



# STAFF REPORT COVER SHEET

July 17, 2024

<b>Address</b>	160 Maple Avenue West	<b>Case Number</b>	PF-1377403-BZA
<b>Regular Meeting Date</b>	7/17/2024	<b>Applicant</b>	Stephen Kenney
<b>Board/Commission</b>	Board of Zoning Appeals	<b>Owner</b>	David Lynch
<b>Existing Zoning</b>	AC	<b>Existing Land Use</b>	Commercial
<b>Brief Summary of Request</b>	Application for a conditional use permit to allow more than 12 seats of permanent outdoor dining.		
<b>Site Improvements</b>	n/a		
<b>Size of Property</b>	Parcel: 99,722 square feet / 2.3 acres		
<b>Public Notice Requirements:</b>	<ul style="list-style-type: none"> <li>Advertisement for two successive weeks in a newspaper having paid general circulation in the Town, announcing upcoming public hearing at Board of Zoning Appeals meeting. A public ad is scheduled to run on July 5, 2024 and July 12, 2024.</li> <li>A sign is required to be posted on property at least 10 days prior to the public hearing. Staff posted a sign on the property on June 3, 2024 notifying residents of the upcoming Board of Zoning Appeals meeting.</li> <li>A certified letter is required to be sent to the County Executive at least 10 days prior to the public hearing. Staff mailed a certified letter to the Fairfax County Executive on July 5, 2024.</li> <li>A certified letter is required to be sent to the owner at least 10 days prior to the public hearing. Staff sent a certified letter to the applicant on July 5, 2024.</li> <li>A courtesy letter was sent to surrounding property owners on July 7, 2024.</li> </ul>		
<b>Official Submission Date for Approval:</b>	On June 14, 2024, the application was deemed by staff to be complete.		
<b>Deadline for Action:</b>	The BZA should take action by September 12, 2024, which is 90 days after the application was deemed complete. That date is directory, rather than mandatory; the Board does not lose jurisdiction to act after the time period has passed.		
<b>Brief Analysis</b>			
<p><b>PROPERTY HISTORY</b></p> <p>The building in which the proposed use is located was built in 1956 and is approximately 50,464 gross square feet. A portion of the interior was renovated in 2013 to retrofit space, previously used as a grocery store, into 6 additional individual tenant spaces. In 2023, commercial building permits were issued, and Board of Architectural Review approval given, for construction of a patio area in the front area of the building. The applicant has applied for a Commercial Certificate of Occupancy for indoor restaurant use, and to the Board of Architectural Review for a proposed sign. The prior use located in this space was for a restaurant with indoor dining only.</p>			

**COMPATIBILITY WITH THE COMPREHENSIVE PLAN**

The Future Land Use Plan in Chapter 3 of the [Comprehensive Plan 2015 Update](#) designates the property as Mixed Use. Outdoor Dining is consistent with the Mixed Use designation (P.38). Chapter 3, Land Use Objective 4 Implementation Strategy “Support locally owned businesses” (p. 40) also supports the proposed use. In addition, Chapter 4, Economic Development, measures “Growth in business licenses, including home businesses” and “Decrease the number of vacancies and business closings’ (p. 55) as an indicator when determining whether identified economic goals, objectives, and implementation strategies for economic development are being met.

**COMPATIBILITY WITH THE ZONING ORDINANCE**

The Town of Vienna regulates Permanent Outdoor Dining of more than 12 seats as a Conditional Use in sections 18-824, 18-331, and 18-335 of the 2024 Zoning Ordinance. As proposed, the requested Outdoor Dining use complies with the Town of Vienna’s Zoning Ordinance requirements as a Conditional Use.

<p>Attachments:</p>	<p>01 – Staff Report          02 – Application &amp; Authorization          03 – Applicant Narrative, Documents &amp; Photos          04 – Outdoor and Indoor Floor Plan          05 – Site Plan          06 – Previous Approvals          07 – Relevant Regulations          08 – Planning Commission Recommendation Memorandum (to be attached once completed)          09 – Public Notification Affidavit</p>
<p>Author:</p>	<p>Maggie Costello, Principal Planner</p>

**I. EXISTING SITE CONDITIONS:**



The space intended for the proposed outdoor dining use, which is at 160 Maple Avenue West, is located in the existing front patio area of the Vienna Shopping Center. The applicant currently leases 2,740 square feet space within the 50,464-square-foot commercial building area. The applicant has applied for a Commercial Certificate of Occupancy with the Town for restaurant use in the interior portion of the leased space and with the Board of Architectural Review for a proposed exterior building façade sign. The location of the proposed outdoor seating is in an extended area accessible from the parking lot, on the northwest (front) side of the building. The parking lot is accessible directly off Maple Avenue West. The proposed outdoor seating area is approximately 604 square feet in area.

The building and site at 160 Maple Avenue West is designated as Mixed Use in the Town of Vienna Comprehensive Plan (Figure 2). The Mixed-Use land use is intended to promote redevelopment of existing commercial areas as mixed-use projects, to give property owners more options, and to encourage more active pedestrian-friendly streets. To the north, south, east, and west the site is bordered by land designated as Mixed Use in the Vienna Comprehensive Plan.

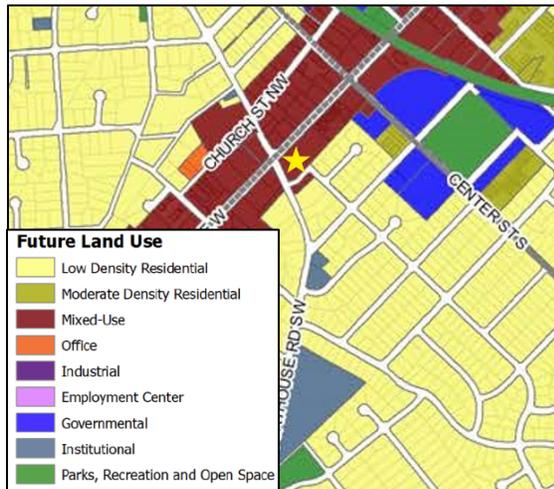


Figure 2 – Town of Vienna Future Land Use Map  
 Source: Town of Vienna 2015 Comprehensive Plan

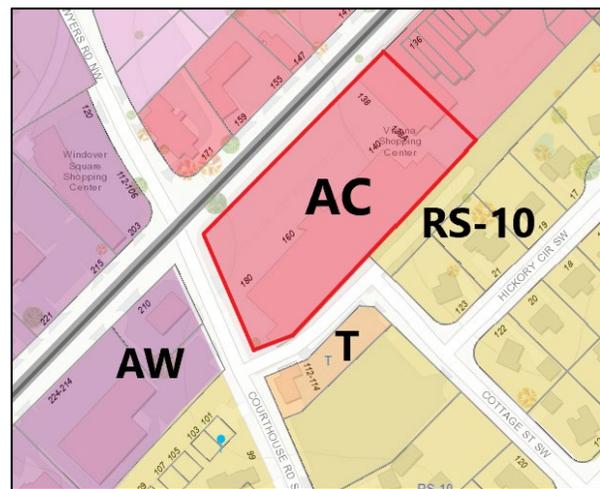


Figure 3 – Town of Vienna Zoning Map  
 Source: Town of Vienna GIS mapping

As shown in Figure 3, the lot is zoned AC, Avenue Center District, on the Town of Vienna Zoning Map. The AC zone is one of the implementing zones within the Mixed-Use Land Use designation. The standards of

this zone are designed to promote a vibrant commercial and mixed-use area along Maple Avenue. Primary uses allowed include upper story residential, and various commercial, public, and institutional uses.

Permanent Outdoor Dining of more than 12 seats is allowed in the AC district is approved as a conditional use, per Section 18-304, Principal Uses Table, of the Zoning Ordinance. To the north and west of the site, land is also zoned AC. To the east is land with RS-10 zoning; to the southeast is land zoned Transitional (T); and to the southwest is land zoned Avenue West (AW).

## II. SITE HISTORY

The building at 160 Maple Avenue West was constructed in 1956 and is approximately 50,464 gross square feet. A portion of the interior was renovated in 2013 to retrofit space, previously used as a grocery store, into 6 additional individual tenant spaces. In 2023, commercial building permits were issued, and Board of Architectural Review approval given, for construction of the patio area in front of the building. The prior use located in this space was for a restaurant with indoor dining only.



Figure 4 – 1960 aerial image of site  
Source: Fairfax County Aerials



Figure 5 – 2023 aerial image of site  
Source: Fairfax County Aerials

## III. PROPOSED USE

The previous occupant of the space of the subject application was CHOPT, fast/casual restaurant. The new occupant would be Seray, which is a more-formal sit-down-style restaurant with table service. The tenant is requesting 18 seats for the outdoor dining area. A total of 101 seats is anticipated, with 83 being indoor.

Noise levels of this outdoor dining facility are anticipated to be much less than the noise levels emanating from the vehicles traveling along Maple Ave, and the seats face away from, rather than towards, residences. Outdoor seating will be used for individuals seated in groups of 2-6 people. Larger gatherings

of people will be held indoors in the main restaurant area. Space will be used for seated patrons only. No outdoor entertainment is proposed.

All trash and litter will be brought out through the rear of the tenant space, similar to the other restaurants/tenants in the adjacent spaces, and deposited in the common trash enclosures along the rear of the site. The volume of trash is expected to be in line with the other restaurants in the shopping center. Trash collection is scheduled for daily pick-up by the landlord. Litter prevention is via staff members who clean the outdoor seating area at the end of the evening shift and periodically throughout the day.

The applicant states in their narrative that off-street loading will happen twice a week between the hours of 8 a.m. and 10 a.m. It is anticipated that loading will occur via the front door and the rear door, not from the parking lot on Cottage Street extension.

The total amount of staff anticipated at any one time is 17, with two dedicated as wait staff for the outdoor seating/patio area. Hours of operation will be Sunday through Thursday, from 11 a.m. to 10 p.m.; and Friday and Saturday, from 11 a.m. to 11 p.m.

#### **IV. STAFF ANALYSIS**

##### **Town of Vienna 2015 Comprehensive Plan**

The Town of Vienna Comprehensive Plan is used as a guide for future land use within the Town. The parcel on which the building and grounds proposed for this use is within a Mixed Use designation, which supports commercial uses, including restaurant uses. In addition, the following Chapters within the Comprehensive Plan contain objectives and indicators relative to the proposed Permanent Outdoor Dining as a Conditional Use:

- *Chapter 3: Land Use. Objective 4 p. 40, Implementation Strategies.* “Support locally owned businesses.”

As this is a locally owned business, supporting the reasonable expansion of permanent dining space for this commercial use aligns with Land Use Objective 4.

- *Chapter 4: Economic Development. Indicators p. 55.* The following additional indicators in the Comprehensive Plan are also used to determine if identified economic goals, objectives, and implementation strategies for economic development are being met:
  - Decrease the number of vacancies and business closings.
  - Growth in business licenses, including home businesses.

Similar to Land Use Objective and Indicator measures, the reasonable expansion of a business to allow for permanent outdoor dining encourages not only growth in overall businesses occupying space within the Town, but also ensures business retention by supporting maximizing potential.

### Town of Vienna Zoning Ordinance

The Town of Vienna Zoning Ordinance provides regulations relating to both Conditional Use Permit applications and applications for Outdoor Dining:

- *Section 18-824 Conditional Use Permit:* Regulations include submission requirements, process, and conditions for approval for all uses allowed through a Conditional Use Permit.

The applicant has provided the required materials, including a site plan, a narrative description of the current operation on site, along with photographs of the interior of the property.

- *Section 18-831: Types of Permits Required to Establish Outdoor Dining:* Outdoor Dining requires review and permits to ensure compliance with all applicable requirements.
  - A. Permanent Outdoor Dining, 12 seats or Fewer. Outdoor dining utilizing 12 seats or fewer may be approved by the Zoning Administrator as part of a new or revised Site Plan and Certificate of Occupancy, subject to compliance with use standards outlined in Article 3, [§18-335](#).
  - B. Permanent Outdoor Dining, more than 12 seats. Outdoor dining utilizing more than 12 seats must apply for a Site Plan and Conditional Use Permit, following the procedures outlined in [§18-836](#) and [§18-824](#), and is subject to compliance with use standards outlined in Article 3, [§18-335](#).
  - C. Seasonal Outdoor Dining. Seasonal outdoor dining within off-street parking spaces, which may be utilized from April 1 to October 31 annually, requires approval of a Seasonal Outdoor Dining Permit by the Zoning Administrator. See [§18-335.3](#).
- *Section 18-335. Outdoor Dining:* Regulations include the following:

Outdoor dining may be permitted on a roof garden of a principal building or at ground level tables directly adjoining a building, subject to the following provisions:

1. General Provisions
  - a. The property owner or property manager acting on behalf of a property owner must authorize any proposed outdoor dining located on their property.
  - b. All structures, features, furnishings, and exterior modifications shall be subject to review by the Board of Architectural Review, except for restaurants located within buildings developed under [§18-236](#).
  - c. All applications shall include to-scale plans showing the location of any outdoor dining furniture or structures.
  - d. Permanent changes shall be subject to site plan control provisions under [§18-836](#).
  - e. Outdoor dining furniture and equipment shall not block pedestrian access or interfere with ADA accessible routes to and from buildings and public facilities.
  - f. Outdoor dining is subject to review by the building code official.
  - g. Outdoor dining furniture and equipment shall not block fire entry or exits points, fire department connections (FDC), or any other required safety exits. Outdoor dining shall not be located in or block any designated fire lanes. Outdoor dining areas are subject to review by the Fairfax County Fire Marshal.

- h. Outdoor dining is not permitted within sixty (60) feet of properties which are both residentially zoned and utilized. Outdoor dining located between sixty (60) to seventy-five (75) feet of a residentially zoned property utilized for residential uses must meet the following criteria:
    - i. May not serve alcohol outside.
    - ii. May not have servers outside.
    - iii. May have no more than eight seats.
    - iv. Hours of operation ending at 7:00 p.m.
  - i. All restaurants must adhere to the Town's noise ordinances set forth in §10-20.1 and §10-44 of the Town Code.
  - j. Amplified sound, including music, is not permitted outdoors, except as otherwise permitted with a conditional use permit per §18-824.
  - k. Permits for permanent and seasonal outdoor dining may be revoked if it is found any conditions listed in this chapter are not adhered to.
2. Permanent outdoor dining provisions:
- a. Outdoor dining with more than twelve (12) seats requires a conditional use permit and will be subject to §18-824 of this chapter.
  - b. In addition to criteria set forth under §18-824, adverse impacts to surrounding properties including, but not limited to, noise and lighting shall be considered by the Board of Zoning Appeals when reviewing an application for a conditional use permit.
  - c. Hours of operation for outdoor dining shall be considered by the Board of Zoning Appeals when reviewing an application for a conditional use permit.
  - d. Any permanent outdoor dining seats shall count towards the parking requirement for restaurants, subject to Article 5 of this chapter.
  - e. Permanent outdoor dining shall be located on a permanent surface, such as a private sidewalk, deck or patio.
  - f. Permanent outdoor dining shall include adequate protection from vehicles.
- *Section 18-531 Minimum Required Off-Street Parking for Vehicles for Restaurant Use: 1 space per 4 seats.*

The proposed use is located within the Vienna Shopping Center owned by Vienna Shopping Center LP and managed by Pappaport Management Company. The Fairfax County Real Property identifies the Vienna Shopping Center as also including three other properties with commercial uses. These include the retail uses and the parking area located at 116 Maple Avenue West (the neighboring property abutting the subject site's northeastern property line), 214 Maple Avenue West (the parcel located to the southwest and across Courthouse Road), and a parking lot located to the south of the site, fronting on Courthouse Road. These properties are shown highlighted in yellow in Figure 4 below:

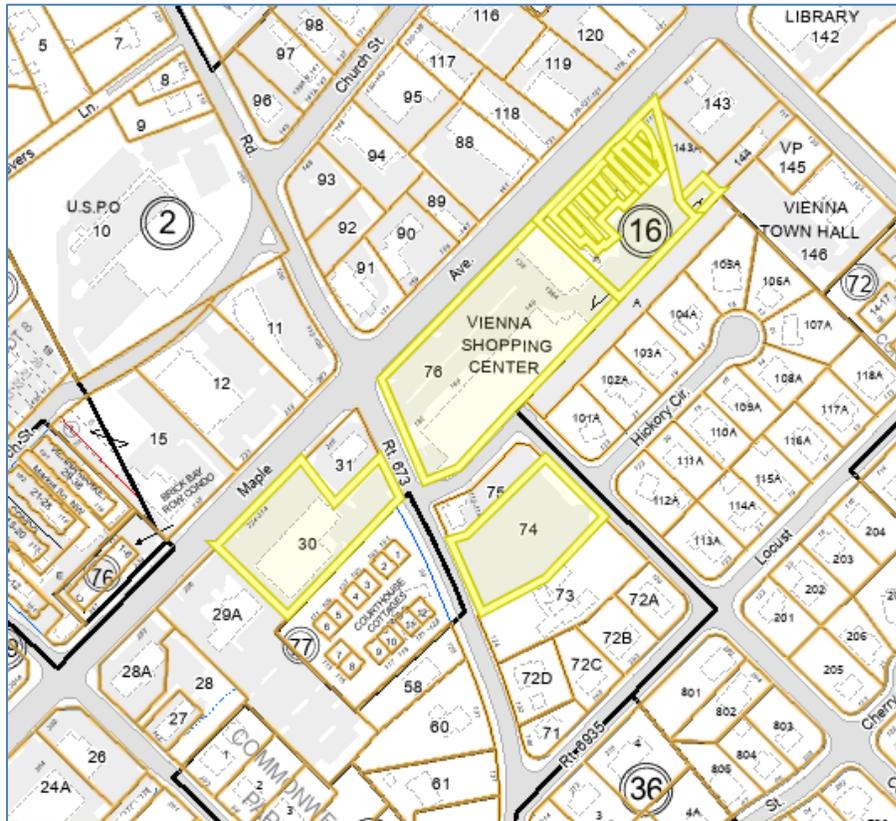


Figure 6 – 2024 Real Property Map Showing Vienna Shopping Center Property  
Source: Fairfax County Jade

As all four parcels are considered part of the Vienna Shopping Center ownership, the parking areas on each parcel are used as combined shared parking areas for all businesses on the parcels. As such, the Vienna Shopping Center properties have a total combined parking availability of 363 parking spaces. Currently, there are 336 parking spaces allocated to existing businesses within the shopping center.

This applicant is requesting a Conditional Use Permit for 18 outdoor seats. In the applicant's recently approved Commercial Building Permit, the site was approved for 66 indoor seats and 12 outdoor seats, for a total of 78 seats for the business. The applicant has revised the site plan to request 83 indoor seats. If the requested 18 outdoor seats are approved, the total number of seats for the business would be 101.

Given the regulations for outdoor dining as outlined in the Zoning Ordinance, the proposed 101 seats would require 26 parking spaces to accommodate this use (1 space per 4 seats, or  $101/4 = 25.25$ ). As there are 363 total parking spaces available for on-site businesses, and 336 parking spaces are already allocated to existing businesses, the remaining 26 needed parking spaces would satisfy the parking requirements as outlined in the Zoning Ordinance. The owner and operator of the Vienna Shopping Center has provided a signed parking tabulation for the properties, approving the allocation of all remaining parking to the applicant.

**Current Violations on this Property:**

The Department of Planning and Zoning is currently working to enforce the violations of Town of Vienna code Chapters 13 and 13A related to the storage of refuse on the Vienna Shopping Center property. Specifically, the amount of trash continually exceeded the capacity of the refuse containers on-site. The property owner has been cited for a code violation and the case is currently in the process of being scheduled with the General District Court. In an attempt to remediate the issue, a new refuse hauler has been hired by the property owner, the location type of refuse containers has been changed, and trash collection has increased to seven (7) days a week. This case will continue to be monitored by the Department of Planning and Zoning.

**STAFF CONCLUSION**

Staff believes that, as presented, the applicant's proposed addition of an outdoor seating area containing 18 seats, in addition to the proposed 83 indoor seating, at 160 Maple Avenue will not have any adverse effects on the surrounding areas, either to the health and safety of individuals or to the neighboring properties. Staff also believes the proposed use will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood. The proposed use aligns with the Town's Comprehensive Plan and meets the Zoning Ordinance's required standards for Outdoor Dining . However, as this is an application for a Conditional Use, the Board of Zoning Appeals may consider recommending conditions to address specific concerns that could fall under the Conditions for Approval, as described in section V. below.

**V. PUBLIC COMMENTS**

As of July 9, 2024, no comments have been received by the Town regarding this application.

**VI. REQUIRED COMMISSION/BOARD APPROVALS**

Review of the application (as established at §18-824 of the Vienna Town Code) requires initial consideration and recommendation by the Planning Commission and a subsequent public hearing with sworn testimony before the Board of Zoning Appeals, where the application will be acted upon.

§18-824.6.E. states that the Planning Commission shall make a recommendation on the application based on Conditions for Approval outlined in §18- 824.3, and applicable Use Standards outlined in Article 3 (see Attachment 07).

§18- 824.3: The Board of Zoning Appeals may issue a use permit for any of the uses indicated within Article 3, with a "C" (conditional) on the Use Table, provided the use for which the permit is sought:

*Conditions for Approval:*

- A. Will not affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use;
- B. Will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood;
- C. Will be in accordance with the purposes of the Town's comprehensive plan; and
- D. Meets use-specific standards outlined in Article 3 of this chapter (§18-331 and 18-335 Outdoor Dining apply).

The Board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure continued compliance with the conditions imposed.

The Town of Vienna Code of Ordinances §18-824.4 states The Board of Zoning Appeals shall fix a reasonable time for the hearing of an application, within ninety (90) days of the application being deemed complete. This time period is directory, rather than mandatory; the Board does not lose jurisdiction to act after the time period has passed.

#### **VII. PLANNING COMMISSION RECOMMENDATION**

The Planning Commission will be meeting to generate its recommendation on July 10, 2024. Subsequent to the meeting, the Planning Commission Chair will produce a memorandum reflecting the Commission's discussion. That memorandum will be provided as Attachment 08 to this staff report, along with any written comments from the public, forwarded to the Board of Zoning Appeals, and made available for public review