

MINUTES

**Regular Meeting
Wake County Board of Adjustment
Tuesday, September 13, 2016
9:00 a.m., Room 2700
Wake County Justice Center
300 S. Salisbury St.
Raleigh, North Carolina**

Members Present: (5) Mr. Brenton McConkey (Vice-Chair), Mr. Terence Morrison, Mr. Will Barker, Mr. John Barker, and Mr. Donald Mial

Members Not Present: (4) Mr. Tim Clark (Chair), Mr. Billy Myrick, Mr. Blake Cason, and Mr. Trenton Stewart

County Staff Present: (8) Mr. Steven Finn (Land Development Administrator), Ms. Celena Everette (Planner II), Mr. Chris Record (Planner I), Mr. Lee Gupton (Deputy Fire Marshal), Mr. Tim Maloney (Planning, Development, and Inspections Director), Mr. Jim Roberson (Inspections Supervisor), Mr. Andy Kuhn (Executive Assistant), and Mr. Russ O'Melia (Clerk to the Board)

County Attorneys Present: (1) Mr. Ken Murphy (Assistant County Attorney)

Item 1, Call to Order: Mr. McConkey called the meeting to order at 9:00 a.m. with 5 members present.

IN RE MINUTES

Item 2, Approval of Minutes of the August 9, 2016 Meeting

Mr. John Barker made a motion to approve the August 9th meeting minutes, and Mr. Mial seconded. The motion carried unanimously.

Item 3, Approval of Written Decision Granting Special Use Permit in the matter of BA-SU-2227-16

Mr. Mial made a motion to approve the written decision granting special use permit in the matter of BA SU-2227-16, and Mr. McConkey seconded. The motion carried unanimously.

Before the case was heard, Wake County staff member Ms. Everette was duly sworn.

Item 4, BA SU-2230-16

Voting Members: Mr. McConkey, Mr. Morrison, Mr. Will Barker, Mr. Mial, and Mr. John Barker

Landowner: Toll NC III Limited Partnership

Petitioner: Jason Barron

PIN#s: 1811-73-7845

Size: 13.17 acres

Location: The site is located at 1200 Keith Road.

Zoned: Residential-40 Watershed (R-40W) and Residential-80 Watershed (R-80W)

Land Use Classification: Non-Urban water supply watershed

The petitioner is requesting special use permit approval as required by section 4-11 of the Wake County Unified Development Ordinance (UDO) to modify an approved plan to allow for an expansion of the parking lot and reduction of the bufferyard along the eastern property line.

TESTIMONY AND EVIDENCE PRESENTED

Documentary Evidence: Staff report, PowerPoint presentation, site plans, application, video, relevant sections of the Unified Development Ordinance were shown and/or available, and Exhibit 1: documents submitted by Mr. Ghosh including slides, site plans, and a letter from James E. Norman of Williams Appraisers, Inc.

Testimony:

Ms. Everette, Planner II, entered the staff report and PowerPoint presentation for BA SU-2230-16 into the record. Mr. McConkey accepted the staff report and PowerPoint slides into the record. Ms. Everette stated the petitioner's name, zoning classification, background and history of the petition. The proposed family activity center is located at 1200 Keith Road. The subject property is located in the Falls Lake Watershed and consists of 13.17 acres. The property is split zoned Residential-40 Watershed and Residential-80 Watershed with the existing development located in the R-80W portion of the parcel. The parcel is surrounded by residential development and open space. Special use approval was granted by the Board of Adjustment on April 4, 2004 to modify the previously approved plan by changing the design of the golf course and location of the clubhouse. As part of the 2004 approval, a 100-foot transitional bufferyard was established along the eastern property line of the sports complex property, now referred to as the family activity center. Ms. Everette said that the applicant was seeking to reduce the bufferyard from 100 feet to 40 feet to allow for the expansion of the existing parking lot. The applicant also proposed a trail from the family activity center lot to the open space. The parking lot expansion would allow for 20 additional parking spaces to serve the existing facility. The Wake County UDO was adopted in 2006, which requires only a 40-foot Type C bufferyard for this type of low-intensity non-residential use when it abuts low-intensity residential uses. The number of employees and hours of operation will remain the same, which was 25 employees and hours from 7 a.m. – 9 p.m., seven days a week. The site will continue to be served by an existing community water system and community wastewater system and the 2 existing driveways off of Keith Road. Per the approved plan in 2004, 67 parking spaces were required, and 110 parking spaces were provided. The additional 20 parking spaces will increase the total to 130 spaces. The site plan is in compliance with Section 16-10, *Landscaping and Bufferyards*, by providing a 10-foot transitional bufferyard along Keith Road, a 50-foot bufferyard along the western property line, and a proposed 40-foot bufferyard along the eastern property line. A total of 3.62 acres of impervious surface is proposed for the site. The maximum impervious coverage allowed per the approved Board of Adjustment 2004 (BA-SU-2004-04) plan is 3.65 acres. The proposed use is consistent with the Wake County Land Use Plan. Notification letters were mailed to adjacent property owners on August 25, 2016 and a public hearing placard was also placed on the site on August 24, 2016. A notice of the meeting was placed in the News and Observer newspaper on August 31 and again on September 9th.

Mr. McConkey asked what the standard was for a bufferyard when the plan was approved in 2004. Ms. Everette said that a 100-foot buffer was only required if it was a high intensity use. The use at that time was a low intensity use which would have required either a 50-foot or 75-foot buffer that could have been reduced. Ms. Everette said that she was not able to find evidence about why the 100-foot buffer was used, but it was shown on the approved site plan. Since the proposal includes reducing the buffer by over fifty percent, the special use permit is needed. Mr. McConkey asked if a 40-foot buffer would be all that was required if someone were to submit the plans today. Ms. Everette said that the UDO requires just the 40-foot buffer.

Sworn witnesses in favor of the petition:

Nil Ghosh of Morningstar Law Group, 630 Davis Drive, Suite 200, Morrisville, North Carolina 27560
Brianna M. Massey of ESE of North Carolina, PC, 252 Fire Tower Rd, Rougemont, NC 27572
James E. Norman of Williams Appraisers, Inc., 11029 Mason Ridge Drive, Raleigh, NC 27614

Mr. Ghosh submitted Exhibit 1 into the record: slides, site plans, and a letter from James E. Norman of Williams Appraisers, Inc. Mr. McConkey accepted Exhibit 1 into the record.

Mr. Ghosh said that by reducing the 100-foot buffer to the required 40-foot buffer, they will be able to provide more parking at the facility. He said that he will present testimony from Ms. Massey and Mr. Norman who are both experts in their fields. He called Ms. Massey, the lead engineer on the project, forward to testify.

Ms. Massey testified that she has been a licensed professional engineer since 2007, and she has worked in the land development field for fourteen years. She said that she prepared the plan that shows the reduction of the 100-foot buffer to the required 40-foot buffer. She said that the plans do not increase the floor area. The impervious surface coverage will increase, though it will still be within the allowed limits.

Mr. McConkey asked about the current situation with the parking. Ms. Massey said that there are days when the area is crowded and people may park on the sides of the islands which impedes traffic flow within the parking lot.

Ms. Everette said that more phases of Hasentree are being recorded which is resulting in more people moving in to the subdivision.

Mr. Ghosh asked Ms. Massey if it was her professional opinion that the plan would not pose a danger to public health or safety, that it would be in harmony with the surrounding community, that it is consistent with the Wake County Land Use Plan, and that it would meet all of the requirements of the UDO. Ms. Massey said that she believed that the plan is in harmony with the existing area, and that it would comply with all of the regulations and standards.

Mr. Ghosh called Mr. James Norman forward to testify regarding property values. Mr. Norman said that he is a certified general appraiser in North Carolina and Virginia. He said that he is a coalition designated appraiser by the North Carolina Professional Appraisers Coalition. He said that he looked at the relation of the parking to the boundary, and he searched for other parcels that are adjacent to parking lots throughout this part of the county. Mr. Norman testified that he found no direct correlation of effects on values to adjacent property owners. He said that it was his professional opinion that the proposed development would not substantially injure the value of the adjoining property.

Mr. John Barker asked whether the property adjacent to the parking lot is part of Hasentree. Mr. Norman said that it is not part of Hasentree, and it is a single family residence on a property of about 8 acres.

Mr. Ghosh addressed the required findings.

1. The proposed development will not materially endanger the public health or safety. Mr. Ghosh said that Ms. Massey's testimony and the exhibits show that the finding has been met. He said that the plan will not add more traffic. More phases of Hasentree are being recorded, so parking is becoming an issue at the facility. He said that no additional utilities will be required.

2. The proposed development will comply with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of special use or class of special uses. Mr. Ghosh said that the evidence submitted by the witnesses as well as the staff report supports this finding. He said that Ms. Everette's presentation did not indicate that there are any issues with the proposed special use permit.

3. The proposed development will not substantially injure the value of adjoining property, or is a public necessity. Mr. Ghosh said that the appraiser, Mr. Norman, found no evidence that the values of adjoining properties would be affected by the proposed development.

4. The proposed development will be in harmony with the area in which it is located. Mr. Ghosh said that the proposed development is not changing the existing environment, so it will continue to exist in harmony with the area.

5. The proposed development will be consistent with the Wake County Land Use Plan. Mr. Ghosh said that Ms. Massey testified that the proposed development will be consistent with the Wake County Land Use Plan.

Mr. Ghosh said that they had met the requirements for granting the special use permit.

There was no one else who wished to speak in favor of or in opposition to the request. Mr. McConkey closed the public hearing.

BOARD DISCUSSION

Mr. Morrison said that the 40-foot buffer is adequate, and it would meet the requirements of the UDO. He said that he did not see any barriers to the board approving the request. He said that he did not see any evidence that it would affect the property values of the surrounding properties. He said that the proposal will not create any traffic, but it will help to solve an issue that is already occurring.

Mr. McConkey agreed with Mr. Morrison's comments. He said that the proposal would not materially endanger the public health or safety, and it would help resolve a problematic situation that could make this a safer situation for the residents.

Mr. John Barker said that the proposal would be consistent with the Wake County UDO with the Type C bufferyard and the impervious surface coverage requirements.

Mr. McConkey noted that there was expert testimony from an appraiser addressing the fact that the proposed development would not substantially injure the value of adjoining property. He said that there was testimony from a professional engineer that the proposed development would be in harmony with the area in which it is located.

MOTION

Mr. Morrison made a motion in the matter of BA SU-2230-16 that the Board find and conclude that the petition does meet the requirements of Article 19-23 of the Wake County Unified Development Ordinance and the special use permit be granted with the recommended staff conditions. Mr. Will Barker seconded the motion. By a vote of 5-0, the motion passed, and the special use permit was granted. So ordered.

FINDINGS OF FACT

(1) The proposed development will not materially endanger the public health or safety.

Considerations:

- a. Traffic conditions in the vicinity, including the effect of additional traffic on streets, street intersections, and sight lines at street intersection and curb cuts. The proposed development will help the existing parking situation by providing additional parking so cars will not need to park beside islands and on the roads.
- b. Provision of services and utilities, including sewer, water, electrical, garbage collections, fire protection.
- c. Soil erosion and sedimentation.
- d. Protection of public, community, or private water supplies, including possible adverse effects on surface waters or groundwater.

(2) The proposed development will comply with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of special use or class of special uses. A professional engineer testified that all of the regulations and standards will be met.

(3) The proposed development will not substantially injure the value of adjoining property, or is a public necessity. A certified appraiser testified that the proposed development would not substantially injure the value of adjoining property.

Considerations:

- a. The relationship of the proposed use and the character of development to surrounding uses and development, including possible conflicts between them and how these conflicts will be resolved.
- b. Whether the proposed development is necessary to the public health, safety, and general welfare of the community or County as a whole as to justify it regardless of its impact on the value of adjoining property.

(4) The proposed development will be in harmony with the area in which it is located. There is an existing facility that would not be changed by the proposal. The proposal will serve the growing needs of the neighborhood.

Considerations:

- a. The relationship of the proposed use and the character of development to surrounding uses and development, including possible conflicts between them and how these conflicts will be resolved.

(5) The proposed development will be consistent with the Wake County Land Use Plan. The evidence in the application and testimony provided supports that the proposed development will be consistent with the Wake County Land Use Plan.

Considerations:

- a. Consistency with the Plan's objectives for the various planning areas, its definitions of the various land use classifications and activity centers, and its locational standards.
- b. Consistency with the municipal and joint land use plans incorporated in the Plan.

CONCLUSIONS OF LAW

The proposed development will not materially endanger the public health or safety. The proposed development will comply with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of special use or class of special uses. The proposed development will not substantially injure the value of adjoining property, or is a public necessity. The proposed development will be in harmony with the area in which it is located. The proposed development will be consistent with the Wake County Land Use Plan.

IT IS THEREFORE ORDERED:

- 1) The petitioner must record the notarized form pertaining to the Order of the Board in the Wake County Register of Deeds and return a copy to the Current Planning Section of Wake County Planning;
- 2) The petitioner must obtain appropriate permits from the Wake County Inspections Development/Plans/Permits Division and Environmental Services.

Item 5, BA SU-2229-16

Before the case was heard, Wake County staff member Mr. Record was duly sworn.

Voting Members: Mr. McConkey, Mr. Morrison, Mr. Will Barker, Mr. Mial, and Mr. John Barker

Landowner: Playmaker Properties LLC

Petitioner: Rob Baumgart

PIN#s: 1606-59-6410

Size: 3.62 acres

Location: The site is located on the northern side of NC 42 Highway near the intersection with Rock Service Station Road.

Zoned: Highway District (HD) within Neighborhood Activity Center

Land Use Classification: Long Range Urban Services Area (Town of Garner)

The petitioner is requesting special use permit approval as required by section 4-11 of the Wake County Unified Development Ordinance (UDO) to construct and operate a 1,200 square foot office/retail business.

TESTIMONY AND EVIDENCE PRESENTED

Documentary Evidence: Staff report, PowerPoint presentation, site plans, maps, deeds, application, video, relevant sections of the Unified Development Ordinance were shown and/or available, and Exhibit 1: maps and photographs of the property.

Testimony:

Mr. Record, Planner I, entered the staff report and PowerPoint presentation for BA SU-2229-16 into the record. Mr. McConkey accepted the staff report and PowerPoint slides into the record. Mr. Record stated the petitioner's name, zoning classification, background and history of the petition. The proposed office and retail business is located at 4109 NC 42 Highway. The subject property is 3.62 acres with a single family residence. The applicant proposed to subdivide the existing lot into two parcels. One parcel would contain the existing single family residence and one parcel would contain the proposed office/retail building. The properties to the north, east, and west are single family residential. The properties to the south across NC 42 are residential and wooded. Access to the site is being proposed off of NC 42 Highway. The property width and frontage along this thoroughfare exceeds the 400 foot minimum standard for special uses within the UDO. The site plan shows the required 5 foot right-of-way dedication along NC 42 HWY. A driveway permit will be required from NCDOT. Utilities for the use will be provided by individual well and septic system. Off-street parking for office use is required to be provided at a rate of one (1) parking space per 300 square feet of floor area. Off-street parking for neighborhood oriented retail use is required to be provided at a rate of one (1) parking space per 400 square feet of floor area and one (1) parking space per 800 square feet of storage area. The site plan indicates 6 parking spaces will be provided on the site, a number that exceeds the minimum parking required regardless of how the building is partitioned for the proposed uses. A 10 foot bufferyard is required along NC 42 Highway. A 40 foot Type C bufferyard is required along the western property line. The applicant is also showing a 40 foot Type C bufferyard along the proposed subdivision line that would separate the single family residence from the proposed special use. Mr. Record said that the site plan is in compliance with UDO standards for bufferyards. The maximum impervious surface coverage for a non-residential use in Highway District is 30% without on-site detention. The proposed impervious surface coverage is 7.95%, which does not trigger the need for stormwater measures. Notification letters were mailed to adjacent property owners on August 26, 2016, and a public hearing placard was also placed on the site on August 26, 2016. A notice of the meeting was placed in the News and Observer newspaper on August 31 and again on September 9th.

Mr. Andrew Petesch, attorney for the applicant, came forward to address the board.

Sworn witness in favor of the petition:

Rob Baumgart, 5600 Rock Service Station Road, Raleigh, NC 27603

Mr. Petesch and Mr. Baumgart submitted Exhibit 1: a map and photographs of the site. Mr. Baumgart said that the building for the business will sit in the middle of the grove of trees. He used the photographs in Exhibit 1 to describe what the building will look like: it will be a double wide modular office building with hardieplank siding and vinyl windows. He said that the building is in good repair, and it is a good design. Mr. Baumgart said that there is existing vegetation on the site that includes a grove of mature deciduous trees. Along the eastern edge of the property, there are eight mature pecan trees that Mr. Baumgart said he would like to preserve as part of the screening. Mr. Petesch asked Mr. Baumgart what his intentions are for the use of the property. Mr. Baumgart said that the building would be good for a professional office for an accountant, realtor, or other

professional service. He said that the building itself is congruent with the home on the adjacent property. The adjacent home is a ranch style house with four bedrooms. The building that would house the office is 1,200 square feet, and it looks like a ranch style house. Mr. Petesch asked how far the building would be from where the driveway would be located. Mr. Baumgart answered that it would be approximately 700 feet away. Mr. Petesch asked about the impact on traffic and the intensity of the use. Mr. Baumgart said that his engineer and traffic engineer said that the proposal would have a low impact on the intersection nearby. Mr. Petesch asked about the utilities. Mr. Baumgart answered that electricity would be provided by Duke Energy, a well will be dug onsite, and there will be a septic system. He said that a soil scientist has established where the septic field will be.

Mr. Murphy asked Mr. Baumgart about the buffers. Mr. Baumgart said that he created the plans according to the UDO. He requested that he could take into account the existing trees that are there to satisfy part of the buffer requirements instead of ripping them out. Mr. Murphy asked if he would be willing to supplement or possibly replace the pecan trees if staff determined that they would not be adequate to meet the buffer required by the UDO. Mr. Petesch said that they are requesting that the board acknowledge in their decision that the staff can allow for the existing trees to replace some or all of the Type C buffer as they see appropriate. Ms. Everette said that this would be consistent with how staff would handle it at the site plan approval stage.

Mr. Petesch addressed the required findings.

1. The proposed development will not materially endanger the public health or safety. Mr. Petesch said that Mr. Baumgart testified that it would be a low traffic operation. It would be a 1,200 square foot facility with six parking spaces. The building would be set back 700 feet from the intersection. The utilities would not be a big impact.

2. The proposed development will comply with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of special use or class of special uses. Mr. Petesch said that the staff report notes that the plan complies with all regulations under the UDO.

3. The proposed development will not substantially injure the value of adjoining property, or is a public necessity. Mr. Petesch requested that an opinion letter from an appraiser, Mr. Martin Wachtel, be submitted into the record. Mr. McConkey did not accept the letter into the record since Mr. Wachtel was not present to be questioned.

4. The proposed development will be in harmony with the area in which it is located. Mr. Petesch referenced Mr. Baumgart's testimony about the structure being consistent with other residential structures in the area. He added that there are other commercial operations in the area including a hair salon and an office building.

5. The proposed development will be consistent with the Wake County Land Use Plan. Mr. Petesch said that the parcel is in a neighborhood activity center which anticipates some office and retail uses.

There was no one else who wished to speak in favor of or in opposition to the request. Mr. McConkey closed the public hearing.

BOARD DISCUSSION

Mr. McConkey said that he thinks that the petitioner has met the third required finding that the proposed development would not substantially injure the value of adjoining property. There is a generous buffer, and it is consistent with surrounding properties.

Mr. Morrison agreed with Mr. McConkey. He said that the proposed development is in line with the surrounding area.

Mr. McConkey said that there was no evidence that there would be any material endangerment. He said that

traffic would be a non-issue, and the plan would comply with all regulations and standards of the UDO. He added that the staff report shows that the proposal is consistent with the Land Use Plan.

Mr. Morrison noted that the petitioner owns the adjacent residential property.

MOTION

Mr. John Barker made a motion in the matter of BA SU-2229-16, I move that the Board find and conclude that the petition does meet the requirements of Article 19-23 of the Wake County Unified Development Ordinance and the special use permit be granted with the recommended staff conditions and with staff having the flexibility to allow the existing trees to be used towards meeting some or all of the buffer requirements. Mr. Morrison seconded the motion. By a vote of 5-0, the motion passed, and the special use permit was granted. So ordered.

FINDINGS OF FACT

(1) The proposed development will not materially endanger the public health or safety.

Considerations:

- a. Traffic conditions in the vicinity, including the effect of additional traffic on streets, street intersections, and sight lines at street intersection and curb cuts. The proposed development will have a low impact on traffic in the area.
- b. Provision of services and utilities, including sewer, water, electrical, garbage collections, fire protection.
- c. Soil erosion and sedimentation.
- d. Protection of public, community, or private water supplies, including possible adverse effects on surface waters or groundwater.

(2) The proposed development will comply with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of special use or class of special uses. The impervious surface requirements will be met, the parking requirements will be met, and the Type C buffer that can utilize some of the existing trees will meet the UDO buffer requirements.

(3) The proposed development will not substantially injure the value of adjoining property, or is a public necessity. The proposed building is a single-story 1,200 square foot building, and it will be consistent with other buildings in the area.

Considerations:

- a. The relationship of the proposed use and the character of development to surrounding uses and development, including possible conflicts between them and how these conflicts will be resolved.
- b. Whether the proposed development is as necessary to the public health, safety, and general welfare of the community or County as a whole as to justify it regardless of its impact on the value of adjoining property.

(4) The proposed development will be in harmony with the area in which it is located. The proposed building is a single-story 1,200 square foot building, and it will be consistent with other buildings in the area.

Considerations:

- a. The relationship of the proposed use and the character of development to surrounding uses and development, including possible conflicts between them and how these conflicts will be resolved.

(5) The proposed development will be consistent with the Wake County Land Use Plan. The location is within a neighborhood activity center, and it is consistent with the Wake County Land Use Plan and the Fuquay-Garner Area Land Use Plan.

Considerations:

- a. Consistency with the Plan's objectives for the various planning areas, its definitions of the various land use classifications and activity centers, and its locational standards.
- b. Consistency with the municipal and joint land use plans incorporated in the Plan.

CONCLUSIONS OF LAW

The proposed development will not materially endanger the public health or safety. The proposed development will comply with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of special use or class of special uses. The proposed development will not substantially injure the value of adjoining property, or is a public necessity. The proposed development will be in harmony with the area in which it is located. The proposed development will be consistent with the Wake County Land Use Plan.

IT IS THEREFORE ORDERED:

- 1) The petitioner must record the notarized form pertaining to the Order of the Board in the Wake County Register of Deeds and return a copy to the Planning, Development and Inspections Division of Community Services;
- 2) The petitioner must obtain the required permits and inspections from the Wake County Planning, Development and Inspections Division of Community Services for all proposed structures, including fences if applicable;
- 3) The petitioner must obtain an driveway entrance permit from the North Carolina Department of Transportation;
- 4) The petitioner must obtain the required permits and inspections from the Water and Wastewater Section of the Wake County Environmental Services Department for the on-site well and septic;
- 5) A final zoning inspection to verify site plan compliance must be performed by the Wake County Zoning Administrator prior to the issuance of a certificate of completion by the Wake County Planning, Development and Inspections Division of Community Services;
- 6) The landowner must maintain compliance with the special use approval and Wake County Unified Development Ordinance;
- 7) The petitioner must maintain compliance with the performance standards listed in Article 17 of the Unified Development Ordinance.

Item 6: New Business – Mr. Finn updated the board regarding recent development activity.

Item 7: Old Business – Mr. Murphy advised the board to refrain from having ex parte communications with citizens regarding the special use permit that was granted by the board in August.

Item 8: Adjournment

Hearing no additional business, the meeting was adjourned at 10:05 a.m.

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REGULAR MEETING
WAKE COUNTY BOARD OF ADJUSTMENT
September 13, 2016

All petitions complete, Brenton McConkey declared the regular meeting
of the Wake County Board of Adjustment for
Tuesday, September 13, 2016 adjourned at 10:05 a.m.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read 'Brenton McConkey', with a long horizontal flourish extending to the right.

Brenton McConkey
Wake County Board of Adjustment

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