;
- (e) Public Utilities;
- (f) Underground bulk storage of propane that is distributed through a system of underground infrastructure for use by individual residential properties in the PUD.

Section 16A.2 Special Exception Uses

There are no special exception uses in the PUD District that may be granted by the Board of Zoning Appeals. The PUD itself is analogous to a special exception and was formerly applied to properties through an established review process by the Board of County Commissioners.

Section 16A.3 Accessory Uses

Uses and structures customarily accessory and incidental to any principal permitted use.

Section 16A.4 Design Standards

These standards are intended to ensure that the PUD is compatible with neighboring properties and that it provides a quality living environment for its residents. The standards

established for any PUD are considered *prima facie* to be acceptable to the developer and may not be the subject of appeal for a variance to the Board of Zoning Appeals.

- (a) Density: The maximum gross density for a PUD is 12 DU/A. In determining the specific density for a particular PUD or for any particular phase of a PUD, the Planning Commission shall give consideration to and shall make findings of fact concerning, at a minimum, the impact of the proposed development on adjacent properties, the availability of public facilities, the impact of the proposed development on public roadways, the impact on public schools, fire and police protection, and the availability of adequate open space.
- (b) Tract Size: There shall be no minimum tract size for a PUD. However, the tract size and shape shall be appropriate for the development proposed as determined by the Planning Commission.
- (c) Open Space: Common open space shall comprise not less than 25 percent of the gross area. The 15% minimum forest cover required by the Forest Conservation Ordinance shall be a part of the minimum 25% open space.
- (d) Landscaping: All Development Plans shall contain a detailed schedule for landscaping. Trees, shrubs and other ground cover is expected to be so designed as to provide maximum enhancement of the overall layout. Landscaping shall be considered a necessary integral part of the PUD rather than an optional amenity.
- (e) Buffer Requirements: Buffer requirements are intended to protect existing or future development adjacent to a proposed PUD from potentially adverse effects.
 - 1. Non-residential uses in the PUD shall have a 50-foot buffer yard along the common boundary with any adjacent lot either within or outside of the PUD that is zoned for or is occupied by a residence.
 - 2. Any multi-family residential use shall be provided by a 50-foot buffer yard along its common boundary with any lot zoned for or occupied by a single-family dwelling.
 - 3. No structure, materials storage, or vehicular parking may be permitted in the buffer yard.
 - 4. Buffer yards shall include adequate screening as deemed necessary by the Planning Commission.

(f) Walkways

1. Walkways shall connect residential uses with off-street parking areas, transit and school bus waiting areas, and recreational facilities and commercial facilities on the site. Walkways shall also connect the development with any contiguous school or park.
2. When a proposed multi-family residential development is located adjacent to an existing public transit route or where students require school bus transportation, a bus waiting area consisting of an impervious surface shall be provided at such location as determined by the Planning Commission and the applicable transportation or education agencies.

- (g) Building Spacing and Height Requirements: Building spacing and height requirements shall be the same as those for the different types of development provided for in the districts where PUDs are permitted.

In review of a Planned Unit Development, the Planning Commission may waive or modify the area, yard, height and other design requirements for the different types of development only if such modification will increase the amenities of the development.

(h) Non-Residential Development

1. In general, non-residential development proposed as part of a PUD shall be integral to the overall development and shall relate well to residential areas in terms of pedestrian and vehicular circulation. Buffer requirements between non-residential and residential uses within a PUD shall be as provided in this Article.
2. Commercial uses listed in the Business, Local District are permitted. The gross area for commercial uses shall not exceed 10 percent of the gross tract area. Commercial use shall not be built or established prior to the residential development except that they may be built in phases consistent with phasing of the residential construction within the 10 percent limitation.
3. Commercial uses shall primarily be designed and intended as a service to the residents of the PUD; however, it is recognized by this Ordinance that strict limitation of the commercial development to the PUD may not be practical. For that reason, the Planning Commission shall consider the policies of the Comprehensive Plan relating to the establishment of commercial development in reviewing a proposal for the commercial portion of the PUD.

4. The Planning Commission may approve innovative and well-designed proposals for the sharing of buildings or parking areas by compatible residential and non-residential uses whenever it can be demonstrated to the satisfaction of the Planning Commission that such sharing is a logical and efficient use of buildings and land, and that the peak operating hours for the respective uses will not be in conflict.

(i) Traffic Circulation and Parking

1. Existing and planned streets and highways shall be of sufficient capacity to serve existing traffic and all new traffic when fully developed.
2. The capacity of existing streets and highways serving a PUD shall be considered by the Planning Commission in determining density. Density resulting in traffic capacity being exceeded on streets and highways shall not be permitted.

- (j) Phasing: In order to ensure that the PUD develops uniformly, each phase shall independently conform to the density established by the Planning Commission for the PUD tract.

Section 16A.5 Changes to an Approved PUD

PUD Floating Zones approved by the Board of County Commissioners prior to July 1, 2012 and shown on the official zoning map shall maintain their validity in accordance with this Article. Subsequent plan reviews and approvals, re-approvals or changes to concept plans, development plans, subdivision plats, and site plans shall comply with the requirements of this Article.

It is the intent of this Article that the original establishment of the PUD not be a speculative device. However, it is also the intent that an approved PUD may need to change in response to changing community needs and conditions, and that change must follow an appropriate public review process similar to that which occurred prior to the PUD approval and as set forth herein.

Recognizing that flexibility in the site design is inherent in the PUD process and that the long term development of such a project may prompt the need for changes in the approved Development Plan for the property, the following procedures are established to accommodate a requested change.

- (a) Upon a request from a developer for a change to the approved PUD Development Plan the Planning Commission shall determine if the requested change is a major or minor change to the Concept Plan reviewed by the Board of County Commissioners as part of the establishment of the PUD District or as part of subsequent changes to the PUD Concept Plan. The establishment and subsequent approved changes to the PUD District by the Board of County Commissioners is considered a tentative approval of density and design features

as shown on the Concept Plan. The Planning Commission shall make the determination that a change is major or minor through evaluation of whether or not the change is in accordance with the latest Concept Plan on file as reviewed by the Board of County Commissioners.

1. Minor changes to the approved PUD Development Plan (Preliminary or Final) may be approved by the Planning Commission without the need for an additional public hearing. As a result of the requested change the Planning Commission may establish other requirements deemed necessary to satisfy the purpose of this Article. Cumulative "minor" change requests may result in the determination by the Planning Commission that there has been a major change to the Concept Plan on file and require the developer to follow the process established for major changes in a PUD Development Plan.
2. Major changes to the approved PUD Development Plan (Preliminary or Final) as determined by the Planning Commission shall also require a change to the Concept Plan and therefore require a new public hearing.
 - i. The public hearing shall be conducted in accordance with established rezoning practices and schedules in effect at the time of the request. The concept plan that illustrates the proposed change to the PUD shall include the information, as applicable to the change, listed below.
 1. A clear delineation of the area of the approved PUD that is the subject of the change request, indicating the approved land use and the requested land use.
 2. All existing development in the PUD.
 3. A vicinity map at 1"=2,000 ft. showing the location of the proposed PUD in relation to its surroundings and to the applicable Urban or Town Growth Area as designated in the County Comprehensive Plan.
 4. The boundary, acreage and current zoning of the tract.
 5. Minimum topographic information sufficient to determine surface drainage patterns and principal drainage areas.
 6. Adjacent land uses and zoning and the location of adjacent dwellings within 100 ft. of the common property line.
 7. Buffer yards required by Section 16A.4(e) and the general location of fencing or screen planting as required by Section 16A.4(e)4.
 8. The location of areas within the tract proposed for single-family, two-family, and multi-family residential uses; commercial and other non-residential uses, tabulation for each area of the number of dwelling units, the maximum building heights, the gross acreage, the gross residential density, and the gross area devoted to commercial uses; and a summary of the total dwelling units and the gross residential density for the tract.
 9. General alignment of principal streets and highways within the development, including major points of access; their relationship to proposed streets within adjacent approved subdivisions and to proposed highways in the Washington County Highway Plan; and the estimated average daily traffic volumes and the traffic

circulation patterns from the development onto existing and proposed public streets and highways that may change as a result of the requested land use changes.

10. The estimated average daily water consumption and sewage flow.
 11. The applicant shall submit twelve (12) copies of the Concept Plan and accompanying data to the Planning Commission unless an alternative number of copies is specified by the Planning Commission.
3. Such major changes shall be reviewed by the Planning Commission for compatibility with this Article. The Planning Commission shall conduct a public information meeting to receive comments from interested parties to assist in the evaluation of the proposed major change. Following the public information meeting the Planning Commission shall forward a recommendation to the Board of County Commissioners. The Commissioners shall hold a public hearing on the matter to determine whether or not the change meets the intent and requirements of this Article and establish findings of fact that consider:
- i. The purpose of the PUD District;
 - ii. The applicable policies of the adopted Comprehensive Plan;
 - iii. The compatibility of the proposed changes of the PUD District with neighboring properties;
 - iv. The effect of the proposed changes to the PUD District on community infrastructure; and
 - v. Consistency with the intent and purpose for the establishment of the PUD which is to permit flexibility and creativity in the design of residential areas, promote economical and efficient use of the land, provide for a harmonious variety of housing choices, a varied level of community amenities and the promotion of adequate recreation, open space and scenic attractiveness.

In no event shall a major change result in the removal of a PUD zone. A denial of the requested major change shall require adherence to the previously approved Development Plan.

Section 16A.6 Plan Review Following a PUD Concept Plan Change

After the Planning Commission has made a determination that a proposed change to an approved PUD is major or minor and a public hearing process has been followed as described in 16A.5 if the change was determined to be major, the remaining steps in the multi-step plan review process are as follows: Preliminary Development Plan review and approval, Final Development Plan review and approval, Site Plan and/or subdivision review and approval as it may be applicable to the proposed type of development. The application format and information requirements for each plan are described below. The review and approval of the Preliminary or Final Development Plans may be combined when appropriate for smaller developments. Submission and approval time frames are provided in paragraph (g) below.

- (a) Preliminary Development Plan: The Preliminary Development Plan shall include the same minimum information as the Concept Plat listed in Section 16A.5(a)2, plus:
1. Existing topography at contour intervals of not more than five (5) feet where the slope is ten percent (10%) or greater and not more than two (2) feet where the slope is less than ten percent (10%), and the source of contour information.
 2. Forest Conservation Plan.
 3. The surface conditions of the tract, including water courses, marshes, rock outcrops, woodlands, limits of the 100-Year Flood Plain and other significant features. Existing vegetation and landscape features to be preserved shall be identified as well as new landscaping in accordance with Section 4.16.
 4. The location of all individual lots and structures and the maximum heights of the structures.
 5. The location, boundary and area of common open space to serve multi-family residential units; the designated area of useable open space in accordance with the standards of Section 16A.4(c); the means of access to useable open space from the dwelling units; and the arrangement of play lots.
 6. The location of all off-street parking, loading zones, and private access roads.
 7. The location of pedestrian walkways and bus waiting areas.
 8. The location of major water and sewerage facilities such as pumping stations, storage tanks, water transmission mains, and sewage interceptors.
 9. Drainage patterns and stormwater management areas.
 10. Easements and rights-of-way, existing and proposed.
 11. The phasing schedule. The time schedule for each phase shall be shown on the Preliminary Development Plan.
 12. Where the intent of the developer is to subdivide, the Preliminary Development Plan shall include the requirements for a Preliminary Plat as specified by the Subdivision Ordinance.
 13. The applicant shall submit twelve (12) copies of the Preliminary Development Plan and accompanying data to the Planning Commission unless an alternate number of copies are specified by the Planning Commission.
- (b) Final Development Plan: The Final Development Plan shall serve as the master plan for all subsequent site plans and subdivision plats and is the official record of agreement between the developer and Planning Commission for development of the tract.

The Final Development Plan shall include:

1. Information required for the Preliminary Development Plan.
2. An approved Forest Conservation Plan.
3. Specific terms and conditions agreed to by the developer and the Planning Commission, or references to such terms and conditions

when more appropriately submitted as part of accompanying documentation. Such terms and conditions may include:

- i. Provisions for the ownership and perpetual maintenance of common open space, recreation facilities, private roadways and parking areas.
 - ii. Agreements for responsibilities between County and developer for providing on-site and off-site improvements.
 4. Certificate of approval signed by the Planning Commission Chairman.
 5. Certificate of willingness to abide by terms and conditions of the Final Development Plan signed by the developer.
 6. The applicant shall submit six (6) copies of the signed Final Development Plan and accompanying data to the Planning Commission, unless an alternative number of copies are specified by the Planning Commission.
- (c) Site Plans shall comply with the requirements of Section 4.11 of this ordinance.
- (d) Subdivisions shall comply with the requirements of the current Washington County Subdivision Ordinance.
- (e) Submission and Approval Time Frames
1. Preliminary Development Plan Review and Approval: The applicant shall submit the Preliminary Development Plan within six (6) months of the decision by the Board of County Commissioners to approve the major change to the Concept Plan. Requests for extension may be granted by the Planning Commission for good cause. The Planning Commission shall approve or disapprove the Plan within sixty (60) days except that extensions as requested by the applicant may be granted by the Planning Commission for good cause.
 2. Final Development Plan Review and Approval: Following approval of the Preliminary Development Plan, the applicant shall submit the Final Development Plan within six (6) months for Planning Commission review. Requests for extension may be granted by the Planning Commission for good cause. The Final Development Plan shall be approved or disapproved by the Planning Commission within thirty (30) days except that extensions as requested by the applicant may be granted by the Planning Commission.
 3. Site Plan and/or Subdivision Review and Approval: Following approval of the Final Development Plan, the applicant shall submit a Site Plan or Subdivision within six (6) months for the entire PUD or for any phase for Planning Commission review and construction shall begin within one (1) year of Site Plan or Subdivision Approval. Requests for extension may be granted by the Planning Commission for good cause.

(f) The Planning Commission may grant modifications to minimum building setbacks for projections into established yards as part of an approved PUD for the following:

1. Bay windows, chimneys, entrances, vestibules, balconies, eaves, and leaders extending into any required yard not more than four (4) feet provided that such projections (excepting eaves) are not over ten (10) feet in length.
2. Minor building infringements as a result of surveying or stake out errors into any required yard not more than two (2) feet.
3. The setback modifications granted in 1 and 2 above shall be processed as minor changes and shall apply to all units in the PUD or a section of the PUD. They may not be requested or approved for a singular property owner.
4. The Planning Commission may delegate this setback modification authority to an appropriate designee for expedient plan review purposes.

Adopted this 18th day of August, 2015.
Effective the 18th day of August, 2015.

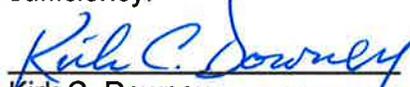
ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, MARYLAND


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sufficiency:


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