



Town of Vienna

127 Center Street South
Vienna, Virginia 22180
p: 703.255.6341
TTY 7111

Meeting Minutes Board of Zoning Appeals

Wednesday, June 5, 2019

8:00 PM

COUNCIL CHAMBERS-VIENNA TOWN
HALL

1. Roll Call

The Board of Zoning Appeals (BZA) held one advertised public hearing in the Council Room of the Vienna Town Hall, located at 127 Center Street, South, Vienna, Virginia, on June 5, 2019, beginning at 8:00 PM with Robert Dowler presiding as Chair. The following members were present: Jonathan Rak, Robert Petersen, George Creed, Michael Gadell, and Bill Daly. Gregory Haight was absent. Also attending and representing staff were Frank Simeck, CZA, Senior Zoning Inspector, Kelly O'Brien, Principal Planner, and Jennifer Murphy, Board Clerk.

At the beginning of the meeting Mr. Dowler asked the clerk to call roll and gave an opening statement reviewing the purview of the Board of Zoning Appeals.

2. Public Hearings

124 Melody Ln SW - Continuance: request for an appeal of a zoning violation

Continued - request for an appeal of a zoning violation stating the subject property is not in compliance with Town Code §18-218 as it relates to building permit requirements, for the property located at 124 Melody Lane, SW, in the RS-10, single-family detached residential zone. Application filed by Nicholas Cumings agent of Walsh Colucci Lubeley & Walsh PC.

Mr. Cumings came forward to request a motion to continue the application because of the meeting date change due to the need for a quorum. This gave two fewer weeks than originally thought. They had made progress in the weeks allotted including new lot coverage, and a survey deemed acceptable by the town. The next step was to update the architectural plans with more detail, which would bring them to the goal line in reference to permitting. The survey and plat demonstrated the applicant would be in compliance with the towns zoning ordinance. Mr. Dowler asked when the survey and plat were submitted. Mr. Cumings stated the final version had been submitted that morning.

Mr. Daly asked when the applicant would like the meeting continued to and Mr. Cumings stated to the next meeting in July (July 17, 2019).

Mr. Dowler asked Mr. Simeck for the town's position. Mr. Simeck stated the town was satisfied as they had received the revised plat and were awaiting the revised architectural plans. The building permit could be submitted once there was follow through with the revised architectural plans and then they could amend the existing structure. Mr. Simeck stated what was in red on the side would be reduced to 20x7 screened in porch, the yellow "L" shape would be open deck, and both structures would then meet code. Mr. Dowler asked if he had any objections, Mr. Simeck stated he had no objections.

Mr. Creed asked the status of the court appearance. Mr. Cumings stated the plan was to

postpone the first appearance, which is routinely postponed.

Mr. Dowler asked for a motion for continuance. Mr. Gadell made a motion to continue the application, Mr. Daly seconded the motion. Mr. Rak made a friendly amendment that it be continued to the July 17, 2019 meeting.

Motion: Gadell

Second: Daly

Passed: 6-0

Absent: Haight

305 Jade Court NW - Conditional Use Permit - Case No. PF-25-19-CUP

Request for approval of a conditional use permit for a Family Day Home Care with a maximum of twelve (12) children at property located at 305 Jade Ct NW, in the RS-12.5 Residential Single-family zoning district. Application filed by Zeinab Salem, business owner of Zeinab Home Daycare.

Zeinba Salem and Smyrna, interpreter for Ms. Salem, were sworn in to give testimony for the application.

Mr. Dowler asked about the existing conditions for the home daycare. Ms. Salem stated she worked in a home daycare with twelve children and worked for KinderCare for one year. Ms. Salem stated she opened her own daycare starting with four children and then took on more child up to seven children. She stated that she has some children in her care now whose parents are pregnant and the parents would like the siblings to stay in her care. Mr. Dowler asked when Ms. Salem started her childcare business that she currently has in her care. Ms. Salem stated she received her license three years ago. Mr. Dowler asked if she had all her required licenses and qualifications from the state to conduct a day care, Ms. Salem said yes. Mr. Dowler asked if the business was out of the home. Ms. Salem said the downstairs (basement) was where she operates the daycare and her family lives upstairs. Mr. Dowler asked for the hours of operation, Ms. Salem stated she opens at 7am and closes at 6pm. Mr. Dowler asked if she lived in the residence. Ms. Salem said yes. Ms. Salem asked who helped with the daycare. Ms. Salem stated her husband helped with the daycare and she has one new assistant. Mr. Dowler asked if she had a paid employee of the business. Ms. Salem said she has her assistant that she pays weekly. Mr. Dowler asked if she and her husband live on the property and if the assistant lived there as well. Ms. Salem stated the assistant lived nearby and could walk to her home. Mr. Dowler asked if she wanted to increase it to twelve because current clients would like to have her services available, she said yes. Mr. Dowler asked if other Board members had questions.

Mr. Petersen asked Ms. Salem where their cars were located during the day. Ms. Salem stated one is always in the garage and the other is either in the garage or in front of the garage. Mr. Petersen asked if during the four years that she had operated the daycare if there had been any problems or if her neighbors had spoken with her about issues with parking. Ms. Salem stated that when she lived in a different home for two years there were no problems, but she wasn't aware of any problems or if anyone had any issue at her current home (305 Jade Ct. NW).

Mr. Creed commented to Mr. Simeck that with the 25% allowable for the daycare, that it appears they are using 43% of the home for the daycare. Mr. Creed then asked Mr. Simeck if the town had cited the home business for using more than the 25% of the home.

Ms. O'Brien stated that it's a recurring issue with Home CO's in reference to Home Daycares. Home occupancies are specific to a home business. Home Daycares will inevitably take up more than 25% of a home and staff intends to look at this issue when revising the zoning ordinance. Mr. Creed asked if in the garage or basement area if there was a full kitchen. Ms. Salem stated she had a refrigerator to keep food for the kids. She said she also had a microwave, washer, and dryer. Ms. Salem's interpreter stated that it is not a kitchen, but just certain things needed for the home daycare, but it is not a kitchen. Mr. Creed asked if there was a stove. Ms. Salem stated that a home daycare does not allow for a kitchen in the daycare, just a microwave and refrigerator.

Mr. Daly stated there were photographs on the screen and asked if there was anything she would like to explain about the photographs. Ms. Salem stated she didn't have anything additional to say about the photos of the daycare, but that two of the parents who use her daycare were at the meeting if the Board would like to ask them questions. Mr. Dowler asked about the ages of the children in the daycare. Ms. Salem said the ages were from four months to four years of age, infants to toddlers.

Mr. Creed pointed out that she had one employee that walks to work. He then asked if she had an agreement to sell one of their cars, she said yes. Mr. Creed asked that if her current employee needed to leave employment and she hired a new employee that needed a parking place would she sell her car at that time. Ms. Salem's interpreter said that at that time they would only have one family car so they would not be able to sell car, but that she would move it to street parking and let an employee park in the garage. Mr. Creed stated she could not park on the street because it is too narrow. Ms. O'Brien clarified that the residents of Jade Ct. can park on the street at any time, visitors are not allowed to park from 7am and 3pm. What Ms. Salem was trying to explain was that they currently have two vehicles and that if there was a need to make space for an employee they would sell one vehicle. Mr. Creed wanted to make sure the restrictions and conditions for the customers of the daycare regarding parking were met.

Mr. Rak asked staff if the CUP was granted would the 25%maximum requirement for a home occupancy go away. Ms. O'Brien stated there were no stipulations for conditional use permits unless the Board decided to create that stipulation. Ms. O'Brien stated Family Day Home was put under Home Occupancy as a zoning determination when the county made it a requirement that jurisdictions need to give an approval.

Mr. Dowler asked staff under which legislation did the Home Day Care operate as it is not found in the town's code. Mr. Dowler stated that although there is mention of Fairfax County he did not believe that should not be involved with the Boards determination. He then asked if it fit somewhere after it outgrows a home business going from seven children to twelve children. Ms. O'Brien stated it is state regulated and that the number of children had been six and the state changed the number to seven. Fairfax County as used as an example and the state code determines the number and the threshold. Mr. Dowler stated he understood how they have dealt with it, but that unless it is on the itemized list that the Board is out on a limb. Mr. Simeck stated that back in 2013 when there were code changes it was never codified and the zoning director in 2013 reverted back to the use of home occupancy permits.

Mr. Creed that if the towns code does not speak to it, would there be a requirement to abide by the county regulations. Mr. Dowler and Mr. Simeck stated no.

Mr. Jonathan Tomek, 211 Courthouse Circle SW, was sworn in to give his testimony. Mr. Tomek stated he wanted to clarify that the owners of the daycare are willing to sell their second vehicle as he is helping them towards selling the second vehicle. Mr. Dowler asked

Mr. Tomek's relationship to Ms. Salem. Mr. Tomek stated he has a child who attends her daycare.

Ms. Elina Desierto, 303 Jade Ct NW, was sworn in to give her testimony. Ms. Desierto stated that Ms. Salem lives next door to her and is a nice neighbor, but that she did have one concern. She stated they are in a nice quiet cul-de-sac, and wasn't sure what the traffic and noise would be with the additional children as there is a bus that already comes and many of the neighborhood children like to play in the cul-de-sac. She also asked for clarification about home businesses as she didn't understand how it worked. She also asked if the next renters were allowed to come and have the same business. Mr. Dowler asked about the school bus and if it was for the daycare. Ms. Desierto stated she thought it was for the daycare. She also stated they had a neighborhood meeting and that no one had an issue with the daycare, but that they would like to keep it as quiet as possible. Mr. Dowler stated they were raising the number from seven children to twelve children. Ms. Desierto asked if it would still be a residential zone. Mr. Simeck stated it would still be zoned residential. Mr. Dowler stated certain businesses can be operated from home which is what the daycare has been doing with up to seven children. The application for twelve children puts them in a different status putting them before the Board to get special permission to have the same operation, but with more children. Ms. Desierto stated she was there representing other neighbors who are concerned. Mr. Dowler asked if the level activity with the current children was troublesome. Ms. Desierto stated she notices people coming and going since she lives next door, but that it doesn't bother her and it is quiet. She stated she wants to understand the future and if the property will stay in that status. Ms. O'Brien stated conditional use permits run with the land, but that the Board has the ability to put conditions on the approval, including that it is for the applicant only or that it was for a certain amount of time. Mr. Creed asked if there were any neighbor letters. Ms. O'Brien stated that the neighbor letters were all in support and were part of the packet.

Mr. Howell Desierto, 303 Jade Ct NW, was sworn in to give his testimony. Mr. Desierto stated he didn't believe they needed to sell their second car because they have enough space in their driveway is wide enough for three to four cars and the street is wide enough. He said the neighbors concern is whether the area will turn into a commercial area. Mr. Desierto said that no one in the cul-de-sac has a problem with the daycare, but how it will impact the cul-de-sac.

133 Maple Avenue East - Conditional Use Permits - Bear Branch Tavern - Case No. PF-18-19-SP/CUP

Request for approval of a conditional use permit for outdoor dining and live entertainment for restaurant use, located at 133 Maple Avenue East, suites 100 & 100A in the C-2 General Commercial and RM-2 Multifamily, Low Density zoning districts. Application filed by Adam Lubar of Speakeasy Restaurants LLC.

Mr. Adam Lubar, was sworn in to give testimony. Mr. Lubar stated their plan for outdoor seating was to build a deck structure that could seat 100 people. The other part of the application was for live entertainment on Thursday, Friday, and Saturday. They would like outdoor entertainment on Fridays and Saturdays, seasonally from 9pm-12am on Friday, 2pm-5pm or 9pm -12am Saturday. Thursdays live entertainment would be inside only from 6pm-9pm or 9pm-12am.

Chris Lefbom, 3127 Valley Ln Falls Church, was sworn in to give testimony.

Mr. Lubar stated that in addition to the outdoor dining in the rear they do intend to have a small outdoor seating area fronting Maple Ave for twelve seats at a countertop with

operable windows with service from the inside of the restaurant.

Mr. Petersen asked for clarification regarding the live entertainment timing as Mr. Lubar stated "or" in his testimony. Mr. Lefbom stated they were trying to keep their options open as they do not have a set schedule. Mr. Petersen asked that if they were approved for the live entertainment CUP would it be their intent to use, for example, on Saturday one block of time, but not the other or could you use both blocks of time on the same day. Mr. Lubar stated the intention would be to only use one. Mr. Lubar stated their version of live entertainment was one or two live acoustic artist and do not intend to be a live music venue. The live music is intended to augment the atmosphere of the restaurant.

Mr. Daly asked, from a safety perspective, what would separate the parking lot from the patrons seated at the table. Mr. Lubar stated there was a six foot sidewalk currently and that there would be a metal fence between the parking and seating area as well as a curb that separates the parking from the sidewalk. Mr. Daly asked if the metal fence was intended to prevent a car if person put their car in drive rather than reverse on accident. Mr. Lubar stated it was not a guardrail and reiterated what was currently there, but stated that if required they would install bollards. Mr. Lefbom stated there were not tables there. Mr. Daly asked if people would be sitting outside, Mr. Lefbom stated that was correct. Mr. Daly then stated that the building would not protect anyone seated there if a car accidentally shifted the wrong way, Mr. Lefbom said no.

Mr. Rak asked if the proposal was to amplify the music. Mr. Lubar stated it would be a small amplifier, but the intention was to cover the outside seating area and inside would be for the bar area and a small portion of the dining area. Mr. Rak asked Mr. Simeck about the noise ordinance in effect limiting the decibel level at the property line. Mr. Simeck stated yes there was a noise ordinance, but there were no decibel readings for the noise ordinance.

Mr. Creed asked of the 90 outdoor seats requested, 12 seats would be located at the front, Mr. Lefbom said yes. Mr. Lubar stated there would be standing room behind the seats in the front, but no designated seats.

Ms. Carey Williams, 207 Center St. N, was sworn in to give her testimony. Ms. Williams stated her home was on Center; Bey Lounge is on Mill St with an ongoing issue with live music. She stated her concern regarding amplified live music at midnight and that there may not be an issue for her, but perhaps the surrounding neighbors. She also was concerned about the noise from the 80-90 people chatting. She asked that they look at stipulating an earlier time to coincide with the town's noise ordinance.

Ms. Sharon Bowman, Friends of Patrick Henry Library, was sworn in to speak. Ms. Bowman stated her concern regarding parking as she felt it would adversely affect the library due to the library being open similar hours to the restaurant. Ms. Bowman stated the library is an integral part of the town and asked to be heard and asked the Board to address the issue of parking. Mr. Dowler stated the information given to the Board states parking will support 300 seats. Ms. O'Brien stated the applicant had received a parking modification from Town Council for up to 300 seats and their current proposal is less than 300 seats. Ms. O'Brien stated the application that evening was for the outdoor dining and live entertainment. Mr. Dowler asked how many parking spaces had been approved for the restaurant. Ms. O'Brien stated there were 103 spaces on site with a shared parking agreement and the busiest times for the restaurant the offices in the building would not have the parking demand. Ms. O'Brien continued with the code requirements of 75 parking spaces for 300 seats which had already been approved by Town Council. Ms. Bowman then said the restaurant is then given permission to use the library parking. Ms.

O'Brien reiterated that the parking space requirement was settled by Town Council and that evening was regarding outdoor dining and live entertainment. Ms. Bowman stated she received a letter. Ms. O'Brien stated that as a neighbor, for any conditional use, they would be notified.

Mr. Petersen stated, for the satisfaction of the witness (Sharon Bowman), that the Board is bound by the decision of the Town Council and that is was not in the Boards purview to modify the decision regarding parking. The concern was heard, but he Board does not have the authority to modify what the Town Council voted on last September.

Mr. Creed asked Mr. Simeck if there were any residential properties nearby the proposed restaurant and how close by were they. Mr. Simeck stated the closest residential would be Church Street and some townhomes on Center Street S. by town hall. Ms. O'Brien continued stating there were condos on Center Street N. close to the intersection of Church and Center.

Mr. Dowler asked for a motion to close the public hearing. Mr. Gadell made a motion to close the public hearing, Mr. Creed seconded the motion.

Motion: Gadell

Second: Creed

Passed: 6-0

Absent: Haight

3. Regular Business

The Board of Zoning Appeals (BZA) met in regular session to review one advertised public hearing in the Council Room of the Vienna Town Hall, located at 127 Center Street, South, Vienna, Virginia, on June 5, 2019, beginning at 8:00 PM with Robert Dowler presiding as Chair. The following members were present: Jonathan Rak, Robert Petersen, George Creed, Michael Gadell, and Bill Daly. Gregory Haight was absent. Also attending and representing staff were Frank Simeck, CZA, Senior Zoning Inspector, Kelly O'Brien, Principal Planner and Jennifer Murphy, Board Clerk.

Item No. 2

Request for approval of a conditional use permit for a Family Day Home Care with a maximum of twelve (12) children at property located at 305 Jade Ct NW, in the RS-12.5 Residential Single-family zoning district. Application filed by Zeinab Salem, business owner of Zeinab Home Daycare.

Mr. Petersen made a motion to approve the request for a CUP to have a family day care for up to twelve children at 305 Jade Ct NW with the approval limited to the use of the current business owner and to not extend to another daycare provider who would move into the same residence.

Mr. Dowler asked if there would be a limit to the time-frame, Mr. Petersen said no. Mr. Dowler asked if there was a second, Mr. Gadell seconded the motion.

Mr. Petersen spoke in support due to the history of the business so for not impinging on the enjoyment by the owners of the neighboring properties. It has been carried out in a satisfactory and responsible manner and daycare is widely acknowledged in the community as a necessity for the current residence of Vienna. It serves a very useful

purpose and improves the lives of all those who can make use of the daycare center.

Mr. Gadell stated he agreed with Mr. Petersen as it has operated for four years with the support of the neighbors. Concerning additional traffic, the applicant stated the additional children would be siblings of children who currently attend the daycare which would not increase the traffic. Mr. Gadell also agreed with limiting the CUP to the tenant and not the property.

Mr. Rak stated he agreed with Mr. Petersen's motion and understands the burden of an expiration date on the conditional use permits due to the investment by the applicant into the approval of the CUP. He felt it may be appropriate to have a review as the neighbors stated that things were okay currently, but not sure how it would work out. Mr. Rak asked if that condition could be put on the CUP to hear any concerns / testimony the neighbors would have to consider further restrictions that may be appropriate.

Mr. Dowler stated he agreed with Mr. Rak. When a daycare is a home business there are a maximum number of children and the providers had to be residents of the home. With the states increase to twelve children, the Board is in new area as it's almost double the children. Due to not enough feed-back or experience by the Board with daycares that have outgrown their home business, but are in the neighborhood with the parking concerns and twelve children a time limit is appropriate. Mr. Dowler also stated the town needs to give direct authority to the Board for CUP's regarding family day home care as opposed to nurseries.

Mr. Creed stated he agreed and felt the town should develop some processes and guidance for applicants and the Board. He also stated he would like a 12 month condition per the Planning Commission recommendation.

Mr. Dowler asked if they could make an amendment.

Mr. Petersen stated, after listening to fellow Board members, that with the agreement by Mr. Gadell he would accept modification of the motion to add a time limit against which the owner must return to be reviewed by the Board. Mr. Petersen asked if twelve months was long enough and that he would be comfortable with twenty four months.

Mr. Daly stated he agreed with Mr. Petersen and that he liked the time frame for twenty four months to give the applicant time to get up to twelve children and to see if the applicant has an employee who drives and how all of that would impact the neighborhood.

Mr. Dowler stated the motion to approve was limited to the business and time for review would be twenty-four months.

Motion: Petersen

Second: Gadell

Passed: 6-0

Absent: Haight

Item No. 3

Request for approval of a conditional use permit for outdoor dining and live entertainment for restaurant use, located at 133 Maple Avenue East, suites 100 & 100A in the C-2 General Commercial and RM-2 Multifamily, Low Density zoning districts. Application filed by Adam Lubar of Speakeasy Restaurants LLC.

Mr. Dowler stated he thought this application would require two motions.

Mr. Creed made a motion to approve outdoor dining be limited to a maximum 90 chairs with a maximum of 12 of the 90 placed in the front parking and that there be bollards place around any outdoor seating to protect those who would be dinning there.

Mr. Daly seconded the motion.

Mr. Rak stated adding hours on the use of the outdoor seating. Having the outdoor seating close at midnight would be appropriate as there can be noise from outdoor seating. The concern about the cars should be mitigated by the wheel stops the applicant had proposed rather than the use of bollards.

Mr. Creed stated that historically it had been the decision of the Board to require bollards to be installed through numerous CUP's at restaurants around town.

Mr. Dowler asked Mr. Creed if he wanted to update his motion to include outdoor dining hours. Mr. Creed stated he didn't know the food service hours and if the bar was serving until midnight then he hoped the restaurant was as well.

Mr. Rak made a motion to amend to restrict the hours of outdoor dining but did not state the time as he felt there was a need to limit the outdoor dining. Mr. Gadell stated that midnight would be good as that would give time for clean-up. Mr. Dowler asked if there was a second for the amendment.

Mr. Creed referenced Bey Lounge with the later hours of food service. Mr. Daly seconded the motion, but Mr. Creed did not accept the friendly amendment. Mr. Dowler stated there was no amendment to close at midnight.

Mr. Petersen expressed his disappointment with the Board to modify the architectural designs of the business and past CUP's that included discussion of bollards. There had been nothing in the testimony or the materials submitted in support of the application from a safety organization that would raise concerns suggesting the need of bollards at that location. The intent is not to approve anything that could cause harm or create a dangerous situation, but he did not see the need for the Board to propose bollards on the sidewalk to prevent an errant vehicle from intruding beyond the parking area. Mr. Petersen stated he was not so disappointed that he would not vote in favor of the overall motion even if it were to retain the inclusion of bollards.

Mr. Gadell asked for a slide to be brought up. Mr. Gadell stated he it looked as though there is a natural barrier that is protecting the seats outside. Mr. Daly asked if town staff determined that all code requirements with respect to safety for seated dinners had been met. Mr. Simeck stated there were bollards in the back, but not in the front as there was an elevated piece/ramp at the front. The only exposed area, which is enclosed by fencing, would be possibly 1/3. Mr. Daly asked if all code requirements were met as he recalled the same information that Mr. Creed had regarding the safety of the diners. Mr. Daly stated he did not want to require more of that applicant than they do other applicants in similar situations. Mr. Simeck stated that when staff reviewed the application they did not see any safety concerns, but if the Board felt a need for planters or bollards for assurance in reference to an errant vehicle that it would be under their purview.

Mr. Creed stated that the two most recent locations that bollards were required by the Board were at Potbelly's and Zoë's. Mr. Creed stated that it was to protect people who were

dining, he then referenced that recently a car had gone through the front door of the ABC store on Maple. Mr. Dowler stated that the Board has required it in the past as well.

Mr. Rak stated that there are bollard in different locations and pointed out that there was a grade difference for the front dining area showing that it was elevated which could have been why staff didn't require bollards on the front.

Mr. Simeck stated there were three planters that were up towards the front that were not shown on the plans. Ms. O'Brien stated the three black images along the fence are planters, but there was nothing located on the corner where it was flatter. The three planters would serve a similar purpose to a bollard.

Mr. Dowler stated that they had a motion before them to grant a CUP with maximum 90 outdoor seats, 12 located in the front, and with bollards. Mr. Dowler called for the vote

Motion: Creed

Second: Daly

Passed: 6-0

Absent: Haight

Mr. Dowler asked if there was someone who would like to make a motion in reference to the live entertainment.

Mr. Gadell made a motion to approve the application for live entertainment with a limit to one year in which the applicant would go back before the Board for review. The hours of operation would be Thursday until 11pm and up until midnight Saturday and Sunday as requested.

Mr. Rak seconded the motion and requested clarification. He stated he agreed to the hours with the limitation, but felt the either or scenario could be problematic in terms of enforcement. Mr. Rak asked to amend the hours deleting the "or".

Mr. Dowler stated that the motion was Thursday until 11 and until midnight Saturday and Sunday.

Mr. Petersen stated the applicant requested approval for music up to midnight Thursday, Friday, and Saturday and he didn't see any difference between Thursday, Friday, and Saturday if the bar / restaurant would be open until midnight Thursday, Friday, and Saturday. Mr. Petersen asked if Mr. Gadell would be agreeable with modifying his motion and make it to midnight all three nights.

Mr. Gadell stated that Mr. Petersen brought up a good point and in retrospect restriction of hours on weekdays in the past was always in reference to the restaurants close proximity to a residential neighborhood and that restaurant was not. Mr. Gadell stated he was open to the friendly amendment of midnight for Thursday, Friday, and Saturday.

Mr. Dowler stated that at the one-year review they could revisit the Thursday hours. Mr. Dowler restated the motion to approve live entertainment to be reviewed in one-year with hours for Thursday, Friday, and Saturday until midnight.

Mr. Creed stated he could not support review in one year as he did not feel there was a need since they were not located in a residential area.

Mr. Gadell stated his reason for proposing due to the testimony of the resident located on Center who can hear the music on Mill St. Giving the one-year review would be erring on

the side of caution.

Mr. Rak stated he strongly supports the one-year review due to the amplification outdoors. He continued stating he could hear the James Madison band at his home on Nelson and felt the amplified outdoor music could carry.

Mr. Dowler asked what a CUP review would be as the Board was accustomed to a CUP expiring. Mr. Rak stated other jurisdictions have a review after a certain time period. It would require a public hearing with the applicant coming back before the Board. If there were issues or complaints they can be presented to the Board for consideration. At that time the Board can add conditions or make changes due to complaints that have arisen. Mr. Rak stated the review is superior to an expiration as it indicates to the applicant they can invest in the business, but there may be further refinements.

Mr. Creed stated once the Board reviews the CUP it would then go to enforcement if there were noise violations. If there was an issued the Zoning Administrator would bring it back to the Board and request a revocation of the CUP.

Mr. Petersen stated he agreed with Mr. Creed as there was not need to limit the time of the CUP or to have a review, but if the entire Board desires a restriction of a twelve month review, the Board does not know when the restaurant will open. They may only have a few months entertainment before coming back for review.

Mr. Dowler stated he too agreed that a review is not needed as the town does have enforcement. If there is too much noise or if there are issues it will be brought back before the Board. Mr. Dowler reiterated the motion to approve live entertainment under one-year review with hours up to midnight Thursday, Friday, and Saturday.

Mr. Creed made a motion to eliminate the one-year review. Mr. Dowler asked if Mr. Gadell was agreeable to Mr. Creed's motion. Mr. Gadell stated he erred on the side of caution from lessons learned from other live music in town as it had put an undue burden those handling the complaints.

Mr. Dowler state there was a motion to eliminate the one-year time frame and asked if there was a second. Mr. Petersen seconded the motion.

Mr. Dowler asked if there was any discussion. Mr. Dowler called a vote for those in favor of eliminating the one-year review.

Motion: Petersen

Second: Creed

Passed: 4-2

Nay: Rak, Gadell

Absent: Haight

Mr. Dowler called for a vote for approval of a CUP for live entertainment with hours on Thursday, Friday, and Saturday until midnight.

Motion: Gadell

Second: Rak

Passed: 6-0

Absent: Haight

Mr. Dowler stated the town calendar was being created and asked the Board if there was

interest in meeting at 7:00pm rather than 8pm. There was discussion regarding the new time. The Board decided to go to a start time at 7pm to commence January 2020.

Mr. Dowler inquired about the time limit on conditional use permit applications. There was additional discussion regarding the length of time that it takes for a conditional use permit to get to the Board of Zoning Appeals

4. Meeting Adjournment

Mr. Dowler asked if there was a motion to adjourn. Mr. Creed made a motion to adjourn the meeting. Mr. Daly seconded the motion.

Motion: Creed

Second: Daly

Passed: 6-0

Absent: Haight

The meeting was adjourned at 9:44.

Respectfully submitted,
Sharmaine Abaied
Board Clerk

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) 255-6341, OR 711 VIRGINIA RELAY SERVICE FOR THE HEARING IMPAIRED.

About the Board of Zoning Appeals

The Board of Zoning Appeals is a quasi-judicial board comprised of seven members – all of whom are residents of the Town of Vienna, VA. The Board serves as an arm of the Fairfax County Circuit Court, as all members are appointed to the Board by the Court after receipt of recommendation from the Vienna Mayor and Town Council.

The Board is empowered by the Code of Virginia to:

1. Hear and decide appeals from any order, requirement, decision or determination of the Zoning Administrator.
2. Grant variances from the Zoning Ordinance – as defined in Section 15.2201 of the Code of Virginia – as will not be contrary to the public interest, when, owing to special conditions, a literal enforcement of the provisions will unreasonably restrict the utilization of the property to a degree that is not shared generally by other properties within the same zone or district, and its authorization will not be of substantial detriment to adjacent properties or change the character of the neighborhood
3. Hear and decide applications for interpretation of the Zoning District Map when there is any uncertainty as to the location of the boundary line.
4. Grant Conditional Use Permits in accordance with the provisions of Section 18-209 – 216 of the Vienna Town Code.

The Board of Zoning Appeals does not have the power to change the Zoning Ordinance or the rezone property. Those powers rest with the Mayor and Town Council. Please be advised, the Board decides each application on its own merit – there are no precedents.

The Board will first consider each application during the Public Hearing portion of the meeting. As part of the Virginia Court System, the Board of Zoning Appeals takes sworn testimony and each participant will be sworn in prior to offering comments.

The second portion of the meeting – the Regular Meeting – will convene after the Public Hearing has been closed. The Board will reach a decision on each item. The grant of any appeal from a decision by the Town's Zoning Administrator requires an affirmative vote of a quorum, no less than a majority of membership (4), of the Board. The grant of a Conditional Use Permit or variance requires an affirmative vote of a quorum, no less than a majority of membership (4), of the Board. If you are unable to stay for the last portion of the meeting, you may learn the Board's decision by contacting staff.

If any party is not satisfied with the decision of the Board, an appeal may be filed with the Circuit Court of Fairfax County within 30 days after the issuance of the Board's decision on the matter.