

MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING AND DEVELOPMENT
STAFF REPORT **#9**

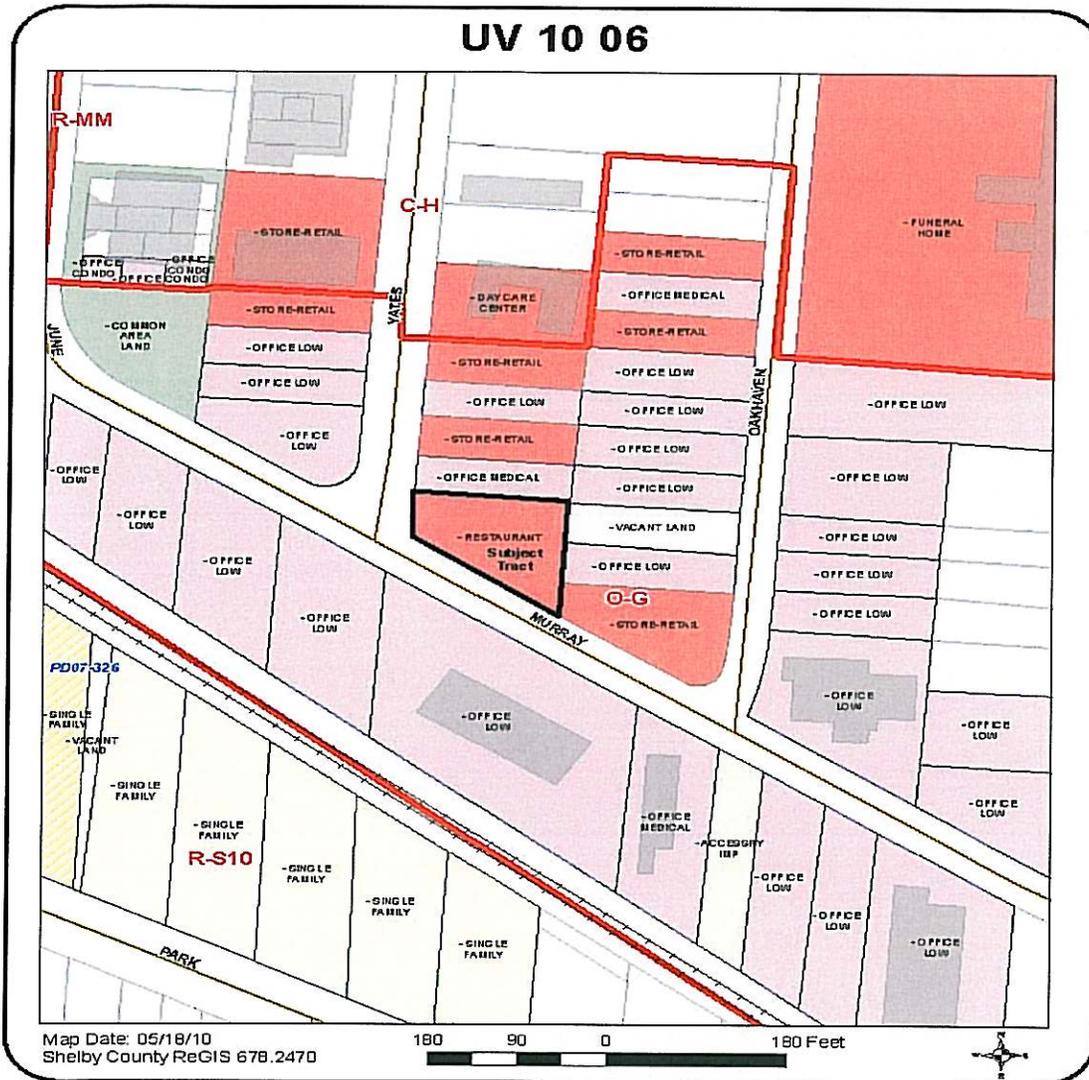
CASE NUMBER: UV 10-06 **L.U.C.B. MEETING:** June 10, 2010
LOCATION: Northeast corner of Murray Avenue and Yates Road
COUNCIL DISTRICT: 5
SUPER DISTRICT: 9
OWNER OF RECORD / APPLICANT: Erling Jensen
REPRESENTATIVE: Butch Edwards
REQUEST: Addition to an existing restaurant
AREA: .27 Acres
EXISTING LAND USE & ZONING: Erling Jensen's Restaurant/General Office (O-G) District

OFFICE OF PLANNING AND DEVELOPMENT RECOMMENDATION:

Approval Of The Entire Facility & Site Including Expansion Area With Conditions

CONCLUSIONS

1. The subject property is zoned for General Office use (O-G). In 1996, the Board of Adjustment granted a Use Variation for a restaurant because O-G Zoning does not permit a free-standing restaurant. This variance remains valid and may continue under the "Nonconformities" Section of the Zoning Ordinance.
2. In 1999, the City Council amended the Zoning Ordinance to require that Use Variations be approved by them, eliminating the authority of the Board of Adjustment to grant them.
3. The applicant is now proposing an expansion to the existing restaurant. The expansion is now governed under the Use Variation approval process through the City Council, not Board of Adjustment.
4. There is no objection to the expansion. It is recommended that the expansion approval include the entirety of the existing facility and grounds to create one current record of approval.

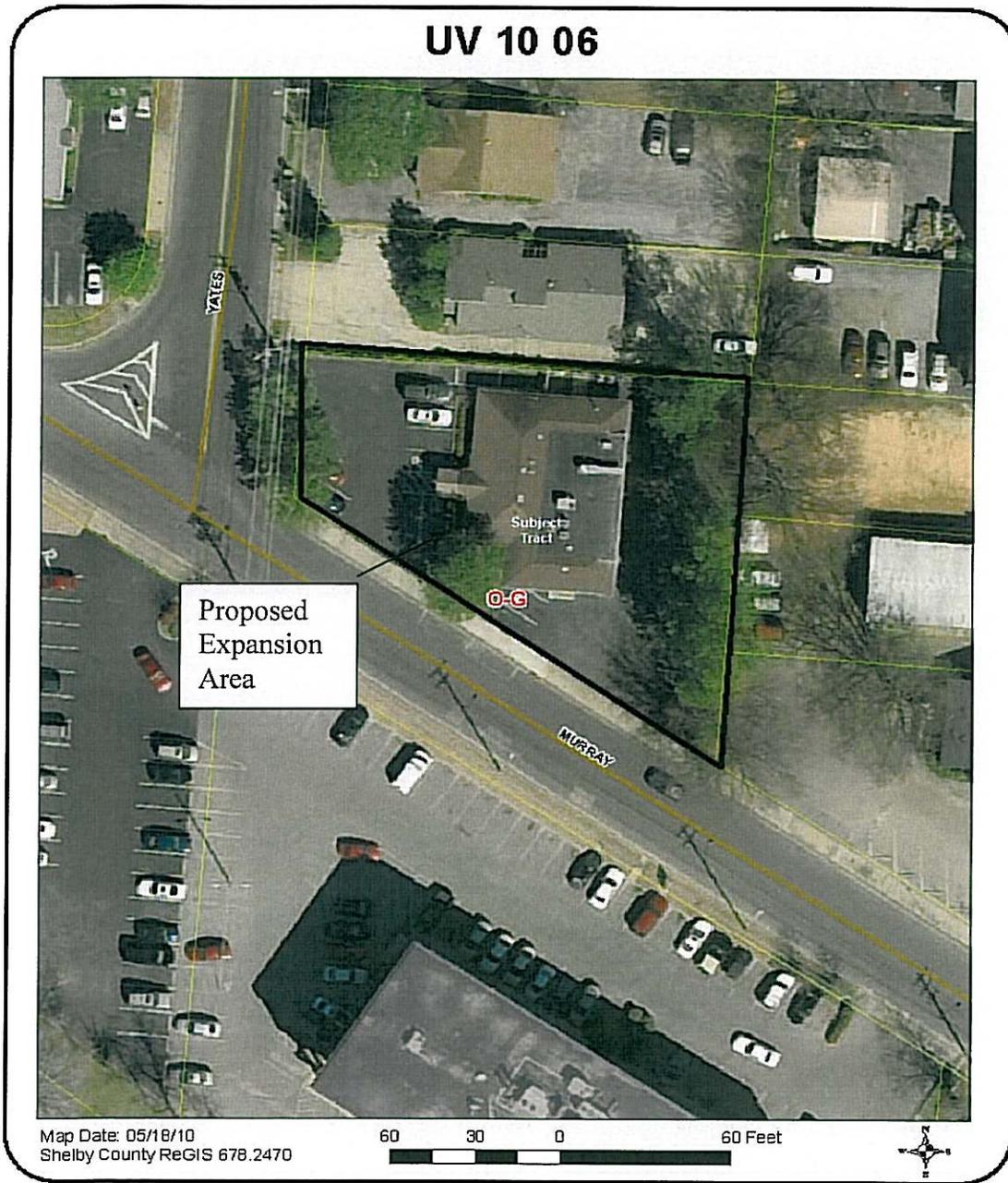


Surrounding Land Use and Zoning

- North – Medical Office in the O-G Zoning District
- South – Offices in the O-G Zoning District
- East – Offices in the O-G District
- West – Offices in the O-G District



Aerial Photo of Subject Property.



Closer view aerial photo of the subject property.



The front of the restaurant as viewed from Yates Road.



The Murray Avenue side of the restaurant.

**UV 10-06
Erling Jensen's
06/10/10
Page 7**



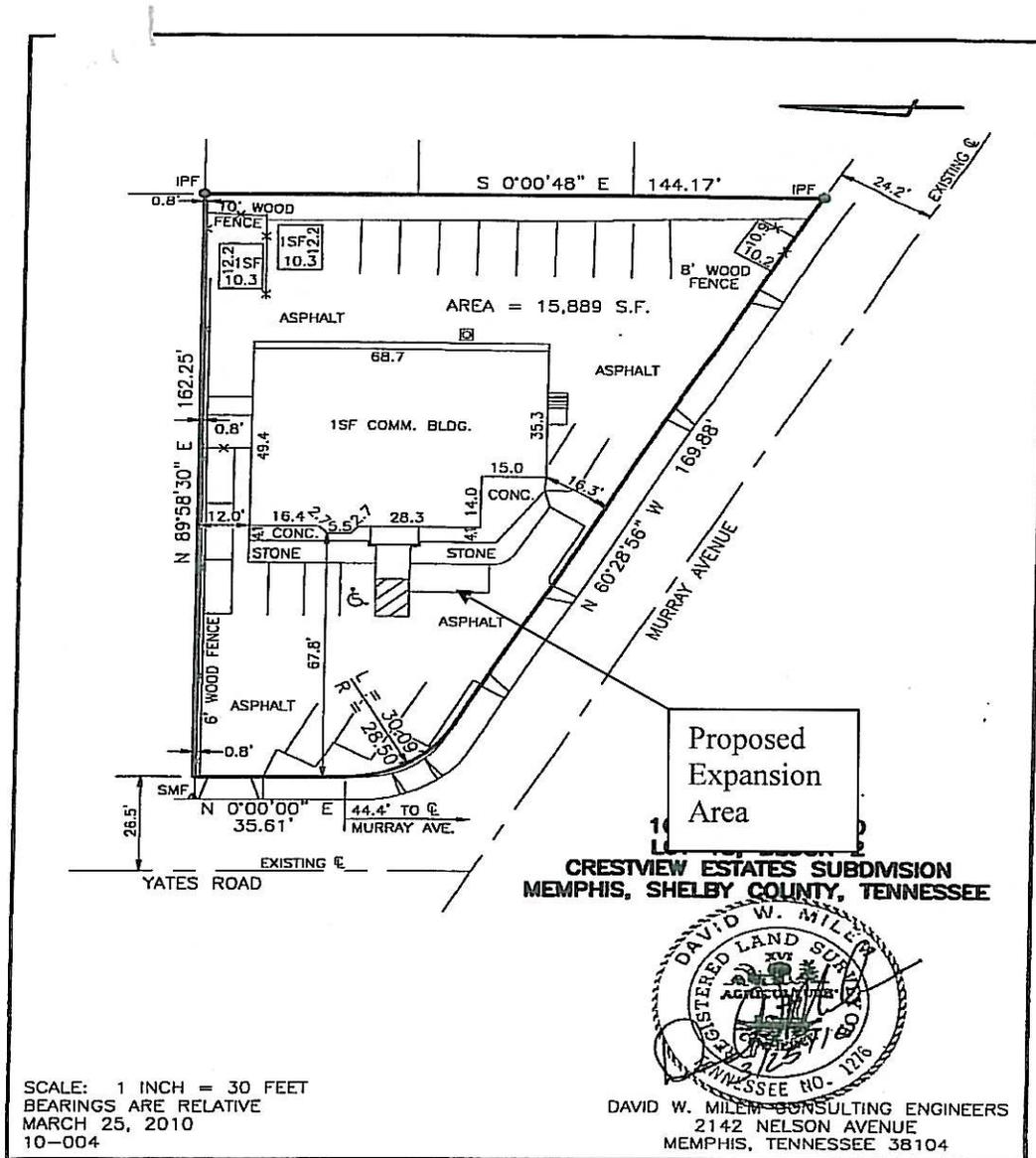
The rear of the restaurant as viewed from Murray Road.



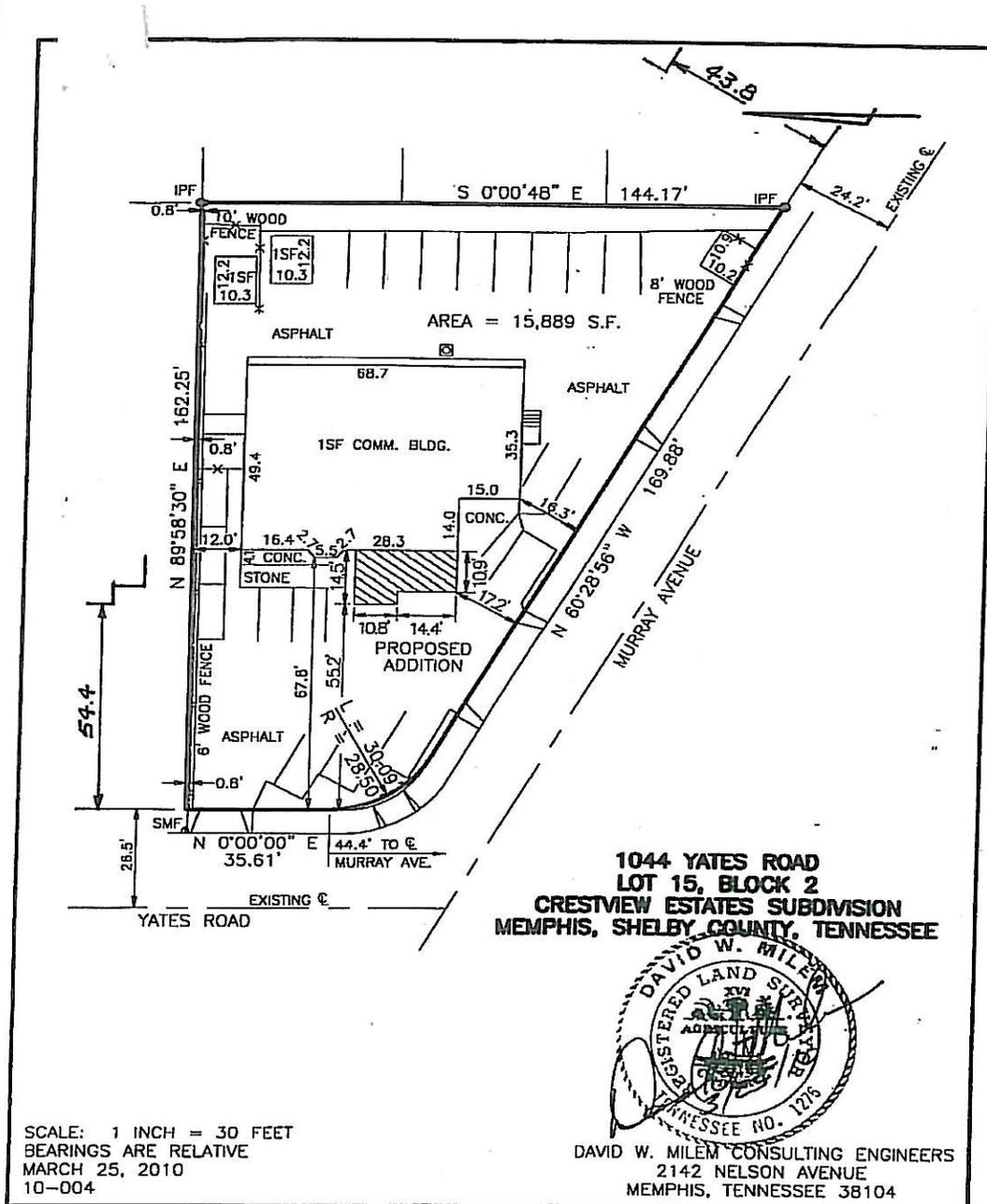
The proposed expansion area at the front of the restaurant as viewed from Murray Road.



This office building directly opposite the restaurant on the south side of Murray Road is the predominant land use surrounding the restaurant.



A survey of the site as it currently exists.



The proposed expansion area is illustrated in the striped pattern.

STAFF ANALYSIS

History Of The Subject Property and Current Use

The subject property is located at 1044 Yates Road and was recorded in 1935 as Lot 15 of Block 2 of the Crestview Estates Subdivision in Plat Book 9, Page 108. The subject property and surrounding lots were previously developed with single-family homes. The subject property itself is a converted single-family home that was built in 1952.

The subject property has since undergone two use conversions aided by previous approvals from the Board of Adjustment. In 1977, the first conversion was approved to an antique shop (Docket # 77-138). The use variation was necessary because the property was zoned for General Office use (O-G) which did not permit an antique shop. The antique shop received one subsequent Board of Adjustment approval in 1992 (Docket # 92-6) for a front yard building setback variation for an addition to the antique shop along Murray Avenue.

In 1996, a request was submitted for a use variation to the Board of Adjustment for a restaurant (Docket # 96-14). The request included a reduction in the required number of parking spaces and a detached sign. Again, the use variation was necessary because the property was zoned O-G and O-G Zoning does not permit a free-standing restaurant. The current restaurant operating on the property (Erling Jensen's) is operating under this approval.

Proposed Expansion & Reason For Requiring City Council Approval

The applicant recently presented plans for a small expansion at the front of the restaurant for a new enclosed foyer, waiting area, and an additional 12 dining seats, bringing the total of dining seats to 110. The applicant was informed that because of the O-G Zoning, the restaurant expansion was not permitted without a variation because of the free-standing restaurant prohibition in the O-G District.

The applicant was advised to file a Use Variation Application with the Office of Planning and Development for the following reasons. In 1999, the City Council amended the Zoning Ordinance to require that use variations be approved by the City Council, thereby eliminating the Board of Adjustment approval process. This did not affect the previous Board of Adjustment approvals for the restaurant since Section 1.E of the Memphis/Shelby County Zoning Regulations states that existing variances remain valid and may continue subject to the "Nonconformities" Section (Section 30) of the Zoning Ordinance.

Subsection 30.B.3.a of the Nonconformities Section states that a nonconforming use shall not be extended, expanded, enlarged, or increased in intensity. The current restaurant use and structure is legal, nonconforming by virtue of its prior Board of Adjustment approvals, but the proposed floor area expansion is not because it expands a free-standing restaurant which is not permitted in O-G Zoning without an approved use variation, rezoning, or planned development. Of these three remedies, the use variation seemed the most appropriate as a rezoning to commercial would be a "spot" zoning and a planned development would be too onerous in terms of process and time.

OPD Recommendation For Approval & Reasons Supporting It

The Office of Planning and Development is recommending approval of the building expansion, but to also broaden the approval to the entire existing facility and site to create one consistent, current record of approval. The existing practical difficulty supporting the approval is that through prior use variation approvals by the Board of Adjustment, a substantial investment has been made into the site to convert it to a restaurant use. The expansion of floor area and seating is minimal (approximately 350 square feet of floor area and 12 additional seats) and the restaurant has existed here for nearly 15 years without any complaints that the Office of Planning and Development is aware of. Broadening the approval to include the entirety of the existing restaurant and existing grounds is recommended to provide for one current, updated record of approval that accounts for any prior approval based on, for example, total number of seats that is not accurate with the current number of seats and proposed expansion of seating. In doing this, the applicant has been notified that the remaining on-site parking after expansion is well below the required on-site parking requirement of one parking space for every 2 seats equating to 55 on-site spaces required unless shared parking can be accomplished with adjoining businesses. Fortunately, the applicant already has shared parking agreements to cover the parking shortfall. The restaurant has limited operating hours (5:00 p.m. – 10:00 p.m.) which makes the shared parking arrangement ideal as the shared parking spaces are provided by businesses with normal operating hours of 8:00 a.m. – 5:00 p.m. The applicant will need to provide proof of these agreements at the time of securing a building permit for the expansion area. It appears from the proposed site plan that 22 on-site parking spaces will be provided, leaving 33 off site to be provided by shared parking agreement.

The recommended conditions of approval for the entirety of the site including the proposed expansion are provided on the following page.

RECOMMENDATION: Approval of a Use Variation to operate Erling Jensen's Restaurant at 1044 Yates Road subject to the following conditions:

1. Total seating capacity shall be 110 seats.
2. The location of the existing principal building and accessory buildings shall be permitted to remain as illustrated on the site plan.
3. The proposed addition is permitted as illustrated on the site plan.
4. Building setbacks and parking space locations as illustrated on the site plan are permitted.
5. A shared parking agreement(s) shall be presented to the Office of Planning of Development and Office of Construction Code Enforcement to register off-site parking spaces needed to meet the parking requirement of one parking space for every 2 seats in the restaurant.
6. The existing site landscaping shall be illustrated on the final site plan. One replacement tree or equivalent landscaping approved by the Office of Planning and Development shall be provided for the landscaping removed for the building expansion.
7. Signs shall be subject to the requirements of the General Office (O-G) Zoning District.
8. Any existing nonconforming curb cuts shall be modified to meet current City Standards or closed with curb, gutter and sidewalk.
9. All existing sidewalks and curb openings along the frontage of this site shall be inspected for ADA compliance. The applicant shall be responsible for any reconstruction or repair necessary to meet City standards.

GENERAL INFORMATION

Street Frontage: 35 feet on Yates Road; 169 feet on Murray Avenue.

Planning District: Walnut Grove

Census Tract: 96

Zoning Atlas Page: 2145

Parcel ID: 056060 00020

Zoning History: The O-G Zoning District was established on the subject property in the 1970's.

DEPARTMENTAL COMMENTS

The following comments were provided by agencies to which this application was referred:

- City Engineer:**
1. Any existing nonconforming curb cuts shall be modified to meet current City Standards or closed with curb, gutter and sidewalk.
 2. All existing sidewalks and curb openings along the frontage of this site shall be inspected for ADA Compliance. The developer shall be responsible for any reconstruction or repair necessary to meet City standards.

City Fire Division: No comment.

City Real Estate: None.

City/County Health Department: The Water Quality Branch & Septic Tank Program has no comments.

City Board of Education: No comment.

Construction Code Enforcement: No comments received.

Memphis Light, Gas and Water: MLGW has no objection to the Use Variance request.

AT&T/Bell South: AT&T has no comment.

Memphis Area Transit Authority (MATA): No comments received.

OPD-Regional Services: No comments received.

OPD-Plans Development: No comments received.

Memphis Park Commission: No comments received.

Sea Isle Park Neighborhood Association: No comments received.

White Station-Yates Neighborhood Association: No comments received.

Pleasant Acres Neighborhood Association: No comments received.