

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT****Date: January 6, 2014****CASE NUMBER**

5870

**APPLICANT NAME**

John Kirby

**LOCATION**7049 Dickens Ferry Road  
(South side of Dickens Ferry Road, 550'± East of Cody Road)**VARIANCE REQUEST****PARKING SURFACE:** Parking Surface Variance to allow a gravel lay down yard for the storing of cars for an automobile paint and body shop in a B-3, Community Business District (rezoning pending)**ZONING ORDINANCE  
REQUIREMENT****PARKING SURFACE:** The Zoning Ordinance requires parking areas to be paved with asphalt, concrete, or an approved alternative paving surface in a B-3, Community Business District.**ZONING**

B-3, Community Business District (rezoning pending)

**AREA OF PROPERTY**

1.4± Acres

**TRAFFIC ENGINEERING****COMMENTS**

As it pertains to the surface variance, any required parking spaces should be delineated by curb stops, as spaces can not be painted on aggregate surface. Other concerns related to this site include the point(s) of access to both public right-of-way and adjacent properties, which should be addressed with the applications to the Planning Commission.

**ENGINEERING****COMMENTS**

If the aggregate surfacing is approved for use as requested the applicant will need to have the following condition met to address unpermitted land disturbing activity on-site: Submit and receive a Land Disturbance Permit for the existing site development additions, including within the AE and X (shaded) Flood Zones.

**CITY COUNCIL****DISTRICT**

District 7

**ANALYSIS**

The applicant is requesting a Parking Surface Variance to allow a gravel lay down yard for the storing of cars for an automobile paint and body shop in a

B-3, Community Business District (rezoning pending); the Zoning Ordinance requires parking areas to be paved with asphalt, concrete, or an approved alternative paving surface in a B-3, Community Business District.

The applicant also has applications for this site pending before the Planning Commission to be heard on December 5, 2013 for a 1-lot Subdivision; Planned Unit Development to allow multiple buildings on a single building site and shared access between two building sites; and Rezoning from R-1, Single-Family Residential District to B-3, Community Business District.

It should be noted that the applicant has already cleared the site and placed gravel without receiving any appropriate permits. The applicant is also already using the site to store numerous wrecked or irreparable vehicles. Also of note, is that the site contains a portion of the headwaters of Twelve Mile Creek and associated floodway and floodzones, therefore the area may be environmentally sensitive.

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application; and, unless the Board is presented with sufficient evidence to find that the variance will not be contrary to the public interest, and that special conditions exist such that a literal enforcement of the Ordinance will result in an unnecessary hardship. The Ordinance also states that a variance should not be approved unless the spirit and intent of the Ordinance is observed and substantial justice done to the applicant and the surrounding neighborhood.

Variances are not intended to be granted frequently. The applicant must clearly show the Board that the request is due to very unusual characteristics of the property and that it satisfies the variance standards. What constitutes unnecessary hardship and substantial justice is a matter to be determined from the facts and circumstances of each application.

The applicant gives the following reasons to explain the need for the variance:

*This property is adjacent to 7060 Airport Boulevard, which is the property we are conducting business on. Our proposal is to clear, grub, and bring in dirt to fill in void space from the clearing and grubbing. In addition, we want to install crushed concrete on the cleared area for extra room. We have had problems with rats, and people living in cardboard boxes on the property, as well as excessive mosquitoes. We know this will bring about a cleaner, safer, environment for us and our neighbors.*

While the applicant's intention to provide a clean and safe environment for themselves and the neighbors is respectable, there is no hardship illustrated to provide justification for the approval of the requested surfacing variance.

**RECOMMENDATION:**

Based on the preceding, this application is recommended for denial.

***Revised for the February 3, 2014 meeting:***

*The application was heldover from the January 6, 2014 meeting at the applicant's request. It should be noted that revised site plans were submitted on January 10<sup>th</sup> for this site to the Planning Commission, but no revised site plans have been submitted for the variance request to reflect these changes and accurately depict the site for which the variance would be granted. That being said, the applicant's request for a aggregate vehicular storage area/lay down yard should be considered in the context that: 1) a portion of the site is within the floodzones associated with Twelve Mile Creek; that 2) many of the vehicles that are being stored appear to be so extremely wrecked as to be inoperable, thus the site is being used a more of a auto repair site, and as such, an I-2, Heavy Industry District classification with Planning Approval would be required; 3) that the site was cleared and placed into use without permits; 4) that approval of the variance would be contrary to the public interest; 5) that the applicant has failed to show that special conditions relating to the property exist that would make literal enforcement of the Zoning Ordinance an unnecessary hardship; and 6) that substantial justice would not be done to the surrounding neighborhood by granting the variance.*

*It should be noted that the proposed Zoning Ordinance amendment to allow aggregate surfacing for storage yards in a B-3, Community Business District with Planning Approval was recently denied by the Planning Commission and the City Council.*

*The applicant already has about an acre of aggregate area used for vehicular storage, and the addition of 1.4± acres of aggregate area would seem unnecessary for the existing collision repair service.*

*In 2002, the existing area, which was a residence at the time, was rezoned to B-3, and the property was incorporated into the rest of the Spectrum lot. In the 2002 rezoning staff report, it was noted that gravel, aggregate, etc (which was proposed), was not an appropriate surface for this expanded parking area. The rezoning approval was also conditioned upon the submission for an administrative PUD, the removal of the existing residential structure within one year of the rezoning approval, and the denial of access to Dickens Ferry Road.*

*There are no records on file to indicate that an administrative PUD was ever submitted (thus the last approved PUD for most of the development was in 1999), and it appears that the existing residential structure remains on the site after reviewing City of Mobile aerial photographs.*

*Based on this, the entire gravel area should be paved, and the residential structure should be removed.*

**RECOMMENDATION:**

*Based on the preceding, this application is recommended for denial.*

***Revised for the March 10, 2014 meeting:***

*The application was heldover from the February 3, 2014 meeting at the applicant's request. The applicant has not submitted any additional information.*

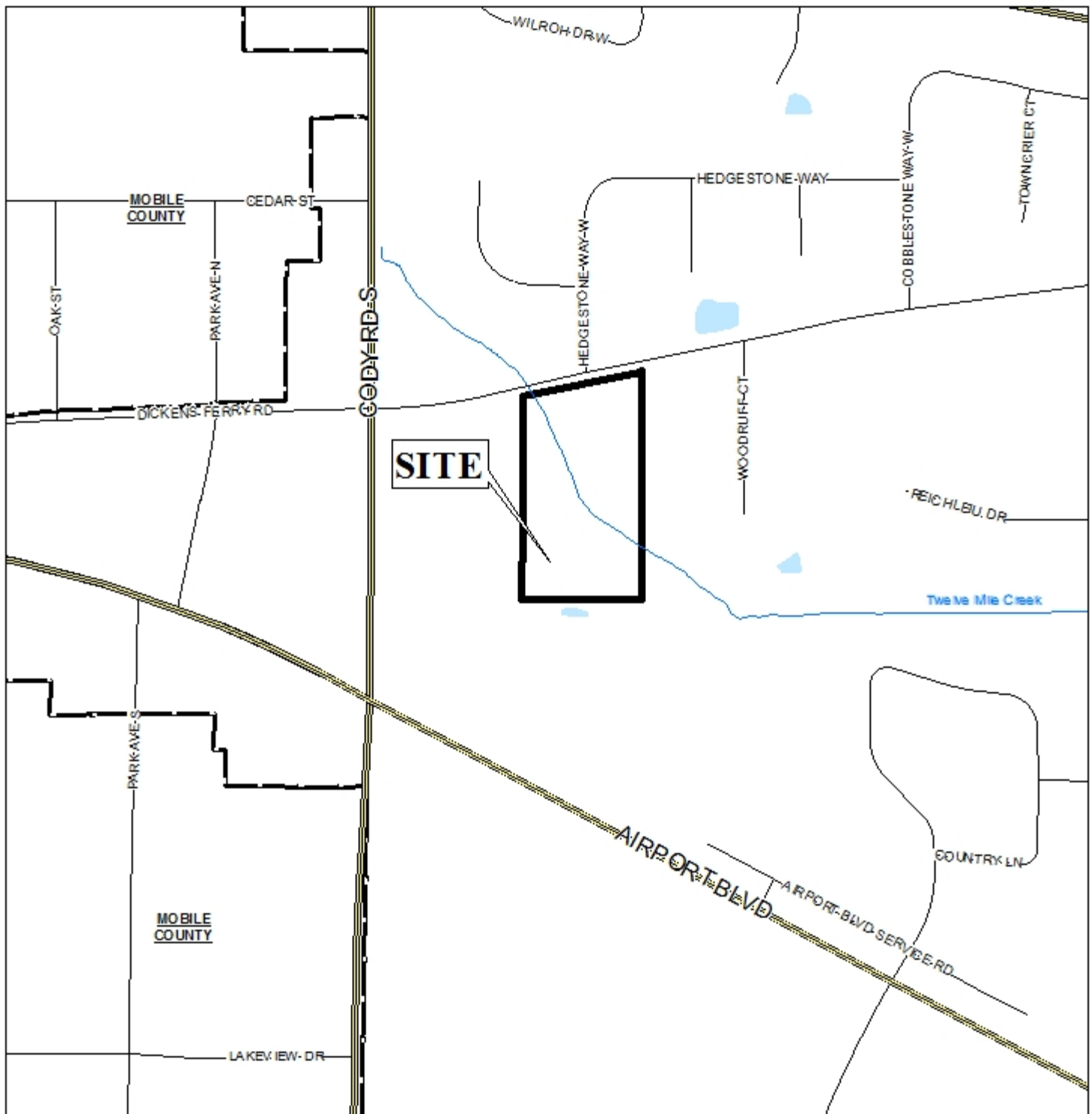
*At the Planning Commission's February 6, 2014 meeting, a Subdivision, Planned Unit Development, and Rezoning were approved for this site. A condition of the Planned Unit Development approval states: "provision of compliant asphalt or concrete surface instead of aggregate surfacing, if the pending aggregate surfacing request is not approved by the Board of Zoning Adjustment".*

*Because the applicant has not submitted any additional information to justify the request to allow gravel surfacing, the previous recommendation remains the same.*

**RECOMMENDATION:** *Based upon the preceding, this application is recommended for denial as the Board finds that the variance request:*

- 1) will be contrary to the public interest in that it is contrary to Section 64-6.A.3.a. of the Zoning Ordinance pertaining to providing concrete, asphaltic concrete, or asphalt surfacing;*
- 2) in that special conditions such as a contractor's storage yard with heavy equipment on tracks do not exist such that a literal enforcement of the provisions of the chapter will result in an unnecessary hardship; and*
- 3) that the spirit of the chapter shall not be observed and substantial justice shall not be done to the surrounding neighborhood by granting the variance because most of the near-by businesses appear to be in compliance with the surfacing requirements of the Zoning Ordinance and no other Parking Surface Variances have been granted within 1,000' of the subject site along Airport Boulevard.*

# LOCATOR MAP



APPLICATION NUMBER 5870 DATE March 10, 2014

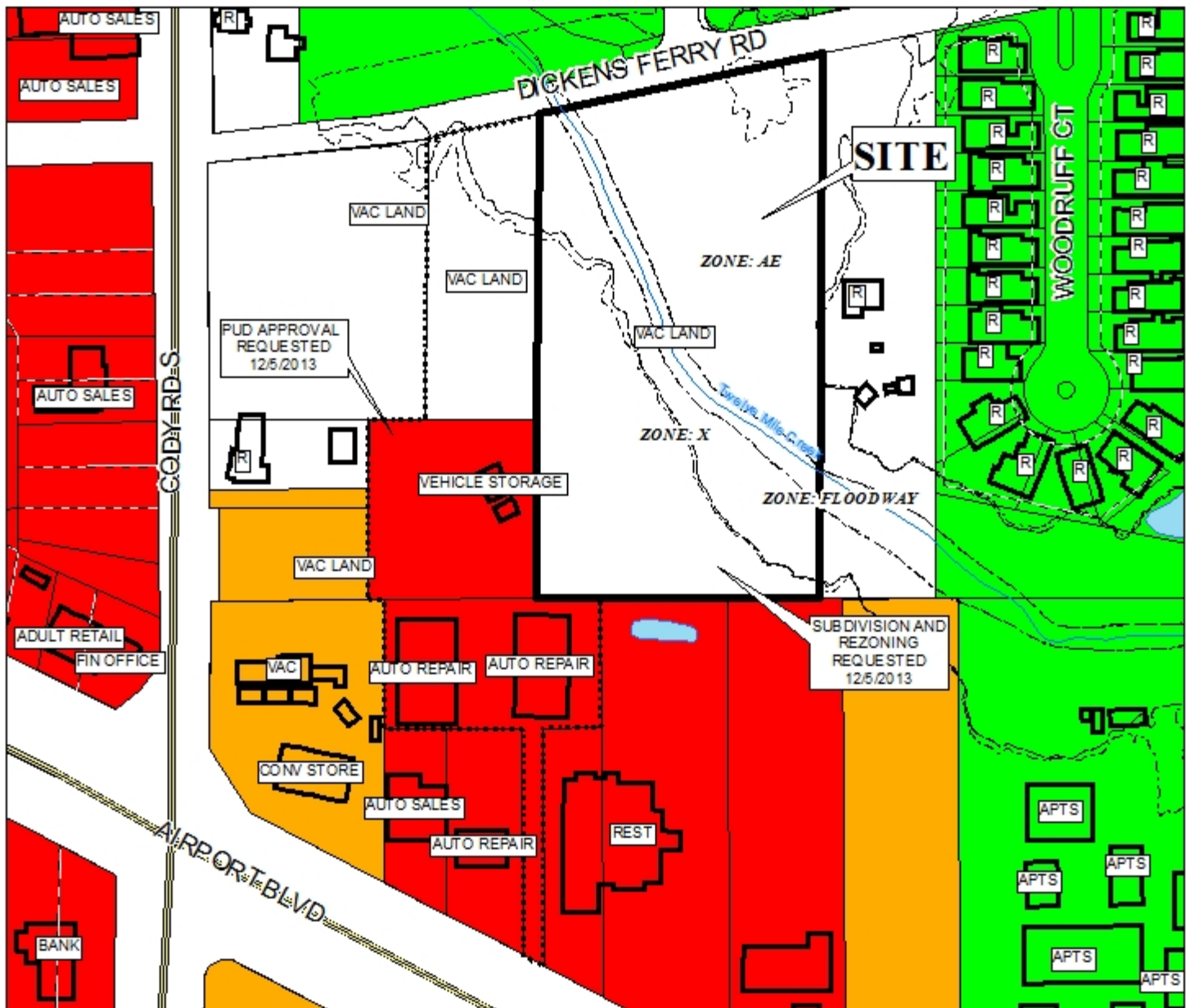
APPLICANT John Kirby

REQUEST Parking Surface Variance



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# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by residences and businesses.

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LEGEND

R-1	R-2	R-3	R-A	R-B	H-B	T-B	B-1	B-2	B-3	B-4	B-5	I-1	I-2	





# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



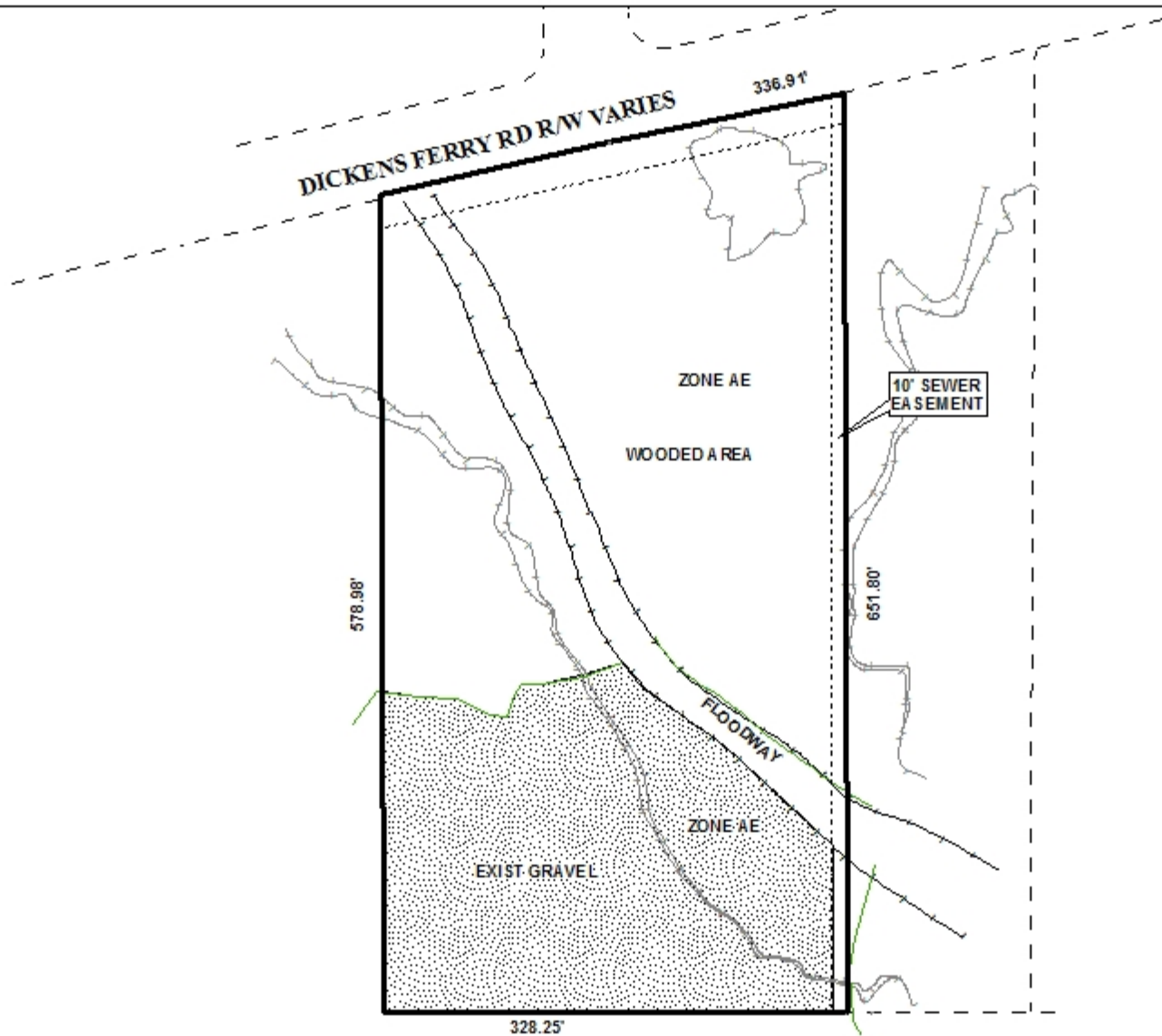
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# SITE PLAN



The site plan illustrates the existing gravel surface area.

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