



Town of Vienna

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

Meeting Minutes Board of Zoning Appeals

Wednesday, July 17, 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 July 17, 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. Also attending and representing staff were Frank Simeck, CZA, Certified Zoning Administrator, and Sharmaine Abaid, 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 for an appeal of a zoning violation

Continuance - 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. Dowler asked Mr. Cumings to come forward and asked where the application stood. Mr. Cumings stated the Town approved the plans, but Fairfax County still needed to issue a building permit. The Fairfax County inspector, who issued the building without a permit violation, was the only person who would be allowed to release the permit. When the permit was released the contractor would complete the work. Mr. Dowler asked Mr. Simeck what the town's position was on the current status of the case. Mr. Simeck stated that what Mr. Cumings stated was correct. Mr. Dowler asked if the violation was to be dismissed or if Mr. Cumings was withdrawing his appeal. Mr. Cumings asked if it could be continued until September, as the work on the porch would be complete by then. Mr. Dowler asked if the town's position was to move forward with the violations or wait until they come into compliance. Mr. Simeck stated that town's position was to allow the applicant to complete the work and permit until September. Mr. Dowler said it would then be another continuance until September.

Mr. Rak asked Mr. Simeck if the Board denied the appeal would he have the discretion to delay the enforcement while the applicant is trying to remedy the situation, Mr. Simeck stated that was correct. Mr. Rak stated he didn't feel there was reason to continue the appeal as a way to delay compliance when the Zoning Administrator has the ability to delay enforcement. The purpose for the appeal is to determine if the decision was correct and there have been no arguments made as to why it was not correct. Mr. Rak stated that it should be left to the discretion of the Zoning Administrator. Mr. Creed stated he agreed with Mr. Rak's comments.

Mr. Dowler stated that if it gets resolved in September it goes away, but discussing the validity of the appeal would mean addressing the four violations listed in the March letter.

Mr. Daly stated that an issue rendered moot by work that would be completed in the next 60 days is work that should be allowed to be done without wasting the time of the Board, if the Board's time can be used for better purposes that evening.

Mr. Dowler asked for a motion.

Mr. Creed asked if the town was willing to withdraw. Mr. Simeck stated the town was not willing to withdraw, but would be willing to continue to ensure everything was completed. Mr. Creed asked if the Board did not go for a continuance would the town withdraw, Mr. Simeck stated the town's position would be to proceed with adjunctive relief and court proceedings to force the applicant into compliance. The applicant's willingness to come into compliance shows the continuation to September is reasonable.

Mr. Cumings stated the appeal was filed to stay enforcement and time to come into compliance. It would be appropriate to continue the matter until September. If the Board disagrees and wants to deal with the appeal then they could. The clean thing to do would be complete the work in two months and hopefully not be back in September, but just submit a letter to the town saying the situation has been remedied.

Mr. Petersen said that in going forward, with the expectation that the work would be completed in September, the Board should go on record saying September is a firm expected deadline. The issue extended back 19 months in dealings with the town and for 16 months with legal representation. The town has shown a great deal of patience in dealing with Mr. Cumings' client. Mr. Petersen said he would like the Board to express the expectation that the work be completed by September and be in compliance.

Mr. Dowler asked for a motion. Mr. Gadell made a motion to continue the application with a deadline of September for compliance with Town Code Section 18-218 as it relates to building permit requirements for the property located at 124 Melody Ln SW, RS-10 Single-Family Residential Zone. Mr. Daly seconded the motion.

Motion: Gadell

Second: Daly

Nay: Creed

Passed: 5-1

919 Ware St SW - Continuance for approval of a variance

Continuation of a request for approval of a variance from Section §18-33.C of the Vienna Town Code to construct a front porch beyond the front-yard setback line on the property located at 919 Ware Street SW in the RS-10, Single-Family Detached Residential zone. Filed by R. Jonas and Darcey K. Geissler, owners

Mr. Geissler was sworn in to give testimony. Mr. Geissler shared his appreciation for the Board's dedication and gave a brief description of their family's life in Vienna since 2006. Mr. Geissler also explained the fraudulent contractor they had dealt with when they first applied to add on to their home. He also explained that their desire was not to tear down and rebuild, but to build up and out. Part of their expansion was to build a 10-foot front porch. Upon filing, the application for the 10-foot front porch they found out they could not build that porch. Mr. Geissler stated he read the town code, felt that the code did allow for the porch, and the lot divisions where he lived were created prior to the creation of the Town Code Section 18-33.C. Mr. Geissler discussed the reasons behind their desire for a

deeper porch. He then stated that he felt the town code conflicted with itself so the town's application leads to an unreasonable outcome. Mr. Geissler referenced an aerial picture on display as his basis of his comment that the town cannot figure out the location of the property line. Mr. Simeck stated the pictures was a GIS overlay so the property line was not accurate and just a depiction of approximately where the property line was located. Mr. Dowler asked if Mr. Geissler was asserting that the property line in the picture was to be used as the 25 feet. Mr. Geissler stated he was asserting that they should look at the definition of street in Code Section 18-33.

Mr. Petersen asked why the aerial photo was shown and the purpose of it being introduced as evidence. Mr. Geissler stated he didn't want the Board to be misled by that depiction which was not accurate. He continued stating his difficulty understanding the town code, which he felt was a liability the town had since the code conflicted with itself. Mr. Geissler said for a street less than 50 feet wide, Town Code Section 18-33.C requires a 50-foot setback from the centerline of the street and 25 foot setback from the street line for streets more than 50 feet wide. Mr. Geissler stated that Town Code Section 18-4 states a street is a public thoroughfare, which affords the principle means of access to an abutting property. Mr. Geissler continued his interpretation of the definition of a street to the Board.

Mr. Creed spoke on the minutes from July 17, 2013 in which he asked what the curb and street line were. The former Director of Planning and Zoning explained that Ware Street had a 60-foot wide street right of way, not 50 feet. Mr. Geissler explained that was right of way, not street or street width. Mr. Creed stated it was street line as defined to the Board when the question was asked (page 2 of the July 17, 2013 minutes). Mr. Geissler submitted to the Board that it was arbitrary and capricious to choose a property line when the definition does not so state and gives the definition of street width. He continued his explanation of street definition per the Town Code versus the definition of property line as well as his thought that the town was creating a problem or a potential liability. Mr. Geissler gave a few examples (501 Kibler Cir, 901 Olympian Ct) of porches that he stated were 15 feet from the curb and were outcomes of the arbitrary and capricious definition and application of a property line rule on thoroughfare streets. Mr. Creed said this had been brought to the attention to the Town Council in a work session on October 21, 2013. The Council had looked at it and had determined that Council or staff required no further action and the zoning regulations remained unchanged. Mr. Geissler stated that it was their determination, but said it would not free them from liability from his case or others.

Mr. Dowler asked if Mr. Geissler had done calculations based on the Town Code. Mr. Geissler stated he had and that it would afford them to do a 10-foot deep front porch. Mr. Dowler asked if he had a surveyor do the calculations. Mr. Geissler stated yes and showed the survey. Mr. Dowler pointed out that the surveyor shows 29 feet and the Code states "...and not less than 25 feet measured from the street line". Mr. Dowler told Mr. Geissler that his survey is measuring from the street line to the front of his house, which was 29 feet. Mr. Geissler said that it was not the street line as defined in the code, and that street line was not pertinent, but the definition of street was pertinent. Mr. Geissler argued that property line was being mistaken for street line and it was not in the ordinance. He continued stating the town made a mistake and that he should be able to rely upon the code as written. There was continued discussion regarding street line, property line, street width, and street.

Mr. Rak asked if Mr. Geissler could address his arguments for the variance in addition to the street width. Mr. Geissler said it was an unreasonable restriction on the property to apply an ex-post facto law in an unreasonable, arbitrary, and capricious fashion. He addressed the staff report note regarding coverage on the lot and there were no

inconsistencies as the survey was the exact same survey from a licensed surveyor that was submitted in 2013. He marked the proposed porch and the existing patios on it. Mr. Geissler stated he submitted a building permit, the variance application, and a true and accurate survey.

Mr. Creed asked where on the plat it shows the lot coverage of 24.59%. Mr. Geissler stated he marked each of the measurements on the plat and on an addendum; he listed each measurement with the multiplication and addition. Mr. Creed asked where the measurement was on the Sam Whitsman land survey. Mr. Geissler stated the coverage was not indicated on the survey. Mr. Creed asked if his contractor showed what the lot coverage would be. Mr. Geissler stated he was their contractor. Mr. Simeck stated the applicant was asked to provide a new survey, but he refused stating he had been before the Board in 2013 and what he had provided in hand calculations was sufficient.

Mr. Dowler asked if he was looking for 1.2 feet from what he could build without a variance, Mr. Geissler said yes.

Ms. Darcey Geissler was sworn in to speak. Ms. Geissler asked that the Board consider that they had met with the town to inquire what they could do by right. Ms. Geissler stated they originally wanted a 10-foot porch, but now they reduced it to an 8-foot porch, and now they would like a 6-foot porch to make it usable. She stated they could get to 6 feet and do that by right if they cantilevered over the support beams and the roof. They would need to put support beams in the middle of the walk area if they cantilevered. Ms. Geissler asked the Board allow the variance to build the same size porch they were told they could do by right, but to do so with the support beams at the edge of the porch rather than middle support columns.

Mr. Creed stated that by right, they could have a 4 foot 10 inch porch; Mr. Simeck stated that was correct. Mr. Creed asked if a 4-foot porch, just shy of 5 foot, would not work. Ms. Geissler stated that was how deep their stoop was and it was not deep enough. She stated that their desire was to age in place, and they would like to be able to build an aesthetically pleasing ramp that goes into the front porch that would be beneficial to their aging parents and to them in the future. Ms. Geissler then explained that using the by-right size of 4 foot 10 inches would not allow them the width needed for wheelchair accessible ramp. She stated that they did review the code and reasonably relied upon how the code was written. Mr. Creed stated that the requirement for a variance is that it would unreasonably restrict the utilization of the property and wondered if 6 foot versus 4 foot 10 would unreasonably restrict utilization of the property. He also asked if the structural restrictions mentioned with the ramp could be mitigated differently. Ms. Geissler stated that she didn't believe it could and she then asked if it was an unreasonable restriction to say they could build a 6 foot porch as long as it was cantilevered and add a fake fence. Ms. Geissler continued with her thoughts on cantilevering the porch. Mr. Creed recommended that the applicants have an architect evaluate and find something to fit within the confines of the code and law. Ms. Geissler mentioned that they had, and the architect they spoke with was unable to find something that met the criteria.

303A Mill St NE - Revocation of a Conditional Use Permit

Request for revocation of a conditional use permit for live entertainment for Lela, LLC DBA Bey, located at 303A Mill St NE, in the CM, Limited Industrial zone. Application for revocation filed by Frank Simeck, Zoning Administrator for the Town of Vienna.

Mr. Dowler asked Mr. Simeck to give a brief statement as to the request by the town to revoke the CUP. Mr. Simeck gave a brief history of the CUP for live entertainment to Bey Lounge starting in 2015 for a 1-year term. There had been several noise violation

incidents in 2017 as well as physical altercations. The BZA had heard both the continuation and revocation of the CUP in November 2017 in which the revocation was denied, and a 6-month extension was allowed with adding further conditions on the CUP to include the decibel level to stay at 51 or below. When Bey came back before the Board in 2018 the CUP was granted with no term limit. Since the granting of the CUP there have been three separate noise violations for which Bey Lounge was found guilty.

Mr. Rami Hasrouni was sworn in to give testimony. Mr. Dowler asked for Bey Lounge's position on the revocation of the CUP. Mr. Rami Hasrouni stated they were no longer in need of the permit as there will no longer be live entertainment and it will just be a restaurant. Mr. Dowler asked if he was agreeable to the revocation of the CUP and Mr. Rami Hasrouni said yes.

Mr. Petersen asked if the restaurant will be using recorded music. Mr. Rami Hasrouni stated they would, but it would be calm background music.

206 Scott Cir SW - Request for a variance

Request for approval of a variance from Section §18-33.E of the Vienna Town Code to construct a rear screened porch over a portion of an existing unpermitted deck that encroaches into the rear-yard setback on the property located at 206 Scott Circle, SW; in the RS-10, Single-Family Detached Residential zone. Application filed by, Brian Buyniski & Julia Kreyskop owners.

Ms. Julia Kreyskop was sworn in to give testimony. Ms. Kreyskop gave some history about her and her husband Mr. Brian Buyniski. Their desire is to expand the livable area of their house and would like an exception to the rear setback to do so. The granting of the variance would require the approval to keep a deck in an existing non-conforming footprint. Ms. Kreyskop stated they had purchased their 2124 square foot home in 2010 and would like to expand the living area to enjoy with family and friends. Ms. Kreyskop listed characteristics of their home and lot that she felt created a hardship; a wider than deep lot, a house that sits diagonally on the lot, and they are on a corner lot. Due to setback restrictions three sides of the lot do not allow for additions and the side that does has a carport and utility room. Ms. Kreyskop stated they did not create any of the existing conditions of the house and that their neighbors that would be impacted by the construction of a screen porch support the proposed project. Ms. Kreyskop continued by explaining the two parts of the deck, as well, as how they proposed to change a portion of the deck while keeping the long portion of the deck the same. She also acknowledged the need for approval to keep the non-conforming long portion of the existing deck, since it had been built without a permit in the 1980's by a previous owner.

Mr. Petersen asked if she had two decks or if it was a single structure. Mr. Kreyskop said they believed the two parts had been constructed separately based on the differences in the design. Mr. Kreyskop also said the only neighbors who could see the deck were the neighbors at the rear, and they had no issue with the deck remaining in its non-conforming footprint.

Mr. Dowler expressed his concern with the unpermitted deck construction.

Mr. Gadell inquired about the 1980 deck construction and asked if at the time of purchase in 2010 had anything been done since they were non-conforming. Ms. Kreyskop stated they were unaware and the survey did not show the distance of the deck from the rear property line and had it shown, she still would not have known that it was not conforming.

Mr. Rak asked if the zoning ordinance in the 80's would have restricted the decks if they

had come through the permit process. Mr. Simeck stated it was the same setback and the decks would have had to meet the 25-foot rear setback.

Mr. Dowler asked if the decks have existed for this length of time if they are exempt from reconfiguring to fit the code. Mr. Simeck stated yes, it would be a legal non-conformity until touching it, and then it would have to conform. Mr. Dowler asked if adding a porch to a deck would be touching it, and Mr. Simeck said yes, that would be altering it. Ms. Kreyscop stated they would be touching the right side to construct a screen porch, but not the longer piece of the deck.

Mr. Petersen stated that after he had looked at the property and had gone through the written submission, he saw the deck as a single structure with significant encroachment on the setback. Mr. Petersen asked if Ms. Kreyscop would like to strengthen her argument that there were two separate structures there. Ms. Kreyscop stated they were not asking to keep it by right, but approval to keep it since the long part of the deck stands by itself and would not be touched during the construction of the screened in porch.

Mr. Dowler stated she would not need the Board's approval to keep the decks, whether or not they would get to build the porch. Mr. Kreyscop stated Mr. Simeck told her that they would have to add the request to keep the deck.

Mr. Petersen said he understood that if the Board approved the variance, they would have to approve the current non-conforming deck that significantly encroached into the setback. Mr. Dowler stated that if the structure was in fact two decks. Ms. Kreyscop stated that the deck does encroach 7 feet, but the size of the deck fits within the size requirements of a deck for the town. Ms. Kreyscop explained what they would have to change if they shortened the deck.

414 Maple Ave E - Request for approval of a Conditional Use Permit

Request for approval of a conditional use permit from Section §18-74.E of the Vienna Town Code for an animal hospital, located at 414 Maple Avenue East, in the C-1 Local Commercial district. Application filed by Banfield Pet Hospital.

Mr. Aaron Vorsane was sworn in to give his testimony. He stated that Banfield Pet Hospital would be relocating from their current location at the Pet Smart on Leesburg Pike. Mr. Vorsane said it was a typical Pet Clinic that would perform exams, dental and preventative care, as well as general surgery. There would not be any overnight boarding of animals. Animals would be brought in during normal operating hours; 7am – 7pm, 7 days a week. They were also proposing to install a 4-foot high chain link fence on the north side of the property to help with potential trash or debris going into the Wolf Trap Creek. They also proposed to put trash and recycling receptacles on the northeast corner of the property and a pet waste station.

Mr. Dowler clarified with the applicant that the hours were 7am – 7 pm and none of the animals would stay overnight. Mr. Vorsane said that was correct. Mr. Dowler asked about noise mitigation. Mr. Vorsane stated that for all Banfield Pet Hospitals they install a 3 and 5 inch steel stud wall over the existing demising wall to the full height, going from the floor and built up to the underside of the existing structure. They will also provide batt insulation at full height as well as 5/8 inch sound break gypsum board. Mr. Dowler asked if it was satisfactory to the neighboring tenant. Mr. Vorsane said yes and that Banfield has not had any noise issues with their clinics around the country.

Mr. Creed asked if there was anything that would be done to mitigate animal noise for the rest of the building. Mr. Vorsane stated there were currently insulated CMU block walls

so they did not feel there was any need for additional noise mitigation around the perimeter of the building.

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

Motion: Petersen

Second: Creed

Passed: 6-0

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. Also attending and representing staff were Frank Simeck, CZA, Certified Zoning Administrator, and Sharmaine Abaid, Board Clerk.

Item No. 2

Continuation of a request for approval of a variance from Section §18-33.C of the Vienna Town Code to construct a front porch beyond the front-yard setback line on the property located at 919 Ware Street SW in the RS-10, Single-Family Detached Residential zone. Filed by R. Jonas and Darcey K. Geissler, owners.

Mr. Dowler asked if there was a motion. Mr. Rak stated he was not convinced by the argument of the definitions of street, but an argument made based on the significant tree lawn, sidewalk, and strip between sidewalk and property line makes the apparent setback look substantial. Mr. Dowler asked for a motion.

Mr. Petersen stated he was not willing to make a motion to approve it and if there was no motion to approve it then he would make the motion to dis-approve.

Mr. Dowler asked if anyone wanted to make a motion to approve. Mr. Gadell stated he would make a motion to approve their request for a variance from section 18-33 of the Vienna Town Code in construction of a front porch beyond the front yard setback line of the property located at 919 Ware St. SW in the RS-10 Single-Family Detached residential zone. Mr. Dowler asked for a second, and Mr. Daly seconded the motion.

Mr. Gadell stated he did not agree with the argument of the definition, but for reasonable use of the property. The resident did state a 6-foot deck was allowed with a cantilevered design, but are not attractive. He continued stating he felt the request was reasonable for use of the porch, as the tenant would like to age in place with their parents, as the width and slope of ADA compliant ramps are specific. The 1.2-foot variance in front would allow that type of ramp to be hidden for future access.

Mr. Rak stated he didn't understand how the ramp related to the depth of the porch. Mr. Gadell stated the only way to get the ramp up and ADA compliant, the ramp would need to come out 7 or 8 feet. Allowing the extra width in the front would allow the ramp to go to the side driveway.

Mr. Creed stated he didn't believe the ramp was relevant as the Town Code allows for the construction of ramps and at the termination of need they are required to be torn down.

Mr. Creed asked Mr. Simeck's input. Mr. Simeck stated that was correct and a permit was allowed for up to 10 years or as long as the handicapped person was living in the home. Mr. Creed stated he did not believe a ramp was germane to the construction of the front porch.

Mr. Petersen stated he did not support the motion. He did not believe that, based on what had been heard in sworn testimony or read, not granting the variance would unreasonably restrict the homeowner's use of the property. Without the granting of the variance, the homeowner could build, by right, a front porch that is of the width the homeowner wishes. It comes down to an issue of aesthetics, which is an interpretation. Mr. Petersen also stated that to apply the Town Code in that instance was not arbitrary or capricious as was argued by the applicant.

Mr. Dowler stated he agreed with Mr. Petersen's position and then restated the motion. Mr. Dowler then asked for a vote

Motion: Gadell

Second: Daly

Failed: 2-4

Nay: Rak, Petersen, Dowler, Daly

Item No. 3

Request for revocation of a conditional use permit for live entertainment for Lela, LLC DBA Bey, located at 303A Mill St NE, in the CM, Limited Industrial zone. Application for revocation filed by Frank Simeck, Zoning Administrator for the Town of Vienna.

Mr. Dowler stated he was unsure if there was a need for a motion. Mr. Petersen said that he believed there was a need even though Mr. Hasrouni stated he was not opposed to the revocation. Mr. Dowler agreed with Mr. Petersen and then asked if there was a motion to revoke Bey Lounge's CUP.

Mr. Creed made a motion to revoke the CUP for live entertainment for Lela, LLC DBA Bey, located at 303A Mill St NE in the CM, Limited Industrial zone. Mr. Daly seconded the motion. Mr. Dowler asked if there was any discussion.

Mr. Petersen stated, in support of Mr. Creed's motion, that the town had very good reasons based on the court convictions and the repeat violations to revoke the conditional use permit. Mr. Creed pointed out that the person who came before the Board the last several times requesting the CUP was not the person that stood before the Board that evening.

Motion: Creed

Second: Daly

Passed: 6-0

Item No. 4

Request for approval of a variance from Section §18-33.E of the Vienna Town Code to construct a rear screened porch over a portion of an existing unpermitted deck that encroaches into the rear-yard setback on the property located at 206 Scott Circle, SW; in the RS-10, Single-Family Detached Residential zone. Application filed by, Brian Buyniski & Julia Kreyskop owners.

Mr. Creed made a motion to approve the variance from Section 18-33 of the Vienna Town Code to construct a rear screened porch over a portion of an existing unpermitted deck that encroaches into the rear-yard setback on the property located at 206 Scott Circle and make the larger deck to be conforming. The motion was not seconded.

Mr. Rak stated that of the numerous screened porches that had been seen the BZA had consistently denied those requests. For consistency of application of the ordinance, Mr. Rak then made a motion to deny the variance. Mr. Petersen seconded the motion.

Mr. Creed stated the Board had never been consistent with corner lots with houses sitting diagonally on the lot. Typically, the Board had been permissive of the applications for those lots in the past due to the back yards, and where the homes sit on the lot.

Mr. Petersen stated that in supporting the motion to deny the owners can continue to have reasonable and enjoyable use of the property without the screened in addition. If the Board were to approve the variance and the non-conforming deck, it would be a significant encroachment into the restricted area of the rear setback.

Mr. Daly stated he agreed with Mr. Petersen as the photos and the overall package left it difficult for him to find two separate decks, and that would be what was needed to allow it. As it was one deck, it being touched and altered the 7-foot encroachment is very significant. He continued stating the Board has to apply what it had to apply and it was not the place of the Board to change the code.

Mr. Gadell asked that if they deny the motion the applicants would still get to keep their deck as is, Mr. Dowler stated that was correct.

Mr. Creed asked about exhibit B's photos and he felt there were two separate decks as one had planking going perpendicular to the house and one went parallel to the house and they had different sets of rails. He continued saying that based on his view it was two separate decks and he would be voting based on his view.

Mr. Rak referred back to the issue of consistency and said he did defer to Mr. Creed as he had tenure on the Board. There had been a recent application that was similar and was denied. Mr. Rak then said that his decision came down to the inability to see a hardship.

Motion: Rak

Second: Petersen

Passed: 5-1

Nay: Creed

Item No. 5

Request for approval of a conditional use permit from Section §18-74.E of the Vienna Town Code for an animal hospital, located at 414 Maple Avenue East, in the C-1 Local Commercial district. Application filed by Banfield Pet Hospital.

Mr. Petersen made a motion to approve the CUP. Mr. Daly seconded the motion.

Mr. Petersen stated, in support of the motion, it was an appropriate use for that part of town, an appropriate business, and it will enhance the livability of the town to have that facility available to Vienna residents.

Mr. Dowler stated he felt they answered all questions about sound, waste disposal, and

hours.

Mr. Creed stated the applicants had met the Planning Commission's recommendation for the sound barrier on the property.

Motion: Petersen

Second: Daly

Passed: 6-0

4. Election of a new Vice Chair

Mr. Dowler stated that the Board had a matter of appointing a new Vice Chair as Mr. Haight had resigned from the Board. Mr. Dowler explained that the Board rotates the Chairmanship and Vice Chairmanship each year. The Vice Chair's responsibility is to conduct the meeting in the absence of the Chair, and to sign the BZA orders. Mr. Dowler asked if there was a nomination for the Vice Chair. Mr. Petersen made a motion to nominate Mr. Creed as Vice-Chair. Mr. Gadell seconded the motion.

Motion: Petersen

Second: Gadell

Passed: 5-0

Abstain: Creed

Mr. Dowler stated he researched whether an attorney should or should not be sworn in when giving testimony at a BZA meeting. He stated he found no canon of ethics or anything in the professional rules allowing that exception for a Virginia attorney so he stated he will swear in all who give testimony.

Mr. Daly stated he felt that was appropriate if they were giving evidence or testimony. An attorney giving argument based on evidence heard or presented would be different. Mr. Dowler stated that an attorney, representing a client, that makes an opening statement, but his clients would testify the attorney would not be sworn in at that time. Discussion continued regarding swearing in attorneys

5. Approval of the Minutes:

Mr. Dowler moved to the approval of minutes and asked if there was a motion to approve. Mr. Petersen made a motion to approve the May minutes with corrections.

Mr. Creed stated there were some misspelling of names and then stated moving forward there should be a document filled out by those who are giving testimony to avoid those errors.

Mr. Rak seconded the motion

Motion: Petersen

Second: Rak

Passed: 5-0

Abstain: Daly

Mr. Dowler asked for a motion to approve the June minutes. Mr. Daly made a motion to approve the June minutes and Mr. Creed seconded the motion

Motion: Daly

Second: Creed

Passed: 6-0

There was discussion regarding the upcoming Board of Zoning Appeals certification training. There was also discussion regarding replacement for Mr. Haight and possibly Mr. Daly when he chooses to move from the town.

6. Meeting Adjournment

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

Motion: Creed

Second: Rak

Passed: 6-0

The meeting was adjourned at 9:46.

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.