



Sara V. Mariska
sara.mariska@ofplaw.com
Direct: 703-218-2146

June 7, 2024

VIA HAND DELIVERY

Andrea West, Zoning Administrator
Department of Planning and Zoning
Town of Vienna
127 Center Street, South
Vienna, Virginia 22180-5719
Andrea.west@viennava.gov

Yaska Camacho Castillo
Clerk to the Board of Zoning Appeals
Town of Vienna
127 Center Street, South
Vienna, Virginia 22180-5719
Yaska.camacho@viennava.gov

Re: Appeal of Violation dated May 8, 2024
Appellant: Vienna Development Associates LLC
Subject Property: 444, 440, 430 Maple Avenue W
Case No.: 24-208

Dear Ms. West and Ms. Castillo:

Please accept this letter as grounds for an appeal of the enclosed zoning violation issued to Vienna Development Associates LLC from Andrea West, Zoning Administrator, dated May 8, 2024, and identified as Case No. 24-208 (the "Notice"). The Notice states that the Subject Property has not been maintained in a condition that is compliant with the approved site plan. As the owner of the Subject Property, the Appellant is an aggrieved party.

On June 9, 2021, the Town of Vienna approved a site plan for the Subject Property. Pursuant to §15.2-2261 of the Code of Virginia, a final site plan shall be valid for a period of not less than five (5) years from the date of approval thereof. As such, the site plan is valid until June 9, 2026. Subsequent to the approval of the site plan, the Appellant obtained a demolition permit identified as DEMOC-213270270 that was issued on January 19, 2022. Pursuant to the demolition permit, the Appellant removed the buildings on the Subject Property. On June 21, 2022, a final inspection was completed, and the demolition permit was closed.

The Appellant is not aware of any proffers, conditions, zoning ordinance provisions, state code provisions, or other requirements that require that an approved and currently valid site plan

include an interim condition, nor is the Appellant aware of any requirement to proceed with the filing of a building permit.

The Appellant is filing this appeal to stay enforcement of the Notice, consistent with Code of Virginia §15.2-2311(B), pursue additional conversations with the Town of Vienna, and preserve all rights. The Appellant reserves the right to submit additional materials into the record.

I have enclosed a check in the amount of \$1,000 to accompany this request. Should you have any questions, or need additional information, please do not hesitate to contact me.

Very truly yours,

ODIN, FELDMAN & PITTLEMAN, P.C.

A handwritten signature in dark ink, appearing to read "Sara V. Mariska", with a stylized flourish at the end.

Sara V. Mariska

Enclosures

cc: Chris Bell

#5999082v1



Zoning Compliance | Department of Planning and Zoning
Town of Vienna
127 Center Street, South
Vienna, Virginia 22180-5719
p: (703) 255-6341
e: DPZ@viennava.gov

NOTICE OF ZONING CODE VIOLATION *ACTION REQUIRED*

Vienna Development Associates LLC
505 Main Street
Suite 400
Hackensack, New Jersey 07601

Case No. #: 24-208
Subject Addresses: 444 Maple Ave W
440 Maple Ave W
430 Maple Ave W
Vienna, VA 22180
Tax/Map IDs #: 0383 02 0139
0383 02 0140
0383 02 0141
Zoning District: AW (Avenue West) with
proffers

May 8, 2024

To Whom it May Concern,

This letter is the first notification of a continuing violation of **Chapter 18 – Zoning and Subdivision Ordinance** of the **Town of Vienna Code**. Included within this letter is the nature of the violation, the steps required to remedy the violation, and the penalties if the violation is not abated.

Description of Violation

The subject properties have been maintained in a condition that is not compliant with the approved site plan since the previous hotel and restaurant were demolished in May 2022 (*Project No.: 669054, 213270270*). The site plan as approved by the Town of Vienna in June 2021 (*Project No.: 391916*) does not include a development phase for the site in an unimproved condition. Without the presence of an active and approved building permit issued by the Fairfax County Building Official, or land disturbance permit through the Town of Vienna Department of Public Works, continuing to maintain the site in the existing condition is a violation of the approved site plan.

Relevant Code Sections

The following code sections are relevant to the violation described within this letter:

Section 18-836 Site Plan Review

1. Site Plan Approval Required. Development of, redevelopment of, or modifications to property must be approved through one of the following site plan types prior to the issuance of a building permit or commencing excavation.
2. Types of site plans.
 - B. Major. All new site plans, new structures, and site plans with land disturbance of 2,500 square feet or more are considered major site plans. All site plans where a modification of requirements is requested shall follow the Major Site Plan process (See §18-830 Modification of Requirements).

Section 18-854 Civil Violations and Penalties

1. Any violation of the following zoning provision of this Chapter shall be deemed a civil violation:
 - E. Failure to Comply with Any Requirement or Condition of an Approved Site Plan and/or a Conditional Use Permit. Deviations from the terms and conditions of an approved site plan and/or Conditional Use Permit shall be deemed a violation of this Chapter subject to a Civil Penalty.

How To Resolve This Violation

The responsible parties must take the following action(s) to resolve the violations within this letter:

- Apply for a revision of the approved site plan to add an interim phase showing the site cleared and stabilized to an acceptable state;
- Obtain the required Town of Vienna permits to meet the conditions of the revised plan;
AND/OR,
- File an application with the Town of Vienna and Fairfax County for a building permit to meet the ultimate conditions of the approved site plan.

Deadline for Correction of this Violation

If the Town of Vienna Department of Planning and Zoning has not observed any action on the violations stated in this letter within **30 days from the date of this letter**, the Town will move towards enforcement through all means permitted under the Town Code and the Virginia State Code, including seeking fines, injunctive relief and any other enforcement remedies as permitted.

Penalty for Failure to Resolve

The penalty for unresolved violations of Vienna Town Code **Section 18-854 Civil Violations and Penalties** are as follows:

Section 18-854 Civil Violations and Penalties

2. **Penalty for Any One Violation.** The penalty for any one violation shall be a civil penalty of not more than \$200 for the initial summons and not more than \$500 for each additional summons. Each day during which the violation is found to have existed shall constitute a separate offense.
3. **Shall Not Be Charged More Frequently Than Once in Any 10-Day Period.** Specified violations arising from the same operative set of facts shall not be charged more frequently than once in any ten (10) day period, and a series of specified violations arising from the same operative set of facts shall not result in civil penalties that exceed a total of \$5,000.
4. **Violation Shall Be Tried in The General District Court.** If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided for by law. In any trial for a scheduled violation authorized by this section, it shall be the burden of the locality to show the liability of the violator by a preponderance of the evidence. If the violation remains uncorrected at the time of the admission of liability or finding of liability, the court may order the violator to abate or remedy the violation in order to comply with the zoning ordinance. Except as otherwise provided by the court for good cause shown, any such violator shall abate or remedy the violation within a period of time as determined by the court, but not later than six months of the date of admission of liability or finding of liability. Each day during which the violation continues after the court-ordered abatement period has ended shall constitute a separate offense. An admission of liability or finding of liability shall not be a criminal conviction for any purpose.
5. **In Lieu of Criminal Sanctions.** Designation of a particular zoning ordinance violation for a civil penalty pursuant to this section shall be in lieu of criminal sanctions, and except for any violation resulting in injury to persons, such designation shall preclude the prosecution of a violation as a criminal misdemeanor, provided, however, that when such civil penalties total \$5,000 or more, the violation may be prosecuted as a criminal misdemeanor.

6. Penalties Cumulative. The remedies provided for in this section are cumulative and not exclusive and, except as otherwise, shall be in the addition to any other remedies provided by law.

Right to Appeal

The recipient of any Notice of Violation has the right to appeal the written order within 30 days of the date of this letter in accordance with **Code of Virginia Section 15.2-2311. Appeals to board.** The decision within this letter shall be final and unappealable if not appealed within 30 days. A statement of appeal must be provided to the Zoning Administrator to start the appeals process. The application fee for Appeals to the Board of Zoning Appeals is currently \$1,000.00.

If you require further clarification or assistance with this matter, please contact the Zoning Administrator via phone at (703) 255-6341 or via email at dpzenforcement@viennava.gov.

Sincerely,



Andrea West, CZA
Zoning Administrator

CC: Sara Mariska
Odin Feldman Pittleman
1775 Wiehle Ave.
Suite 400
Reston, Virginia 20190