

From: Stephen Kenney, Chairman Planning Commission  
To: Vienna Town Council  
Meeting Date: May 13, 2020  
Re: MAC – Repeal vs Extending the Moratorium

### **Overview**

During our Planning Commission meeting of May 13, 2020 the commission had a lengthy discussion on the merits of recommending a suspension of the Maple Avenue Commercial (MAC) Zone vs. repealing the same ordinance.

There was little to no context for the suggested repeal of the MAC zone given to the PC other than the suggestion by the Director that doing so would allow for a ‘clean slate’ for the zoning rewrite. Several Planning Commission members felt the extension of the moratorium is more appropriate at this time but expressed frustration at the lack of progress to date. This group was concerned the PC is being left out of a decision-making process and that the MAC ordinance has been left for months without any significant discussions. Others felt it was time to move on and ‘start with a clean slate’ in regards to the zoning rewrite. This would allow the maximum flexibility in rewriting the ordinance, while also drawing on the context of the original regulation. As suggested above this issue has some passionate discussions in each direction as evidenced by the split vote for the repeal. As such the Chairman requested each member to state their opinion in writing (listed below) for the Town Council’s records and review.

### **PC Action and Concerns**

The PC did proceed with a vote on both options although several felt we should only proceed with one option over the other, with a mix of opinions as to which option is more favorable.

Commissioner Meren made a motion to extend the moratorium for the MAC zone until June 30, 2022.

Motion: Meren

2nd: Hays

Roll Call Vote: 8-1 (McCullough – Voted No)

Commissioner Gelb made a motion to repeal the MAC zone.

Motion: Gelb

2nd: Patariu

Roll Call Vote: 6-3 (Voting No – McCullough, Meren, Couchman)

### **Notes from Individual PC Commissioners**

The Chairman asked the individual commission members to express their preferences below as many may support either option but prefer one over the other. Below are their statements.

Michael Gelb

*I voted for both measures – repeal of the MAC and to extend its suspension, but my preference is for repeal. I support extending the moratorium only as a fallback if the Council does not repeal the MAC.*

*I support repeal because the MAC is a dead law and there is no reason to leave a dead law on the books. While I think the MAC could have been significantly improved with amendments that ship has sailed. I was an early supporter, but MAC has been a failure in practice – too complex, too ambiguous, and too divisive. We should wipe the slate clean while also taking all that we have learned from the experience and exploring a range of alternative strategies for encouraging beneficial development. For example, we might try rejigging current by-right zoning to reflect today’s marketplace or emulating the Falls Church Special Exception system. Perhaps, we could adapt the approach used for Church Street, which has worked well. Maybe, we can use a variant on the MAC concept but with clearer incentives, clearer requirements and strong public buy-in. There are many choices, but I am pretty certain nothing will be built again under the current MAC Code. We should move into the future with a code book that reflects that reality.*

Sharon Baum

*I prefer the repeal over the extension. The current document has so many issues, it is best to start afresh. Of course, we can draw on the MAC along with our experiences to create a better document.*

Mary McCullough

*As the record shows, I voted against the moratorium and the repeal. My vote against the moratorium was more a vote against the continuous delays in moving forward with review and revision to the town code. What you would call a protest vote. I knew my vote would have no impact on letting the town council know that the majority of the commissioners support the temporary suspension for two years. If I have to choose between the suspension or a repeal, I would without hesitation vote for the suspension. To repeal the MAC sends the wrong message. You don’t repeal to “start fresh.” You amend and revise what doesn’t work or what brings about unintended consequences. There are elements of the MAC that can bring about constructive and needed development, including diverse residential housing. We can’t become a town of \$1.5 million homes with a desolate commercial corridor. It won’t work. Too many people worked too hard, for too long to ensure the sustainability and viability of the town’s commercial corridor. Hopefully with the code revisions the town will receive input from diverse and representative town residents.*

Sarah Couchman

*Per your request, I am writing to you to explain my preference for suspending and not repealing the Maple Avenue (MAC) zone. Before I offer my explanation, however, I feel it important to express my confusion as to why Town Council would ask the Planning Commission to vote on these two conflicting proposals at the same meeting, particularly at a time when the Commission has largely been excluded from Council's discussions regarding the MAC and the zoning code update. We have been asked before to vote on the temporary suspension, and given that the last one is soon expiring, it makes sense that we would be asked to vote to recommend or not recommend approval of another suspension. But the vote to repeal the MAC was a complete surprise and one that I feel should have come with more context. I believe some of my fellow commissioners were also confused by the repeal vote, and we all would have benefited greatly from additional communication with Town Council regarding this agenda item.*

*During the Wednesday, May 13 meeting of the Planning Commission, I voted to recommend approval of an extension of the temporary suspension of the MAC, but in my mind, the more important vote was my recommendation not to repeal the MAC. As it is widely known, I have been a long-time supporter of the MAC, but I am not blind to the controversy and division it has caused in Vienna. I recognize that the MAC cannot be reinstated as it currently stands, so an extension of the suspension of some duration is necessary. I suppose the Planning Commission could have proposed another six-month extension or extension of some other period of time, but then we would have to repeat the process in another six months. By June 2022, however, the zoning update will be substantially, if not totally, complete, and the Town will have a zoning code that (hopefully) includes the vision and spirit of the MAC without the more controversial elements. To extend the suspension of the MAC until we have a zoning code that represents the interests of all residents makes sense. What does not make sense is ending the suspension because potential applicants, knowing their projects would have no chance of receiving approval, would not submit any applications.*

*Still, what makes even less sense is repealing the MAC. On Wednesday, I voted against recommending approval of the repeal of the MAC. While I appreciate the idea of going into the zoning update with a "clean slate" as several people put it on Wednesday, and while I understand that the consultants will still receive all of the MAC history and related documentation, I feel it is important that it remain part of the code and be treated with the same importance as the other articles in Chapter 18 of the code. I am open to the idea that the MAC as we know it may not survive the zoning code update. I understand that Article 13 may not be called the Maple Avenue Commercial Zone and that Article 13 may be eliminated completely. But I think the vast majority of town residents support the vision and spirit of the*

*MAC – a walkable, pedestrian-friendly streetscape, a public realm that fosters community, and main street that promotes economic vitality – and opposition is primarily aimed at the execution of that vision, not the vision itself. My concern is that by repealing the MAC, we send a message that this vision, in fact, is not as important to residents as other portions of the code, and while the consultants will know about the MAC, it will not receive the attention it deserves and needs. Although I have been told that the MAC will not receive any different treatment during the zoning update whether it an official part of the code or not, I can't help asking myself, if that is the case, why are we going to the trouble of repealing it in the first place? Why aren't we allowing it to be part of the update process in the same way that we are handling the other articles in our code?*

*Thank you for your time and the opportunity to share my thoughts.*

Julie Hays

*Thank you for the opportunity to provide context for why I voted in favor of the MAC suspension and its repeal.*

*The MAC's overall intent is good; the ordinance as currently written is flawed and should be replaced. The choice presented Wednesday night was false; we do not need to repeal right now in order to start anew. Repealing the MAC prematurely risks losing the vision and intent that our residents still care about. It is possible to develop a process that allows decision makers to begin with a clean slate, bring in new ideas and best practices that work elsewhere, and ensure our legal obligation to retain the good components of the MAC is met (preferably from the updated draft).*

*I am not convinced we have had the necessary conversations regarding the various scenarios that could take place if we repeal the MAC now (instead of suspending and repealing it at a later time). That said, if Council believes our only way forward is to repeal it now and can be assured the vision and positive elements from the MAC will be thoughtfully considered and incorporated, then let's repeal and move forward.*

*Over the last year, there have been zero joint work sessions with the Planning Commission to discuss this issue or the process for how to make progress. I urge Council members to utilize the support of its Planning Commission, which is a statutorily required advisory body responsible for assisting Town Council with promoting the orderly development of the Town of Vienna and planning for its future development.*

Drew Meren

*I voted to continue the suspension, although I didn't think it needed to be for two years, and against the repeal of the MAC for several reasons. While it is disappointing that delays continue to keep the town from moving forward on a comprehensive code rewrite, I recognize the need to continue the moratorium since the town is finally moving forward on the comprehensive review and rewrite and the pandemic that*

*is affecting our community. You opposed the vote on repealing the MAC because it seemed to come from nowhere and the town council provided no information to the commission on why this proposal has been brought to the commission's attention. Repealing the MAC code, just as the town is about to undertake a comprehensive review of the code is unwise and any consideration of this dramatic an action on the MAC should have only come before the commission following joint work sessions with the Town Council and possibly the Board of Architectural Review. There is no replacement to the MAC other than what codes prevented any development prior to the MAC approval. The town council should meet with the Planning Commission at least quarterly to talk about issues of interest to the town and/or residents and to discuss matters of interest to the planning commission and the town council. The Planning Commission should be considered an advisory body to TC. Thank you*

David Miller

*I will go with what Cindy (Petkac) tried to tell us. Get rid of the MAC so the consultants can start with a clean sheet.*

David Patariu

*I prefer scrapping the MAC, as is well known, but as I said during the meeting without also removing MAC language from the Comprehensive Plan, this is just a half measure.*

Stephen Kenney

*First, I fully support the intent of the original MAC. We were simply trying to find a means to encourage new pedestrian-oriented development along Maple Avenue, and to allow an alternate, or variety in housing type(s) within town via mixed use development. Those are worthwhile goals to me and considering the fact our town is comprised of 85-90% single family residential zoning by land mass I think it would be a major mistake to not allow any residential development along Maple Avenue. Mix-Use development does not detract from small town. The people make a town small town, not the size or density of the buildings. We have one primary commercial district and it is exactly one block deep. We can do better than our current 1960s zoning.*

*I voted in favor of both measures but I feel more strongly towards extending the MAC moratorium at this time. We can always decide to repeal it down the road if and when that seems to make sense. To me we really never explored all options of reworking the original MAC to see if there was enough common ground to justify repealing the ordinance in its entirety. It could well lead to that in the end but I never got the impression we completed our exploration of the document to see what changes were feasible and see if some simple fixes could gain a majority approval. I've heard over and over again that people opposed to the current MAC projects are not opposed to development. They are just opposed the 'that development.' I've no idea what they thought they were getting in the original MAC that never materialized. That is the missing link in my opinion.*

*With the above in mind I can see the merits of starting with a clean slate, with the caveat that the information we have gleaned from our current MAC be included as background information for the*

*consultant to use as we move forward with the zoning rewrite. The information should include all the workshops, surveys, research and feedback we received from the original MAC regulation. Moving forward I do think we need to include more concrete flexibility within the approval process to deny a project if the majority feels it is not suitable or appropriate for the town, not that I feel we have necessarily run into that to date. In that sense the Falls Church model may be more suitable for our needs.*