



# Town of Vienna

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Vienna, Virginia 22180  
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## Meeting Minutes Planning Commission

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Wednesday, January 24, 2018

8:00 PM

COUNCIL CHAMBERS-VIENNA TOWN  
HALL

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### Regular Meeting

#### Roll Call

*Commissioners Miller and Meren are absent.*

#### Communication from Citizens and/or Commissioners

*None*

#### Public Hearings

*None*

#### Regular Business

1. Request for recommendation in support of a Conditional Use Permit (CUP) for live entertainment and outdoor seating at Whole Foods, located at 143 Maple Avenue East.

*Town Planner Michael D'Orazio provided a staff report to the Commission, stating that there are currently two conditional use permits active on the property. One is for outdoor seating and one is for live entertainment. Outdoor seating was approved in 1996 with live entertainment approved in 2017. The applicant would like to combine these two use permits; extending their live entertainment to year round, increasing the allowable number of seats on the outdoor patio area, and to serve alcohol outdoors.*

*Chairman Gelb asked if those are changes from their current use permit on file. Mr. D'Orazio agreed, stating that the 1996 order for approval includes a provision barring alcohol on the patio area. Commissioner Cole complimented Mr. D'Orazio on the staff report, stating that it was an outstanding report that thoroughly covered the situation and issues presented. She asked if someone was present to represent the application. Chairman Gelb called the applicant forward to speak.*

*Kyle Mincey, AIA, with MV+A Architects stepped forward to speak. Mr. Mincey stated that he is present on behalf of the application. He noted that the store manager is also present to speak on behalf of the application. The application is a request to amend and change their current conditional use permit to increase the number of seats outside as well as to increase the amount of time that they can offer live music. This would occur both outside and inside the store.*

*Chairman Gelb asked for proposed changes from what is currently allowed. Mr. Mincey stated that that 1996 conditional use permit includes a restriction on the*

*number of tables and seats allowed at the outdoor seating area. Based upon the amount of available parking they would like to maximize the number of seats that are outside.*

*Commissioner Cole asked how they intend to enforce the one hundred-twenty (120) seat limit since they will be moving them back and forth from outside to inside dependent upon conditions. Mr. Mincey stated that they are open to suggestions. Mr. D'Orazio stated that this has been a topic of staff discussion as well. Staff is currently considering requiring conditional use permits to be displayed on site similar to certificates of occupancy. Commissioner Cole agreed that would be helpful, stating that there are so many conditional use permits that are in place and with personnel changes things can get lost. She stated that it is important to not exceed seating allowance. Mr. D'Orazio suggested that they consider not recommending a limit on the number of seats allowed. He stated that while it is possible that the Town Code could change in terms of parking space requirements they would not want the applicant to have to come back if the number of seats change per code. Commissioner Cole asked from a fire safety perspective, how the seating capacity is measured. They would not want to create an overcrowding situation. Mr. D'Orazio agreed, stating that the amount would not exceed what is allowable by Fire Marshall. Additional discussion followed regarding Fire Marshal requirements.*

*Commissioner Cole stated that the ingress/egress on Maple Avenue allows cars to turn left on to Maple Avenue. She stated that it is fairly close to the traffic light at Park Street and to the intersection at Mill Street. She asked if adding live music would create a potential distraction to drivers and if this is an opportunity to limit it to Right Turn Only out of Whole Foods. Mr. D'Orazio stated that the patio area sits 70 feet from the sidewalk area. He could not say if it would be distracting. Mr. Mincey anticipated acts to be limited to one or two person acoustic performances. They do not intend anything to be too lively or too distracting.*

*Commissioner Basnight noted that the live entertainment is for Saturdays only. He asked if they considered holidays as well. Mr. Mincey responded that is why they are requesting year round. The 2017 conditional use permit only allows live music on a specific day during specific times occurring from June – September. They are asking permission to offer it year round, seven days a week, no later than 9 pm. This will allow for events like a jazz brunch or carolers during the holidays.*

*Commissioner Baum asked if it would compete with Town Green events and whether the applicant could coordinate with the town of those events.*

*Nick Dimarco store manager for the Vienna Whole Foods stepped forward to speak. Mr. Dimarco stated that they would certainly take any events occurring on the Town Green in to consideration. They scheduled events on Saturdays so that they would not compete with Friday night events on the Town Green. Mr. Mincey agreed, stating that they have always been very community oriented.*

*Commissioner Basnight stated concern that if not handled properly it could be a dangerous situation. Chairman Gelb stated that they could impose any recommendations that they feel necessary. Commissioner Couchman, referring to staff recommendations, stated that they could incorporate the extensions for live entertainment so long as it does not conflict with town events.*

*Commissioner McCullough stated that the use permit was originally for 5:30-9:30 pm*

on Saturdays, from June – September. Now they are considering year round, at any time of the day until 9 pm. Mr. Mincey agreed. Commissioner McCullough asked how often customers are using the patio and whether it is always open. She asked if they can walk out to the patio with food and drink or if they are restricted to the interior space. Mr. Dimarco answered, weather permitting, some customers will eat outside. They find that during nice weather the patio is heavily occupied. Commissioner McCullough asked if customers are free to bring their alcoholic beverages outdoors. Mr. Mincey answered yes, stating that when they applied for their 2017 conditional use permit staff made them aware of the 1996 conditional use permit, which included the prohibition language. That is why they are back.

Mr. Dimarco noted that they have been operating outside of their 1996 conditional use permit for many years, since before he started working at the store. Mr. Mincey explained that their Virginia ABC license lists Whole Foods as a restaurant, which allows them to offer alcohol consumption both indoors and outdoors. When he first learned of the issue he asked if the Town of Vienna had any restrictions on alcohol consumption outdoor similar to other jurisdictions. He stated that it has been his understanding that the Town does not have jurisdiction over alcohol consumption, which may be a point of clarification.

Chairman Gelb asked staff for response. Mr. D'Orazio agreed, stating that it is the Virginia Department of Alcoholic Beverage Control (Virginia ABC) that regulates alcohol consumption. He stated that the Board of Zoning Appeals has not placed conditions prohibiting consumption of alcohol beverages on past outdoor seating applications. He referenced Caboose Brewery and Clarity restaurant, stating that there are no restrictions. Chairman Gelb asked why alcohol consumption is fit into conditional use permits if it is regulated by Virginia ABC. Mr. Mincey stated that is why they are requesting to have it removed from their use permit to clarify that alcohol consumption is permitted in the outdoor seating area.

Commissioner Cole asked if the Town has any authority to make reference to it. She had been hoping to impose a condition that alcohol not be consumed on the patio after 9 pm. Even if the store is closed they may find patrons lingering outdoors with a drink. Mr. D'Orazio noted that the Town of Vienna does not regulate alcohol; it is left to Virginia ABC. Additional discussion followed.

Commissioner McCullough asked what would prohibit customers from purchasing a bottle of wine and consuming it on the patio. Mr. Dimarco explained that previously there had been no store regulation. As of October of 2017 they set forth standards that only alcoholic beverages purchased from the bar's point of sale can be consumed onsite. They have also set the same policy for beer.

Commissioner Baum asked on evenings that live entertainment is scheduled if they will have additional event staff for crowd control. Mr. Dimarco answered yes, stating that they plan accordingly with their staff ahead of time.

Chairman Gelb invited members of the audience to speak. There being none Chairman Gelb asked for further comment from the commissioners.

Commissioner Kenney noted that he will recuse himself from voting since he has done work in the past for Whole Food. He asked if the applicant could review the bicycle rack shown on the plan. Mr. Mincey stated that there are currently existing bike racks onsite. Per staff comments, it was suggested that more bike racks be provided. Whole Foods feels that there are currently an adequate number of

locations for patrons to store their bikes. Commissioner Kenney asked how many storage spaces that they currently have for bikes. Mr. Dimarco responded that there are currently two bike racks, long ones allowing for a total of 12-14 bikes at one given time. Commissioner Kenney asked if the subject racks are located west or closer to the W&OD trail. Mr. Dimarco answered yes, stating just past the entrance. Commissioner Kenney asked if they are not on the concrete patio area. Mr. Dimarco answered no, stating that they are located in the flowerbed area.

*There being no further questions Mr. Mincey and Dimarco were seated.*

Chairman Gelb called for discussion. Commissioner Cole asked if the conditional use permit will supersede and replace the previous two or would it amend them. Mr. D'Orazio stated that he had spoken with the Town Attorney to verify that there were no legal issues. It would replace both conditional use permits making a new one that combines both outdoor seating and live entertainment. Staff feel it to be the smart way to go because the uses are dependent on each other. It seemed best to have one conditional use permit.

Commissioner Cole stated that she would hope that a motion of recommendation included seating be divided between indoor and outdoor areas. In light of staff's comments that they not specify one hundred-twenty (120) seats but phrase it that the amount of seating per town ordinance be divided but flexible between inside and outside. Live music would be permitted but associated with restaurant use at staff's recommendation. It should also include the time limit requested of 9 pm or closing time of the store. She stated that she preferred a condition that alcohol consumption be terminated in the outdoor seating area at the time of store's closing, if that is in their power to regulate.

Commissioner Couchman asked if they should hold off on the alcohol restriction and whether it is necessary since the applicant has stated that they have last call an hour prior to the store closing. Commissioner Cole stated that they have the flexibility to include it as a recommendation. It is up to the Board of Zoning Appeals to determine whether it can be included.

Mr. Mincey asked if the Commission was comfortable with the language; "...as long as the store remain in compliance with rules and regulations of the Virginia ABC or governing body regulating alcohol consumption and sales." Commissioner Cole agreed, stating that would be an acceptable resolution.

*There being no further discussion a motion was in order.*

**Commissioner Cole made a motion that the Planning Commission recommend to the Board of Zoning Appeals approval of a conditional use permit (CUP) application for live entertainment and outdoor seating at Whole Foods, located at 143 Maple Avenue East subject to the following conditions: that the amount of seating available to the operation may be divided between indoor and outdoor seating areas, that they be permitted to provide live music associated with the restaurant use, that live music shall be concluded no later than 9 pm, that alcohol service will be conducted in compliance with all applicable Virginia ABC regulations, and that live music performances will be scheduled in consideration of contemporaneous town events.**

**There being no further discussion Chairman Gelb called the questions.**

**Motion: Cole**

**Second: Basnight**

**Carried: 6-0-1**

**Abstain: Kenney**

## Approval of the Minutes

*Commissioner Cole stated that the clerk did an excellent job on the October meeting minutes.*

**Commissioner Cole made a motion that the minutes for the October 11, 2017 meeting be approved as submitted.**

**Motion: Cole**

**Second: McCullough**

**Carried: 6-0-1**

**Abstain: Gelb**

**Commissioner Cole made a motion that the meeting minutes for the November 8, 2017 work session and regular meeting be approved as submitted.**

**Motion: Cole**

**Second: McCullough**

**Carried: 6-0-1**

**Abstain: Kenney**

## Planning Director Comments

*Mr. D'Orazio stated that the Commission has been given a spreadsheet of upcoming projects. He stated that although it is lengthy it provides information on upcoming rezoning cases, subdivisions, site plans, and one wall waiver.*

*Chairman Gelb commended Mr. D'Orazio on his efforts as acting director, which will end shortly. He hoped that Mr. D'Orazio will continue to provide equally good service in his normal staff role. Mr. D'Orazio thanked Chairman Gelb for his comments.*

*Commissioner McCullough thanked Commissioner Basnight for his two years of service as chair of the Planning Commission. She also congratulated Commissioners Gelb and Kenney on their election as new chair and vice-chair.*

## Meeting Adjournment

*The meeting adjourned at 8:39 pm.*

*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.*

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