



Town of Vienna

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Meeting Minutes Planning Commission

Wednesday, June 28, 2017

8:00 PM

COUNCIL CHAMBERS-VIENNA TOWN
HALL

Regular Meeting - Legistar Use Begins

The Planning Commission met in regular session on Wednesday, June 28, 2017, at 8:00 p.m. in the Council Chambers of the Vienna Town Hall, 127 Center Street South, Vienna, Virginia. Walter I. Basnight, Chairman, presiding and the following members present: Laurie Cole, David Miller, Mary McCullough, Sarah Couchman, Michael Gelb, Sharon Baum, and Andrew Meren. Stephen Kenney was absent. Also in attendance and representing Town Staff were Patrick Mulhern, Director for the Department of Planning & Zoning, Hyojung Garland, Deputy Director for the Department of Planning & Zoning, and Emily Goodman, Board Clerk.

Roll Call

Ms. Goodman called roll; Stephen Kenney is absent.

Communication from Citizens and/or Commissioners

Ms. Cole informed the Commission that she would not be present at the first August meeting.

Ms. Baum wished to enact a moment of silence to honor Lenny Shultz, recently deceased, a great coach and mentor to many in Vienna.

Regular Business

1. Conditional Use Permit for Family Day Home Care located at 715 Marshall Rd SW

Ms. Garland said the property is diagonally opposite Marshall Road Elementary School and showed pictures of the site. Marshall Road is prohibited for street parking and Delilah Drive has a time restriction of no parking between 10 AM and 2 PM. Per the Zoning Code a child day care center must offer off street parking but staff has determined that is geared more towards commercial sites. Home day cares must meet the parking requirement but are allowed to count street parking. The parking required for the dwelling is three spaces and seven for the daycare for a total of ten required spaces. The driveway can accommodate four spaces which leaves six on-street parking spaces required. No parking is allowed on Marshall Road which leaves Delilah Drive. The applicant has submitted a letter of support from the adjoining neighbors confirming they are in support of the daycare customers parking on the street. There is approximately 240 linear feet which can accommodate 11 cars which meets the parking requirement.

Ms. Cole asked the applicant if she lives at the property and Ms. Lamichhane said

she does. Ms. Cole asked how she proposes to handle parking and parents pulling in and out of the driveway with the added traffic of drop-off at the elementary school. Ms. Lamichhane responded that her mother has been running a daycare with seven children for years. They have a staggered schedule and have never had issues. The parking restriction between the hours of 10 AM and 2 PM has never been a problem. Her mother tells parents to be careful because cars drive fast down the road. They have never had an issue with cars parking in their driveway because of the staggered schedule.

Ms. Cole asked if the kids come through the front door and Ms. Lamichhane answered that they come through a different gate.

Ms. Baum asked if the children will stay in the basement during nap and eating times and Ms. Lamichhane said yes; they only go outside to play. Ms. Baum asked how many adults are present with the seven children and Ms. Lamichhane said her mother and an assistant. With 12 children, there will be her mother, the assistant, and herself. Ms. Baum asked what the ratio is from infant to adult and Ms. Lamichhane said there is a point system; each child is worth a certain number of points based on their age. The more points, the more adults you need. Infants are worth more points than older children.

Mr. Meren said he used to live on Kingsley Road and is familiar with the stream in the back. He asked if the yard is fenced and Ms. Lamichhane said yes.

Mr. Gelb said the Commission received letters from two neighbors saying they were ok with the parents parking on the street but there are other neighbors. He asked if they have been contacted.

Ms. Garland answered that there is a sign up and letters went out to the adjoining neighbors.

Ms. Lamichhane said two neighbors came by today to ask if she planned to buy additional properties and expand. She told them no and they were fine with that.

Mr. Gelb asked if staff has received any complaints and Ms. Garland answered no.

Ms. McCullough asked if her mother currently was running the daycare in her home and Ms. Lamichhane explained that it is her parents' home and she lives there too. Her mother has decided that she wants to retire so she has decided to take over the business.

Ms. McCullough said she lives on Ware Street and walks to the metro. She has never noticed an issue with cars. She asked when the daycare started and Ms. Lamichhane said April of this year. Prior to that they live in Maryland.

Ms. Cole questioned how staff measured the linear distance for the parking spaces. It looks like the space across the driveways and all the way up Delilah Drive was measured. There is no parking for a significant distance on Delilah Drive. She questioned if staff visited the site. Ms. Garland responded that the measurements were taken by aerial photo. This was a rough estimate. The total linear footage needed for six cars is approximately 132 feet.

Ms. Cole said it looks like the driveway was expanded by bricks. She asked if that was done when the applicant's parents bought the house and Ms. Lamichhane said it was already there when they bought the house. It makes it easier to turn around

to get out into the street.

Ms. Cole wondered if there would be a lot coverage problem. She asked staff to look at the lot coverage.

Mr. Mulhern said the previous director allowed people to install five foot walkways long their driveways so it could be that it is not an issue for that reason.

Ms. McCullough said she has concerns about parking. When she walked the site there was a car parked illegally at the corner of Marshall Rd and Delilah Dr at 7:15 AM. Parents will want to park as close as they can in order to get their kids in and out as safe as possible. There was recently a child hit on Marshall Rd after they scooted out between two parked cars. Marshall Road is a huge walking community and this property is right at a primary crossing. She is concerned.

Ms. Couchman said parking seems to be the primary concern. She thinks they can work with the applicant to make sure reasonable accommodations are being made. She would hate to see the applicant lose out on business because of parking.

David Miller asked if they could recommend less than 12 and Mr. Mulhern answered that they could.

Ms. Baum said the Commission should ask the applicant to stagger drop off and pickup during times when Marshall Road Elementary School is not doing their drop off and pick up.

Chairman Basnight asked the applicant if she currently staggers drop off and pick up and Ms. Lamichhane said right now she has no issue with the School. Right now most parents drop off before school starts and all of them pick up after school lets out. Chairman Basnight asked if she has any agreement with the parents and Ms. Lamichhane said there is no formal agreement but the parents naturally try to avoid the traffic. Chairman Basnight said the Commission might recommend that she does not have parents arrive during certain key times and Ms. Baum added unless they arrive by foot.

Ms. Couchman said she would argue that they are being unreasonably restrictive. Parents are not going to want to sign up for a daycare when they can't drop their kids off during morning rush hour. She lives around the corner from a daycare directly across from Louise Archer Elementary School and they make it work. She has never noticed an issue. The street is busy in the morning but somehow it still works. She takes issue with the Commission belaboring the parking so much.

Mr. Gelb asked what impact it would have if the Commission restricted the number of children from 12 to 10 and Ms. Lamichhane answered that she would really like twelve. This is her passion and she has a waiting list of parents. She would do 10 if that is all she could get but she would really like twelve.

Mr. Miller said Ms. Lamichhane does not have a lock track record with seven children so it might be better to increase the number slowly and see who it goes. A lot of people are traveling Marshall Road in the morning going to work and they aren't necessarily thinking to look for children like people on Nutley Street would be.

Mr. Meren said he has used home daycares for the last four years and both were one busy streets; one was on Cedar Lane and the other on Cottage Street. One of them had a smaller driveway than Ms. Lamichhane. Anyone who drives on Marshall Road knows there are children in the area. He has seen the house several times and thinks it is a great location. It meets all the Town specifications.

Ms. Cole said they are talking about increasing from 7-12 children, which is a potential for five more families. Being concerned about parking is not frivolous; it is a safety issue, especially in a location where people already suffer from the proximity to the school and metro. Having safe and convenient parking is important to the Town. She has concerns with the location and how much traffic there is. She believes in the applicant's enthusiasm and is trying to think of the least restrictive conditions to impose on timing. Chairman Basnight suggested having staggered arrivals and departures put into the recommendation.

Mr. Miller said this daycare has been in place since April and hasn't operated in the winter when it is dark in the morning. They haven't had a chance to see if it is really safe. Conditions are much different in December when it is dark in the morning and evening. He doesn't think they have had long enough to assess how safe the situation truly is.

Ms. McCullough said she wants to support the business. Marshall Road will soon be going down to one lane for an undetermined amount of time for road construction. The business is still new. Cars back up on Marshall Road all the time. Neighbors have expressed difficulty even getting out of their driveways.

Ms. Couchman asked Ms. Lamichhane how many of her current seven families reside in Town and Ms. Lamichhane answered that they all do. Ms. Couchman asked about the families on the wait list and Ms. Lamichhane said one is in Tysons but the others are in Vienna.

Mr. Gelb asked what time the children arrive and Ms. Lamichhane said most come between 7:45 AM and 8:00 AM.

Mr. Gelb asked what time Marshall Road Elementary School starts and Ms. Cole answered 9:15 AM and ends at 4:15 PM.

Chairman Basnight said they could offer the CUP for one year and then revisit.

Ms. Couchman said she would rather offer the CUP for one year than impose time restrictions.

Mr. Miller said the concern is that time restrictions and even signs don't do much to persuade people not to park. Something written into a CUP is not going to have much enforcement power. People will deliver their kids whenever they need to deliver their kids. That is why he thinks less children is a better option.

Mr. Meren said he is in favor of leaving the number at 12 and limiting it to one year.

Mr. Gelb said he came with the intention of supporting the 12 children and is still willing to do so but there have been really good points made about safety and traffic. The applicant indicated she could make it work with 10 and could come back and ask for 12 after a year so that may be their best option.

Ms. Couchman said the applicant intends to hire a second employee. Having less children could affect her break-even point. At some point it is not feasible to hire a second employee with less children.

Ms. Lamichhane responded that she would have to do some readjusting but she would want the additional employee either way. It will definitely affect her profit though.

Mr. Miller said it is not the Planning Commission's problem to determine business feasibility. He would feel differently if the business had two years of operation and kids coming and going in the dark. He likes the idea of a timeline they can revisit and he also likes the idea of keeping it less than twelve.

Ms. Lamichhane asked if they have made other home daycares going from 7 to 12 do a trial run with less children and Mr. Miller said no but they have all been established businesses.

Ms. Couchman said she thinks it is reasonable to consider impact of the Planning Commission's recommendation on the applicant. She asked where the applicant's families are living so the rest of the Commission can remember that finding childcare is a nightmare and if they can offer Vienna families another option then it is a wonderful thing.

Mr. Gelb made a motion to recommend approval to the Board of Zoning Appeals for approval of a conditional use permit for a Family Day Home at 715 Marshall Road SW and in the RS-16, Single Family Residential zone for a period of one year and with a maximum of ten children.

Mr. Miller seconded the motion.

Motion: Gelb

Second: Miller

Passed: 6-2

Nay: Cole, Couchman

Absent: Kenney

2. Conditional use permit for live entertainment at Whole Foods located at 143 Maple Avenue East

Ms. Hyojung said this is a conditional use permit request for live entertainment at Whole Foods which is across the street from the Town Green and surrounded by commercial buildings. They would like to utilize their outdoor seating area and staff recommends to keep the hours flexible. There was an inquiry about compliance with the 1996 CUP for outdoor seating, staff is in communications with the Town Attorney and further investigation is necessary.

Chairman Basnight asked if they were not able to find the historical information and Ms. Garland said they were not able to find the drawing but staff is continuing to look. It is important to remember that this is a totally separate request.

Ms. Cole said the applicant is requesting specific; she asked for clarification on why staff is recommending no limitation on hours. Ms. Garland responded that it is the Planning Commission's decision. The Code Enforcement officer has asked that it be left open because it often becomes an enforcement nightmare latter down the road.

Mr. Gelb said it is typical that when they approve a CUP a time limit is imposed.

Ms. Garland said the Commission is probably thinking of Bey Lounge but Bey Lounge is surrounded by residential properties. Bey Lounge is a bar and this is a

grocery store. It is far removed from residential areas and across from the Town Green. The Comprehensive Plan encourages street activity and staff feels this is adding to that goal.

Mr. Miller said the Town imposes limits on its own events at the Town Green.

Mr. Mulhern said the park closes at dark. A better solution might be to make a broad time frame such as no later than the current hours of the grocery store. Ms. Couchman agreed and said the store closes at 9:00 PM.

Mr. Gelb said the issue of seats should not be a problem because he has attended events at Whole Foods before and more people are standing than sitting.

Ms. Cole said seating is important because it relates to parking. The store has changed recently and increased its consume-on-site operation.

Chairman Basnight said it can often be difficult to find a parking spot even without the live entertainment.

Ms. Couchman said it is adjacent to the W&OD trail.

Ms. Baum said it is not just a grocery store; they have on premise alcohol sales. Another concern is light pollution and crowd control.

Mr. Mulhern said the CUP for outdoor seating prohibits alcohol outdoor.

Ms. Garland said she understands that demand is different than requirements but per the approved site plan they have 30 parking spaces in addition to what they are required and they are allowed 120 seats per their parking.

Ms. Cole said she believes there is a sign on the patio prohibiting alcohol but there is service on the patio.

Mr. Meren said he has been to outdoor music events at Whole Foods and asked why they are asking for a CUP now. Mr. Mulhern responded that they are correcting the matter; Whole Foods never had a CUP for live entertainment.

Candice Child of Whole Foods came forward to represent the application.

Mr. Meren asked Ms. Child to confirm the store hours on Saturdays. Ms. Child said the store is open until 9:30. They are not interested in having live entertainment passed 9:00 PM.

Mr. Gelb asked when they intend to start. The website says July 1st. Ms. Child answered that their intention was to start in June and they started in June. They were not aware they needed a permit.

Mr. Meren asked if they have had any issues with live entertainment and Ms. Child said not that she is aware of. They try to stay away from issues.

Mr. Miller said he is grappling with the future when there is the potential for loud rock concerts at 11:00 PM and there is nothing in the CUP to prohibit it.

Ms. McCullough said on the website it says there is live entertainment on Saturdays

from 6:00 PM – 9:00 PM on the patio. She has been to events at Whole Foods and they are great but they need to take hours into account and should also consider the potential impact on events taking place at the Town Green.

Ms. Child agreed and said they have taken that into consideration. They don't wish to compete with the Town.

Ms. McCullough asked if they have reached out to the Town to determine the schedule of events and Ms. Child said they look at the city event calendar.

Ms. Baum said some of the artists they have listed are four piece bands and Ms. Child answered that usually only two members perform.

Ms. Couchman said she feels like the Commission is looking for problems. If there is a Code compliance issue than it will be up to the Town to go after it. There is no need to dig for skeletons.

Mr. Gelb said it is the Commission's responsibility to fashion a CUP that will provide reasonable options for the store and a reasonable certainty for the Town. It doesn't seem like Whole Foods is able to provide real answers to their questions.

Mr. Meren asked what the hours are that are being requested and Ms. Child said they generally do the live entertainment from 6:00 PM – 9:00 PM. Staff recommended keeping the hours open so they wouldn't have to come back. Mr. Meren asked if 5:30 PM – 9:30 PM would be acceptable and Ms. Child said they would not go past 9:00 PM but those hours would work.

Ms. McCullough said she would recommend stopping the hours at 9:00 PM. The store closes at 9:30 PM and they need time to get people out. She is disappointed that Whole Foods is operating live music without an approved CUP. The Town needs businesses to understand there are rules and regulations that need to be followed and they need to get that message out.

Mr. Miller said they haven't considered decibel levels.

Mr. Basnight asked what the Town's regulations say about decibel levels and Ms. Cole said the Town doesn't use decibel levels as a standard. Rather than trying to specify something like that, it is better to let the Town enforce any noise ordinance issues. She proposes they go ahead and approve the CUP with the following provisions, Saturday, 5:30 PM – 9:00 PM, June 1st through September 30th, and confined to the patio area. They need to make sure Whole Foods comes into compliance with their existing CUP when it comes to serving alcohol on the patio. They want to send a message to the business community that they are fair when it comes to enforcement.

Ms. Baum said, with the Maple Avenue Commercial district, residential units will be allowed over businesses; five to ten years from now, there could be residential units on or near the Whole Foods lot. People near Bey Lounge can hear the music in their yards. The Commission also needs to consider light pollution.

Ms. Garland said, in terms of hours, staff was thinking it is fine to cap the hours on the late end but not necessarily on the early end. It may be that years from now they want to do music on noon on Saturdays.

Mr. Basnight said the applicant made it clear that they want the live entertainment in the evenings. Ms. Garland responded that as is evident with the 1986 order, these things can go on for 20 years and circumstances change.

Mr. Miller said it looks like on the 1996 order the Board imposed a one year restriction. Mr. Mulhern explained that the first time he read the order he thought the same thing but if you read closer you can see they asked for a one-year report. Additional discussion followed.

Mr. Mulhern suggested that motion language could be conditioned to include that no supplemental performance lighting spillage is limited off site, doesn't conflict with town green events, outdoor entertainment from 5:30 pm to 9 pm, Saturdays, June 1st to September 30th be confined to patio area with a possible time limit of 1 year, 2 years, or 5 years. Chairman Basnight stated that it wouldn't be a hardship to update every year. Ms. Child agreed noting that the store will not want to pay \$1,000 every year. Additional discussion followed.

Ms. Cole moved to recommend approval for live entertainment subject to the following conditions; live entertainment scheduled for Saturday evenings from 5:30 pm to 9 pm inside or outside of store. If outside that it be confined to the patio area. Performances may occur from June 1 to September 30, any outdoor supplemental performance lighting designed to prevent spillage of lighting off the site.

Ms. Cole noted that this does not include a time limit or conflicting with events.

Ms. McCullough seconds the motion.

Ms. Couchman asked that the motion language include revisiting the CUP in 5 years.

Ms. Baum seconded the amended language.

Mr. Gelb said that 5 years is a long time but prefer it to be shorter. Mr. Miller said that he is comfortable with 5 years given new construction will take up to 4 years to finish.

Ms. Cole agreed that a longer 5-year time frame is appropriate. Staff will be aware of its limitations and will be able to address anything extremely promptly.

Mr. Miller said that it would also be beneficial if staff reported on the existing CUP language for when it is reviewed by the Board of Zoning Appeals.

Chairman Basnight called for a vote on the amendment.

Motion to amend: Couchman

Second: Baum

Amend: 6-0

Absent: Kenney

Approval of the Minutes:

None

Planning Director Comments

Mr. Mulhern said looking ahead staff expects to move forward with review of Town Code amendments. Town Council held a work session prioritizing ordinance amendments. They recognized that the Town Code is out of date needing many sections updated. He said, in particular local commercial zone regulations, specifically restaurants. Mr. Mulhern expects amendments forwarded to the Planning Commission at the July 10 2017 Town Council meeting. Staff also expects the July 10, 2017 meeting to include consideration for an alternative layout for the Mashie Subdivision. The applicant intends to re-engineer the project, which will be sent to the Planning Commission for review and comment. That is expected for review on the August 9, 2017 agenda so that it can be reviewed by Town Council at their August 21, 2017 meeting. Mr. Mulhern said that there are currently no meetings scheduled for August 23, 2017. Only a possible work session.

Mr. Gelb asked if there are any possible projects on Maple Avenue to discuss. Mr. Mulhern answered that Town Council has held several work sessions including a townhouse condominium project near Navy Federal Credit Union. JDA Custom Homes is proposing a mixed-use redevelopment project for his office building located on Maple Avenue West. Additionally, Doug D'Alexandar intends to bring back his proposal for the Marco Polo site. That will be a presentation item at an upcoming Town Council meeting.

Meeting Adjournment

There being no further discussion, the meeting adjourned at 9:56 pm.

Respectfully submitted,

Emily Goodman

Clerk to the Commission

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