

**MEMORANDUM**

To: Mayor and Town Council

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

Date: January 23, 2023

Re: Attachment 5 – Building Heights in Commercial Zones for January 30, 2023 Code Create Conference Session

This memorandum provides a discussion of maximum building heights to support the Town Council's January 30, 2023 Conference Session on Code Create. The Code Create project, to update the Town of Vienna's zoning code, includes a review of, and potential revisions to, key standards. The January 30th Conference Session will focus on draft *Article 2 – Zones, Districts, and Dimensional Standards*. The Town Council held Conference Sessions on this draft article in 2021 and 2022, and the Planning Commission held work sessions on this topic. The agenda packet for January 30th presents an updated draft of Article 2, incorporating, to the best ability of staff, the comments that were provided by Councilmembers and Planning Commissioners.

On some topics, comments were not unified in intent and/or decisions were not reached. One of these key topics was maximum heights of buildings in certain zones. To be clear, there was very little question regarding height limits in areas zoned strictly for single-unit detached residential use. No Councilmember, Commissioner or member of the public has proposed changing the current maximum height limit of 35 feet for those portions of the town, which represents the vast majority of Vienna's land; and the draft of Article 2 reflects this standard remaining the same. However, there was some diversity of opinion expressed regarding heights in areas where commercial or light industrial development could occur.

This memorandum will provide some basic facts that, staff hopes, may frame the discussion, thereby permitting the Town Council to come to decisions that it views to be in the best interests of Vienna.

Staff's view is that the core decision is whether the Town Council wishes these corridors to be limited to two-story buildings or to be limited to three-story buildings. The option for four-story buildings was ruled out with the repeal with the Maple Avenue Commercial (MAC) zoning and its permitted heights.

Staff does not have a recommendation and is attempting to bring information in an objective fashion that will help the Town Council.

Building Heights in Current Code, Code Create draft and the repealed MAC

Current Code: At present, under the current code, the maximum height of any structure along Maple Avenue or Church Street is *three stories, but not to exceed 35 feet*. Section 18-164 permits certain features to be higher than the maximum limits. They include stair towers, elevator housings, tanks, parapet walls, steeples, flagpoles or similar structures; however, none of those features may include occupiable space. Along Church Street, municipal parking structures are permitted up to four levels above ground but not to exceed 50 feet as measured from the primary street facing the structure if developed under the Church Street Vision.

The CMP zone along Follin Lane SE and the CM zone along Mill Street NE and Dominion Road NE have maximum permitted heights of 45 feet. Accessory structures in the CMP may be of greater height with Council approval.

Draft of Code Create Article 2: The updated draft of Article 2 that you have received continues the previous draft's concept of a limit of *42 feet* for all zones associated with Maple Avenue and Church Street. An exception in the draft is in the Avenue Center District (AC), which would, in addition to 42 feet, permit rooftops uses. It states "42 ft. max. plus rooftop use area (not to exceed 12 ft. in height)" if the building is located within 300 feet from Maple Avenue, and not adjacent to residential single-unit detached neighborhoods. The property itself may be adjacent to residential, however the buildings that may use this overlay zone must be within the identified overlay zone on the property.

No change is proposed to the heights in the CMP zone, which the draft now calls the CP Corporate Park District. In the new draft M Mill District, which is currently the CM zone, the draft includes a limit to the height of buildings that are located immediately adjacent to single-unit residential. The proposal requires the building to "step down" from 45 feet to 38 feet for any portion of the building located within 30 feet of a residential district.

The Repealed MAC: As a comparison with the existing and draft new commercial areas, the Maple Avenue Commercial (MAC) zone regulations had the following key limits related to maximum building height:

- A. "The maximum height shall be the lesser of four stories or 54 feet...
- B. Functional or decorative elements on the highest level of a building may not result in a total height, including these elements, that is more than 115 percent of the permitted building height, nor exceed ten percent of the area of the building footprint.
- C. The minimum height of the first story of a principal building shall be 15 feet."

Building Size under the Current Code and Draft Code

Though the current code states that there is a maximum height in these commercial areas of *3 stories, but not to exceed 35 feet*, the combination of Vienna's various regulations and general modern building

requirements ensure that new buildings in these corridors will be no higher than two stories. Those factors are:

- Under Section 18-73 of the current code, ground floor uses may not be residential. They must be the commercial or recreational uses that almost always need 16 feet or higher on the ground floor, to take into account both ceiling heights and the need for piping and other infrastructure above the ceiling.
- Section 18-73 further states that residential apartments are only permitted “in a building which is principally occupied and used for other uses permitted in section 18-72.” This provision has been interpreted to mean that more than 50 percent of the space must be non-residential. As such, at least some of the second floor of any three-story building must be non-residential and therefore must accommodate non-residential ceiling heights. Offices or other commercial on the second floor is not likely to need 16 feet, but will need 12 feet, whereas residential uses may be able to be accommodated in under 11 feet.

The arithmetic of the minimum needs for a two-story and three-story building shows the following:

Two-Story Building

- Ground floor: 16 feet
- Second floor: 12 feet
- Total: 28 feet

Three-Story Building

- Ground floor: 16 feet
- Second floor: 12 feet
- Third floor: 11 feet
- Total: 39 feet

As a practical matter, many retailers would prefer slightly higher ceilings, sometimes as high as 18 feet (including systems above the ceiling), and upper floors of 11.5 or 12 feet provide more space for systems. As such, three story buildings would have more space with which to operate:

Three-Story Building with a bit more space, two options

Option A

- Ground floor: 17 feet
- Second floor: 12 feet
- Third floor: 11.5 feet
- Total: 40.5 feet

Option B

- Ground floor: 18 feet
- Second floor: 12 feet
- Third floor: 12 feet
- Total: 42 feet

Examples of Buildings at Various Heights

In searching for ways to better visualize the differences in building heights, staff searched for examples in Vienna. There are many examples of 35-foot non-residential buildings, though none with three stories. The most recent non-residential building of 35 feet is the new home of the Town's Police Department, which is shown here.

35 feet



Approximately 42 Feet

Staff can find no buildings in Vienna at 42 feet, which is the maximum height in the draft of Article 2, almost certainly because current regulations do not permit it and the MAC permitted more. The closest building to that height is not in the Maple Avenue or Church Street corridors, but along Mill Street. The CubeSmart building is 45 feet, but, visually from the street, the height is 48 feet including the parapet wall.

Staff shows this building because it is in Vienna, but staff does not believe that it is an accurate representation of the buildings that actually would potentially be constructed along Maple Avenue or Church Street. Such a use is not, and would not be, permitted.



Staff therefore, in this case, has looked beyond Vienna for examples. Here is a 3-story building that staff believes to be approximately 42 feet tall, in Austin, Texas. The neighborhood behind this building is single-unit residential.



Another example from Austin Texas is this three-story building presented below, in which a portion of the third story is open for rooftop activities. In the draft code, such activities could only occur in areas not adjacent to residences. The first image is a rendering prior to construction. The second image is a recent photo that shows it nearing completion of construction. As with the previous building shown, the back of the parcel is adjacent to a single-unit residential neighborhood.



Rendering

Actual Photo



54 feet – MAC

The last building shown is the Sunrise Assisted Living building, which is nearing completion in Vienna and is shown here from two different angles. These photos, which were taken in January 2023, serve two purposes. First, they show a building of 54 feet, in which the full height offered by the MAC zoning was used. Second, it allows one to imagine that same building without the fourth story. That imagined three-story building is what, potentially, a 42-foot limit would permit, which staff has attempted to show by digitally removing the top floor in the bottom photo.



4-story building



3-story building

Conclusion

Staff is prepared to assist the Town Council in any way in reaching your decisions regarding maximum height limits in the Town's commercial and mixed-use areas.