

Town of Vienna Zoning Code Review

Town Council: Setting of Public Hearing for July 10

June 5, 2017



Section 18-248

Protest Against Proposed Change



Current Code

Sec. 18-248. - Protest against proposed change.

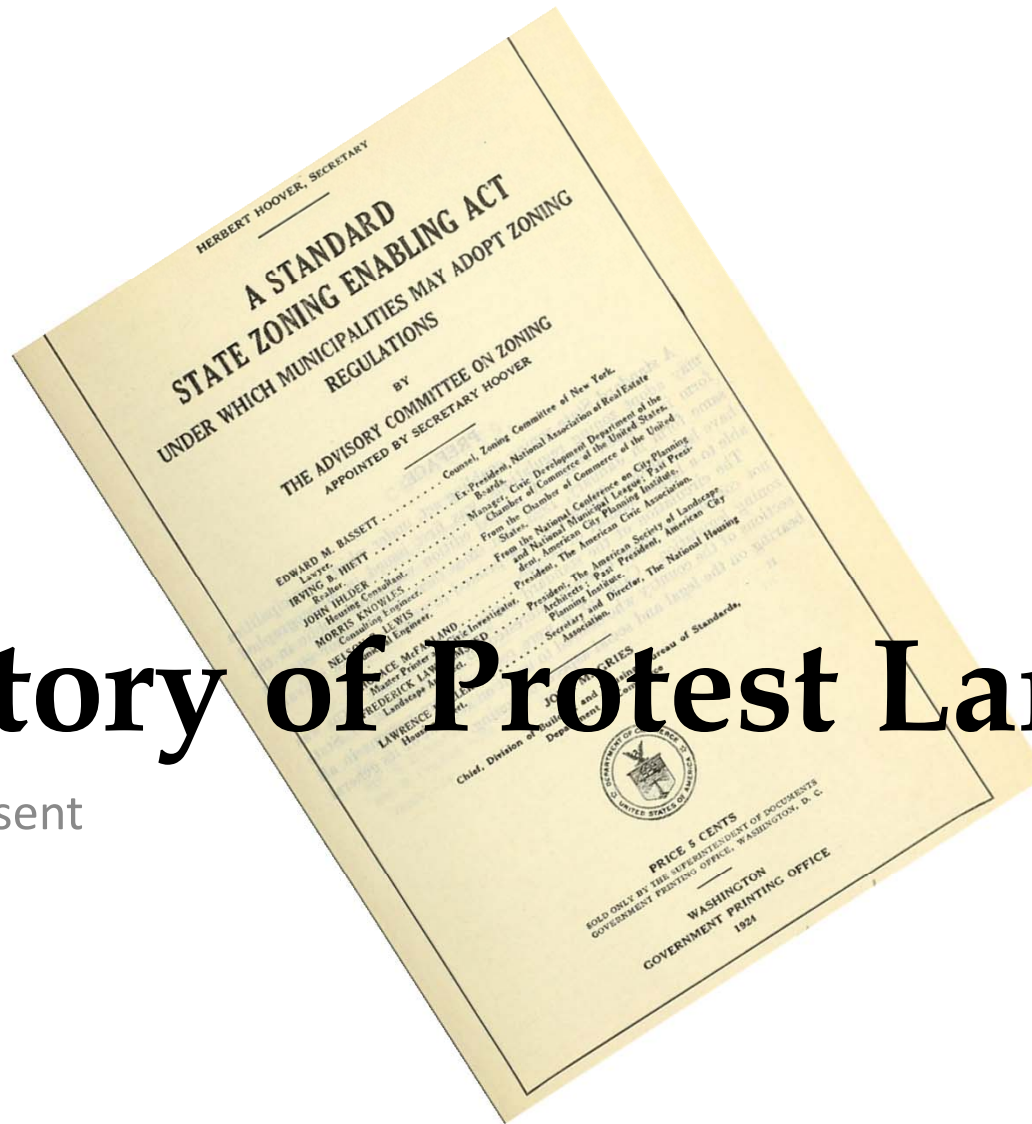
In case of a protest against any change of zone boundaries or rezoning of property signed by **20 percent**, or more, of **any one of the following groups**:

- (1) The owners of lots included within the area of the proposed change;
 - (2) The owners of lots abutting the area included in such proposed change; **or**
 - (3) The owners of lots directly opposite the area included in such proposed change, where such area abuts upon a street;
- such change shall not become effective except by the favorable vote of **six-sevenths** of all the Town Council.



History of Protest Language

1916 - Present



Origins

- Protest language first included in **New York City's 1916 zoning ordinance**, the **nation's first comprehensive zoning ordinance**
- Language was included in the Standard State Zoning Enabling Act of 1926
 - Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change, signed by the owners of **20 per cent** or more either of the area of the lots included in such proposed change, or of those **immediately adjacent** in the rear thereof extending ___ feet there from, or of those directly opposite thereto extending ___ feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of **three-fourths** of all the members of the legislative body of such municipality. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments.



Origins (Continued)

- The Standard State Zoning Enabling Act was model legislation for states and was created by the Department of Commerce
- Today, there are **approximately 21 states** that have the protest language in their state codes
- **Virginia is not one of the states with the protest language**, however there are 12 jurisdictions with language in their charters, as well as jurisdictions with it just in their zoning ordinances



Other Jurisdictions in NoVA

No Protest language in the Code

- Arlington County
- Fairfax County
- City of Fairfax
- City of Fredericksburg
- City of Manassas
- City of Manassas Park
- Spotsylvania County
- Stafford County
- Fauquier County
- Loudon County
- Prince William County
- Town of Herndon
- Town of Leesburg
- Town of Purcellville
- Town of Occoquan
- Town of Middleburg
- Town of Clifton
- Town of Dumfries
- Town of Quantico



Protest Language in Northern Virginia

- **Only two other jurisdictions** in Northern Virginia have protest language in their codes, **Falls Church and Alexandria**
- Both have it **in their charters**, which requires the General Assembly to amend the language
- **Vienna does not have it in its charter**, which makes it easier to change



City of Alexandria

CHAPTER 9 - Planning, Zoning, and Subdivision Control

Sec. 9.13 - Effect of protest by twenty per cent of the owners of property.

If a protest is filed with the city clerk against an application of motion to amend the boundaries of a zone or to amend the terms of an adopted conditional zoning proffer or zoning condition, signed by the **owners of twenty percent** or more **either** of the area of **land within the boundaries of such proposed change** **or** of the area of land **within 300 feet** of the boundaries of the land affected by such proposed change, the council shall not approve the application or motion, or adopt the ordinance making such amendment, by less than **three-fourths** affirmative votes of the members of council. Streets, alleys and lands dedicated to public use or lands owned by the city, Commonwealth, or federal government shall not be included in computing the abovementioned areas.

Any such protest shall be filed not later than 12 o'clock noon on the last working day before the day on which a public hearing on the application or motion is first conducted by the city council. Once any such protest has been filed no changes thereto by way of addition, substitution, amendment or withdrawal, may be made after said 12 o'clock noon deadline. (Acts 1960, ch. 8, § 1; Acts 1966, ch. 12, § 1; Acts 1966, ch. 83, § 1; Acts 1971, Ex. Sess., ch. 166, § 1; Acts 1974, ch. 595, § 1, Acts 1988, ch. 157; Acts 1990, ch. 652, § 1)



City of Alexandria

ARTICLE XI. - DEVELOPMENT APPROVALS AND PROCEDURES

DIVISION B. - DEVELOPMENT APPROVALS

11-808 - Protest of zoning map amendment by landowners.

- (A) *Who may protest.* A protest shall be signed by the **owners** of at least **20 percent** of:
- (1) The land **proposed to be rezoned** by the map amendment; **or**
 - (2) All land **within 300 feet of the boundaries** of the land proposed to be changed by the map amendment.
- (B) *Deadline for protest.* A protest must be filed with the city clerk no later than noon on the last working day before the day on which city council conducts its first public hearing on the proposed amendment.
- (C) *Calculation of ownership.* The director shall verify that those filing are legal property owners and that there are sufficient legal property owners signing to constitute the required 20 percent, subject to the following:
- (1) Streets, alleys and land dedicated to public use or owned by the city, state or federal government shall not be included in computing the areas of ownership required.
 - (2) If land included in the computation is owned by a condominium unit owners association then the square footage of the land shall be **divided evenly by the number of units** in the condominium unit owners association and each owner of a unit shall be entitled to sign for his or her allocated portion of the land.
- (D) *Effect of protest.* If a protest to a proposed map amendment is filed, the city council may not approve the proposed amendment except by an affirmative vote of **three-fourths** of its members.
- (E) *Limitations.*
- (1) Once a protest has been filed, no changes by way of addition, substitution, amendment or withdrawal may be made to the protest after the deadline provided for the filing of a protest in [section 11-808\(B\)](#).
 - (2) A protest against a less restrictive change is not effective against a more restrictive change but a new protest may be filed against the more restrictive change and this paragraph does not prevent the filing of a protest against both a less and more restrictive change.
 - (3) The provisions of this [section 11-808](#) shall not apply to city owned property or be effective in the case of a map amendment which is part of a comprehensive implementation of a new or substantially revised zoning ordinance.



City of Falls Church

CHAPTER 17. - PLANNING, ZONING AND SUBDIVISION CONTROL

Sec. 17.14. - Effect of protest by property owners.

If a protest is filed with the city clerk against such amendment, supplement or repeal, signed by the owners of **twenty percent** or more of the total area of the **lots included in such proposed change** **or** of the total area of the lots **outside of the proposed change, any part of which is within 150 feet of the boundary of such area**, the council shall not adopt the ordinance making such amendment, supplement or repeal, except by an affirmative vote of **not less than five members** of the council. Each signature to such protest shall be witnessed by a person whose affidavit to that effect is attached thereto. (1950, c. 323; 1954, c. 440)



Language Comparisons

	Town of Vienna (Original)	Town of Vienna (TC Proposed)	Alexandria	Falls Church	Town of Vienna (PC 3/22 discussion)
Validating Percentage	20	50	20	20	20
Group <i>(voting unit: lot or fraction of 1 vote for condo)</i>	1) within the area;	1) within the area;	1) proposed to be rezoned; or	1) included in proposed change or	1) proposed to be rezoned; or
	2) abutting; or	2) abutting; and	2) within 300 feet of the boundaries	2) within 150 feet of the boundaries	2) within 300 feet of the boundaries
	3) directly opposite	3) directly opposite			
Super Majority Threshold	6/7 (0.86)	2/3 (0.67)	3/4 (0.75)	5/7 (0.71)	3/4 (0.75)

Proposed Revision

Section 18-248



Protest Language in Vienna

- **Added in the 1956 Zoning Ordinance, but not in the Charter**

- In case of a protest against any such proposed change signed by the owners of Twenty (20) per centum or more either of the area of the lots included in such proposed change, or of those adjacent in the rear thereof, or of those directly opposite thereto, such amendment shall not become effective except by the favorable vote of **four-fifths (4/5)** of all the Town Council.

- **Amended in 1959**

- In case of a protest against any such amendment or change signed by twenty (20) per centum, or more, of any one of the following groups: (1) the owners of the lots included within the area of the proposed change, or, (2) the owners of lots abutting the area included in such proposed change, or, (3) the owners of lots directly opposite the area included in such proposed change, where such area abuts upon a street, then such amendment or change shall not become effective except by the favorable vote of **five-sixths (5/6)** of all the Town Council.



Sec. 18-248. - Protest against proposed change.

In case of a protest against any change of zone boundaries or rezoning of property signed by ~~20~~ 50 percent, or more, of ~~any one of the following groups:~~

- (1) The owners of lots included within the area of the proposed change;
- (2) The owners of lots abutting the area included in such proposed change; ~~or~~ and
- (3) The owners of lots directly opposite the area included in such proposed change, where such area abuts upon a street;

such change shall not become effective except by a favorable two-thirds vote of ~~six-sevenths of all~~ the Town Council quorum present.

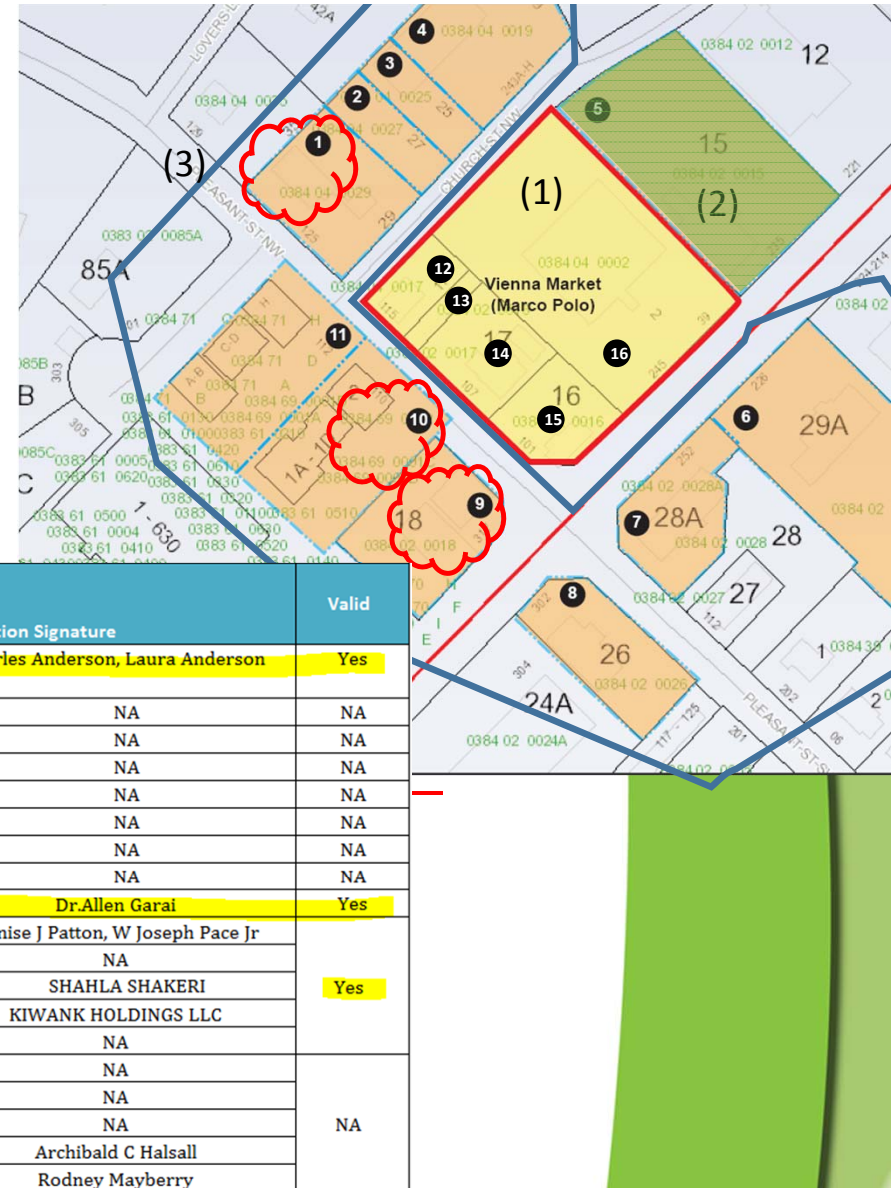
For purposes of this section, a protest petition must be submitted in writing and received by the Town Clerk no later than 12 o'clock noon on the working day on which a public hearing on the application or motion is first conducted by the town council. The owners of any lots submitting any such protest petition shall execute such protest petition under oath that they are the legal owner or authorized representative of any such lot owner. If the owner of any lot is a corporation or condominium, the petitioner shall submit the appropriate documentation demonstrating he/she is the authorized representative for the lot owner.

* note: $6/7 \times 7 = 5.99$ (min. 6 vote), $2/3 \times 7 = 4.66$ (min. 5 vote)



Current Ex: Vienna Market

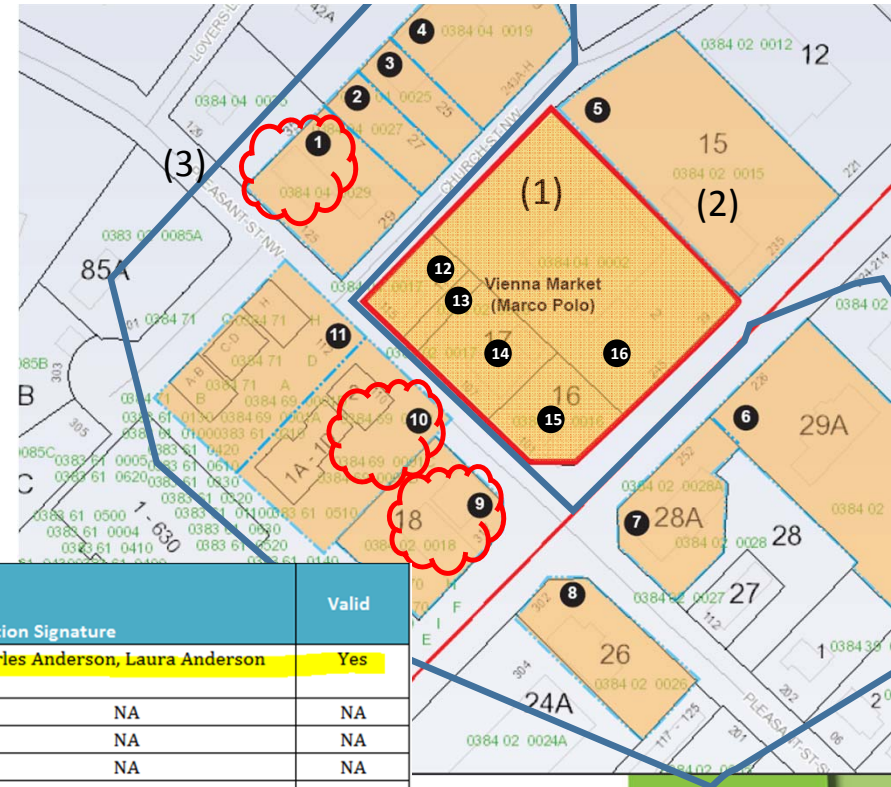
- Total 10 parcels *(excluding #5 as adjacent)*
- Min.20% of 10 parcels=2 parcels
- Meets the Min. *(3 valid w/ 2 req. min.)*



Parcel Index	Address	Map #	Owner/ Condo Owner	Lot Owner/Condominium	Business Licence Record	Petition Signature	Valid
1	125 Pleasant St, NW	0384 04 0029	ANDERSON CHARLES L, ANDERSON LAURA K		NA	Charles Anderson, Laura Anderson	Yes
2	243G Church St, NW	0384 04 0027	WINDOVER HEIGHTS ASSOCIATES		JOSEPH IANNAMICO	NA	NA
3	243G Church St, NW	0384 04 0025	WINDOVER HEIGHTS ASSOCIATES		JOSEPH IANNAMICO	NA	NA
4	243G Church St, NW	0384 04 0019	WINDOVER HEIGHTS ASSOCIATES		JOSEPH IANNAMICO	NA	NA
5	235 Maple Ave. W	0384 02 0015	FIRST NATIONAL BANK OF VIENNA		DON'T KNOW	NA	NA
6	226 Maple Ave. W	0384 02 0029A	226 MAPLE VENTURE LLC		Darren Bernstein	NA	NA
7	252 Maple Ave. W	0384 02 0028A	CHAHHEL 252 INC		CHARLES CHAHHEL	NA	NA
8	302 Maple Ave. W	0384 02 0026	VIENNA PROPERTY MANAGEMENT LLC		DALBIR BHULLER	NA	NA
9	317 Maple Ave. W	0384 02 0018	GARSAY 301 MAPLE LLC		Dr. Garai	Dr.Allen Garai	Yes
10	110 Pleasant St, NW	0384 69 0001A	PACE DENTAL LLC	Birch Condominium Association: Denise J Patton (President)	DR. JOSEPH PACE	Denise J Patton, W Joseph Pace Jr	Yes
		0384 69 0001B	ALPINE MANAGEMENT LLC		No record	NA	
		0384 69 0001C	SABCS INVESTMENT GROUP LLC		SHAHLA SHAKERI	SHAHLA SHAKERI	
		0384 69 0001D	KIWANK HOLDINGS LLC		ROGER SIMPSON	KIWANK HOLDINGS LLC	
11	112 Pleasant St, NW	0384 69 0002	K AND S OF VIRGINIA LLC	Poplar Office Condominium UOA: Rodney Mayberry (President)	STEPHEN SANDS	NA	NA
		0384 71 A	AVALYN REAL ESTATE LLC		LISA TEP	NA	
		0384 71 B	MOON SUE KYUNG		MOON SUE KYUNG	NA	
		0384 71 C	PLEASANT STREET LLC		DENNIS RICE	NA	
		0384 71 D	TANBRIDGE WAY LLC		BRIDGET HALSALL	Archibald C Halsall	
		0384 71 H	LEEDS CASTLE LLC		No Record	Rodney Mayberry	

Prop Ex: Vienna Market

- 5_(w/in area) + 1_(abutting) + 10_(directly opposite) = Total 16 Parcels
- Min. 50% of 16 parcels = 8 parcels
- Does not meet the Min. (4 valid w/ 8 req. min.)

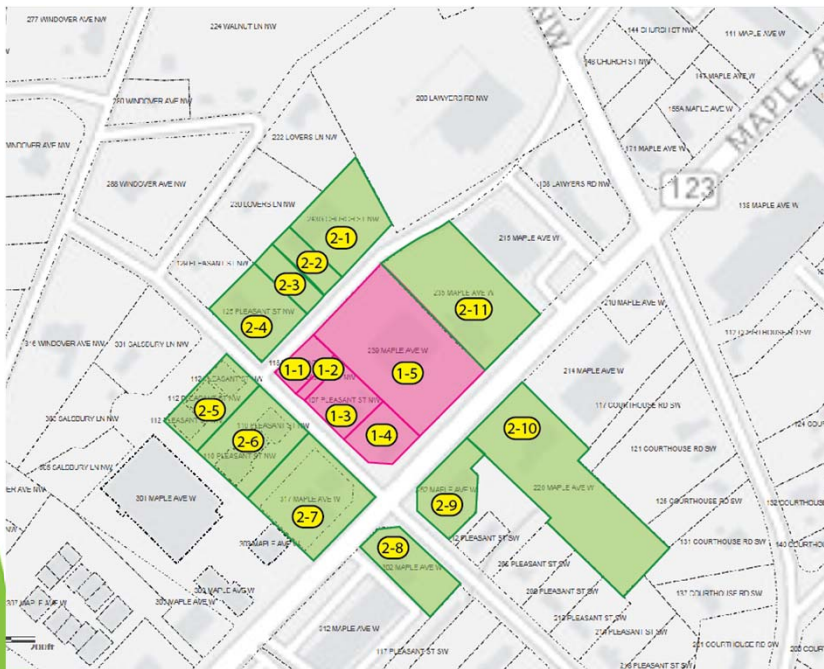


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2	243G Church St, NW	0384 04 0027	WINDOVER HEIGHTS ASSOCIATES		JOSEPH IANNAMICO	NA	NA
3	243G Church St, NW	0384 04 0025	WINDOVER HEIGHTS ASSOCIATES		JOSEPH IANNAMICO	NA	NA
4	243G Church St, NW	0384 04 0019	WINDOVER HEIGHTS ASSOCIATES		JOSEPH IANNAMICO	NA	NA
5	235 Maple Ave. W	0384 02 0015	FIRST NATIONAL BANK OF VIENNA		DON'T KNOW	NA	NA
6	226 Maple Ave. W	0384 02 0029A	226 MAPLE VENTURE LLC		Darren Bernstein	NA	NA
7	252 Maple Ave. W	0384 02 0028A	CHAHHEL 252 INC		CHARLES CHAHHEL	NA	NA
8	302 Maple Ave. W	0384 02 0026	VIENNA PROPERTY MANAGEMENT LLC		DALBIR BHULLER	NA	NA
9	317 Maple Ave. W	0384 02 0018	GARSAY 301 MAPLE LLC		Dr. Garai	Dr. Allen Garai	Yes
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		0384 69 0001B	ALPINE MANAGEMENT LLC		No record	NA	
		0384 69 0001C	SABCS INVESTMENT GROUP LLC		SHAHLA SHAKERI	SHAHLA SHAKERI	
		0384 69 0001D	KIWANK HOLDINGS LLC		ROGER SIMPSON	KIWANK HOLDINGS LLC	
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		0384 71 B	MOON SUE KYUNG		MOON SUE KYUNG	NA	
		0384 71 C	PLEASANT STREET LLC		DENNIS RICE	NA	
		0384 71 D	TANBRIDGE WAY LLC		BRIDGET HALSALL	Archibald C Halsall	
		0384 71 H	LEEDS CASTLE LLC		No Record	Rodney Mayberry	



Group	No. Parcel	Current Code (min. 20%) – Three Separate Categories	Proposed Draft (min. 50%)- Three Categories Combined
Group 1 (Rezoning Site)	1	1	8
	2		
	3		
	4		
	5		
Group 2 (Abutting)	1	0.2	
Group 3 (Directly Opposite)	1	2	
	2		
	3		
	4		
	5		
	6		
	7		
	8		
	9		
	10		
Total No. of Parcels	16		

2-Group Scenarios: Marco Polo Site



Group	No. Parcel	Propose 2-Group (min. 20%)	Propose 2-Group (min. 30%)	Propose 2-Group (min. 40%)	Propose 2-Group (min. 50%)
Group 1 (Inside)	1	1	1.5	2	2.5
	2				
	3				
	4				
	5				
Group 2 (Outside)	1	2.2	3.3	4.4	5.5
	2				
	3				
	4				
	5				
	6				
	7				
	8				
	9				
	10				
	11				
Total No. of Parcels	16				

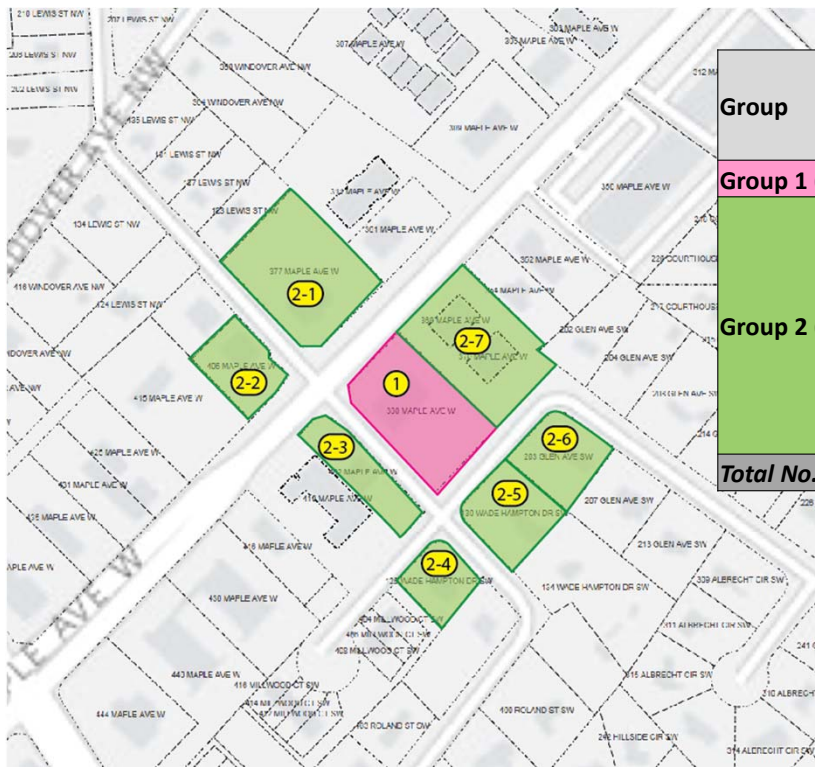
3&1-Group Scenarios: Site Example 1



Discussion Purpose Only

Group	No. Parcel	Current Code (min. 20%) Three Separate Categories	Proposed Draft (min. 50%) Three Categories Combined
Group 1 (Rezoning Site)	1	0.2	4
Group 2 (Abutting)	1	0.2	
Group 3 (Directly Opposite)	1	1.2	
	2		
	3		
	4		
	5		
6			
Total No. of Parcels	8		

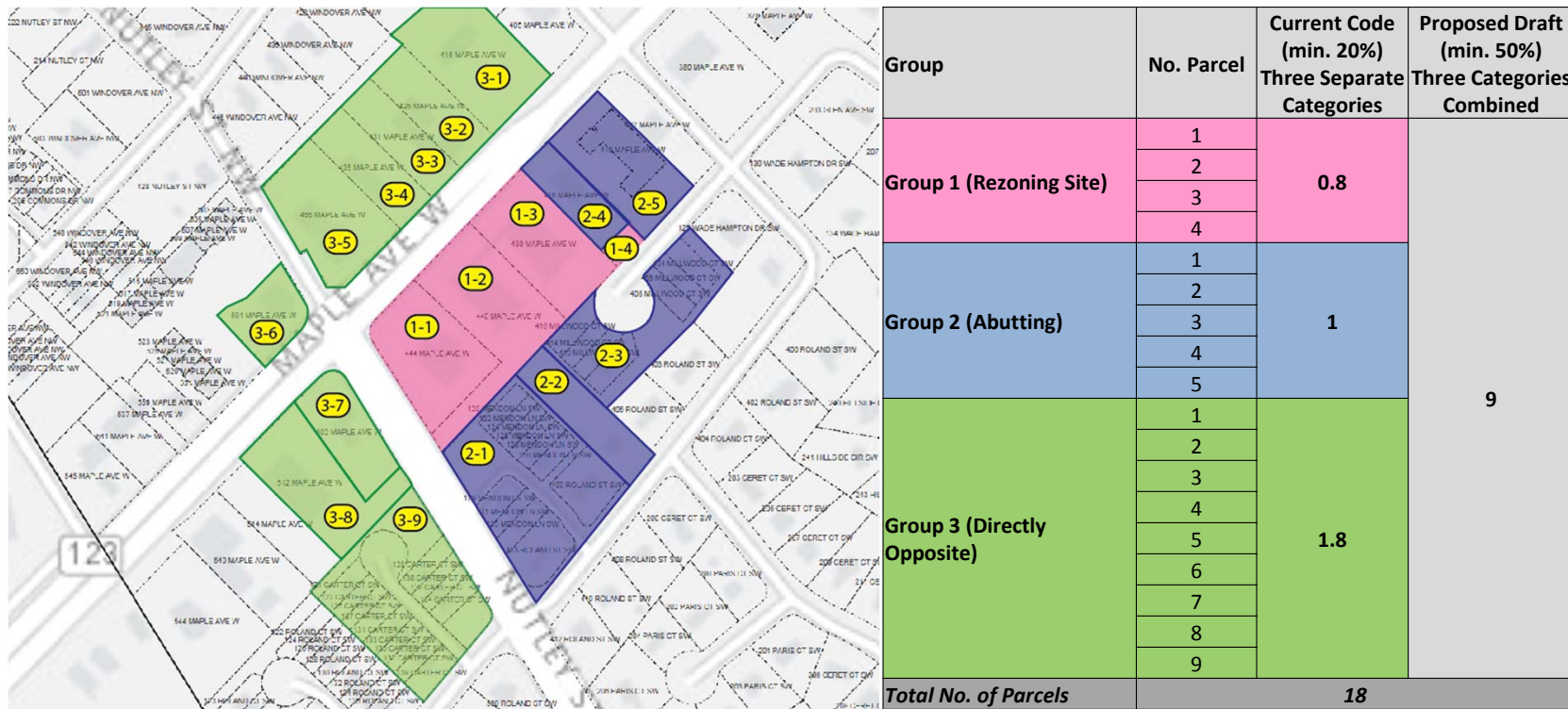
2-Group Scenarios: Site Example 1



Group	No. Parcel	Propose 2-Group (min. 20%)	Propose 2-Group (min. 30%)	Propose 2-Group (min. 40%)	Propose 2-Group (min. 50%)
Group 1 (Inside)	1	0.2	0.3	0.4	0.5
Group 2 (Outside)	1	1.4	2.1	2.8	3.5
	2				
	3				
	4				
	5				
	6				
	7				
Total No. of Parcels	8				

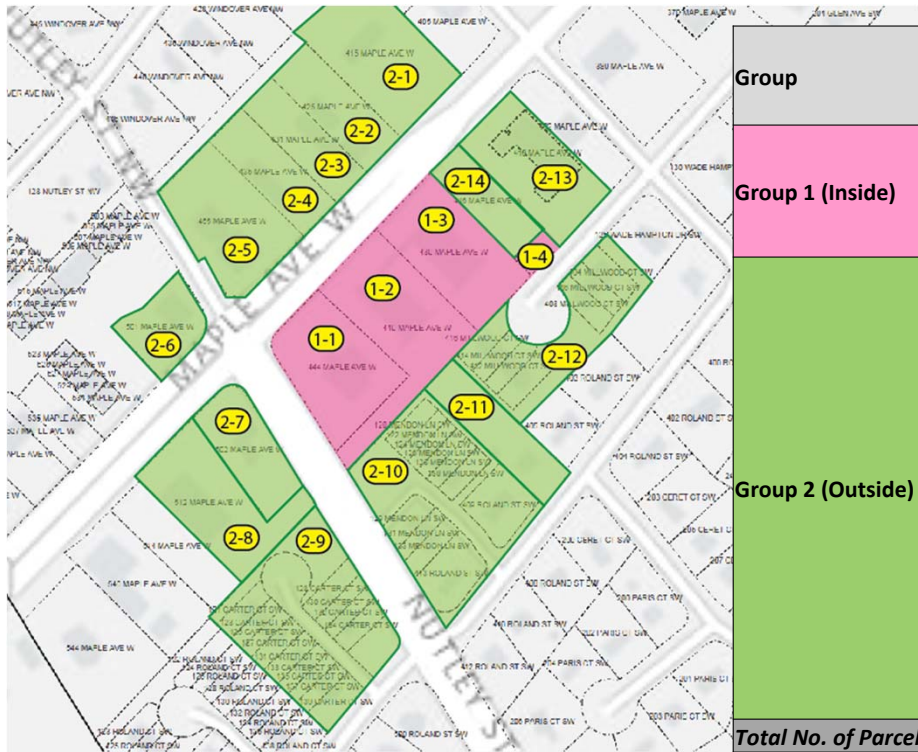
Discussion Purpose Only

3&1-Group Scenarios: Site Example 2



Discussion Purpose Only

2-Group Scenarios: Site Example 2



Group	No. Parcel	Propose 2-Group (min. 20%)	Propose 2-Group (min. 30%)	Propose 2-Group (min. 40%)	Propose 2-Group (min. 50%)
Group 1 (Inside)	1	0.8	1.2	1.6	2
	2				
	3				
	4				
Group 2 (Outside)	1	2.8	4.2	5.6	7
	2				
	3				
	4				
	5				
	6				
	7				
	8				
	9				
	10				
	11				
	12				
	13				
	14				
Total No. of Parcels	18				

Discussion Purpose Only

Planning Commission Recommended Language *-Final (5/10/2017)*

- **ARTICLE 24. - REZONING AND AMENDMENTS**

Sec. 18-248. - Protest against proposed change.

In case of a protest against any change of zone boundaries or rezoning of property signed by 20 35 percent, or more, of any one of either of the following groups:

- (1) The owners of lots included within the area of the proposed change; or,
- (2) The owners of lots abutting the area included in such proposed change and the owners of lots directly opposite the area included in such proposed change, where such area abuts upon a street;

Such change shall not become effective except by the favorable vote of ~~six-sevenths~~ two-thirds of ~~all~~ the Town Council quorum present.

For purposes of this section, a protest petition must be submitted in writing and received by the Town Clerk no later than 12 o'clock noon on the working day before the day of the first public hearing on the application or motion is first conducted by the town council. The owners of any lots submitting any such protest petition shall execute such protest petition under oath that they are the legal owner or authorized representative of any such lot owner. If the owner of any lot is not a natural person, the petitioner shall submit the appropriate documentation demonstrating the signatory is the authorized representative for the lot owner.

