



Town of Vienna

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Meeting Minutes Planning Commission

Wednesday, August 14, 2019

8:00 PM

COUNCIL CHAMBERS-VIENNA TOWN
HALL

The Planning Commission met in regular session on Wednesday, August 14, 2019, at 8:00 p.m. in the Council Chambers of the Vienna Town Hall, 127 Center Street South, Vienna, Virginia. Michael Gelb, Chairman, presiding and the following members present: David Miller, Mary McCullough, Sarah Couchman, Andrew Meren, and Sharon Baum (participating remotely). Also, in attendance and representing Town staff were Cindy Petkac, Director of Planning & Zoning, Kelly O'Brien, Principal Planner, and Jennifer Murphy, Clerk to the Commission.

Roll Call

Chairman Gelb noted that Commissioner Baum is participating by phone as permitted under the adopted resolution for electronic participation.

All commissioners are present.

Communication from Citizens and/or Commissioners

None

Public Hearings - None

Regular Business

Recommendation to the Board of Zoning Appeals for a Conditional Use Permit for live entertainment in a restaurant located at 111 Church Street NW, in the C-1B Pedestrian Commercial Zone.

Providing staff's presentation, Principal Planner, Kelly O'Brien stated that the site is located on Church Street NW, and bounded by residential properties along the rear with C-1B, local commercial located above and across the street from the property. There is a significant elevation change from the residential side down to the property. The nearest home is located approximately 135 feet from the subject location. Located across and adjacent to the site are ground floor commercial with second floor apartments. The same type of buildings are located diagonally across Church Street. She stated that Blend 111 is the first tenant space at the ground floor level of the building. Ms. O'Brien presented photos of the building and surrounding views of the property. Due to tenant layout configuration, Blend 111 has no immediate adjacent neighbors.

Ms. O'Brien stated that the applicant is proposing live entertainment of musicians and will consist of guitarists and/or a piano player at the front lounge area, which has been shown in red on the plan. Live entertainment would consist of 1-2

musicians performing Tuesdays – Sundays between 10 am - 11 pm during open hours. Ms. O'Brien provided a list of tenant hours of surrounding businesses, stating that the kitchen closes at 10 pm with the establishment remaining open until 11 pm.

Ms. O'Brien noted the criteria for a conditional use permit:

- Does not adversely affect the health or safety of persons residing in the neighborhood
- Is not detrimental to public health welfare or injurious to property or improvements to the neighborhood
- Is in accord with the Town's Comprehensive or Master Plan.

Ms. O'Brien stated that the application was deemed complete July 25, 2019, requiring action from the Board of Zoning Appeals within 90 days of submission, which is October 23, 2019. The application is currently scheduled for a public hearing with the Board of Zoning Appeals on September 18, 2019. Proposed hours of operation fall within the Town's allowable noise ordinance, which restricts noise from the hours of 11 pm – 8 am. The applicant's request falls within the Town's noise ordinance. Concluding her presentation, Ms. O'Brien thanked the commission, stating that the applicant is present to answer questions.

Commissioner Meren asked if the tenant space is entirely enclosed. Ms. O'Brien answered that the floor plan diagram details openings at the front and back doors. Commissioner Meren asked if any records of noise complaints have been received for the building. Ms. O'Brien answered no, stating that she also spoke with a representative at the physical therapist's office located upstairs to ask if they had any concerns and advise about the meeting.

Chairman Gelb asked if everyone received notification. Ms. O'Brien answered yes. Chairman Gelb asked if they received any input from the public regarding the application. Ms. O'Brien answered no.

Commissioner Kenney recommended that there be a one-year trial period to reevaluate the application in a year. Although the application is different from previous applications for live entertainment along Mill Street they are requesting one or two acoustical instruments. He asked for the type of building construction. Ms. O'Brien was uncertain. Commissioner Kenney stated that there is the potential for overlapping operating hours with the upstairs business. Noise could escape every time they open the door but it is less of a concern. Commissioner Miller stated that the building is constructed out of light concrete.

Commissioner McCullough asked if light concrete provides a better sound barrier. Commissioner Kenney stated that it would deaden the sound.

Chairman Gelb invited the applicant forward to present.

Michael Biddick owner of Blend 111 was present to speak. Mr. Biddick thanked the commission for reviewing his application. He concurred with staff's presentation, stating that they intend to provide small acoustical entertainment for a small setting. It will not be a lounge, bar, or disco. They would like to provide live music that will enhance their guests experience while dining; anything that would inhibit their guests dining experience would not be appropriate for them. With respect to frequency, they are asking for flexibility to offer live entertainment at different times of day. Initially they would like to offer one or two musicians per month while they figure out if it is something that their guest want.

Commissioner McCullough stated that the application indicates music on weekends from 10 am – 2 pm with evening music during the week occurring from 6 pm – 11 pm. Mr. Biddick agreed, stating that they are busiest during weekend brunch on Saturdays and Sundays from 10 am – 2 pm. Additionally, they would consider having an event on Thursdays from 7 pm – 10 pm, to complement their dinner setting. It will also depend on the musician's schedules as well.

Commissioner McCullough asked if the applicant had opportunity to speak with the other tenants and/or owners in the building. She asked if anyone expressed concerns. Mr. Biddick responded that there was nothing specific to music. They have also performed sound tests in the building with regular music to determine whether anything could be heard by surrounding businesses. They could not hear anything. If the door was open then you could hear some sound. He noted that music would be played primarily when surrounding businesses are closed and not during prime business hours. Additionally, per internal testing, they do not anticipate any noise concerns.

There being no further questions, the applicant was seated.

Addressing staff, Commissioner McCullough asked if any time limits were included in their recommendation for live entertainment for Bear Branch Tavern. She asked whether the BZA placed a time limit on the conditional use permit. Ms. O'Brien did not recall a time limit either recommended by the commission or enacted by the BZA.

Commissioner Kenney stated that the physical therapist is open until 8 pm Monday – Thursday. Although it should not be an issue, it would give them an opportunity to see if there is an issue per past experience with the Bey Lounge.

Commissioner Couchman stated that they heard concerns for Bear Branch Tavern from the upstairs tenant who expressed concerns for entertainment noise during their business hours. As a result, their hours were more specifically defined. Chairman Gelb stated that the applicants and neighboring tenant were able to work out a schedule themselves, which effectively eliminated any potential conflict.

Commissioner McCullough stated that she would not categorize the application with Bey Lounge's application, as it was such a very different setting and music scene. She did not want to place such restrictions on the application since the town has the ability to revoke a conditional use permit if they violate their conditions. She worried about the economic impact for making a business come back for review.

Chairman Gelb asked staff for the cost of a conditional use permit. Ms. O'Brien answered that it is currently \$1000 to make application for a conditional use permit. Commissioner Couchman agreed with Commissioner McCullough's comments, stating that it is unnecessary to place such a burden on the applicant particularly in light of the costs in money and time to apply. Commissioner Meren stated that if the applicant modifies their music, no longer offering acoustical music in the course of two years, he would like the opportunity to review the application for any changes.

Ms. O'Brien confirmed that the Planning Commission did not make recommendation for time limits on the last conditional use permit. Ms. Petkac noted that as of July 1, 2019, town fees adjusted so that an application for conditional use permit is now \$1,500. Additional discussion followed.

Commissioner McCullough asked in the event that music styles change, could they provide limiting language. Commissioner Couchman stated that the application write-up covers that, as it indicates live music consisting of one or two musicians playing acoustic instruments.

Chairman Gelb is sympathetic to Commissioner Kenney's concern, stating that it is just good practice. He is hesitant to impose a \$1500 burden on the applicant. If there is a violation, it can be revoked.

Addressing staff, Commissioner Miller asked if staff recalled noise complaints for any businesses issued conditional use permits for acoustical music. Ms. O'Brien answered that none of her research has brought any to light. She only located issues with the Bey Lounge, which has since been revoked.

There being no further discussion Chairman Kenney called for a motion.

Commissioner Couchman made a motion that recommendation be made to the Board of Zoning Appeals for live entertainment as described in the live music description dated July 24, 2019, provided by the applicant in a restaurant located at 111 Church Street NW, in the C-1B, pedestrian commercial zone.

There being no discussion Chairman Kenney called the question.

*Motion: Couchman
Second: McCullough
Vote: 8-0*

Baum voting remotely by phone

New Business

Chairman Gelb invited Commissioner Meren to provide an overview of work session discussion. Commissioner Meren stated that during this evening's 7:30 pm work session, the Commission discussed proposing a new regular meeting time beginning January 2020. This would change from the current 8 pm beginning time for their regular meeting.

Commissioner Meren made a motion to modify the Planning Commission's bylaws to adjust regular meeting start times from 8 pm to 7:30 pm effective January 2020.

*Motion: Meren
Second: Couchman
Vote: 8-0
Baum voting remotely*

Commissioner Meren stated that they also discussed next steps for Planning Commission in addressing the MAC and timelines to meet the November moratorium deadline. Chairman Gelb stated that as chair he would formally request guidance from Town Council. Commissioner Miller suggested it be included in the Chair's memorandum report. Chairman Gelb agreed.

Planning Director Comments

Director Petkac reminded everyone of the joint Town Council, Transportation Safety

Commission, and Planning Commission work session scheduled for Monday, August 19th at 7 pm to discuss the third installment of the Maple Avenue Multimodal Transportation Land Use Study. Additionally, the Commission is scheduled for a three-hour work session for parliamentary training beginning at 6:30 on August 28th.

Approval of the Minutes

Commissioner McCullough made a motion to accept the draft minutes of the April 24, 2019 regular meeting with minor changes provided to the Clerk to the Commission.

Motion: McCullough

Second: Meren

Carried: 8-0

Commissioner McCullough made a motion to accept the draft minutes for the May 8, 2019 regular meeting with minor edits provided to the Clerk to the Commission.

Motion: McCullough

Second: Kenney

Carried: 8-0

Commissioner McCullough made a motion to accept the draft minutes for the May 22, 2019 regular meeting with minor edits provided to the Clerk to the Commission.

Motion: McCullough

Second: Meren

Carried: 8-0

April 24, 2019 Regular Meeting Minutes

May 8, 2019 Regular Meeting Minutes

May 22, 2019 Regular Meeting Minutes

Meeting Adjournment

Chairman Gelb asked if there is any further comment. Commissioner McCullough stated that since Walter Basnight is no longer serving on the Planning Commission she wanted to mention how much she appreciated his contributions to the Commission and the Town. He will be greatly missed.

There being no further discussion the meeting adjourned at 8:43 pm.

Respectfully Submitted,

Jennifer M. Murphy

Commission Clerk

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