



Town of Vienna

Meeting Minutes

Board of Zoning Appeals

127 Center Street South

Vienna, Virginia 22180

p: 703.255.6341

TTY 7111

Wednesday, July 17, 2024

7:30 PM

Charles Robinson Jr. Town Hall, 127 Center
St. South

Roll Call

The Board of Zoning Appeals met for a meeting in the Vienna Town Hall at 127 Center St S, Vienna, Virginia, on Wednesday, July 17, 2024, at 7:30 pm.

Chair Mr. Dhanjal called the meeting to order at 7:30 pm.

Roll Call: Mr. Lowther, Mr. Petersen, Mr. Rettinger, Mr. Creed, Mr. Gadell, Mr. Nash, and Mr. Dhanjal were present.

Staff present: Zoning Administrator Andrea West, Principal Planner Maggie Costello, Kelly O'Brien, Deputy Director, Planning and Zoning, and Board Clerk Yaska Camacho Castillo.

Chairman Dhanjal called the meeting to order at 7:30 PM stating that Item # 8 on the agenda has been deferred until the September 2024 Board of Zoning Appeals meeting.

Mr. Creed suggested limiting the discussion of each Item to three minutes. The board did not support his suggestion.

Public Hearing:

BZA-24110

Request for approval of a variance from Section 18-407.3 Swimming Pools and Outdoor Hot Tubs., of the Town of Vienna Zoning Code, to construct a swimming pool in the rear yard of an existing single-family dwelling located at 514 Spring St SE, in the RS-10, Single-Family Detached Residential zone. The Zoning Code states the front edge of the swimming pool shall be no less than five feet from an extension of the rear wall line of the principal building on the adjacent lots. If the variance is approved, the proposed pool will be set closer than five feet from, and encroaching into, the extension of the rear wall line of the adjacent lots.

Andrea West, Zoning Administrator – 127 Center St South Vienna, VA was sworn in to provide background on Agenda Item 1.

The applicants are proposing a 40' by 14', 529 square foot, swimming pool in the rear yard of the property, behind the principal structure at 514 Spring St. SE. The construction of this feature would require a variance of the requirement within Section 18- 407.3, which states all pools are to be constructed at least 5 feet from an extension of the rear wall line of adjacent residences within all single-unit residential zoning districts. If the variance is approved, the front edge of the proposed pool will be set 24 feet closer to the home than the code allows. The pool meets the setback requirement from the neighboring property's rear wall at 510 Spring Street SE. There is a swale located in the rear yard that assists with drainage for the neighboring households. Mr. Creed inquired about the rationale for the selected code section. Ms. West replied that the application was submitted prior to the passage of the revised code, and this code section was brought over. Mr. Creed expressed concern that a promulgated document has been carried forward from a time prior to the passage of the new code without understanding the ramifications. Should this present future problems, everyone involved must be aware.

Mr. Gadell asked if the proposal meets the side and rear yard setbacks to which Ms. West replied yes.

Chairman Dhanjal reiterated that this may have been overlooked in the Code rewrite and should be taken up with the Town Council as a recommendation for review.

Chairman Dhanjal called for applicant, Lindsey Finn, 514 Spring St., SE, to be sworn in for testimony. Ms. Finn stated that a letter of support for the placement of the swimming pool has been provided by their neighbor, Joshua Cilman, 516 Spring St., SE. This location will avoid any disturbance to the swale which affects many of the households in the neighborhood (6 feet of drainage area). Mr. Dhanjal asked for the letter of support to be part of the record.

Mr. Lowther asked the applicant to please describe the hardship that was not created by them. Ms. Finn stated that the reason for wanting the pool closer to the home vs. further away is due to her husband's medical reasons.

Applicant, Sean Finn was sworn in to provide additional testimony on the request. While the applicant was preparing to speak Mr. Creed requested that the supporting letter from Joshua Cilman be read into the record. Chairman Dhanjal read the letter into the record.

Mr. Finn reported that the continued progression of his medical condition has required a dependence on aquatic therapy. Positioning the pool close to the deck will allow him ease of access now and in the future. Photographic evidence was provided to support that locating the pool further back on the property will likely impede water flow through the swale.

Greg Budnick, PE, GJB Engineering, PO Box 1214 Newington, VA provided sworn testimony that a 2012 application included the swimming pool at this address as a future feature. The objective for the location of the pool at that time was to avoid disturbance of the swale. Looking at the application today it is unlikely that an adequate combination of features could be applied to allow access across the swale without the introduction of a bridge. Due to the progression of the applicant's medical condition, there is an important reason to locate the pool close to the structure.

Alaina Finn, 514 Spring St., SE was sworn in to provide testimony that the swimming pool would be a welcome feature to their life. The request would have a positive impact on the family.

With no additional public testimony, Chairman Dhanjal called for a motion to close the Public Hearing. Mr. Creed made a motion to close the public hearing and Mr. Lowther seconded the motion. The motion passed unanimously.

Chairman Dhanjal opened the floor for discussion on the Item. Mr. Lowther stated that he agreed with Mr. Creed that the referenced Code must be sent back before the Town Council for correction.

Mr. Creed made a motion to approve the request for a variance from Section 18-407.3 Swimming Pools and Outdoor Hot Tubs., of the Town of Vienna Zoning Code, to construct a swimming pool in the rear yard of an existing single-family dwelling located at 514 Spring St SE, in the RS-10, Single-Family Detached Residential zone. The front edge of the proposed pool will be set 24 feet closer to the home than the Code allows.

Motion: Mr. Creed

Second: Mr. Nash

Discussion in favor of the motion:

- Cannot reasonably anticipate all issues that might arise related to other properties.
- Swale cannot be altered.
- This is a unique property with terrain that allows receipt of water flow from all neighboring properties; Homeowners did not create the hardship.
- Hardship existed with the property and as a result, homeowners cannot fully enjoy their property as allowed by the Code.

Discussion against the motion:

- BZA must apply the section of the Code presented; Cannot simply choose to dispense with the Code presented.
- Not a unique property where Code has been applied improperly.

Motion: Mr. Creed

Second: Mr. Nash

Ayes: Mr. Rettinger, Mr. Creed, Mr. Gadell, Mr. Lowther, Mr. Nash, and Mr. Dhanjal.

Nays: Mr. Petersen

Vote: 6-1

BZA-24111

Request approval for a conditional use permit for a Family Day Home, per Section 18-824 Conditional Use Permit, of the Town of Vienna Zoning and Subdivision Ordinance, to care for up to twelve (12) children at 430 Old Court House Rd NE, in the RS-12.5 zoning district.

Maggie Costello, Principal Planner, was sworn in to provide the staff presentation. The subject property currently consists of a 4,006 square-foot single-family home built in 2023. The home is located on State Route 677, Old Courthouse Road NE, in the 400 block. The applicant received a certificate of occupancy on May 30, 2024, to operate a family day home (daycare) for no more than four children, in addition to their own children.

The indoor family day home activity, which is confined to the basement of the home, is accessed by utilizing the walk-out basement door, although the front door or garage door may also be offered during inclement weather.

Staff estimates that, with both on-site and on-street parking availability, the applicant appears to be able to accommodate at least 12 vehicles at any given time, providing adequate parking for this use. Given most arrivals and departures to and from the site will be staggered, and time spent on site by each patron would be minimal, it is also unlikely all 12 vehicles would be arriving and parking simultaneously.

The Planning Commission's recommendation included the condition that the owner install a privacy fence around the backyard play area. The applicant further agreed to install additional vegetation screening of the neighboring yards, utilize a staggered drop-off and pick-up of the children, and require parents to drop off and pick up children on the southern side of the street.

Mr. Creed stressed that given the excess traffic on Old Courthouse Rd., it is not recommended that anyone be allowed to cross Old Courthouse Rd. to access this facility.

Applicant, Ranjbar Bahareh, homeowner, was sworn in for testimony. Responding to Board Member inquiry and Planning Commission recommendations the applicant noted that it was highly unlikely parking spaces across Old Courthouse would be needed to accommodate the facility; backyard fencing will be installed on Friday; due to the added fencing, there is little to no space for additional shrubbery. She stressed that the fencing would block the children from the street.

Muji Khishdruz, 430 Old Court House Rd NE, confirmed, through sworn testimony, that the 4-foot fencing material will be Wood Pickett as shown on the proposed fence document

As requested by the Board, Ms. Bahareh stated for the record that parents would be required to bring children to the facility from the south side, which is closest to the home, and that only parking closest to the home will be used.

With no further comment, Chairman Dhanjal called for a motion to close the Public Hearing. Mr. Creed made a motion to close the Public Hearing and Mr. Lowther seconded the motion. The motion passed unanimously.

Mr. Petersen made a motion to approve the conditional use permit for a Family Day Home, per Section 18-824 Conditional Use Permit, of the Town of Vienna Zoning and Subdivision Ordinance, to care for up to twelve (12) children at 430 Old Court House Rd NE, in the RS-12.5 zoning district with the following conditions:

- The fencing as discussed is completed prior to the operation of the family day home.
- As the applicant has stated, and as a requirement for the operation, parking will be limited to the south side of the Old Courthouse Rd., for drop-off and pick-up of the children.

The Board supported the application for the following reasons:

- The Family Day Home Care fits in with the Town's Comprehensive Plan.
- The Family Day Home responds to an important need in our community for family day homes.
- Once the fence is installed there is no room for vegetation.

Motion: Mr. Petersen

Second: Mr. Creed

The motion carried unanimously.

BZA-24112

Request for approval to the Board of Zoning Appeals of a conditional use permit for a Private Indoor Recreation Facility, per Section 18-824 Conditional Use Permit, of the Town of Vienna Zoning and Subdivision Ordinance, to operate a dance hall for tango dancing, at 303 C Mill Street NE, in the Mill District.

Kelly O'Brien, Deputy Director, Planning and Zoning was sworn in to provide testimony from the Town of Vienna.

Ms. O'Brien stated that the Future Land Use map identifies this area as light industrial development and is limited to those administrative, research, and manufacturing activities that can be carried out without a detrimental impact on surrounding areas. The applicant currently has a certificate of occupancy to operate a portrait photography studio in unit C of 303 Mill St NE. This existing business operates from 9 a.m. to 9 p.m. Monday through Friday. The applicant proposes operating an Argentine Tango dance hall in the same unit. Originally, the hours of operation for the dance hall were proposed as monthly on Saturdays from 8 p.m. - 11 p.m. and Thursdays from 8 p.m. - 11 p.m.

During the Planning Commission meeting on June 26, 2024, the applicant was asked if she would prefer to have flexibility on one weekend per month and one weekday per week to host their events rather than receiving approval for only one Saturday monthly and weekly on Thursdays as submitted. Since that meeting, the applicant has requested to adjust the hours of operations to start one hour earlier during the week, to add one hour to the front and back of the weekend slot on Saturday (7 p.m. – 12 a.m.), and one weeknight and possibly add one more weekend slot a month (Sunday 3 p.m. – 8 p.m.).

The estimated attendance is 50 attendees. Staff is proposed as a maximum of 6 people including the owner, two of the owner's relatives, and three volunteers. The business proposes only operating 5 – 6 nights per month, which should lessen the impact on the surrounding properties. The hours of operation are in the evening when surrounding tenants are not in operation, which should alleviate parking issues. The applicant has also taken steps to mitigate potential noise issues.

Board Members noted that prior tenants had problems that resulted in the revocation of the Conditional Use Permit. Noise complaints and loitering into the late-night hours were principal.

The applicant Melody Yazdani was sworn in to speak. She read her statement to the Board which was made part of the record.

Ms. O'Brien noted that no application for food or beverage has been forthcoming. Soundproofing has been added to the walls and the garage doors. The hours of operation were clarified – one weeknight per week 7 p.m. -12 a.m. and two total weekend nights.

Mr. Petersen asked the applicant if she planned on having a limit on the number of participants. The applicant clarified that the participants would have to sign upon their arrival. Once the space reaches its capacity (49 participants) they will require online registration.

Chairman Dhanjal opened the floor for public comment.

Resident Susan White - 902 Woodlawn Dr – Testified in favor of the request. She explained that she met the applicant through the dance community. She is thrilled with the applicant's interest in bringing Tango to Vienna. Ms. White stated that Colvin Run Dance Hall dances are in very high demand, so they cannot hold dances as often as they would

like. This highlights the need for an additional venue in Northern Virginia. A centrally located venue next to the beltway and accessible by two metro lines, with a little help from UBER, would greatly benefit the Tango community and contribute to the local economy of Vienna. Dancers get hungry, they work up an appetite, or they eat beforehand and will undoubtedly patronize Vienna businesses and further enrich our community.

With no additional speakers from the public, Chairman Dhanjal called for a motion to close the Public Hearing.

Mr. Gadell made a motion to close the public hearing and Mr. Rettinger seconded the motion.

The Motion carried unanimously.

Mr. Gadell made a motion to approve the conditional use permit for a Private Indoor Recreation Facility, per Section 18-824 Conditional Use Permit, of the Town of Vienna Zoning and Subdivision Ordinance, to operate a dance hall for tango dancing, at 303 C Mill Street NE, in the Mill District with the following conditions:

- The private indoor recreational facility is specifically for tango dance hall use only.
- Hours of operation shall be one weeknight per week from 7 pm to 12 am and two weekend days per month, 7 pm to 12 am on Saturdays and/or 3 pm to 8 pm on Sundays.
- The dance hall operators shall not allow loitering to occur outside the premises of the dance hall.

Mr. Lowther recommended striking out the third condition due to impracticality. The recommendation failed due to a lack of a second.

Motion: Mr. Gadell

Second: Mr. Nash

The motion passed unanimously.

The Board supported the application for the following reasons:

- This request would be a great addition to the Town of Vienna.
- The application does not present some of the previous problems in that location.
- The opportunity will stimulate the economy in the town.

Chairman Dhanjal called for a break at 9:05 PM. The meeting resumed at 9:08 PM.

BZA-24113

Request for approval of a conditional use permit for Specialized Instruction, per Section 18-824 Conditional Use Permit, of the Town of Vienna Zoning and Subdivision Ordinance, for sports training at 514 and 516 Mill St NE, in the Mill District.

Kelly O'Brien, Deputy Director, Planning and Zoning (previously sworn) presented the item for consideration. She stated that the subject business is located in the building at 510-520 Mill Street NE. The applicant has operated their baseball training business at 516 Mill Street NE since December 2013. The certificate of occupancy lists the use as "Baseball Training"; however, that was not a listed use in the zoning ordinance. The business is considered an existing nonconforming use as the specified use is not included in current code uses. The applicant has requested to expand into the adjoining tenant space at 514 Mill Street NE. Expanding into a larger space, from 3,600 square feet to 7,200 square feet, is an expansion of the nonconforming use and requires the business to meet current regulations. The zoning code update, effective January 1, 2024, includes "Specialized Instruction," defined as "a facility primarily devoted to instructing vocational, professional, musical, dramatic, artistic, scientific, performing arts, or other special subjects. The business has been operating in the Town for more than 10 years. The staff has not found any records of complaints or issues with this business. The use is permitted with the approval of a conditional use permit and is consistent with the Future Land Use map in the Comprehensive Plan.

Mr. Creed commented on the parking space allocation being adjusted if it is not being used. He stated that Pitchers Edge has 11 parking spaces and Colby has 5 parking spaces. He wondered why the businesses needed all those reserved parking spaces if they would only have a few customers at a time.

Renee Pippin, Pitchers Edge LLC, 516 Mill St., NE was sworn in to respond to questions regarding parking spaces. She stated that when the business moved into the building 10-11 years ago there was only 1 other tenant in the building. The reserved parking signs were already there. Eventually, more tenants moved in, and additional parking was added.

Mr. Creed asked the applicant how many parking spaces they would need for 514-516 Mill St. Ms. O'Brien replied that six parking spaces (combined) are required for 514 & 516 Mill Street NE per the Towns code. Mr. Creed said there were signs in the location saying you would be towed if you parked there. Ms. O'Brien responded that the labeling of the parking spaces is decided by the landlord. The landlord is permitted to place signs under 8.5 x 11 on their site location.

With no comments from the public, Chairman Dhanjal called for a motion to close the public.

Mr. Lowther made a motion to close the public hearing and Mr. Gadell seconded the motion. The Motion carried unanimously.

Mr. Petersen made a motion to approve a conditional use permit for Specialized Instruction, per Section 18-824 Conditional Use Permit, of the Town of Vienna Zoning and Subdivision Ordinance, for sports training at 514 and 516 Mill St NE, in the Mill District in accordance with the application filed by Rene Pippin of Pitcher's Edge, LLC., the business owner and in accordance with the materials we received in the support of the application.

The board's discussion included the following points:

- This is a successful business making a useful contribution to the community.
- The expansion will improve and enhance the safety of the participants.
- The parking space allocation be adjusted if not used. Mr. Creed recommended that the applicant work together with the landlord to remove reserved parking signage to allow others to use the parking spots.

Motion: Mr. Petersen

Second: Mr. Nash

The motion carried unanimously.

Chairman Dhanjal reminded the Board that going forward Items would be taken up for discussion out of the agenda order.

BZA-24114

Request for approval of a conditional use permit to allow Specialized Instruction, per Section 18-824 Conditional Use Permit, of the Town of Vienna Zoning and Subdivision Ordinance, to operate a driver's education program at 450 Maple Avenue East, Suite 302, in the Avenue East (AE) zoning district.

Maggie Costello, Principal Planner, Planning (previously sworn in) provided testimony from the Town of Vienna. Following a description of the property's history, Ms. Costello stated that the applicant leases office space in the mixed-use building and holds a Commercial Certificate of Occupancy for online virtual classroom instruction and general office activities. The business generates minimal customer visits on-site and conducts all physical driving training and exams off-site. The proposed change in use to include in-person specialized instruction at 450 Maple Ave E, Suite 302 will not have any adverse effects on businesses located within the 420-450 block, the health and safety of individuals, nor to the neighboring properties.

With no questions from the floor, Chairman Dhanjal called for the applicant Alna Mohamed, 450 Maple Avenue E., #302 to be sworn in for testimony. The applicant read a prepared statement for the public record.

With no comments from the public, Chairman Dhanjal called for a motion to close the public hearing.

Motion: Mr. Gadell

Second: Mr. Rettinger

The motion carried unanimously.

Mr. Petersen made a motion to approve a conditional use permit to allow "in person" specialized instruction, per Section 18-824 Conditional Use Permit, of the Town of Vienna Zoning and Subdivision Ordinance, to operate a driver's education program at 450 Maple Avenue East, Suite 302, in the Avenue East (AE) zoning district.

The board's discussion included the following points:

- There is no adverse impact on the community.
- The business provides a useful service for the town and contributes to the businesses in the town.

Motion: Mr. Petersen

Second: Mr. Creed

The motion carried unanimously.

BZA-24115

Request for approval of a conditional use permit to allow Outdoor Dining, per Section 18-824 Conditional Use Permit, of the Town of Vienna Zoning and Subdivision Ordinance, for over twelve (12) seats at a restaurant located at 160 Maple Avenue West, in the Avenue Center (AC) zoning district.

Maggie Costello, Principal Planner, (previously sworn) to present the Item for consideration by the Board. The applicant currently leases 2,740 square feet of space within the 50,464-square-foot commercial building area at 160 Maple Avenue West. 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. 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. A larger gathering of people will be held indoors in the main restaurant area. Space will be used for seated patrons only. No outdoor entertainment is proposed.

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 nor will it be detrimental to the public welfare or injurious to property or improvements in the neighborhood. It was clarified that the language "more than 12 seats" in this instance refers to 18 seats. The number of seats allowed is based upon meeting other criteria such as parking.

Stephen Kenney, RV Architects 467A N Washington Street, Falls Church, VA was sworn in to speak on behalf of the owner David Lynch 8405 Greensboro Drive, 8th floor McLean, VA.

Mr. Kenney stated that the tenant for this property, Seray Restaurant, is taking over the previous restaurant user, CHOPT. Seray is planned as a formal sit-down style restaurant with servers taking orders and bringing food to individual tables. By right the tenant space can have up to 12 seats for outdoor seating. The tenant is requesting a total of 18 outdoor dining seats. Mr. Kenney confirmed that the current fencing will remain and there will be no reduction in the front walking space currently available.

With no additional comments or questions, Chairman Dhanjal called for a motion to close the public hearing.

Motion: Creed

Second: Gadell

The motion passed unanimously.

Mr. Petersen made a motion to approve a conditional use permit to allow Outdoor Dining, per Section 18-824 Conditional Use Permit, of the Town of Vienna Zoning and Subdivision Ordinance, for 18 seated patrons at a restaurant located at 160 Maple Avenue West, in the Avenue Center (AC) zoning district.

The board discussed how the requests fit with the Vienna Comprehensive Plan.

Motion: Mr. Peterson
Second: Mr. Creed.
The motion passed unanimously.

BZA-24116

Request for the renewal of a conditional use permit for a Family Day Home, per Section 18-824 Conditional Use Permit, of the Town of Vienna Zoning and Subdivision Ordinance, for the care of up to twelve (12) children at 305 Jade Court NW, in the 12.5 zoning district.

Maggie Costello, Principal Planner, (previously sworn) presented the item for consideration. The presentation included information about the site location, Land Use & Zoning, the existing screening, outdoor play area, home interior, parking analysis & parking permits, and zoning regulations (section 18-324). Ms. Costello stated that the applicants currently lease 305 Jade Court and have written permission from the property owner to operate a family childcare business out of the home. In 2019, the applicant was granted a conditional use permit from the Town for a Family Day Home allowing care for up to 12 children which was valid for 24 months. In 2021, the applicant was granted a new conditional use permit allowing a Family Day Home for up to 12 children with an expiration period of 36 months.

Ms. Costello's presentation also included photos provided by the applicant that showed a lapse in pick-up time. It was noted that the existing use has been providing adequate space for staggered drop-off and pickup since the operation began and meets the required standards for Family Day Homes under the 2024 Town of Vienna Zoning Ordinance.

Parking permits are required for on-street parking on Jade Court from 7 a.m. – 3 p.m. Monday through Friday. Permits are limited to Jade Court residences and issued by the Town of Vienna Police Department. Currently, there are 8 active parking permits for Jade Court and 8 violations have occurred since 2008. Ms. Costello stated that although the operations have successfully provided parking for its patrons for over eight (8) years they did receive a notification (per Section Code 18-419) to remove a parked vehicle from the grass area in the front yard. The applicants immediately addressed the violation.

In summary the applicant is proposing to continue the operation of the existing Family Day Home for up to 12 children, as issued on the last conditional use permit by the Town. The hours of operations would remain the same 7 a.m. – 6 p.m. Monday through Friday. 2 patron vehicles parking areas in the driveway as well as public parking and driveway at 305 Jade Court are being proposed by the applicant.

Mr. Creed stated that he believed the reason for the required renewal was to ensure the applicant was still living at 305 Jade Court since the conditional use permit ran with the land at that period. He also mentioned that the property located directly across from the site, 304 Jade Court, also operates as a Family Day Home and wondered if the properties were related.

Applicant, Zeinab Salem, 305 Jade Ct., NW was sworn in to respond to questions about the relationship between the two daycare facilities at 304 and 305 Jade Ct. respectively. The applicant read his statement and clarified that the two facilities are entirely separate; 304 Jade Court is operated by the applicant's father and 305 Jade Court is operated by the applicant's mother. The businesses are operated independently. All family daycare is regulated by the State and overseen by the Department of Education inclusive of every 6-month inspection. The applicant confirmed that 305 Jade Court has no inspection violation with the state.

Chairman Dhanjal opened the floor for comment from the public.

Rachel Orsiger, 212 Courthouse Circle, SW was sworn in to provide testimony. She

commented in favor of the request. She stressed the importance of this facility to those in Vienna with small children. The Town has many other excellent resources but finding quality daycare that can be trusted is very hard. The Town is fortunate to have Zeinab Daycare to provide that care.

Ishmial Malek, 315 Lewis St., NW was sworn in to provide a brief statement in support of the request.

Tooba Malek, 315 Lewis St., NW was sworn in and provided testimony supporting the request. Ms. Malek stated she has walked the area for the past eight years and has never noted much traffic from Zeinab Daycare.

Nausheen Khan, 902 Ninovan Rd. SE was sworn in. She testified in favor of the request. Although she does not live in this area, she travels through the area multiple times per day. The traffic and congestion in the general area are extensive primarily due to the proximity to Louise Archer Grade School and James Madison High School. Despite this, she is in support of the application stressing the shortage and rising cost of childcare.

Hala Imar, 913 Ninovan Rd. SE remarked through sworn testimony that she concurs with all the previous speakers.

Lauren Urban, 2707 Willow Dr. was sworn in to provide testimony. With children who attended the facility, she clarified the drop-off process, indicating that parents sign up for a fifteen-minute drop-off window. The applicant is noted to make every reasonable effort to communicate parking rules so clients will be respectful of the neighbors. Ms. Urban wanted to stress that the Daycare is not adding to existing congestion which already exists due to the nearness of KinderCare, Louise Archer Elementary School, and James Madison High School. She urged the Board to renew the Conditional Use Permit for this wonderful facility.

Virginian Seay, 2704 Earls Ct. provided sworn testimony that the applicant always takes steps to assure the safety of the children and respect for the neighbor's property, urging drop-off parking in front of the home. Failure to renew the application would be detrimental to all concerned.

Penny Oszak, 221 Nutley St., NW was sworn in to provide testimony. While not objecting to daycare facilities in residential homes, her concern is the close proximity of the two facilities at 304 and 305 Jade Court. The number of cars coming and going would negatively impact the general safety of the neighborhood. When asked what conditions would be acceptable to her, she stressed that clients should be restricted to parking in the driveway as the street is restricted parking (sticker required).

Mr. Creed asked how the Town can enforce street parking. Ms. West noted that Zoning has no authority to enforce street parking. Street parking is enforced by the police department.

Elizabeth Di Fransisco, 434 Knoll St., NW was sworn in to testify. Recognizing the importance for additional daycare in Vienna, she stated that 24 daycare spots on a cul-de-sac with 7 homes was too many. The issue becomes safety. With children already playing basketball and riding bicycles and scooters the additional traffic generated by the increased daycare size would be too dangerous.

Bernard Rothschild, Fairfax, VA. was sworn in to testify. Mr. Rothschild remarked that he and his family have recently moved to Northern VA from Texas. He stressed the difficulty

in finding quality daycare and stated his appreciation for the wonderful environment created by the applicant's daycare facility.

George Whitmore, 417 Knoll St. was sworn in to testify. He stated that the greatest concern was not traffic, but quality of life. He was opposed to any increase in the number of children at these facilities.

Penny Oszak wished to assure the Board that her objection to this application renewal was strictly due to the added traffic and its effect on the quality of life for the households of the cul-de-sac.

With no additional speakers from the floor, Chairman Dhanjal called for a motion to close the public hearing.

Motion: Mr. Creed

Second: Mr. Lowther

The motion carried unanimously.

Mr. Petersen made a motion to approve the renewal of a conditional use permit for a Family Day Home, per Section 18-824 Conditional Use Permit, of the Town of Vienna Zoning and Subdivision Ordinance, for the care of up to twelve (12) children at 305 Jade Court NW, in the 12.5 zoning district with the following condition:

- The CUP will apply only for the duration that Zeinab Salem, as the current resident tenant of the address, operates the Zeinab Home Day Care. Should Zeinab Salem, cease to hold the residence of the address, the conditional use permit will terminate.

Motion: Mr. Peterson

Second: Mr. Nash

Boards Discussion:

Mr. Creed expressed his concern that there is no proof that Mr. Zeinab would be living at the residence in the future; a restriction must be applied. It was noted that the condition stated in the motion provides for that restriction. Other Board members stressed that the application is for renewal at this location and must be considered apart from any pending applications.

Chairman Dhanjal called for a vote on the Item.

Motion: Mr. Peterson

Second: Mr. Nash

Ayes: Mr. Petersen, Mr. Nash, Mr. Gadell, Mr. Rettinger, Mr. Dhanjal, Mr. Lowther.

Nay: Mr. Creed

The motion carried in a 6-1 vote.

BZA-24117

DEFERRED Request to hear an appeal of the Zoning Administrators Determination in accordance with the requirements of Section 18-820 Appeals of Zoning Administrator Decision., of the Town of Vienna Zoning and Subdivision Ordinance, affecting property located at 430, 440, 444 Maple Ave W, Vienna, Virginia, tax map numbers: 0383 02 0139, 0383 02 0140, 0383 02 0141, in the AW - Avenue West zoning district. Filed by Sara Mariska, of Odin Feldman Pittleman, on behalf of Vienna Development Associates LLC, property owner.

The decision being appealed is the issuance of a Notice of Violation by the Zoning Administrator, case number 24-208, for a violation of Section 18-836 Site Plan Review. The Zoning Administrator determined that the existing condition of the property did not meet the requirements of the site plan approved in June of 2021.

Deferral noted at the beginning of the minutes.

Regular Business**Approval of the Minutes: June 5, 2024 meeting minutes.**

The meeting minutes for June 5, 2024, were approved with an amendment.

Meeting Adjournment

The meeting adjourned at 10:57 PM.

**Yaska Camacho Castillo
Board Clerk**

THE TOWN OF VIENNA IS COMMITTED TO FULL COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT STANDARDS. TRANSLATION SERVICES, ASSISTANCE OR ACCOMMODATION REQUESTS FROM PERSONS WITH DISABILITIES ARE TO BE REQUESTED NOT LESS THAN 3 WORKING DAYS BEFORE THE DAY OF THE EVENT. PLEASE CALL (703) 255-6341, OR 711 VIRGINIA RELAY SERVICE FOR THE HEARING IMPAIRED.

About the Board of Zoning Appeals

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The Board of Zoning Appeals is a quasi-judicial board comprised of seven members – all of whom are residents of the Town of Vienna, VA. The Board serves as an arm of the Fairfax County Circuit Court, as all members are appointed to the Board by the Court after receipt of recommendation from the Vienna Mayor and Town Council.

The Board is empowered by the Code of Virginia to:

- Hear and decide appeals from any order, requirement, decision or determination of the Zoning Administrator.
- Grant variances from the Zoning Ordinance – as defined in Section 15.2201 of the Code of Virginia – as will not be contrary to the public interest, when, owing to special conditions, a literal enforcement of the provisions will unreasonably restrict the utilization of the property to a degree that is not shared generally by other properties within the same zone or district, and its authorization will not be of substantial detriment to adjacent properties or change the character of the neighborhood
- Hear and decide applications for interpretation of the Zoning District Map when there is any uncertainty as to the location of the boundary line.
- Grant Conditional Use Permits in accordance with the provisions of Section 18-209 – 216 of the Vienna Town Code.

The Board of Zoning Appeals does not have the power to change the Zoning Ordinance or the rezone property. Those powers rest with the Mayor and Town Council. Please be advised, the Board decides each application on its own merit – there are no precedents.

The Board will first consider each application during the Public Hearing portion of the meeting. As part of the Virginia Court System, the Board of Zoning Appeals takes sworn testimony and each participant will be sworn in prior to offering comments. During the public hearing each agenda shall be closed a decision will be rendered.

The grant of a Conditional Use Permit, Variance, or appeal from a decision by the Town's Zoning Administrator requires an affirmative vote of no less than a majority of membership, of the Board. The Board consists of 7 members and a majority consists 4 members. If the applicant is unable to stay for the Board's decision portion, the applicant may learn the Board's decision by contacting staff.

The second portion of the meeting – the Regular Meeting – is for approval of meeting minutes and new business and will convene after the Public Hearing has been closed.

If any party is not satisfied with the decision of the Board, an appeal may be filed with the Circuit Court of Fairfax County within 30 days after the issuance of the Board's decision on the matter.