



Town of Vienna

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

Meeting Minutes Board of Zoning Appeals

Wednesday, September 18, 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, and Michael Gadell. Bill Daly was absent. Also attending and representing staff were Frank Simeck, CZA, and Sharmaine Abaied, 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.

Mr. Dowler called for the first item and Mr. Creed interjected with a point of order. Mr. Creed stated that the minutes from July 17th had item 1's continuance, for the building permit issue, on the property located at 124 Melody Ln. There had been a vote that the problem must be corrected by September, but it was not an agenda item. Mr. Creed asked for an explanation from the zoning administrator. Mr. Dowler stated he would like to go with item 1 so the applicants could be heard and then address the continuance.

2. Public Hearings

111 Church St NW - Blend 111 - Conditional Use Permit - Live Music

Request for approval of a conditional use permit from Section §18-210.S of the Vienna Town Code for live entertainment, located at 111 Church St NW Suite 101, in the C-1B, Pedestrian Commercial district. Application filed by Hugo Vasquez of Blend 111.

Mr. Hugo Vasquez was sworn in to speak. Mr. Vasquez stated they had opened their restaurant last May on Church Street. They wanted to offer live music to their customers to improve the dining experience which is the reason for the application. Mr. Dowler stated the planning commission had approved the request and Mr. Vasquez stated that was his understanding. Mr. Dowler stated the Planning Commission recommended the music end at 11:00pm and it be limited to what was in the application, acoustic music with occasional amplification as an accompaniment for dinner. Mr. Dowler asked if the restrictions were agreeable to Mr. Vasquez and he stated they were. Mr. Dowler stated they had received the justification and the floorplan had been seen by the Board including the location of the music and felt the Board had all they needed to make a decision. Mr. Dowler asked if there was anyone present to speak on the application.

Paula Pierce, 123 Church St NW, was sworn in to speak. Ms. Pierce asked what the expected noise level of the music would be as her yoga studio conducts meditation in the evenings. She was concerned that the music level may interfere with the work they do. Ms. Pierce stated parking was already an issue and was concerned that the music may increase the clientele and cause additional parking issues. Ms. Pierce stated that at the

time she left for the BZA meeting, 123 Church St NW parking lot was full, but there were no customers for any of the business located there.

Mr. Dowler asked Mr. Vasquez to approach to answer the questions. Mr. Vasquez asked Mr. Michael Biddick to come forward to assist with answering the questions. Mr. Michael Biddick was sworn in to speak. Mr. Biddick stated, in relation to the volume question, that the restaurant currently plays music during open hours. The music in the building, per the request, would be at the same volume level currently played. Mr. Biddick said they weren't looking for dance hall type music, just acoustic guitar players, percussion, soft music to be played at the same level they currently have their music played. Mr. Biddick mentioned they did not have outdoor space or windows to open so the only time any music would be heard is when someone enters or exits the building. The building is all concrete offering noise insulation. The parking question was addressed next. Parking on Church St is an issue, but live music or, no live music would not be an issue for parking. The live music would not be a draw as was not intended to be a concert venue; it will be local musicians looking for a place to play. Mr. Dowler asked if they had public parking or parking maintained by the building. Mr. Biddick stated the building had private parking behind the building. He also said, the space between their location and Bazin's is a driveway leading to the back parking lot and includes underground private parking. Mr. Dowler asked if they had the same landlord. Mr. Biddick said they were separate buildings and separate parking. He continued stating that when guests ask about parking they tell them the parking is below the building, behind the building, and any available street parking.

Mr. Creed asked Ms. Pierce how far her building was from Blend 111. Ms. Pierce stated it was directly next door and their parking sits in front, so it is more visible. Mr. Creed asked where her studio was in relation to Blend 111. Ms. Pierce stated hers was the furthest away and that she was more than satisfied with Mr. Biddick's answer relating to the volume of the music. Mr. Dowler asked if there were other questions.

Mr. Francis J. Lyons, 111 Center St. N., was sworn in to speak. Mr. Lyons wanted to know if the Board was allowing for amplification and if they were, could there be a specific wattage limit or type of amplifier specified. He felt occasional amplifier use was very broad. Mr. Dowler asked if he had a home or business across from Blend 111. Mr. Lyons said it was a home. Mr. Dowler asked if it was residential condominiums and Mr. Lyons said yes. He stated he could look out his window and into the new restaurant. Mr. Dowler asked if he had heard any music, Mr. Lyons said he had not and that their establishment has been fantastic thus far. He continued stating the reason for his comment was due to Blend 111's neighbor.

Mr. Dowler asked for any other comments and then asked for a motion to close the public hearing.

Mr. Gadell made a motion to close the meeting, Mr. Rak seconded the motion.

Motion: Gadell

Second: Rak

Passed: 5-0

Absent: Daly

3. Regular Meeting

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 September 18, 2019, beginning at 8:00 PM with Robert Dowler presiding as Chair. The following members were present: Jonathan Rak, Robert Petersen, George Creed, and Michael Gadell. Bill Daly was absent. Also attending and representing staff were Frank Simeck, CZA, and Sharmaine Abaied, Board Clerk.

Mr. Dowler spoke on the continuance for 124 Melody Ln for Nicholas Cumings clients and the Zoning Administrators determination. It had been continued, but there was no sign of it on the agenda. Mr. Simeck was asked what was happening. Mr. Simeck stated that Mr. Hathaway, owner of 124 Melody Ln SW, had been working diligently after the meeting in July to obtain a reputable contractor. He had told Mr. Simeck that he had one lined up, but that gentleman had backed out. Mr. Hathaway had recently obtained a new contractor, had a Fairfax County building permit, and had an invoice for preliminary work to be done. Mr. Simeck stated Mr. Hathaway was hopeful that the new contractor would have the work completed by the next meeting on October 18th. Mr. Dowler asked what they were doing to rectify the situation. Mr. Simeck stated they had an existing screen porch they would need to cut in half and convert into an open deck. Mr. Simeck stated that would alleviate the lot coverage and setback issues. Mr. Dowler asked why he was holding on to the appeal. Mr. Simeck stated it was to put a stay on any enforcement. Mr. Dowler stated that if Mr. Hathaway withdrew he would still have the violation, and Mr. Simeck stated the withdrawal would force the town to seek injunctive relief. Mr. Petersen stated the owner sought, through the appeals process, to have the Board interpose itself between the property owner and the Zoning Administrator for enforcement of the violation. Mr. Petersen stated that in the July meeting they made it clear that their position expired that month (September) and the Board was no longer interposing itself in terms of enforcement of sanctions for the zoning violation. Mr. Rak stated the intention was to deny the appeal if the work was not completed in September and then the enforcement discretion would be in the hands of the Zoning Administrator. Mr. Rak asked if there was reason the Board could not move to deny the appeal. Mr. Dowler stated the applicants had notice from the last meeting, but no one was present at the current (September) meeting. Mr. Dowler asked what the implications would be for denying the appeal when the applicants were not present, and what the technical reason was to not move forward with denying the appeal. Mr. Simeck stated there had not been proper notification which was why the item had not gone before the Board that evening. Mr. Creed asked why it had not gone out. Mr. Simeck stated that it was an error and due to notification requirements the item could not be heard before the Board. Mr. Dowler asked if it was formal notice from what they had been told at the last meeting. Mr. Simeck stated it was the formal notice of public hearing. Mr. Creed stated he was the only member who had voted against the item in July as it had already dragged on for a long period of time. Mr. Dowler stated that if the item was properly before the Board they could move forward. Mr. Creed recommended that the Zoning Administrator follow a parallel enforcement. Mr. Simeck stated he would need to speak with the Town Attorney as there was a stay on enforcement. Mr. Petersen stated the Board did not need to take action and the agreement was to postpone until September and that time had expired. Mr. Dowler stated he didn't believe it happened automatically, and the Board has to take a positive to finish by deny or granting. Mr. Rak agreed, and that although Mr. Petersen was clear, due to the procedural requirements not having been met the Board's hands were tied. He followed up by saying the application should be confirmed to be on the agenda for October. Mr. Rak also said he did not believe continuances should be granted, as the enforcement should be at the discretion of the Zoning Administrator. If an appeal of the Zoning Administrator's decision is brought forward, the applicant should describe the basis for their appeal and why the Zoning Administrator is wrong or it should be turned down. Mr. Creed stated they had been trying to assist the applicant, but no one believed it would go on that long. There was additional discussion regarding the timing of the appeal. Mr. Dowler stated it needed to be on the docket for October and all the notices need to go out.

Item No. 1

Request for approval of a conditional use permit from Section §18-210.S of the Vienna Town Code for live entertainment, located at 111 Church St NW Suite 101, in the C-1B, Pedestrian Commercial district. Application filed by Hugo Vasquez of Blend 111.

Mr. Rak made a motion to approve with the conditions made by the Planning Commission including; the music be restricted to the live music as described in the application and that the live music end no later than 11:00pm. Mr. Petersen seconded the motion.

In support of the motion Mr. Rak said the applicant made a good justification and answered the questions raised during the public hearing. Mr. Petersen added the application fits within the comprehensive plan of promoting a vibrant central business district and was a step in the right direction.

Mr. Gadell added, in reference to the noise level, the application states single or minimal amplification addressing the noise issue. Mr. Gadell felt that the Blend 111 application was not a parallel issue to other applications that had gone before the Board and had noise issues.

Motion: Rak
Second: Petersen
Passed: 5-0
Absent: Daly

4. Approval of the Minutes:

Mr. Dowler asked if there was a motion to approve the minutes.

Mr. Creed made a motion to approve the minutes as amendments; correcting a word, and adding the names of those who voted “nay” for consistency. Mr. Petersen seconded the motion with written changes to the minutes that had been submitted to the clerk. Mr. Dowler stated he had a small change as well.

Motion: Creed
Second: Petersen
Passed: 5-0
Absent: Daly

5. 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: Rak
Passed: 5-0
Absent: Daly

The meeting was adjourned at 8:32.

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.