



Town of Vienna

Meeting Minutes

Town Council Meeting

Charles A. Robinson Jr.
Town Hall
127 Center Street South
Vienna VA, 22180

Monday, October 21, 2019

8:00 PM

Charles A. Robinson, Jr. Town Hall, 127
Center Street, South

Regular Meeting

Invocation: Reverend Eric Song, Church of the Good Shepherd

Pledge of Allegiance to the Flag of the United States of America

1. Roll Call

Present: 7 - Council Member Linda Colbert, Council Member Pasha Majdi, Council Member Douglas Noble, Council Member Nisha Patel, Council Member Steve Potter, Council Member Howard J. Springsteen and Mayor Laurie DiRocco

2. Approval of the Minutes:

- A. [19-1469](#) Approval of the Joint Work Session Minutes of May 1, 2019, The Work Session Minutes of September 16, 2019 and the Regular Meeting Minutes of September 30, 2019.

It was moved to approve the Joint Work Session Minutes of May 1, 2019, the Work Session minutes of September 16, 2019 and the Regular Meeting Minutes of September 30, 2019 as submitted.

A motion was made by Council Member Noble, seconded by Council Member Colbert, that the Minutes be approved. The motion carried by the following vote:

Aye: 7 - Council Member Colbert, Council Member Majdi, Council Member Noble, Council Member Patel, Council Member Potter, Council Member Springsteen and Mayor DiRocco

3. Receipt of petitions and communications from the Public that are not on the Agenda. (Limited to 5 minutes per issue and no formal action can be taken this evening)

Gail Rubin 208 Wolscott, addressed the Council regarding a message received from Marion Serfass, Director of Finance for the Town of Vienna. The message stated that the water bill received prior to the installation of a new meter and the bill received following replacement were not "wildly different" noting that the first was 3,000 and the second dropped to 700. Ms. Rubin indicated that contact was made with Mr. Payton prior to the new meter installation which was followed by a message from the Mayor. This message noted that the Town Council had reviewed all the materials and determined that the Town had "treated her properly". Taking offense with the wording "properly", Ms. Rubin stressed that she feels she has been overbilled and poorly treated. Mayor DiRocco emphasized that correct procedure was followed, certain credits were applied and the final determination by Council will stand with no additional credit. Council Member Majdi suggested the possibility of an internal leak within the property. Ms. Rubin, however, disputed this idea given the dramatic usage drop following installation of a new meter. After

refusing to take her seat when asked by Mayor DiRocco, she requested a polling of the Council to determine who specifically believed she was right in her claim. Councilmember Springsteen felt the justification was sufficient and handled appropriately; Councilmember Patel, not having read the recent email was unable to comment further. At this point, Ms. Rubin stepped from the podium.

4. Reports/Presentations

A. 19-1478 Recognition of James Madison High School Band as State Champions

Mayor DiRocco and the Town Council recognized the accomplishments of the James Madison marching ensemble under the direction of Michael Hackbarth

A. Report and Inquiries of Council Members

Councilmember Colbert requested that Council consider the possibility of adding additional street lighting at the mini roundabout. Noting regular pedestrian use after dark, she pointed out the poor diver visibility when heading Southeast toward Cedar Lane

B. Report of the Town Manager

None

C. Report of the Mayor

Mayor DiRocco reported that the 73rd annual Vienna Halloween Parade will be held on Wednesday October 23 and urged everyone to come out and support the parade.

D. Proposals for Additional Items to the Agenda

It was moved to add consideration of the implementation of a consent agenda for streamlining Council meetings.

A motion was made by Council Member Pasha Majdi, seconded by Council Member Nisha Patel, that this was approved. The motion carried by the following vote:

Aye: 7 - Council Member Colbert, Council Member Majdi, Council Member Noble, Council Member Patel, Council Member Potter, Council Member Springsteen and Mayor DiRocco

E. Closed Session

It was moved that the members of the Vienna Town Council be poled to affirm that in the closed session convened this day Monday October 21st The Town Council met for discussion for consideration of personnel matters, specifically the interviewing of individuals for consideration of appointment and/or reappointment to Town Boards and Commissions.

It was further move that the certification resolution be adopted in accordance with state statute, and that the Town Clerk is authorized to execute the certification authorization.

It was further moved that the closed session be continued to later this date, Monday, October 21, 2019 at the conclusion of the regular council meeting, in accordance

with Virginia Code section 2.2-3711A.3 for discussion and consideration of the acquisition of real estate property for a public purpose.

*Motion Councilmember Colbert
Second Councilmember Springsteen
Carried unanimously*

It was moved that Lou Elizabeth Cousins be reappointed to the Vienna Public Art Commission for a two-year term, said term will be retroactively effective from September 30, 2019 through September 30, 21.

*Motion Councilmember Colbert
Second Councilmember Springsteen
Carried unanimously*

A motion was made by Council Member Linda Colbert, seconded by Council Member Howard J. Springsteen, that this item be approved. The motion carried by the following vote:

Aye: 7 - Council Member Colbert, Council Member Majdi, Council Member Noble, Council Member Patel, Council Member Potter, Council Member Springsteen and Mayor DiRocco

5. Public Hearings

A. [19-1458](#)

Public hearing on appeal of Board of Architectural Review's September 19, 2019 approval for Vienna Market located at 245 Maple Avenue West

Mayor DiRocco called the meeting to order at 8:30 p.m. The Town Clerk called the roll and all members of Council were present. Mayor DiRocco opened the hearing with a statement regarding the value of public input, noting that it is important to hear all voices and create an environment where citizens feel comfortable sharing their comments on the topic at hand. She urged quiet during presentations and thanked everyone in advance for their cooperation, respectful and courteous behavior. Citizens were asked to come forward, state their full name and address, and limit their time to three minutes. Each person was asked to speak only once. She introduced the appellant Charles and Laura Anderson, noting that Council each had a copy of the appeal and all supporting documents.

Mr. Charles Anderson of 125 Pleasant Street, NW. opened his summary by indicating that this appeal raised one issue, whether the rear design of the proposed townhomes at 245 Maple Avenue West are harmonious with the fronts. Noting that he is not filing the appeal to block or slow down the project, he, in fact, would like it completed as quickly as possible. He further stressed that he does not believe that Council should second guess the BAR on trivial matters or questions of taste, rather that such appeals should be limited to instances when the final approved design fails to meet one of the fundamental legislative directives that guide the BARs decision, stating that this is such an instance. Finally, he suggested that if the appeal is supported, then it is important to address why this happened and to require the developer to fix the shortcoming in the design. Pointing out that the BAR was tasked with cleaning up a situation where two vastly different designs were approved. They pushed the developer to make the final product as close to the original ornate and rich design as possible, focusing on the facades and sides of the building in an effort to move the plans closer to original. He indicated that this Public Hearing is his first opportunity to raise an issue and believes the developer

has already worked out the final design. He pointed out that if he had been allowed to speak at earlier work session all this may have been avoided and stresses that citizen input needs to be allowed at an earlier point in the process.

Referencing the Town Code Mr. Anderson observed that there are three applicable provisions, Chapter 4 Section 4-15(d) applies to all Maple Avenue buildings. The BAR shall consider if proposed free standing buildings use the same architecture for all sides exposed to public view; Mac provision Article 14-95.14.E.4 side and rear building facades visible from public streets shall have similar architectural treatment as on front façade; Article 14-95.14.G.1 facades of building visible from public street or single family detached dwelling shall have consistent material and similar architectural style. So the question remains, do the approved plans for the Vienna Market, located at 245 Maple Avenue West, meet these criteria?

While the front treatment is well conceived, the rear walls, as planned, are clad entirely in siding. The issue is whether the backs and sides are visible to the public. Mr. Anderson concedes that they are visible from Church Street, from the proposed park at Maple Avenue and Pleasant St., and from Market Square street. He takes exception with the notion that Market Square is a private street and therefore the Codes do not apply because both the Code and the Comp plan (A25) prohibit the creation of private streets in the Town of Vienna except for commercial buildings. He concluded his statement by noting that there are many options for the back of these structures and there is still time to make adjustments.

Mayor DiRocco thanked Mr. Anderson for his comments and brought forward Cindy Petkac, Director of Planning and Zoning for the Town of Vienna.

Ms. Petkac introduced Andrea West, department planner and staff liaison to the BAR and Paul Layer, Chairman, Board of Architecture Review. Mr. Layer serves per town charter as the requisite architect and has been on the BAR for almost 20 years. She continued by noting that Section 4-12 of the Town Code allows for filing of an appeal and that such an appeal must be filed within two weeks of the decision. She further stated that the Anderson appeal was filed October 1, 2019 falling within the two-week period. The BAR approved the majority of elevations for the Vienna Market during the August 15, 2019 meeting with exceptions including those under appeal (approved on September 19, 2019). She noted that Council has three choices, 1. Affirm the decision made by BAR, 2. Reverse the decision made by BAR, or 3. Modify the decision.

At the August 15, 2019 meeting the following items specific to 245 Maple Avenue West were approved: the four townhomes that face Church Street (the BAR asked the architect to revise the design to further enhance architectural feel of the units). They returned to the September 19, 2019 meeting and had complied by carrying the brick façade around the side; the BAR approved all the outstanding items including all architectural details on the four townhomes. Ms. Petkac provided background stating that the matter first came to the BAR in April and based on that submission the BAR held three work sessions prior to August 15, 2019 meeting.

Councilmember Springsteen queried whether public comments were solicited prior to any of these work sessions, and Ms. Petkac replied that they were not. He further questioned what process the public could use to express concerns, to which Ms. Petkac replied that the BAR encouraged the use of email.

Between August 15, 2019 and September 19, 2019, Ms. West indicated that the BAR

made several changes to improve the façade, including a brick wraparound to encompass the sides and the first garage of the rear. The brick material was also raised up to pedestrian eye level.

Nate Roberts with Northfield Construction and Development, noted that, as the developers they support the BAR and cooperatively worked through the process over a period of five to six months. When Mr. Anderson brought his concerns to the August 15, 2019 meeting, they weighed his opinions heavily but ultimately interpreted the Town Code to mean that materials need to be similar, but not necessarily the same. The Code refers to color and texture as architecturally harmonious and the use of similar architectural treatment though not necessarily exact materials. The last Code examined, 18-95.14.G.4, states that primary façade material should wrap around the corner to a logical point of conclusion. This was interpreted to imply that the front material was not intended to wrap all four sides. He further mentioned that several versions were rendered following the August 15, 2019 meeting in order to include wrapping the brick material to the garage.

Councilman Springsteen, in seeking clarification, observed that in the August 15, 2019 meeting, the BAR approved the renderings of all facades along the complex with the exception of the brick material of units 1, 13, 28 and 29. Notably Mr. Anderson is appealing the facades of all the units in their entirety however the decision made in the September 19, 2019 was related to the four units called out as an exception for prior approval in August. He would like someone to clarify what specifically the Council is looking at.

Town Attorney Steve Briglia addressed this issue noting that, as depicted in the elevations submitted at each meeting, there were changes made in response to input from the BAR. He stated that Councilmember Noble is correct in that the BAR order of August 15, 2019 approves a number of design and architecture features yet further states the following items are to be excluded from approval; lighting, landscape, etc. and brick on units 1, 13, 28 and 29. Mr. Anderson's concern regarding the way the brick on these units wrap around was not approved; his argument being that the brick material should extend across the back all the way down the private street.

Again seeking clarification Councilmember Noble questioned what was approved in the August 15, 2019 meeting and what was held back from approval, asking what piece is appealable. He pointed out that if Mr. Anderson is appealing the materials of the entire rear façade then he has not met the two-week timetable for filing an appeal.

Mr. Anderson confirmed that he is appealing the entire set of rear elevations for the reason that the rear elevations are approved as a whole, they are not devisable. In response Councilmember Noble suggested that the BAR made them specifically divisible as part of their decision. Again Mr. Anderson stressed that they were approved as a whole, noting that "it was hard for me to know what it would look like because the backs of the buildings were still open after the August 15, 2019 meeting" and it was unclear how the wraparound would work because there was not a rear elevation.

Responding to a request by Councilmember Majdi to read the approval of September 19, 2019, Mr. Robbins pointed out that full elevations were provided at the August 15, 2019 meeting. As they understood it was only the remaining four units under review at the September 15, 2019 meeting, only those elevations were provided. He confirmed that Mr. Anderson was correct in stating that the full elevation was not

provided in September 15, 2019 meeting.

Mr. Robbins, in response to Councilwoman Patel, indicated that the entire rear elevation was presented on August 15, 2019 and was entirely approved with the exception of the four units in question.

Ms. West read the motion of September 19, 2019 at a request by Councilmember Majdi

BAR approved the Vienna Market located at 245 Maple Avenue W. Councilmember Majdi inquired whether the bulleted points in in the motion address the point that Councilmember Noble raised earlier and that appeared in the August 15, 2019 minutes. Councilmember Noble added “or did the statement of continuing conditions that’s in the following section address that and if it addressed it in its entirety then we are back where Mr. Anderson started”?

Ms. West responded by stating that the BAR is approving the plans as they were presented, based upon when they make the motion, they mention the drawings as they are presented to them. The continuation of that element of the brick wrap around was not specifically mentioned but it was included in that plan set from that date.

Mr. Paul Layer, Chairman of the Board of Architectural Review began his remarks with a recap of the appeal, noting that it is based upon the claim that final architectural design, as approved by the BAR, violates various design regulations as related to the rear design of proposed townhouses along Vienna Market Lane. He further quoted the regulation from Chapter 4 of the Town Code: “for partially freestanding buildings the same or architecturally harmonious materials colors, textures, treatment, are applied to all portions of the walls exposed to the public view”. Additionally, he provided governing sections from the MAC: “side rear building facades that are visible from public streets must have a similar architectural treatment as the front façade” and also “Facades visible from a public street or from a single family detached dwelling have consistent materials and similar architectural style.” The BAR is charged with applying to all standards defined in these regulations. In reviewing the decision, he stressed that there was considerable discussion as to what compatible meant and the final determination was that compatible is interpreted to mean consistencies. Recognizing that interpretation of these words can be subjective he pointed out that the BAR concluded the regulations DO NOT require an applicant to apply uniform or identical design elements to all facades. There is nothing in the Code that indicates applicants are required to do this. During review, the BAR recognized the abrupt material change at the four end units visible from Church Street and suggested that the applicant better integrate transitions. At August 15, 2019 meeting a recommendation was made to extend the brick up to the first floor to better integrate the architecture of the four end units. At September 19, 2019 meeting the applicant presented revised drawings reflecting recommended integration as well as better coordinated colors. With these changes the BAR found that applicant met the threshold of the applicable design regulations. In summary, Mr. Layer stated that although the individuals appealing this approval may hold personal design preferences, the BAR vote reflects that the applicant met the code required design threshold. Mr. Layer respectfully requested that the BAR decision be upheld.

Councilmember Patel requested a visual of the final approved version, specific to the units that are all siding. To this Mr. Layer quoted from the Town Code 18.95.14-.9 materials section: “Primary façade materials shall wrap around the corner of a

logical point of conclusion such a window or change in façade” noting the word “primary” vs. “secondary”. He concluded that whoever wrote the Code must have decided that there are both and historically they are not always treated the same. The primary facades of this project are obviously brick while the secondary facades are Hardy Cement fiber board, the highest of high quality, exceeding most other materials. By way of example, Mr. Layer pointed to 120 Church Street. Sided with Hardy Cement fiber board, he commented that use of this material is a common way to turn a building corner and often serves to give variety and relief from an overly domineering brick façade. In this project, he notes, they met the requirements. “We must differentiate between preference and what is required by Code. Codes are designed to provide a set of parameters”.

Councilmember Noble asked Mr. Layer to characterize the conversation within the BAR of wrapping around or NOT wrapping around the floors above the second/third floor in terms of why the brick material was not extended around to next logical conclusion point. Again, Mr. Layer pointed out the break point of the balcony was logical. Due to the fact that the brick is basically a veneer, whether solid or bin brick, both are non-load supporting. Extending the brick beyond the second floor would be too risky as there is very little to support the brick above at that level. If it spans over something there must be a lintel used in some way. He further noted that studies have shown that people look at the environment through a 30% cone, which means that most people look at things at eyelevel. While the builders of this project could have used brick on the backs of the units, choosing to make use of the wrap did not violate the Code. There is no language in the Code that gives the BAR latitude to require full coverage of structure backs. Additionally, there is no precedent for denying the use of this material. Should the Town Council desire the exclusion of this material then it must to be stated somewhere, as with the MAC which states that vinyl siding is prohibited.

Expressing his concern, Councilmember Springsteen noted the lack of consistency with use of the two materials, to which Mr. Layer concluded that while he respectfully disagreed he needed feedback from the appellant on this issue. Mr. Anderson recognized the high quality of Hardy Cement fiber board, he stressed that the issue was not necessarily the quality as much as it was the consistency and harmony of the materials. Addressing the issue of the appeal timing, he stated that as long as a project is open any appeal would be premature and this project did not go through final approval until September 19, 2019.

Councilmember Springsteen concluded that what Mr. Anderson was seeking was brick treatment to the rear facades of all the units. By way of comparison Mr. Anderson urged the Council to review the rendering of the row paralleling Maple Avenue and the seamless way the materials blend the front and the back. As it stands approved now, one unit in each row will have a different back than the others.

Councilmember Potter observed that Mr. Anderson filed his appeal over concern regarding the lack of harmony for all exterior walls visible to public; the developers responded that the materials were not required to be the same; the Town referenced the Town Code, Section 4 Section 4-15 that mentions architecturally harmonious materials; and finally Mr. Layer, Chairman of the BAR, provides additional information on harmony and singularity in materials. Additionally, Mr. Anderson believes the entire back of the buildings are not made of harmonious materials and would like it to be the same as the front.

In response to this assessment, Mr. Anderson stressed he was not seeking use of the same materials front and back. He referenced the row that parallels Maple Avenue, noting that the front of all five units are 80% or more brick, and stated that while he agrees with Mr. Layer that in architecture there is often a natural stepdown to the backs of the building; the question to consider is whether it should be a complete change.

Councilmember Potter recalled that there had been contention regarding the back of the building at 444 Maple Avenue and changes were made.

Explaining that he is the Architect for both projects, Bill Foley, of Lessard Design spoke to this issue indicating that the units facing Maple Avenue are defined as live/work and, as such, are classified as commercial. The other side is the entrance for the Townhouse primary homeowner, which explains why additional brick is used and also why it is not present on the other Townhomes. As stated in the MAC, Section 18-95-.14.9, the material does not have to be same on all four sides.

Councilmember Majdi presented a procedural question, asking; does this appeal affect decisions that are governed by Chapter 4 and decisions that are governed by Chapter 18 or one or the other, and if the appeal is solely about decisions governed by Chapter 18 would that not be considered under the jurisdiction of the BZA rather than the BAR?

Reiterating that this project represents an approved MAC project, Ms. Petkac pointed out that there exists an approved concept plan for Vienna Market. In describing the process, she noted that when a project comes to the BAR the final design is reviewed to determine if it matches the concept plan approved by the Town Council. Second, the BAR applies the design standards of Chapter 4.

Councilmember Majdi questioned if there were an appeal on decisions made governed by the Code of Chapter 18, would the BZA rather than BAR be asked to consider the issue. By way of explanation, Ms. Petkac reminded the Council that Chapter 18 was written as a process for MAC rezoning. Regarding this project, the Town Council approved the rezoning from C1-A to MAC Maple Avenue Commercial Zone on May 7, 2018. Any appeal of a Town Council rezoning must be submitted within 30 days of that decision.

Attorney Briglia, in referencing the MAC ordinance, indicated that prior to any building permit issuance in the Town, an applicant must receive BAR approval for a commercial zone and for nonresidential uses, such as a school. Any appeal is made to the Town Council who can then affirm, reverse, or modify in whole or part, the BAR decision; the next stage appeal is to the circuit court. While this is set forth in Chapter 4; he stressed that if the Council is seeking guidance regarding architectural controls, direction is provided in the Town Charter. The Vienna Town Charter sets forth the general parameters that are included in Chapter 4 of the Town Code, but cannot exceed what's in the Charter. It sets out that the BAR reviews architectural approval in the commercial zones and other zones if not a residential use. Appeals to the BAR are directed to the Town Council; appeals from the Town Council are directed to the circuit court of Fairfax; that is the only process for reviewing architectural plans. He further noted that Vienna has unique BAR authority as most municipalities do not have a BAR unless it is in a historic district. Because the design concept had already been approved by Council, the Council can exempt designs and has done this in the past. Any commercial project would always go to the BAR; Chapter 4 requirements, which come from the Town Charter, must be

applied. If there's discrepancy between Chapter 4 and Chapter 18, Chapter 4 is applied because those criteria (4-15) come from the Town Charter.

Mayor DiRocco called for anyone present from the public who would like to speak.

Edna Trim 608 Tazewell Rd., NW stated that she was present at the August 15, 2019 meeting. It was her impression that the BAR intended to approve the whole plan. Noting that there was much discussion about wrapping the brick, she did not recall any discussion about law. She further noted that the contractors present were uncertain if they would be able to secure more of the red brick used on the front. Ultimately it was her impression that the overall plan with regard to the back was approved but was dependent upon the cost of wrapping the brick. The contractors present weren't sure if the developer would agree to pay more for full wrapping of the brick. Ms. Trim expressed support for the timing of the appeal by Mr. Anderson because she believed nothing was set in stone with regard to the backs of the buildings. She concluded her remarks expressing the hope that Council will listen to the desires of the Town citizens.

Jamie Lewis 413 Bowman St., SW addressed the Council by stating her concern over the changes to the design of the development over the five months between March 28, 2019 and August 15, 2019. Stressing that the first rendering was one that blended into the overall community, she commented that the citizenry studied the original drawings for over the five months prior to August 15, 2019 and when they expressed their pleasure, it was for the original renderings. She was present at the August 15, 2019 BAR meeting and recalls that members stated "this rendering is not what we approved". Consequently, what is under consideration now is not what was approved in March. She expressed her support for Mr. Anderson.

Sherry Dart 331 Lewis St., NW pointed out that the backs of the dwellings are viewable from Church St. and urged Council and the BAR to remember where this building will be, because it can be seen from all sides.

Elizabeth DiFransisco 434 Knoll St., NW voiced that this is not an isolated building. Three sides are visible; from Maple Avenue, from Church Street and from Pleasant Street. She further emphasized her dismay that the project plans indicate a beautiful façade on Maple Avenue, a decent looking façade on Pleasant St. and then a sudden drop off to a "cheap looking façade" in the back. She also pointed out that this location is just across the street from the Historic District. She concluded by observing that you have one chance to get this right.

Joe Dailey 412 Rowland St., SW set out two ideas for consideration; 1. If the original was proposed, then was sold and bought, why would the BAR approve something that is lesser in appearance; 2) If the BAR believes that the four end units must be changed to meet requirements, "as an engineer, I don't understand why all eight don't require change".

Resident – not identified - indicated mixed feelings about project because it is her belief that it will drive housing costs higher. She chose to speak because "the idea that we're even discussing whether Chuck Anderson has standing to bring this forward is very disturbing and despicable". She voiced concern that the citizenry have no real inclusion or means for public discussion. It is her belief that "we can barely speak and that's much of why this happened. We just want to be heard".

Mike Arhens 207 Glen Ave., SW by way of agreement with Mr. Anderson recommended a field trip to 225 Locust St., SE (a smaller version, but an appropriate representation of a harmonious wrap around) and the Metro Row development on

Rt. 29 near Nutley (high end materials at the entrance followed by a gradual drop off in quality). He pointed out that the appeal does not dispute that Hardy Cement siding is a high quality material just that it is not harmonious. He urges the Council to consider what happened at the Metro Row development and see what will happen in Vienna if this project is approved as it is currently presented.

Estelle Belisle 200 Ceret Ct., SW spoke in support of Mr. Anderson, stressing that he is reasonable in his appeal. She noted that he does not ask for the detail used in the front, just that there be consistency, and that there be more a sense of harmony.

As there were no further comments, Councilmember Noble inquired about the look of the backs in the original concept plan approved by Council, May 7, 2018 and how that would compare to what is being reviewed tonight. He noted that looking at the two end units one can see the interior façade on Market Lane, the materials wrap around and are differentiated on the interior unit in some manner.

Mr. Anderson pointed out that in reality there is no provision for MAC review of architectural standards stated specifically in the statute. There is a provision for review of Maple Avenue and when MACs are approved there is no requirement to provide complete two dimensional elevations of all sides. As a result, Article 4 applies. The wrap around referred to by Mr. Layer is covered in Article 14-95 in the MAC, but Mr. Anderson believes that this issue is really addressed in Article 4, Maple Avenue, which has very clear language about fronts, backs and public view. Article 14-95 of the MAC is for guidance only.

Expressing gratitude to the citizens who came forth to express concerns, Councilmember Patel observed that it requires a lot to care this much about their community.

A motion was made to close the public hearing.

Motion: Councilmember Springsteen

Second: Councilmember Majdi

The motion carried by the following vote: Aye: Council Member Colbert, Council Member Potter, Council Member Majdi, Council Member Noble, Council Member Patel, Council Member Springsteen and Mayor DiRocco

Councilmember Colbert addressed Mr. Layer questioning how the BAR determined what was visible from public view. In response, Mr. Layer indicated that the issue was very puzzling because it is the term public view is not defined. As a result, the BAR considered the turning of the corner and attempted to create a compatible transition from one side to the other. The concept of public view differs slightly in the MAC definition than in that of Chapter 4. Critically he noted that he has learned tonight that Chapter 4 takes precedent in appeals. As a result, public view is not quantifiable. He concludes that anything that moves beyond the plane of the street, which is public, into the private, would be considered out of public view. However, if viewing at an angle then it brings forth another dimension. The BAR considers what is harmonious from the perspective of the building itself and what is adjacent to it.

Councilmember Springsteen made a motion to modify the BAR decision of September 19, 2019, to approve the Vienna Market located at 239 Maple Avenue, W. to show brick in the back.

Mayor DiRocco requested greater clarification regarding the brick in the back, to which Councilmember Springsteen stated the entire back.

A revised motion was presented for consideration by Councilmember Majdi.

It was moved to reverse the decision of the BAR of September 19, 2019 to approve the Vienna Market located at 245 Maple Avenue W. It was further moved to remand the application to the BAR for reconsideration under Chapter 18 and Chapter 4 of the Town Code.

*Motion made by Councilmember Majdi
Second Councilmember Springsteen*

Mayor DiRocco requested input from Town Attorney Briglia regarding the feasibility of returning the decision to the BAR since the BAR has already made the decision. It was her understanding that the next step would be an appeal of the Council decision to the Fairfax Circuit Court.

Attorney Briglia noted that Council sits in the chairs of the BAR when there is an appeal. He stated that it is his legal opinion that unless there is consent by the applicant there is no authority to remand because it states in the Town Code Section 4-13 that the Council may affirm, reverse, or modify the decision of the BAR, in whole or in part. It is his belief that "in whole or in part" is where the modification of a plan would fall, so the Council has the authority to deny an application and have it return to you for final approval.

Responding to Mayor DiRocco's query as to whether the applicant would come back to Council at a later date, Attorney Briglia stated that the Council sits in the same seats as the BAR which denies in part regularly and then plans are later returned for consideration again by the BAR.

Councilmember Noble offered the idea that should Council choose to modify the decision, rather than approve the motion on the floor, they could modify it such that there would be a review and recommendation from the BAR back to the Council before there could be a final vote. He stressed that the Council must make certain that they are "undoing the thing that was approved relative to the rear of the building". He requested clarification of the action whether the Council can seek a review and recommendation from the BAR of what the modifications to the rear of the units might be.

Mr. Layer indicated that the project developer would like to propose a compromise. Attorney Briglia confirmed that the Code addresses this exact alternative. Mr. Foley proposed that they modify the design to wrap brick to the first floor of the entire building. Councilwoman Patel questioned if Mr. Foley was referring to the rear façade of all rows of Townhomes. Mr. Foley replied that he was referencing the two primary buildings.

In an attempt to clarify, Ms. Petkac indicated that this would be applied to the four rows of townhomes; the backs of the four rows.

Before making a decision, Councilwoman Patel requested a rendering depicting each row from each street. She further urged that this rendering go back to the BAR for greater consideration, in addition to allowing for citizen input.

Pointing out that according to Attorney Briglia, the renderings cannot go back to

the BAR, Mr. Layer suggested that a decision could be made here this evening and the revised version could be routed back to the BAR.

Councilmember Majdi raised a point of order noting that a motion has been made and seconded which included no reference to compromise or making an immediate architectural decision. He stressed that the Council must address the motion that is under discussion. He further noted that he was not ready to make an immediate architectural decision.

Councilmember Noble requested a rereading of the motion and asked Councilmember Majdi if he would amend the motion on the floor.

It was moved to reverse the decision of the BAR of September 19, 2019 to approve the Vienna Market located at 245 Maple Avenue W. It is further moved to remand the application to the BAR for reconsideration under Chapter 18 and Chapter 4 of the Town Code.

Councilmember Majdi noted that if Council receives consultation from the BAR prior to looking at this project again, then this action will provide the desired outcome while staying within the parameters recommended by the Town Attorney.

Councilmember Noble reiterated that the Council functions in the role of the BAR in this circumstance and that he remains concerned that the motion, as it reads now, may undo the entire September 19, 2019 approval. He further suggested that the disapproval be limited to only the rear facades of the four buildings.

Addressing the issue of a remand, Attorney Briglia cited rules stating that the decision before Counsel shall be final subject to Section 4-14; subject 4-14's appeal is to the circuit court. In his opinion the remand would not stay at appeal in circuit court. Someone could appeal the fact that Council reversed it or modified it. Modifying it is different. It's not a final decision until Council accepts the modification. The process is not a formal remand to the BAR but Council could ask the BAR for input and continue it to another meeting.

It was moved to modify the decision of the BAR made September 19, 2019 to approve the Vienna Market located at 245 Maple Avenue W. It was further moved to direct the BAR to consult with the Town Council before the Town Council's next meeting on this topic for reconsideration of the application under Chapter 18 and Chapter 4 of the Town Code.

Motion made by Councilmember Majdi

Second Councilmember Springsteen

Mayor DiRocco requested further clarification. Noting that the application is coming from the BAR; the appeal is of the BAR's decision; the application is now in the hands of the Council. She questioned whether that is appropriate or, as long as it's a consultation, should it be coming back to the Town Council. Attorney Briglia indicated that the applicant submits modifications to the Council and the Council meets with the BAR and works through the modifications (potentially in a work session) when it is then returned for final approval or disapproval by the Council.

Mr. Anderson expressed appreciation of the move toward compromise suggesting that the parties move one step further by extending the back treatment to all four rows. Mr. Foley replied that they have received approval to extend brick on all four sides up to first floor on all four rows. In response to Mayor DiRocco's question, Mr. Anderson stated that he is pleased and feels this is a good compromise.

Councilmember Noble offered an amendment to the motion on the floor: 1) include the August 15, 2019 meeting date because that was approval of the primary façade with exception of four end units; 2) add onto end of motion "specific to modifications to the rear facades of the townhomes facing Market Square."

Councilman Majdi expressed his discomfort in limiting the scope of the review at the next meeting. He was disinclined to prescribe what is discussed at the next meeting.

Mr. Layer stated that all three parties are now in agreement, and observed that the Council, as pointed out by Attorney Briglia, has it within their power to make that decision tonight. Mr. Foley has agreed that all four of the bottom sides will be brick, the applicant has also agreed, and as Chairman of the BAR he also agrees. Concluding that it is a perfect solution, Mr. Layer remarked that "it's a compromise and you could move forward with that motion tonight; the developers would prefer not to have to come back in a month".

Councilmember Majdi remarked that this reminded him of the discussion regarding of the MAC application for the Sunrise Assisted Living application. At that time, he urged the Council to table the discussion and hold another meeting. In the interim, if changes needed to be made that was the time. He holds the same philosophy here, noting that he does not believe it appropriate to "cut a deal right now", even if all three parties agree. Councilmember Majdi observed that "It's a different approach than some council members would like to take but that's why votes are taken. This is the motion that's been made and we'll see how it goes".

Following a rereading of the motion, Councilmember Noble proposed an unfriendly amendment limiting the motion to "specific to modifications of the rear facades of the townhomes facing Market Square."

Second Councilmember Springsteen

At the request of Mayor DiRocco the initial motion on the floor was read:

It was moved to modify the decision of the BAR made September 19, 2019 to approve the Vienna Market located at 245 Maple Avenue W. It was further moved to direct the BAR to consult with the Town Council before the Town Councils next meeting on this topic for reconsideration of the application under Chapter 18 and Chapter 4 of the Town Code.

Councilmember Majdi requested that the motion be reread as amended by the friendly amendment and then Councilmember Noble will offer an unfriendly amendment.

It was moved to modify the decision of the BAR made September 19, 2019 and August 15, 2019 to approve the Vienna Market located at 245 Maple Avenue W. It was further moved to direct the BAR to consult with the Town Council before the Town Councils next meeting on this topic, for reconsideration of the application under Chapter 18 and Chapter 4 of the Town Code.

Motion: Councilmember Majdi

Second: Councilmember Springsteen

Councilmember Noble offered an unfriendly amendment to the motion; to append after the period of the last motion to indicate "it is specific to modifying the rear facades of the four rows of townhomes parallel to Pleasant St. and the Bank of

America property facing Market Square.”

Following a call for discussion from Mayor DiRocco, Councilmember Potter requested clarification on the exact location of the Townhomes. In reply Councilmember Noble noted that the diamond on the elevation represents a viewpoint looking down the pedestrian alleyway and those facades facing the white space are already brick. He pointed out that it includes the facades of both sides of Market Square on the items parallel to Pleasant St. and the Bank of America that face the interior; those with the garage doors. Councilmember Patel questioned what exactly was happening with the brick in the rear. Noting the general confusion and lack of clarity surrounding the unfriendly amendment, Councilmember Majdi urged restraint on making any proposal regarding architecture. He pointed out that everything proposed in the unfriendly amendment can still be accomplished with the amendment as it's written. His preference would be to allow a level of latitude to Chairman Layer and the BAR, to make recommendations as they see fit, via consultation, to include everything that is included in the unfriendly amendment. He further stated that the original motion is about a question of law, not about a question of facts. “We are now entering into questions of facts and proposals to modify, the way that I made the motion was to apply Chapter 4 of the Town Code. That's important because the way that Chapter 18 is written it's not exactly precise and clear where and how Chapter 4 applies to MAC applications”. He emphasized his respect for the BAR decision stressing that he does not wish to step in to a decision making role with respect to architecture, “but I do think it is appropriate for the council to clarify whether or not Chapter 4 applies in the BAR reviews of MAC applications”. Critically, he notes, “that was the underlying purpose of the motion; I'm going to stick with that one and I think ultimately we will get the compromise because through the consultation process it will be recommended formally, in writing”.

Mayor DiRocco reiterated that she believed the appellate was very clear in what was wanted. They showed the back of Maple Avenue and said they were comfortable with the compromise made with the property owners who indicated that they would provide brick on all four of the buildings. The Chair of the BAR said they would be happy with it. “I personally think we should move forward now with that. I don't think it's unclear. I do appreciate the unfriendly amendment; I think that helps focus the motion. I think there is a lot of time and energy spent by the BAR so therefore in the effort of time and energy we should move forward on it now”.

Addressing Councilmember Majdi, Councilmember Patel voiced her concern regarding the wording of the motion, stating that without specific reference to changes, items could potentially be changed that may not be welcomed by the neighbors in the area.

Councilmember Majdi replied that, while he recognizes the legitimacy of Councilmember Patel's point, he believes it is similar, if not the same, as the point made by Councilmember Noble. He further expressed concern that “if we use that language now we may limit the scope in a way that prohibits the best outcome”. He preferred that it return to the BAR and allow the BAR to consult with the Town Counsel, believing that the BAR will amend it as the Council desires.

Referencing the compromise, Councilmember Colbert noted that it was a positive to see all three parties involved working together and that this should allow for the issue to move forward. The unfriendly amendment serves to cement the idea and there exists agreement among Mr. Layer, Mr. Anderson and the builders.

Councilmember Patel agreed, noting that it is in the best interest of the appellant to see this project done expeditiously. She then requested one last verification from Mr. Anderson that he is happy with this compromise.

Mr. Anderson indicated that the proposed concept to brick the backs of the four rows that parallel Church St. and Bank of America through the first floor and then side the second and third, is a good one and he supports that approach. He also stressed that he would support a motion that would spell out that concept subject to final approval "because we need to see the plans before we say yes", by the Town Council. He recommended that the Council consult with the BAR and then the BAR and the architect bring the renderings back for final approval. He urged a vote to approve.

Mayor DiRocco noted that there is a motion on the floor with an unfriendly amendment to that motion, with a second. The unfriendly amendment is on the original motion, which is to modify it.

Councilmember Majdi requested a restatement of the motion.

It was moved to modify the decision of the BAR made September 19, 2019 to approve the Vienna Market located at 245 Maple Avenue W. It was further moved to direct the BAR to consult with the Town Council before the Town Councils next meeting on this topic for reconsideration of the application under Chapter 18 and Chapter 4 of the Town Code.

An unfriendly amendment has been made and seconded:

-specific to modifying the rear facades of the four rows of townhomes parallel to Pleasant St. and the Bank of America property facing Market Square.

Councilmember Patel questioned whether a vote of nay on the unfriendly amendment would then allow the motion by Councilmember Majdi's to stand.

Mayor DiRocco called for a vote on the unfriendly amendment.

The motion carried by the following vote: Aye: Councilmember Colbert, Councilmember Noble, Council member Patel, Councilmember Potter, Council Member Springsteen and Mayor DiRocco

Nay - Councilmember Majdi

Mayor DiRocco stated that with the passing of the amendment it becomes part of the original motion stressing that she would like to see acceptance of the concept plan "as it has been described tonight".

Councilmember Majdi requested a point of information seeking clarity in the placement of the amendment in the motion to which Councilmember Noble the amendment should be placed at the end of the motion. Councilmember Majdi requested a reread of the entire motion and amendment.

It was moved to modify the decision of the BAR made September 19, 2019 and August 15, 2019 to approve the Vienna Market located at 245 Maple Avenue W. It was further moved to direct the BAR to consult with the Town Council before the Town Councils next meeting on this topic for reconsideration of the application under

Chapter 18 and Chapter 4 of the Town Code, specific to modifying the four rear facades of the townhomes parallel to Pleasant St. and the Bank of America property facing Market Square.

Motion: Councilmember Majdi

Second: Councilmember Noble

In answer to Councilmember Noble's clarification of the property name Ms. Petkac replied that the development is called Market Square.

Mayor DiRocco stated that the Council should move as quickly as possible; the applicant has presented his case and the Council is now aware of the changes that need to be made.

Councilmember Majdi remarked that the current motion implies that Chapter 4 applies in MAC applications and "that's a good thing".

The motion carried by the following vote: Aye: Councilmember Colbert, Councilmember Potter, Council member Majdi, Councilmember Noble, Councilmember Patel, Councilmember Springsteen and Mayor DiRocco

A motion was made by Council Member Majdi, seconded by Council Member Noble, that the Action Item be approved. The motion carried by the following vote:

Aye: 7 - Council Member Colbert, Council Member Majdi, Council Member Noble, Council Member Patel, Council Member Potter, Council Member Springsteen and Mayor DiRocco

6. Regular Business

A. [19-1384](#)

Request approval of vehicle purchases within the Vehicle Replacement Program for FY20

It was moved to approve the proposed expenditure of funds for replacing vehicles listed above within the VRP in the amount of \$590,010.39 from the account listed above.

A motion was made by Council Member Springsteen, seconded by Council Member Colbert, that the Action Item be approved. The motion carried by the following vote:

Aye: 7 - Council Member Colbert, Council Member Majdi, Council Member Noble, Council Member Patel, Council Member Potter, Council Member Springsteen and Mayor DiRocco

B. [19-1442](#)

Request spending for Echols Street SE Paving Project utilizing IFB 20-03

It was moved to approve funding for rebuilding the roadway and replacing curb, sidewalk, and gutter at Echols Street SE from Delano Drive to Follin Lane.

A motion was made by Council Member Springsteen, seconded by Council Member Noble, that the Action Item be approved. The motion carried by the following vote:

Aye: 7 - Council Member Colbert, Council Member Majdi, Council Member Noble, Council Member Patel, Council Member Potter, Council Member Springsteen and Mayor DiRocco

C. [19-1452](#)

Request additional funds for the Park Street NE sidewalk improvements

It was moved to approve \$28,922.56 in additional funds for the Park Street NE sidewalk improvements project.

A motion was made by Council Member Springsteen, seconded by Council Member Potter, that the Action Item be approved. The motion carried by the following vote:

Aye: 7 - Council Member Colbert, Council Member Majdi, Council Member Noble, Council Member Patel, Council Member Potter, Council Member Springsteen and Mayor DiRocco

D. [19-1453](#) Request approval for FY20 spending with Eastern Salt for de-icing salt

It was moved to approve FY20 spending in the amount of \$117,000 for de-icing salt from Eastern Salt.

A motion was made by Council Member Patel, seconded by Council Member Springsteen, that the Action Item be approved. The motion carried by the following vote:

Aye: 7 - Council Member Colbert, Council Member Majdi, Council Member Noble, Council Member Patel, Council Member Potter, Council Member Springsteen and Mayor DiRocco

E. [19-1457](#) Approval of 2020-36 Capital Improvement Plan (CIP)

It was moved to approve the Capital Improvement Plan through 2036 as presented this evening.

A motion was made by Council Member Springsteen, seconded by Council Member Colbert, that the Action Item be approved. The motion carried by the following vote:

Aye: 5 - Council Member Colbert, Council Member Noble, Council Member Potter, Council Member Springsteen and Mayor DiRocco

Nay: 2 - Council Member Majdi and Council Member Patel

19-1479 Request to look at Consent Agendas for future Council meetings

It was moved to direct the Town Manager, Town Attorney and the Town Clerk to consider applying a consent agenda for a portion of Town Council Meetings, to review practices by other municipalities in Northern VA, and to report back to Town Council.

A motion was made by Council Member Majdi, seconded by Council Member Colbert, that the item be approved. The motion carried by the following vote:

Aye: 7 - Council Member Colbert, Council Member Majdi, Council Member Noble, Council Member Patel, Council Member Potter, Council Member Springsteen and Mayor DiRocco

F. [19-1473](#) Second Closed Session

Council recessed into Closed Session at 11:17 p.m.

Mayor DiRocco called the regular meeting back to order at 11:45 p.m. The Clerk called the roll and all members of Council were present.

It was move that the members of the Vienna Town Council be polled to affirm that during the second Closed Session convened this date, Monday, October 21, 2019, the Town Council met for discussion or consideration of the acquisition of real property for a public purpose."

It was further move that the Certification Resolution be adopted in accordance with State Statutes, and that the Town Clerk is authorized to execute the Certification Resolution."

And it was further moved that the Closed Session be continued to Monday, November 4, 2019 at 7:00 p.m. in accordance with Virginia Code Section 2.2-3711.A.(1), for discussion or consideration of personnel matters, specifically the interviewing of individuals for consideration of appointment and/or re-appointment to Town Boards and Commissions.

A motion was made by Council Member Colbert, seconded by Council Member Noble, that the Action Item be approved. The motion carried by the following vote:

Aye: 7 - Council Member Colbert, Council Member Majdi, Council Member Noble, Council Member Patel, Council Member Potter, Council Member Springsteen and Mayor DiRocco

7. Meeting Adjournment

THE TOWN OF VIENNA IS COMMITTED TO FULL COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT STANDARDS. TRANSLATION SERVICES, ASSISTANCE OR ACCOMMODATION REQUESTS FROM PERSONS WITH DISABILITIES ARE TO BE REQUESTED NOT LESS THAN 3 WORKING DAYS BEFORE THE DAY OF THE EVENT. PLEASE CALL (703) 255-6304, OR 711 VIRGINIA RELAY SERVICE FOR THE HEARING IMPAIRED.

Signed / Dated: _____

Laurie A. DiRocco, Mayor

Attest:

Melanie J. Clark, CMC
Town Clerk