

From: Michael Gelb, Chairman Planning Commission
To: Vienna Town Council
Date: April 3, 2018
Re: Planning Commission Action on Vienna Market Project

Overview

On March 28, at the conclusion of two days of public hearings, the Planning Commission (PC) voted 6 – 1 (with two absent) to recommend approval of MAC rezoning for the proposed Vienna Market Project.

The PC held public hearings on March 14 and 28. Seven members of the public shared their views and two individuals spoke at each hearing. Charles Anderson and Laura Anderson, the most immediate residential neighbors to the proposed project, raised a number of legal issues that they suggested should bar the project. They argued that the project should be treated as a subdivision under town code and said that it does not comply with the rules for a subdivision. They also argued that town code does not allow for construction of private roads as proposed at Vienna Market. The Andersons also suggested that rooftop dining on residential patios of the proposed development would require a CUP.

The Andersons previously opposed an earlier proposal by Mr. D’Alexander for this site in 2015-16 and filed a formal protest, which was instrumental in blocking that development. Possible concerns about the prior project’s legality were not prominent in the 2016 protest, which focused on neighborhood impact, especially traffic and parking.

At the request of the PC, Town Attorney Steve Briglia prepared a legal memo in which he rejected the Anderson’s arguments. He concluded that the proposed project meets all legal requirements for MAC rezoning under Town code. Mr. Briglia attended the March 28 meeting and provided an oral summary of his opinion. Mr. Briglia relied in part on precedent and referenced other locations where the town has allowed private roads. He noted that the proposed project was a consolidation of properties into a single parcel and not a subdivision. Mr. Briglia also rejected the notion that a CUP would be required of future residents who might wish to dine outside and/or grill on their rooftop patio.

A few other members of the public raised concerns (recap below), primarily about the commercial impact for their businesses. But unlike two years ago, no citizens other than the Andersons explicitly stated opposition to the project. The one other resident of the immediately affected neighborhood (Windover Heights) to speak said she supported the project.

Other Issues and PC Discussion

In its report to the PC and at the March 14 meeting, Town Planning Staff provided an overview and recommended approval of the project with some adjustments to better integrate a proposed plaza with the retail portion. Staff noted that project showed that one townhome would face on Maple Avenue, which violated a MAC ban on first floor residential space fronting on Maple Avenue. The applicant, Doug D’Alexander, orally agreed at the March 14 hearing to accommodate staff’s concerns.

PC members also provided Mr. D’Alexander with a number of suggestions, primarily architectural, to improve the project. There were notable concerns about the “fortress-like” look of the façade facing the Bank of America.

Among items flagged by Commission members:

- Parking in garage. Certain end spaces seem too tight, making it difficult for a driver to back out/leave the garage.
- Is there enough space for retrieval of trash from dumpster without impact on the structure? Applicant should demonstrate feasibility.
- Add design elements to the structures east wall (by Bank of America so it doesn’t appear so monolithic/ominous. Some PC members called it “fortress-like”
- Might applicant pledge to bar tractor trailers for deliveries to commercial occupants? Commissioners worry that tractor trailers could block Maple Avenue. The applicant said he was aware of the risk.
- Subsequent to the meetings, Commissioner Kenney noted that plans appear to show two parking spaces on the residential level are for commercial use. He asks how would a patron know the spaces are available? He further notes that this might direct some commercial traffic to Church Street, which was a concern in 2016.

At PC’s subsequent meeting on March 28, Mr. D’Alexander shared new renderings displaying adjustments to address staff’s concerns about the one Townhome facing Maple Avenue and bringing the project into full compliance with the MAC.

At the March 28 meeting, Commissioners asked Mr. D’Alexander whether the project might be further adjusted to eliminate one proposed townhouse and substitute additional commercial space. Mr. D’Alexander said such a change would be economically untenable. He said an increase in commercial space would require him to provide a significant amount of additional parking and that he would have to eliminate several townhouses in order to free land for the required parking. Mr. D’Alexander also was asked by one Commissioner to consider the possibility of additional green space to accommodate future residents and possibly reduce additional new demand on existing public park space in the Town.

Commissioner Cole, among others, said that while not perfect, the proposed project largely meets the goals of both the MAC and the Town Comprehensive plan, especially the use of mixed use development on Maple Avenue to add commercial space and expand residential options. Commissioners also have noted that the current proposal addresses many of the concerns raised by residential neighbors in Windover Heights in response to the failed 2016 proposal for this site.

Regarding the legal issues raised by the Andersons, Commissioners complimented the quality of the presentations (including the attached PowerPoint), but said that they would rely on the Town Attorney’s legal opinion that the project meets all requirements of the Town Code.

Note: Although Mr. Briglia’s memo to Town Council was a legally privileged communication, the PC Chairman decided after discussion with Mr. Briglia to waive the privilege and make copies available at the meeting in the interest of transparency. The Chairman noted this decision at the meeting. He added

that it should not be considered a binding precedent and that the PC reserved its full rights to enforce confidentiality of legally privileged materials in the future.

Public Testimony

The PC heard from seven members of the public as recapped below:

1 - Charles Anderson

At the March 14 meeting, Mr. Anderson presented a PowerPoint on what he called “Threshold Legal Questions.” He argued that the proposed development should be classified as a subdivision under both Vienna and state law and that the project’s internal roads must therefore meet the 50-foot width requirement for secondary and local streets. In an oral presentation on March 28, Mr. Anderson appeared to argue that private roads are not allowed under Town Code and that they are discouraged by the Comp Plan.

As a secondary matter, Mr. Anderson suggested that under certain conditions rooftop dining and cooking atop the proposed townhomes might require a conditional use permit.

2- Laura Anderson

Ms. Anderson joined her husband in addressing the PC at its March 28 meeting and also challenged the legality of the proposed project.

2 – Emilio Belloli

Speaking at the March 14 meeting on behalf of his father, owner of the neighboring Windover Heights commercial building on Church Street, Mr. Belloli raised two concerns:

- Disruption of traffic and access to his property during construction. Specifically Mr. Belloli asked if Church Street would remain one way during construction and suggested it be opened to two-way traffic.
- Parking. Mr. Belloli noted that he already has difficulty with postal employees illegally parking in his lot and expressed concern that visitors to the new residences would park in his lot and interfere with his tenants’ ability to conduct their business.

3) Rick Lucien of AJs Sports Stop

Mr. Lucien, at the March 14 meeting, expressed amazement that his business location would be torn down as a result of this project. He said he had moved to Vienna fairly recently to operate the business and was now concerned about its future and the welfare of his employees. He feared he would not be able to stay in business in Vienna once the current location is torn down. At the March 28 meeting, in response to a comment by Mr. D’Alexander, Mr. Lucien stated his belief that AJs and other small neighboring businesses that would be displaced by the Vienna Market are exactly the type of independent enterprises that create the culture of Vienna.

4) Patty Hanley

Ms. Hanley spoke in support of the project and said she was looking forward to walking to the retail opportunities that it presents.

5) Nancy Logan

Ms. Logan, a Vienna resident who relocated here from Los Angeles voiced general concern about excessive development changing the character of Vienna by converting it into an “edge city.” She doubted the MAC’s “walkability” goal and also suggested greater use of the Town newsletter to inform residents about proposed projects.

6) John Munyon

Mr. Munyon stated his concern that the Town might be on the hook for maintaining sewer and related water-related facilities to support the Vienna Market Development. However, Planning staff indicated that under terms of the proposed project, the developer and/or Condo association would be responsible and that the project would not create any additional burden or costs for the Town for sewer maintenance.

The Vote

The PC voted 6 – 1 to recommend that the Town Council approve the MAC rezoning request for the Vienna Market.

In Favor

Basnight
Cole
Couchman
McCullough
Gelb
Meren

Opposed

Baum

Absent

Kenney
Miller