

**MEMORANDUM**

To: Mayor and Town Council

From: David B. Levy, Director of Planning and Zoning
Kelly O'Brien, Deputy Director of Planning and Zoning
Andrea West, Zoning Administrator

Date: August 17, 2023

Re: August 28, 2023 Code Create Town Council Meeting:
Options for Town Council Decisions

INTRODUCTION***Purpose of this Document***

The Town Council has received a large amount of public input on the draft of *Chapter 18 – Zoning and Subdivision* during the public hearing process. The input includes:

- The transcripts of the testimony from the 14 people who spoke over the two evenings (July 10 and 12) of the public hearing.
- 135 submissions of written testimony.

This memorandum draws on the public input to provide Town Council with options for decision-making, in the context of the Council's stated goal of adopting the updated chapter by October 23rd. This memorandum can be viewed as a companion to another document (Attachment 5 to this agenda report) produced by staff, which is entitled "Staff Summary of Public Testimony on Draft Chapter 18, organized by topic."

In this memorandum, staff provides context and zoning code options for key topics. It does not cover all testimony submissions (oral and written) and does not always cover all points within submissions that raised more than one topic. It also does not cover every point listed in Attachment 5. As such, reading Attachments 5 and 6 do not replace reading the testimony as submitted by the public. We offer our apologies both to the Town Council and to members of the public for points missed or misunderstood.

Of course, the Town Council is free to make any decisions it chooses, including decisions different than the options that staff has provided; and is free to address topics that staff has not raised.

Changes and a New Public Hearing

The Town Council is free to direct staff to make changes to the draft that was released on June 12, 2023. Some changes would not require a new public hearing. Examples of changes not needing a new public hearing would be: 1) reverting back to existing code or existing standards, 2) lessening the amount of a change that the new code proposes, 3) and deleting new language that is not in the existing code. The principle is that no new public hearing is needed if the Town Council removes or lessens changes from the existing code.

Other changes would require a new public hearing. Examples of such changes would be: 1) adding new standards that are not in either existing code or the draft; 2) increasing the amount of a change that the new code proposes; and 3) adding new language that would have an impact on regulations or implementation of regulations, if that language is not in either existing code or the draft. The principle is that a public hearing is needed if the Town Council wishes to make a change to the existing code that is not yet proposed in the draft code; and/or to add or increase change proposed in the draft code.

In the options presented below, staff has identified, with both words and symbols, those options that could be made without a public hearing and those that would require a public hearing.

- The “☑” symbol means no new public hearing would be required, and the “☒” symbol indicates that a new public hearing would be required.

TESTIMONY TOPICS AND OPTIONS

Accessory Dwelling Units

1. Some public comments suggested that the Town of Vienna should permit accessory dwelling units (ADUs) to be built and occupied in the town. This topic was discussed early in the code update process and Council determined it would be best to postpone the discussion until after the code update was complete. Therefore, no change from current code is proposed in the draft. Any changes with respect to ADUs during this update process, especially if new code language were added to permit (ADUs), would need a specific proposal.

- ☒ A new public hearing would be required to include any change of this nature within the updated code.

Administrative, Related to Board of Architectural Review

2. One submission called for changes to the form and functions of the Board of Architectural Review. Such changes would need to take place in Chapter 4 – Architectural Design Control of the Town Code, which is where the Board of Architectural Review’s form and functions are defined. Chapter 4 is not the subject of the proposed draft. If Town Council determines that changes should be made, language would need to be proposed relative to Chapter 4 – Architectural Design Control.

- ☒ A new public hearing would be required to adopt text amendments to Chapter 4 – Architectural Design Control.

Buffers

3. One submission suggested that there be a new requirement for 6-foot brick walls between non-residential and residential uses within residentially zoned areas of the town. Neither the current zoning code nor the proposed code has this requirement. As a reminder, non-residential uses, such as churches and schools, in single-unit-detached residential zones are typically approved through a CUP process. If the Council wishes to add this standard to the code, Council could make a motion *to include language in Article 5B, Division 3, to require a brick wall between public, institutional, and community uses and adjoining single-unit residentially used properties.*

- ☒ A new public hearing would be required to include this change within the updated code.

4. One submission recommended that the code establish a buffer of 20 feet between non-residential and residential uses. The draft code currently proposes landscaped buffers of 10 feet between commercial and residential uses, and 15 feet between industrial and residential uses. If the Council agrees with the recommendation, Council could make a motion *to increase the required*

buffer to 20 feet between nonresidential and residential uses. Council would need to decide whether this increase would apply to all zones bordering residential uses or only some.

☒ A new public hearing would be required to include this change within the updated code.

Building Height

5. In the testimony, there are several requests to increase the permitted height of structures along Maple Avenue and of multi-unit structures, including duplexes and townhouses; and other requests not to exceed 35 feet in any portion of the Town. Staff views there to be three options, in addition to that which the current draft Chapter 18 proposes:

- If Council wishes to increase the heights in any zone, beyond what is reflected in existing code and the current draft, the new proposal will need to be developed and proposed.

☒ A new public hearing would be required.

- If the Council wishes to eliminate the current draft's proposal to raise the maximum building height to 42 feet in Avenue Central and/or Gateway South, a motion could be made *to reduce the height limit in the draft code from 42 feet to 35 feet.*

☒ This change could be made without a new public hearing.

- If the Council wishes to reduce height limits throughout the Town to 35 feet, not only along Maple Avenue and in Gateway South, the implication would be that height limits would also be reduced in the Corporate Park and Mill District, which currently have a height maximum of 45 feet. *A motion could be made to reduce height limits through the Town to 35 feet.*

☒ A new public hearing would be required because it would result in the reduction of current development rights in two zones.

Pergolas

6. Various requests were submitted requesting that the code permit rooftop pergolas above 35 feet on townhomes and/or other residential structures. The current code does not allow such permanent structures to exceed the 35-foot height limit.

- If the Council wishes to permit this addition, a motion could be made *to include "non-enclosed shade structures" in the list of permitted architectural features allowed to exceed the building height maximum as identified in Section 18-212.1.B in the draft code.*

☒ A new public hearing would be required to include this change within the updated code.

- If the Council wishes, further, to provide an option for such a structure to exceed 9 feet above the 35-foot height limit, only after a recommendation by the BAR and approval by the Town Council, *a motion could be made to include "non-enclosed shade structures" in the list of features allowed, in Section 18-212.1.C, to be erected beyond the nine (9) foot maximum as described in Section 18-212.1.B in the draft code.*

☒ A new public hearing would be required to include this change within the updated code.

Note: The testimony regarding pergolas also recommended that "pergolas" be added to Article 9, Definitions. That topic is addressed in this memorandum under Definitions.

Conditional Use Permits and the BAR

7. There was input suggesting that the Board of Architectural Review (BAR) should be a recommending body in the Conditional Use Permit (CUP) process. The current code includes a requirement that any application for a CUP receive a recommendation from both the Planning

Commission and the Board of Architectural Review (BAR) in advance of the decision of the Board of Zoning Appeals (BZA). As was discussed during the June 12, 2023 Conference Session and addressed in the staff memorandum (Attachment 1) for that discussion, the Town's practice for decades has been that, despite what the zoning code has said, the BAR does not review CUPs in advance of the BZA decision.

The draft code shows a change to reflect the decades of practice, which is that the BAR's role is to conduct its review *after* the use is approved by the BZA and when there is an application to construct an exterior modification. This role is consistent with the BAR's role on other reviews, and as defined in Chapter 4 of the Town Code.

- If the Council wishes to continue the current practice that the BAR does not conduct reviews in advance of the BZA's use decisions for CUP applications, but only does so afterwards to review exterior modifications, *no motion is needed*.
- If the Council wishes to include the BAR's input into the BZA's decision, staff suggests that there be *a motion that directs staff to include language in the updated Chapter 18 that includes BAR review and recommendation in the CUP approval process, as reflected in the existing code*.

☒ Such a change would not require a new public hearing.

Definitions

8. Based on public input and staff's own review, staff recommends that the following definitions be added to the code:

Buffer means an area of land that provides a transition between two different zones or uses to help each blend more easily with the other and/or to reduce conflicts.

Pergola means a permanent structure attached to a building by posts supporting a horizontal roof that may be open or closed to provide air flow or shade from the sun and elements.

Architectural features, major means prominent or characteristic features of a building, attached to or protruding from an exterior wall or roof, such as bay windows, box windows, cantilevered floor areas, steeples, and cupolas.

Architectural features, minor means prominent or characteristic features of a building, attached to or protruding from an exterior wall or roof, such as windowsills, belt courses, cornices, eaves, steps, and chimneys; and ingress and egress improvements, such as basement areaways and window wells.

Lumens means a unit of measurement for quantifying the amount of light energy emitted by a light source (power of the light radiated by the light source).

Kelvins means the reference color temperature of the light spectrum emitted by a light source, also referred to as the coolness or warmth of the light. On the low end of the scale, at approximately 1,000-2,000 Kelvin, the light appears reddish orange; at 3,000-4,000 Kelvin the light appears yellow; at 5,000-7,000 Kelvin, the light appears bright white; and at 8,000-10,000 Kelvin, the light appears blue.

- If Council agrees with these new definitions a motion can be made to *include these definitions as written or with any revisions that the Council may wish to make*.

☒ Such a change would not require a new public hearing.

District Boundaries Along Maple Avenue

9. Various testimony submissions addressed the proposed boundaries between zoning districts along Maple Avenue. Some recommended moving the boundary further east than the draft updated zoning map shows, to either Branch Road or Beulah Road, and others recommended not having such boundaries at all along Maple Avenue.
 - If the Council wishes to expand the Avenue Center either to Branch Rd or Beulah Rd, or to have the entirety of Maple Avenue be under a single district, a motion could be made *to change the boundary 1) of the Avenue Center district, identifying the desired bounds of the district; or 2) in some other manner of the Town Council's choosing.*
 - ☒ If the boundaries are changed, a new public hearing would be needed due to the change in the proposed zoning map from the current draft.

Fences

10. Fence Height: One submission requests that the code permit fences to be built higher than six (6) feet in residential areas, because of the number of neighborhood deer. If Council wishes to increase the permitted maximum height of fences in residential zones a motion could be made to *raise the maximum height to a new specific number of feet.*
 - ☒ A new public hearing would be required.

11. The BAR testimony (Recommendation #2) recommends that decks and fences in multifamily residential developments be under the purview of the BAR. In the current code, patios and decks are exempted from architectural review. The definition of "Structure", in Article 2 – Definitions, specifically excludes patios and decks from architectural review in any residential zone. These exclusions are carried forward in the draft code's Article 9 Definitions, in the definition of "Structure."

During the Town Council's discussion of Article 4B, staff, after having raised the topic, received guidance that the draft code should include a provision that the BAR would no longer review fences for individual residential units within multi-unit developments of duplexes, townhouses or cottage courts. The result would be that the individual units would be treated in the same manner as single-unit detached homes for fence permits. The draft Chapter 18 reflects this change, in Section 18-453.2, where private decks, fences and patios are all listed as excluded from architectural review. The draft code continues the policy of BAR reviewing fences in the common areas of those developments.

Staff considers there to be, at least, the following options for Council to consider, specifically for multi-unit developments:

- If the Council wishes to continue the current code policy of the BAR reviewing fences for individual units, and continuing to exclude decks and patios from architectural review, a motion may be made *to delete the word "fence" from Section 18-453.2.*
 - ☒ A new public hearing is not required.
- If the Council wishes for the BAR to review decks and patios (in addition to fences), staff suggests that the Council could make a motion *to delete Section 18-453.2 and to delete the following text from the Article 9 definition of Structure, "Additionally, patios and decks shall not be considered structures for the purposes of architectural review in any residential zone."*
 - ☒ A new public hearing would be required to make this change to the updated code as it would add a new requirement.

- If the Council wishes to continue the draft Chapter 18's approach of excluding private decks, fences and patios from BAR review, *no motion is required*.

Housing Affordability/Density/Diversity

12. Quite a few testimony submissions recommended that Vienna provide a greater variety of locations where housing other than single-unit-detached units could be built, so that there would be a greater number of more-affordable housing options. The testimony proposed modifying the zoning map and/or broadening the uses permitted in certain zones. If the Council wishes to make changes of this nature, a specific proposal would need to be developed.
 - Staff suggests that the Town's goals with respect to housing options and affordability would be a good topic for discussion during the update to the Comprehensive Plan, to then be followed by any associated updates to the code. Such a change would almost certainly require a public hearing.
13. Various recommendations were submitted either for or against being more permissive with respect to allowing more upper-story residential units to be built in mixed-use areas. The current code allows for mixed-use buildings in commercial zones to provide upper-story residential units as a permitted use, as long as uses other than residential are predominant. For decades, Vienna has interpreted this provision to mean that more than 50% of the square footage must be non-residential.

The draft code removes the requirement that non-residential uses must be predominant but retains the limitation that residential uses may not be on the ground floor in these zones (other than as access to the upper-floor residential units). By making this change, the draft would allow the top two floors to be fully residential in, for example, a three-story building.

In Avenue Center and Church Street, residential use is listed as permitted. In contrast, upper-story residential is listed as a conditional use in Avenue East, Avenue West, Gateway South and Neighborhood Mixed Use.

If Council wishes for residential use to be permitted, not conditional, in all zones identified, a motion could be made *to change the use table to show upper-story residential as permitted in AE, AW, GS and NMU, and subject to the regulations limiting residential uses on the first floor as is stated in Section 18-350 - Upper-Story Residential*.

- ☒ A new hearing would not be required as this approach would be consistent with the current code.

Lighting

14. The comments received related to lighting vary from specific recommendations to a general desire to implement Dark Sky initiatives. Staff is sympathetic to many of the proposals but does not have expertise on some of the more technical areas of lighting. Staff is also sympathetic to the concerns regarding whether the draft's specific numeric regulations have been properly reviewed by lighting experts.

Staff suggests that the Council could consider two lines of thinking regarding lighting:

- 1) maintaining the draft's new language regarding protections for residential areas while, at the same time, or,
- 2) removing the new proposed numeric standards until such time as the Town has been able learn from technical experts and develop a more comprehensive and informed approach.

The Council therefore could consider, for the current update to Chapter 18, a motion *to make the following specific revisions to the draft code:*

- *Add language to the end of Section 18-519.1: “and not to exceed the boundary of the property.”*
- *Remove from Sections 18-517.6, 18-467.2, and 18-566.5 the following “Luminaires with 1,000 or less initial lumen output.”*
- *Remove from Sections 18-415, 18-468, 18-518, and 18-567 the following “Light sources that exceed 200,000 lumens or an intensity in any direction of 2,000,000 candelas or more;”*
- *Remove from Sections 18-469, 18-519 and 18-568 the following “either: A. Mounted at a height measured from grade to the bottom of the light fixture, including the height of the parking structure when located on top of a parking structure, equal to or less than the value $3 + (D/3)$, where D is equal to the horizontal distance in feet from the light source to the nearest residential lot line extended vertically ($H=(D/3) + 3$);” OR*
- *Add language to Sections 18-416, 18-469, 18-519 as a new numbered item “Use of motion sensors is encouraged.”*

- ☒ No new public hearing would be necessary if the Council were to make these changes to the draft.

Lot Coverage

15. A testimony recommendation is that the code should allow permeable materials to be exempt from lot coverage calculations. Neither the current code nor the draft code includes such an exemption. The Town Council reviewed the lot coverage regulations and in June of 2022, adopted the current code allowing a 400 square foot outdoor living coverage bonus for covered decks.

Options available to the Council include:

- 1) maintaining the status quo for this code update,
 - 2) exempting the entire area covered in permeable paving (perhaps up to a maximum percentage of the lot), or
 - 3) exempting a portion of the area covered with permeable paving (again, perhaps up to a maximum percentage of the lot).
- If the Council wishes to allow all or a portion of permeable paving materials not to count towards lot coverage, a specific proposal could be made *to add language to Section 18-213 that identifies the quantity of permeable paving credited for lot coverage, how credits are calculated, and the standards for the materials eligible for the credits.*

- ☒ A new public hearing would be required as it would make a significant change to lot coverage.

Lot Deviation

16. One submission was unsure whether the draft code changes any requirement with respect to lot deviation. As clarification for the Council, the draft proposes no changes from the current code related to lot deviation. The regulation has been moved from the definitions section of the existing code into the dimensional standards of the draft new code. Staff does not believe that Council action is needed at this time.

Open Space/Parks

17. One submission asks that new development include open green space and maybe even public art:

- The draft code does include a requirement that open space be reserved in multi-unit and commercial developments and there is no proposal to require public art. Prior requirements for public art were part of an incentive zoning district and not a zoning requirement for permitting. If the Council would like there to be a requirement for public art, staff suggests that, first, there be a review of State law by staff and the Town Attorney and that a proposal consistent with State law be developed, perhaps by a working group of Town staff and the Vienna arts community. Any such proposal would need a public hearing, as it would be a new requirement.
- If the Council would like to include additional open space requirements for commercial or multi-unit development, a motion may be made *to increase the percentage of open space required, identifying the zoning district(s) within Article 2 and specifying the percentage of open space.*

☒ A new public hearing would be required to make this change to the updated code.

18. One submission asks that the remaining eight acres of Beulah Road Park be zoned PR (Parks and Recreation) rather than RS-12.5. If the Council wishes to rezone this property into the PR, or any other, zone, the Council could make this motion. Staff anticipates that the future of this site will be discussed during the process of developing the Parks Master Plan. Staff suggests that any rezoning could take place after the Town Council adopts that new plan.

☒ A new public hearing would be required to make such a zoning map amendment.

Parking

19. Some submissions recommend changes in standards for automobile parking. Staff anticipates the Town Council will, in the near future, discuss potential changes related to parking requirements, after the ongoing parking study is completed and the Town Council has had an opportunity to consider the study's implications.

☒ Any changes in standards relative to parking would require a proposed code amendment and, therefore, a public hearing.

20. The TBLC sees the need to address Church Street separately with respect to loading and unloading guidelines and bicycle parking. Staff is sympathetic to these concerns and suggests that developing solutions might be best done through formation of a working group that would involve multiple Town departments working with, at minimum, Church Street businesses, property owners, and the bicycle community. Together, this group could bring proposed code language for Church Street and/or develop programs outside of the zoning code for public streets and rights-of-way.

- Staff suggests that there may not be time to conduct such a process before the date that the Town Council has set to adopt the updated Chapter 18. However, the Town Council could direct staff to set up such a group in the future.

21. One submission recommends that there be increased flexibility regarding the types of bicycle racks that may be used. If the Town Council wishes to provide more flexibility for the types of bicycle racks used, a motion could be made *to include the following language in all applicable sections of the code "...shall include inverted "U" bicycle racks and circular bicycle racks or acceptable variations as determined by the Zoning Administrator with recommendation from the Director of Public Works."*

☒ No new public hearing would be necessary.

- The Town already has discretion to choose the type of bicycle rack when it is placed on Town-owned property.

22. One submission requests that stacking (queuing) requirements be added to Article 5B, so that such institutional uses as schools would have standards for managing its drop-off and pick-up functions. When institutional uses are in residential areas, they are typically approved through a CUP process. Since such uses vary in their type and intensity, staff suggests that a useful code change could be to require applicants to provide key information to the recommending and decision bodies in the CUP process. If Council wishes for such a change for institutional uses, a motion could be made *to add the following language modification shown in bold for requirements for conditional use permits listed in Section 18-824.5.v:*

“Parking and Stacking.

- a. Number of spaces available to serve residents, employees, and patrons during the hours of operation, for all primary and secondary uses being proposed.*
- b. **Plan showing geometric design of stacking aisle and number of stacking spaces provided.”***

☒ No new public hearing would be necessary.

Satellite Antennas

23. The BAR states that the restrictions on satellite antennas in the proposed code are new and recommends that Town Council review them. In fact, the language included in the draft code related to satellite antennas is brought forward from the current code and is not new. However, staff agrees that this topic should be reviewed and updated at a future date.

- Staff does not believe that Council action is needed at this time.

Setbacks

24. One testimony submission expressed concern that "the 15 foot side yard set back for garages and accessory dwellings is excessive compared to other cities and municipalities and we would like the city to consider more exemptions to that requirement when requested, where neighbors do not object." [41]

Neither the current code nor the draft code has these setback requirements and the Town does not permit accessory dwellings. The current code has side yard setbacks for accessory structures of either 1 foot, 5 feet or 10 feet (for two-story accessory buildings). Staff suspects that this submission was referencing a different jurisdiction's code.

- Staff does not believe that Council action is needed at this time.

25. One submission asks that there be more requirements when a parking lot is abutting a single-unit residential lot, including more than a 5-foot setback and 6-foot masonry wall.

The draft code already requires a brick wall between single-unit detached residential uses and commercial, industrial, and multi-unit residential zones. Based on the remainder of the content of the written comment from which this recommendation comes, staff believes the intent is to increase the setback and require a brick wall in the RS-10, RS-12.5, and RS-16 zones for parking lots on public, institutional, and community uses adjacent to single-unit residential lots.

- If Council agrees with this recommendation, a motion would be needed directing staff *to include the requirement of a brick wall between the parking lots of any public, institutional, or community uses, on their sites, and single-unit detached residential lots; and increase the setback of the parking lot from the adjoining property line from 5 feet to ____ feet.*

☒ A new public hearing would be required as this adds more restrictions and greater setbacks.

Signs

The Board of Architectural Review (BAR) has submitted several recommendations related to signs. Some of the recommendations are that the Town Council should put existing code language back into the new updated code, and other recommendations would impose new requirements or restrictions.

- New requirements or restrictions may be meritorious, and staff suggests that an overall review of sign requirements may be helpful as a future work item, after the completion of Code Create.
- ☒ Generally, adding new requirements, allowances or restrictions for signs not in the current code or draft code will require a new public hearing.

Below are the motions or considerations that Council may choose to discuss for each of the recommendations made by the BAR regarding signage:

26. The BAR requested that the intent section be brought back into the code. It could be achieved through *a motion to include the language from the current code, Section 18-174 Intent, into Division 7 Signs in Articles 4B, 5A, and 5B as a new Section titled Purpose and Intent.*

- ☒ As this language is from the current code, no new public hearing would be needed.

27. The BAR requested that there be no more than 3 signs of 1.5 square feet (or smaller) without BAR review. The current code does not require a permit for any sign of 1.5 square feet or smaller, and there is no limitation to the number of these size of signs. It could be achieved through a motion *to require approval by the Board of Architectural Review for more than 3 signs of 1.5 square feet or smaller.*

- ☒ As this requirement would be new, it would require a new public hearing.

28. The BAR recommends that signs do not exceed the roof line. This prohibition exists in the current code under Sec. 18-178. - Prohibited signs and sign structures. Adding this regulation to the proposed code could be achieved through a motion *to add the language "Signs of any type shall not be erected upon the roof of any building, except on the sides of a mansard-type roof." to the Prohibited Signs sections of Articles 4B, 5A, and 5B.*

- ☒ As this language is from the current code, no new public hearing would be needed.

29. The BAR recommends, moreover, that there be the following additional language related to signs on mansard roofs, following *"...on the sides of a mansard-type roof"* in the language cited above: *"...and only in the case where there is no other location for a sign to be placed."* If the Council would like to add it, a motion *to add the language could be brought forward.*

- ☒ As this requirement would be new, it would require a new public hearing.

30. The BAR recommends bringing language regarding deteriorating signs from the current code into the updated code, which could be achieved through a motion *to include the language from current code 18-179.B and C under Sections 18-544 and 18-593 Removal of Unsafe, Unlawful, or Abandoned Signs*

- ☒ As this language is from the current code, no new public hearing would be needed.

31. The BAR recommends a change that could be accomplished through the motion *to include the following language "Perpendicular signs may not project more than four feet from the building facade, may not over-hang the property line, and may not interfere with pedestrian traffic or the building's architectural elements." as a new letter A under Section 18-545.3 Building Mounted Signs.* This exact language is in both the current code and draft new code (page 2-51), but only for Church Street Vision projects. It does not apply to other zones, either in the current code or the draft.

☒ As this requirement would be new to other zones and districts, it would require a new public hearing.

- If the Council wishes to maintain this limitation only for Church Street Vision requirements no action is required.

32. The BAR recommended that an “open” sign of a business shall not exceed 1.5 square feet unless it is submitted to the Board of Architectural for Review. This provision is within the current code and is brought forward into the draft code. Any sign, with any content, that is greater than 1.5 square feet in area is counted towards the total signage allowed and required to be reviewed by the BAR. Staff’s view is that no motion is needed.

33. The BAR recommended removal of the language that states that the “regulations do not regulate or restrict signs by content...” This content-neutral language was added by staff, and reviewed by the Planning Commission and Council, in service of abiding by Supreme Court rulings. It is taken directly from Fairfax County’s zoning code.

Upon consultation with the Town Attorney, staff offers the following potential alternative language, which could replace the line that the BAR requested be removed, and to be included (or referenced) in Sections 18-420, 18-486, 18-538, and 18-587. The language was developed in part by reviewing language from Harrisonburg, VA, Alexandria, VA, and Fairfax City, VA:

1. This article shall be interpreted in a manner consistent with the First Amendment guarantee of free speech. This article shall allow a noncommercial message to be automatically displayed, whenever a commercial message is allowed to be displayed. If any provision of this article is found by a court of competent jurisdiction to be invalid, such finding shall not affect the validity of other provisions of this article, which can be given effect without the invalid provision.
2. A sign placed on land or on a building for the purpose of identification, protection, or directing persons to a use conducted therein shall be deemed to be an integral but accessory and subordinate part of the principal use of land or building. Therefore, the intent of this article is to establish limitations on signs in order to ensure they are appropriate to the land, building, or use to which they are appurtenant and are adequate for their intended purpose while balancing the individual and community interests.
3. These regulations are intended to promote signs that are compatible with the use of the property to which they are appurtenant, landscape and architecture of surrounding buildings, are legible, are not distracting to motorists, and are constructed and maintained in a structurally sound and attractive condition.

If Council wishes to adopt this replacement language, a motion may be made to revise the Applicability section of the sign divisions within the draft code by replacing it with the above language.

☒ This replacement language would not require a new public hearing.

34. The BAR recommends bringing forward the sign permit procedures from Section 18-186 in the current code, in its entirety. The draft code includes much of what is in the existing code. Article 8, Section 18-821 of the draft code defines the required steps for a Certificate of Approval from the Board of Architectural Review, including for signs and any other exterior modifications.

What has been removed is the list of items that must be included in the application packet. This approach is similar to how other application types are treated, “Checklists” of required submission materials are developed by staff and updated periodically as appropriate. Town staff has the administrative authority to develop application requirements and uphold those policies. The

benefit of not listing this information in the zoning ordinance is the ability to update required submission materials without going through a code amendment process.

If Town Council wishes to list these “checklist” items in the zoning code, a motion may be made *to incorporate all the requirements from 18-186 in the current code into 18-821 of the draft code.*

☒ As this language is from the current code, no new public hearing would be needed.

35. The BAR recommends better clarification or adding a graphic to explain sign illumination in Sections 18-488, 18-540 and 18-589. Staff will work with the consultant ZoneCo to explore a graphic that will help to illustrate the sign illumination requirements.

- No Council action is required at this time and no public hearing would be required.

36. The BAR recommends that the code prohibit internally illuminated signs along Church Street, for both the Church Street District (CS) and the Church Street Vision Incentive Overlay District (CS-O). The current and draft code retain the restriction on internally illuminated signs on Church Street Vision Overlay projects but neither has that restriction for Church Street projects that are not opting into the overlay district. The change to the CS district would be more restrictive than what the code currently allows or is proposed in the draft code. If Council would like to make this change, a motion could be made *that the code not allow internally illuminated signs along Church Street, either in the CS district.*

☒ This change would require a new public hearing.

37. The BAR recommends that the code allow internally lit ground-mounted signs in the Avenue Center (AC) district. The Council could make a motion *to revise the table in Section 18-540 Sign Illumination to provide the allowance for internally illuminated ground mounted signs in the Avenue Center (AC) district.*

☒ The change to AC district would be returning the regulations back to current code and would not require a public hearing.

38. The BAR recommends adding a new procedure for temporary signs to require a time stamp to track the duration of the sign being posted. For this BAR recommendation to be implemented, staff suggests that the Council consider reestablishing a permit requirement for temporary signs. Otherwise, staff is unsure of how to implement this requirement. In 2021, the Council made a series of updates to regulations. At that time, Council eliminated the requirement for temporary signs to obtain permits from the Town. If Council wishes to reinstitute a permit requirement for temporary signs, as a vehicle to monitor the time that temporary signs are in place, *a motion may be made to do so.*

☒ This change would be a new requirement and would therefore require a public hearing.

39. The BAR recommends bringing back Section 18-178.A.10, which prohibits signs from displaying telephone and facsimile numbers, Internet addresses, or electronic mail addresses. The current code asserts that this information may be distracting to motorists and therefore create a hazardous situation.

If the Council wishes to bring back this language, a motion could be brought forward *to add the following language from the current code 18-178.A.10. to draft code Section 18-543 Prohibited Signs, “The use of telephone numbers, facsimile numbers, Internet addresses or electronic mail addresses on a permanent wall and freestanding signs can be distracting to motorists and thereby create a hazardous situation. Therefore, telephone numbers, facsimile numbers, Internet addresses, and electronic mail addresses may not be displayed on such signs, either jointly or individually, except when required by federal, state, or local law. Evidence of such requirement*

must be submitted with any application for a sign permit containing a telephone or facsimile number, or an Internet or electronic mail address.”

- ☒ As this language is from the current code, no new public hearing would be needed.

Trees and Landscaping

There were a series of comments within this topic area. Those requesting changes focused on the desire for a new ordinance, or a change to the Town code, to support revitalizing the tree canopy in Vienna. In a parallel agenda item on August 28, 2023, the Town Council will be discussing potential updates to the code with respect to the tree canopy.

- ☒ If new code language is proposed, either as part of the Code Create process or separately, a new public hearing will be required.

Uses

The following recommendations were made related to uses, for Council’s consideration. If Council wishes to implement any of these recommendations Council may motion to:

40. *Hotels be changed from permitted to conditional use in the Avenue Center zone.*

- ☒ This change would be consistent with the current code and would therefore not require a public hearing.

41. *Grocery stores be changed from permitted to conditional use in the Avenue Center zone.*

- ☒ This would be more restrictive than current code and would therefore require a public hearing.

42. *Funeral homes be changed from permitted to conditional use in the Avenue Center zone.*

- ☒ This change would be consistent with the current code and would therefore not require a public hearing.

43. *Brewpubs be changed from permitted to conditional use in the Avenue Center zone.*

- ☒ This would change would be more restrictive than current code and would therefore require a public hearing.

44. *Add “Indoor Storage” as a Principal Use with a conditional use permit in commercial districts.*

- ☒ This would be a new use and require a public hearing.

45. *Upper Story Residential be changed from conditional use to permitted use in AE, AW, GS and NM districts and zones, subject to limitations in the code.*

- ☒ This change would be consistent with current code and would therefore not require a public hearing.

46. *Remove drive-thru facilities as a conditional use in AE, AW, AC, and GS.*

- ☒ This change would require a new public hearing.

47. *Add upper story residential as a permitted use in Mill District (M) and Corporate Park (CP).*

- This change would not be consistent with the comprehensive plan and, in staff’s view, would require a plan amendment, with the associated required public hearings, as well as a public hearing on the subsequent code amendment.

48. Testimony was submitted proposing that additional space be provided for “outdoor use by businesses” that is near residences, when there is a building between the outdoor space and

residences. The testimony (written testimony 40) does not clarify if the proposal is specifically for outdoor dining or if it also includes outdoor display and sales, though staff thinks that it may be offered for the case of Simply Social. The specific language recommended in the testimony is as follows, to apply to Section 18-335 (which is on page 3-16 of the draft):

“Businesses should be permitted to use outdoor space, at a distance less than 80 feet but no less than 40 feet to residence(s), if there is a building between the utilized outdoor space and the residence(s). The business building shall serve to shield the outdoor space and residents’ view when standing at the street level and visualized without any obstructions such as perimeter walls or vegetation. The residents’ ability to see the utilized outdoor space from a vantage point higher than the surrounding street level shall not prevent the use of the outdoor space. The depth of the commercial building shall be included in the distance and the measurement shall be from the point of the outdoor space nearest the residence to the nearest property line of the residential property.”

- Staff recommends that, if Council wishes to adopt a provision of this sort, it first determine whether it wishes to focus solely on outdoor dining or on all outdoor commercial activities, including display and sales. Staff further recommends that the proposal would need more analysis.

☒ Any change of this sort would require a new public hearing.

49. *Remove Commercial Off-Street parking as a conditional use in AE, AW, AC, GS, and CS.*

☒ This change would be more restrictive than the current code and the draft code and would therefore require a new public hearing.

50. One submission asks why only one Farmers Market is allowed in Vienna. If the Council wishes to permit more than one farmers market in Town, a motion may be made *to revise Section 18-325 in accordance with the Council’s desired policy, which could include increasing the permitted number or eliminating the restriction altogether.*

☒ This change would require a new public hearing.

Uses, Electric Vehicle Charging

51. One submission requested expansion of the locations where EV charging stations may be located as accessory uses, and to have a clear permitting process for EV charging as a primary use.

- The draft code already expands the use of EV chargers as an accessory use to all zones and districts, where it is currently only permitted as a principal use in the C-2 zone. No action is required by Council.
- Staff recommends that the topic of EV charging stations as a principal use in all commercial and industrial zones and districts be brought back to the Town Council as part of a future code amendment. Staff’s concern in expanding charging stations as a principal use is the same as allowing gas stations in all zones. The intent of Avenue Center (AC) district is to provide for more pedestrian friendly uses and fueling stations of any kind, electric or gas, is inherently auto oriented with increase in curb cuts and stacking of vehicles.

Uses, Outdoor Dining/Seating

52. Many members of the public provided comments indicating their wish that the existing and draft new code be changed to allow Simply Social, in the Cedar Park Shopping Center, to have more outdoor seating than they are currently permitted.

The current code for outdoor dining, which was adopted in 2022, has been brought forward into the draft updated Chapter 18 without any changes. The current code permits applicants to go through approval processes that will allow them to have either 1) seasonal outdoor seating from April through October, or 2) permanent outdoor seating, up to 12 seats as a permitted use or 13 or more seats with an approved conditional use permit. No outdoor seating is permitted either seasonally or permanently within 60 feet of a residential property line, including single-unit residential and multi-unit residential. Between 60 to 75 feet from the residential property line, a maximum of 8 seats is permitted with additional restrictions.

Staff views the following as options for the Town Council:

- Leave the code as adopted in 2022 and ask staff to return with a report on how it is functioning after the first year of seasonal outdoor seasoning. No Council action would be required.
 - *Motion to remove the 8-seat restriction in the areas that are 60-75 feet in distance from residences but require a conditional use permit for any number of outdoor seats within this distance.*
- ☒ This change would require a new public hearing.

CONCLUSION

Staff repeats that we understand that not all topics were covered in this memorandum. We look forward to the discussion of these and any other items that the Town Council wishes to discuss.