

D'Orazio, Michael

From: Laurie DiRocco
Sent: Wednesday, June 12, 2019 11:15 AM
To: Petkac, Cindy; D'Orazio, Michael
Subject: Fwd: MAC application process issues re 380 Maple Avenue and Sunrise MAC applications

Sent from my iPad

Begin forwarded message:

From: David Patariu <dpatariu@yahoo.com>
Date: June 10, 2019 at 10:42:47 AM EDT
To: "mayor@viennava.gov"
<mayor@viennava.gov>, "[Council Manager Clerk@viennava.gov](mailto:Council_Manager_Clerk@viennava.gov)"
<[Council Manager Clerk@viennava.gov](mailto:Council_Manager_Clerk@viennava.gov)>
Cc: David Patariu <dpatariu@yahoo.com>
Subject: **MAC application process issues re 380 Maple Avenue and Sunrise MAC applications**

Mayor DiRocco and Town Council,

The following are comments on the MAC application process, and issues regarding what are commonly known as the the 380 Maple and Sunrise MAC applications.

First, for the 380 Maple MAC project, as of June 9, I don't believe the Town posted on its web site the updated proffer sheet received right before the June 3 Town Council meeting.

Here is a link to the meeting agenda details: [Town of Vienna - File #: 19-1295](#)

Below this text is an image of the meeting agenda available online, with only one item labeled "proffer"--it should have two if the June 3 revised version had been posted:

Details

Reports

File #: 19-1295 Version: 1 Name:
Type: Action Item Status: Passed
File created: 5/23/2019 In control: [Town Council Meeting](#)
On agenda: 6/3/2019 Final action: 6/3/2019
Title: Continuation of public hearing on rezoning of 374-380 Maple Avenue W from C-1 Local C with ground floor retail and multifamily residential condominium units. AND Consideratio
Attachments: [1. 380 Maple Ave West - Town Council Staff Report - 6-3-2019](#), [2. 380 Maple Ave West - Signed Proffer Statement - 6-3-19](#), [5. 380 Maple Ave West - Reference - Wade Hampton Rezoning April 29, 2019 Public Hearing Follow Up](#), [8. 380 Maple Ave West - Town Council Concept Plan - Revised 5-13-19](#), [11. 380 Maple West Revisions from 4-29-19 TC Public Hearing - West - Existing Conditions and Concept Plan - 4-29-19 Version](#), [14. 380 Maple Ave West Exhibit](#), [17. 380 Maple Ave West - Traffic Impact Study - Final](#), [18. 380 Maple Ave West - MAC Incentives Checklist - 3-27-19](#), [21. 380 Maple Ave West - Statement of Purpose and](#) [27-19](#), [24. 380 Maple Ave West - Neighbor Contact Map - 3-27-19](#), [25. 380 Maple Ave W 27-19](#), [27. 380 Maple Ave West - Planning Commission Memo - 4-12-19](#), [28. 380 Maple /](#) [30. 380 Maple Ave West - Planning Commission Staff Report - 3-27-2019](#), [31. 380 Maple reference only\) - Architectural Drawings - Option 1](#), [33. 380 Maple Ave West - PC Submittal Architectural Drawings - Option 2](#), [35. 380 Maple Ave West - BAR Submission \(for reference Plan - Jan 2019](#)

And below is an image of the Proffer Statement item--from what I can tell no mention of thirty-seven units, or three storage units, or what was presented to the Town that I spoke about at the June 3 meeting and was shown on the screen to the audience at the public hearing:

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← | → ■ Highlight all ■ Match case *Phrase not found*

PROFFER
380 MAPLE
36,842 sq ft

Rezoning: PF-58-18-MAC

Record Owner: Red Investment,

Applicant: Red Investment,

Property: Parcel 0382-02-
as shown on the

Zoning: C-1 and RS-16 t

Project Name: 380 Maple

Date: **May 22, 2019**

The June 3 revised proffer is also not posted in the Agenda for the upcoming June 17 meeting:

Search Calendar [Help](#)

8 records Group Export

Name	Meeting Date ▾	31	Meeting Time	Meeting I
Planning Commission	6/26/2019	31	8:00 PM	COUNCIL
Town Council Meeting	6/17/2019	31	8:00 PM	Charles , Regular
Board of Architectural Review Work Session	6/14/2019	31	8:00 AM	Vienna T Work Se
Planning Commission	6/12/2019	31	8:00 PM	COUNCIL Regular
Town Council Work Session	6/10/2019	31	7:30 PM	Charles , Joint Wc
Board of Architectural Review Work Session	6/7/2019	31	8:00 AM	Vienna T
Board of Zoning Appeals	6/5/2019	31	8:00 PM	COUNCIL
Town Council Meeting	6/3/2019	31	8:00 PM	Charles , Regular

The revised proffer from just before the June 3 council meeting should be posted so that the public can evaluate the proffers and comment on their adequacy, merits, or deficiencies. To date (June 9) the revised proffers do not seem to have been made available to the public.

Second, residents did not have a chance to review the revised proffers submitted on June 3 right before the public hearing on the 380 Maple project. If they were not subsequently posted, I don't see how the Town of Vienna is meeting the spirit or letter of the law regarding public participation and the required hearings for a project--how can residents comment at a public hearing on MAC projects, or in writing during the written comment period, when information about the updated proffers is not made available? The prejudices both the applicant and the residents, as it deprives residents the opportunity to comment on the **adequacy, merits, or deficiencies of the proffers made by the developer.**

Third, regarding the comment during the June 3 meeting that is in summary--"aren't new proffers better"--just because revised proffers may be responsive to one or more council-members concerns, new proffers are not better when resident's don't have an opportunity to comment on them during public hearings. How can you know if "new" is actually "better" if you don't ask residents impacted by said development, or give residents and other council-members an opportunity to comment in a meaningful way?

Fourth, just because a developer has the right to submit proffers right before a town council meeting (another point made on June 3 by the Town's attorney in response to a question by Council-member Springsteen), shouldn't residents, council-members, and staff have adequate time to evaluate and comment on the revised proffers, or revised plans? What part of the law requires newly submitted or revised proffers, or plans, to be voted on in the same night, or without a public hearing? What is the point of a public hearing on proffers or plans that the public has not has a chance to evaluate prior to the public hearing? What under the law requires the Town Council to vote on proffers/materials submitted that day, or that evening? **These are**

the questions that needed to be answered on June 3 in response to Councilmember Springsteen's concern, and a MAC process developed that supports adequate time to evaluate and deliberate over newly submitted proffers or plans.

Fifth, by closing the public hearing on June 3 but extending the written comment deadline to June 10, the Town may have inadvertently exposed residents commenting in writing on this or other MAC projects to SLAPP litigation risk. It seems Virginia does not have a traditional [anti-SLAPP](#) law, and only affords limited protections against claims of tortious interference for statements made at public hearings (<https://www.virginiadefamationlawyer.com/virginias-anti-slapp-statute/>) under [Va. Code 8.01-223.2](#). See the following excerpt in an article on this topic:

. . . [T]here is also a statutory qualified privilege in Virginia that immunizes statements made at public hearings from forming the basis for any claim for [business conspiracy](#) or [tortious interference](#). The statute is found at [Va. Code 8.01-223.2](#). The privilege applies to “statements made...at a public hearing before the governing body of any locality or other political subdivision, or the boards, commissions, agencies and authorities thereof, and other governing bodies of any local governmental entity concerning matters properly before such body.”

On its face the statute seems to only allow immunity for comments made during a public hearing, so does a “written comment period” after the public hearing is closed meet that definition? I am not sure, but a plain reading of the statute indicates that there may be SLAPP risk in submitting any letter during the comment period, as the comment could be characterized as being outside of the public hearing period and thus not immune from claims of tortious interference or business conspiracy. The public hearing should be left open during the written comment period so that residents can be afforded the protection of [Va. Code 8.01-223.2](#) against such potential SLAPP claims. Perhaps the Town's attorney can look into this and examine this concern further to improve the MAC process? Just a suggestion.

Sixth, as I said during the public hearing on June 3, the public did not have a chance to speak on the materially revised plans submitted to the Board of Zoning Appeals (BZA) or the Planning Commission. I really doubt what occurred during the Sunrise approval process meets the spirit of the law requiring public hearings. For example, as soon as the public hearing was closed before the BZA on Sunrise, new plans were submitted by the Sunrise developer and staff that were materially different, eliminating almost half of the retail space. The BZA, instead of continuing the meeting and giving themselves or the public a chance to evaluate the newly submitted plans, voted and approved the conditional use permit without any public hearing on the new plans--all during the same meeting. This on its face seems improper, and subverted the public hearing before the BZA.

Additionally, the BZA voted on / issued a conditional use permit on new plans that the Planning Commission did not submit to them, and then the Planning Commission approved plans that were materially different than what the BZA had issued a conditional use permit for. How is any of this proper under the MAC approval process requirements? We already have problems with what is known as the Marco Polo / Vienna Market redevelopment and multiple sets of plans being in play (locally known as Marcopolo-gate). Why is the Town leadership allowing that same process mistake to be made again with the Sunrise MAC project? Allowing multiple, materially different plans to be submitted for approval at different stages of the MAC approval process (BAR, BZA, PC) is confusing and prejudices both the applicant and residents.

As I said at the June 3 hearing, there is a chronic process problem with these MAC applications, and history is repeating itself again where as with the 444 Maple Ave. project's final proffers, residents do not have an opportunity to comment on the proffers or plans, the Town Council is voting on.

On 380 Maple, I urge you to correct this process, post the June 3 revised proffers for the 380 Maple Ave project, and extend the public hearing on 380 Maple to allow for comments from residents on the proffers and project you are voting on.

On Sunrise, I suggest that you send the final plans back to the Planning Commission so that a public hearing can be had at that stage of the process, then to the BZA for a conditional use permit on the set of plans before the Town Council now. After that process is complete, the Sunrise application will be ready for a vote by the Town Council. The requirement for meaningful public hearings must be honored. To date, I don't believe it has before the BZA or the Planning Commission on the materially revised Sunrise plans that are now before the Town Council.

Thank you for your time and consideration.

Sincerely,

- David N. Patariu

Resident and homeowner, Vienna, Virginia

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8 records	Group	Export		
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On agenda:	6/3/2019		Final action:	6/3/2019

Title: Continuation of public hearing on rezoning of 374-380 Maple Avenue W from C-1 Local C with ground floor retail and multifamily residential condominium units. AND Consideratio

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PROFF
380 MAP
36,842 sq

Rezoning: PF-58-18-MAC

Record Owner: Red Investment,

Applicant: Red Investment,

Property: Parcel 0382-02-
as shown on the

Zoning: C-1 and RS-16 t

Project Name: 380 Maple

Date: **May 22, 2019**

D'Orazio, Michael

From: Mayor
Sent: Wednesday, June 12, 2019 1:00 PM
To: Petkac, Cindy; D'Orazio, Michael; Town Manager
Subject: Fwd: 380 Maple Ave

Sent from my iPad

Begin forwarded message:

From: John Schnittker <schnittkerjm@gmail.com>
Date: June 10, 2019 at 9:19:26 PM EDT
To: tara.bloch@viennava.gov, linda.colbert@viennava.gov,
mayor@viennava.gov, pasha.majdi@viennava.gov, douglas.noble@viennava.gov,
csienicki@viennava.gov, hspringsteen@viennava.gov
Subject: 380 Maple Ave

Mayor and Council Members

I live at 240 Glen Ave SW and oppose the present form of the proposed residential/retail building now under consideration. My concerns are rooted in three areas, the scale of the building is inappropriate, taking up nearly the entire lot, the rear of the building towers over Glen Ave and the neighborhood, changing the very character of our neighborhood, and traffic and safety will be compromised.

The proposed building should be scaled back, and setbacks and insets especially in the rear reevaluated. Neighborhood compatibility for this and future projects needs to be addressed more comprehensively under the MAC revisions now under consideration.

Glen Ave SW is surprisingly still little more than a country lane. There are no sidewalks, and traffic is very light, often just

a few cars per hour. When we take walks, we walk along the edge of the street, just as school children and parents do when they go to and from the school bus stop across the street from our home. Traffic issues and safety will need to be addressed more comprehensively under this and any revised proposal for 380 Maple.

Given the strong community opposition to this proposal in its present form, the ongoing moratorium/revision of the MAC, the overwhelming results of the recent town council elections it would be prudent to either reject this proposal in its present form or allow the new town council configuration to make this decision. The existing MAC guidelines should not be the determining factor for approval of this project. Vienna needs to get it right this time.

John Schnittker
240 Glen Ave SW
Vienna, Va 22180

D'Orazio, Michael

From: Mayor
Sent: Wednesday, June 12, 2019 1:00 PM
To: D'Orazio, Michael; Petkac, Cindy; Town Manager
Subject: Fwd: 380 Maple West Project

Sent from my iPad

Begin forwarded message:

From: David Steiner <dpsteiner@gmail.com>
Date: June 10, 2019 at 3:53:13 PM EDT
To: tara.bloch@viennava.gov, Linda Colbert <linda.colbert@viennava.gov>, Mayor <mayor@viennava.gov>, pasha majdi <pasha.majdi@viennava.gov>, douglas.noble@viennava.gov, "Sienicki, Carey" <csienicki@viennava.gov>, hspringsteen@viennava.gov
Cc: Paula Steiner <pauleigh@gmail.com>
Subject: 380 Maple West Project

Dear Mayor and Council Members:

Since arriving in Vienna in 2014, we have found a constant barrage of information coming at us regarding the Maple Avenue Corridor. No doubt, you have received many comments and complaints about the latest proposed changes and concerns regarding the 380 Maple West Project. They include, but are not limited to, inconceivably narrowing Wade Hampton Drive from 36 to 32 feet, reaching no conclusion on safety with two traffic impact studies, and, most recently, the proposal that traffic would be directed to enter and exit on Glen Avenue SW.

Since we have not been able to absolutely confirm the last item, we're concerned that this may be buried somewhere only to rear its hideously ugly head after the project is approved and homeowners, like ourselves, will be forced to endure the disastrous consequences of this decision.

Glen Avenue SW, is an historic street lined by many legacy trees. Some of the homes are historic from decades ago when the area was largely agrarian in style. The street itself is barely adequate for two-way traffic of small to medium sized cars. In fact, when the school bus comes down the street, it usually takes up most of the pavement. Making this street a thoroughfare for 380 Maple West residents, vendors and businesses will be devastating. It will also cause serious safety concerns for our children, adults and senior citizens who daily walk through the area using the street itself.

Please do not approve this project that would have such dire ramifications on our neighborhood and the natural environment. We are genuinely concerned about the nature of the projects for the Maple Avenue Corridor even though we are strong proponents of finding reasonable ways to develop the corridor and attract new businesses. The current plans for 380 Maple West do not satisfy any of those concerns. Now is not the time to rush through approval of this project.

Very truly yours,

David P. Steiner
Paula L. Steiner
220 Glen Avenue SW
Vienna, VA 22180

D'Orazio, Michael

From: Mayor
Sent: Wednesday, June 12, 2019 1:01 PM
To: Petkac, Cindy; D'Orazio, Michael; Town Manager
Subject: Fwd: Comments for consideration prior to the Town Council Meeting on June 10, 2019

Sent from my iPad

Begin forwarded message:

From: <jhuleatt@cox.net>
Date: June 10, 2019 at 3:35:56 PM EDT
To: <tara.bloch@viennava.gov>, <linda.colbert@viennava.gov>, <mayor@viennava.gov>, <pasha.majdi@viennava.gov>, <douglas.noble@viennava.gov>, <csienicki@viennava.gov>, <hspringsteen@viennava.gov>
Cc: <melanie.clark@viennava.gov>
Subject: Comments for consideration prior to the Town Council Meeting on June 10, 2019

Town Council Members,

Please consider our concern that you may prematurely vote in favor of the 380 Maple Ave MAC rezoning request tonight. We believe that such a vote at this time would occur prior to the adequate resolution of the safety issues that the present design of the building imposes on Wade Hampton Drive. Mere statements that the safety issues raised by the public will be taken care of without concrete design changes in the building design and Wade Hampton Drive should not be accepted by the Town Council. We are concerned what the MAC approval process implications of such a vote will be without these concrete safety resolutions?

The current Wade Hampton to Glen intersection and Glen bend, as well as the Wade Hampton to Roland bend represents existing points of safety concern for both pedestrians and vehicles. The proposal to narrow Wade Hampton Drive from 36 ft. to 32 ft. is a mistake. A narrowed street will only increase the hazards of delivery vehicles executing constricted turn maneuvers with an increase in forecasted increased and congested traffic flow during busy hours. Wade Hampton needs all the 36ft. of its current width. Very few streets that intersect Maple Ave in Vienna are 32 ft. wide.

We are also concerned with the inadequate number of auto/truck turn exhibits by vehicle type in the materials submitted by the developer to the town. We are further concerned that the Planning and Zoning staff are not requiring the two traffic impact studies to give a direct opinion on the issue of safety issues related to the 380 Maple Ave. project. Further Public Works has failed to offer or has never even been asked to offer their opinion on how the safety of the building design, the proposed street narrowing and all of the curb cuts on Wade Hampton Drive will affect traffic flow and congestion on Wade Hampton. All of these shortcomings have not been addressed by the Town of Vienna and its staff, despite numerous statements by the public drawing attention to the hazards for pedestrians, cyclists, wheelchair users and cars.

The likely increase in cut through traffic, resulting from this project, both residential and business, combined with the impact of delivery vehicles having to maneuver through this area raises the safety

risk significantly. The traffic flow into and out of this structure, particularly for those visiting the retail spaces, could lead some to see street parking as preferable to negotiating the parking lot, particularly if trucks are maneuvering into and out of the lot. With the proposed changes to Wade Hampton which eliminate the current street parking, parking in the residential area will be the only alternate option.

Our concern continues to be neighborhood compatibility as set forth in the MAC rezoning requirements and what those who developed the MAC originally intended. The original visual renderings convey style and density that seems to address many of the concerns about neighborhood compatibility that is absent in this and other proposals that have been put forth. It appears that the original vision has been significantly altered and is no longer in synch with what the originators intended. Our hope is that the Town Council considers the original vision before setting precedents that result in mammoth structures that seriously impact resident and visitor safety and the overall appeal of the Town of Vienna.

Please do not vote on the 380 Maple Ave project tonight until the above issues are concretely resolved.

Thank you for your service.

William and Jayme Huleatt
413 Roland Street, SW, Vienna, VA

D'Orazio, Michael

From: Mayor
Sent: Wednesday, June 12, 2019 1:01 PM
To: Petkac, Cindy; D'Orazio, Michael; Town Manager
Subject: Fwd: Proposed rezoning of 380 Maple Ave.

Sent from my iPad

Begin forwarded message:

From: sharon pott <f6g6pott@yahoo.com>
Date: June 10, 2019 at 2:37:27 PM EDT
To: "linda.colbert@viennava.gov" <linda.colbert@viennava.gov>, "mayor@viennava.gov" <mayor@viennava.gov>, "pasha.majdi@viennava.gov" <pasha.majdi@viennava.gov>, "douglas.noble@viennava.gov" <douglas.noble@viennava.gov>, "csienicki@viennava.gov" <csienicki@viennava.gov>, "hspringsteen@viennava.gov" <hspringsteen@viennava.gov>, "tara.bloch@viennava.gov" <tara.bloch@viennava.gov>
Subject: Proposed rezoning of 380 Maple Ave.

I am seriously concerned about the safety issues that would arise if the design for 380 Maple goes ahead as planned.

It seems to me that it would be extremely unwise to permit all traffic, foot, vehicular, delivery, garbage to enter and exit across such a narrow spot onto our short road, Wade Hampton Drive.

It has to be reconsidered in light of the expected increased activity on Wade Hampton from the new project at 444 Maple Avenue.

I also feel that that the developer has not honestly considered the wishes of nearby neighbors as he has made no substantial concessions regarding a compatible transition in design from commercial to residential at the rear of the building. The current design is overbearingly large. I would feel utterly betrayed by Vienna's Town Council if this development is passed as planned. It clearly does not take seriously the well being either of the users of Wade Hampton or the residents whose lives would be impacted.

Sincerely
Sharon Pott,
134, Wade Hampton Drive,
Vienna VA 22180