



Town of Vienna

Meeting Minutes

Town Council Meeting

Charles A. Robinson Jr.
Town Hall
127 Center Street South
Vienna VA, 22180

Monday, February 1, 2021

8:00 PM

Charles A. Robinson, Jr. Town Hall, 127
Center Street, South

1. Resolution

- A. [21-2053](#) Resolution for Continuity of Government

Mayor Linda Colbert read into the record the Continuity of Government. The Resolution was approved through voice vote.

2. Invocation: Councilmember Ray Brill

Mayor Colbert recognized Council Member Brill who provided the evening's invocation.

3. Pledge of Allegiance to the Flag of the United States of America

4. Roll Call

Council: Council Member Chuck Anderson (via ZOOM); Council Member Ray Brill Jr., Council Member Nisha Patel (via ZOOM); Council Member Steve Potter (via ZOOM), Council Member Ed Somers (via ZOOM); Council Member Howard J. Springsteen and Mayor Linda Colbert.

Staff: Mercury Peyton, Town Manager; Mike D'Orazio, Deputy Director, Planning and Zoning (via ZOOM); Steve Briglia, Town Attorney.

Present: 7 - Council Member Chuck Anderson, Council Member Ray Brill Jr., Council Member Nisha Patel, Council Member Steve Potter, Council Member Ed Somers, Council Member Howard J. Springsteen and Mayor Linda Colbert

5. Acceptance of the Minutes:

- A. [21-2054](#) Acceptance of the Regular Council Meeting Minutes of January 4, 2021 and the Conference Session Minutes of December 3, 2020 and January 11, 2021.

The regular council meeting minutes of January 4, 2021 and the conference session minutes of December 3, 2020 and January 11, 2021 were approved with revisions.

6. Receipt of petitions and communications from the Public that are not on the Agenda. (Limited to 3 minutes per issue and no formal action can be taken this evening)

Mayor Colbert recognized Scott Ward, 408 Adahi Rd., SE. Mr. Ward explained that he has been waiting for his new home building permits for nearly two months due to a delay in approval of the deed of dedication. This delay has caused a hardship as he is unable to move forward with the build until the permits are approved. He is seeking to clear up the confusion and expedite the process. Town Attorney Briglia explained that the Town will not issue building permits until the bank (Vice President or higher) signs off on the deed of dedication; a process which can often

take a very long time. He suggested that it might be possible to issue necessary permits, minus the occupancy permit, while waiting for the deed of dedication. Attorney Briglia will speak with Director of Planning and Zoning Cindy Petkac. Mr. Ward verbally accepted the meeting invite sent by Mayor Colbert to discuss the issue in person.

Additional comments: Council Members Potter, Springsteen and Patel announced their intent to run for re-election.

7. Closed Session Report

It was moved that the members of the Vienna Town Council be polled to affirm that a Closed Session was held on January 25, 2021 virtually, via ZOOM, and in-person, in accordance with Virginia Code, Section 2.2-3711.A.(1), and the Town of Vienna's Continuity of Government ordinance, for discussion or consideration of personnel matters, specifically the annual performance evaluations of the Town Manager and the Town Clerk. It was further moved that the Certification Resolution be adopted in accordance with State Statutes, and that the Town Clerk is authorized to execute the Certification Resolution. And it was further moved that the Closed Session be continued to Monday, February 8, 2021 at 7:00 PM in accordance with Virginia Code, Section 2.2-3711.A.(1), and the Town of Vienna's Continuity of Government ordinance, for discussion or consideration of personnel matters; specifically the interviewing of individuals for consideration of appointment or reappointment to Town Boards or Commissions.

Motion, Council Member Somers. Second, Council Member Springsteen. Motion carried unanimously.

Mayor Colbert moved to amend the motion to include Saturday, February 6, 2021 at 9:00 AM. Second, Council Member Somers. Motion approved unanimously.

Town Manager Mercury Payton introduced the new Director of Human Resources, Michele Crabtree.

7. Closed Session Report

Aye: 7 - Council Member Anderson, Council Member Brill, Council Member Patel, Council Member Potter, Council Member Somers, Council Member Springsteen and Mayor Colbert

8. Public Hearings

A. [21-2031](#)

Public hearing on proposed text amendments to add Family Day Home provisions to Sections 18-4, 18-13, 18-210 of Chapter 18 of the Town Code.

Mayor Colbert called the first Public Hearing to order. Town Clerk Melanie Clark called roll. All Council were present.

Mayor Colbert recognized Deputy Director of Planning and Zoning, Mike D'Orazio, to provide an overview of the proposed text amendments. Following his presentation, Mayor Colbert asked for clarification on language referencing the RS16 zone. Deputy Director D'Orazio indicated that the Code is cumulative on this matter where other zoning districts reference uses permitted in RS16.

Council Member Patel questioned if automobile traffic/child care drop-off issues discussed during the work session should be included in the written language.

Deputy Director D'Orazio replied that this issue is often brought before the Board of Zoning Appeals. As such, providers have been encouraged to stagger drop off times. Additionally, Director Petkac indicated that as a Conditional Use Permit (CUP), the Board of Zoning Appeals can specify conditions for approval. Council Member

Anderson clarified that the proposed amendment provides an overall framework for a CUP but each specific application requires detailed consideration for issues such as parking, etc.

Council Member Potter questioned whether RS16 typically abutted commercial and if there were plans to change the language which allows colleges, schools, golf courses, etc. in the RS10 and RS12.5 residential zones. Director Petkac responded that in some cases, RS16 does abut commercial. Regarding the RS10 and RS12.5 zones, she clarified that the listed items are CUP's currently allowed in residential zones; in the Code rewrite, all CUP's will be presented in one table. She pointed out that should Council wish to change which zones allow CUP's, these can be amended however the focus of this amendment is to address what is currently not covered (childcare).

Council Member Brill questioned the average number of children in the approved facilities and whether results of background checks and annual visits were shared with the Town. Deputy Director D'Orazio estimated that of the six approved facilities, there are 10-12 children allowed in addition to the children residing in the home. He further noted that both the State of Virginia and the County of Fairfax regulate these facilities and results are available on-line. Town Attorney Briglia clarified that "children residing in the home" refers to any children under guardianship, and the State must issue a license if there are more than four children in care. He further stated that the regulatory function falls to the State and the County, the Town has no authority. The CUP process also includes an analysis of the impact on the neighborhood. The Board of Zoning Appeals has the authority to place unbiased conditions on any applicant.

Deputy Director D'Orazio stated, in response to Council Member Potter, that the Town receives approximately two applications annually, and those applications typically progress to approval.

With no further comments or questions, a motion was made to close the public hearing. Motion, Council Member Anderson; second, Council Member Springsteen. Motion carried unanimously.

Mayor Colbert called for a motion on the proposed amendment.

It was moved to approve the Planning Commission-recommended text amendments to sections 18-4, 18-13, and 18-210 of the Vienna Town Code related to Family Day Homes. It was further moved to direct the Town Clerk to advertise a Notice of Intent to Adopt the ordinance changes. Motion Council Member Anderson; second Council Member Patel. Motion carried unanimously.

A motion was made by Council Member Anderson, seconded by Council Member Springsteen, that the Action Item be approved. The motion carried by the following vote:

Aye: 7 - Council Member Anderson, Council Member Brill, Council Member Patel, Council Member Potter, Council Member Somers, Council Member Springsteen and Mayor Colbert

B. [21-2030](#)

Public hearing on proposed text amendment to Sidewalk Ordinance, Section 17-67.2 of Chapter 17 of the Town Code

Mayor Colbert called the second Public Hearing to order. Town Clerk Melanie Clark called roll. All Council were present.

Following a presentation by Director Petkac and Deputy Director D'Orazio on the proposed text amendment, Mayor Colbert noted that the Town continues to move closer to the goal of making Vienna more walkable.

Council Member Springsteen agreed and expressed his support of the amendment. He did, however, request clarification on the issue of whether a required sidewalk

would be counted in the lot coverage calculation and whether the homeowner was required to install curb and gutter. Deputy Director D'Orazio noted that sidewalks are primarily located in the right-of-way and, as such, do not count toward lot coverage. He further stated that the curb and gutter are the responsibility of the Town, not the homeowner.

Council Member Patel requested clarification on the language "shall dedicate land". She presented the following example: if property does not currently have a sidewalk, is the three feet of property frontage not factored into lot coverage, designated for sidewalk? Also, does the homeowner pay property taxes on that portion of the lot? Deputy Director D'Orazio responded that the referenced three feet is actually right-of-way and technically not part of the owner's property. While homeowners are not taxed on that portion of land, generally property owner's taxes do support the right-of-way. Council Member Patel continued by seeking clarification on the issue of easement vrs. right-of-way. Town Attorney Briglia clarified that an easement is owned by the property owner and the right-of-way is owned by the "people". The function of the easement determines whether a homeowner can build on it. Section 17.67.1 contains language that requires dedication; should a property owner demolish an existing home or subdivision, land on the street frontage must be dedicated for sufficient right-of-way for sidewalk, curb and gutter. Any development after the 1960's was required to dedicate land and build a sidewalk unless it was waived by Council. As a result, in 95% of the single lot tear-downs there is already a right-of-way dedication. In most cases following a tear-down there is no need to dedicate because sufficient right-of-way already exists for sidewalk and often for curb as well. There are exceptions however, with older properties, such as Mr. Ward's property at 408 Adahi Rd., SE, where sufficient right-of-way to build a sidewalk does not exist. The Code states that when a property is clear cut, then the owner must dedicate to the current standards, enough land for sidewalk, curb and gutter. The distinction is that the amendment states that with a single lot development, whether there is adequate right-of-way or not, the property owner must put in a sidewalk if there is sidewalk on either side, regardless of whether curb and gutter are present. The current amendment before Council would require developers/property owners, where there is a single-lot tear-down, to install sidewalk regardless of the existence of sidewalk on either side.

Mayor Colbert recognized, at this point, a suggested amendment, offered by Council Member Anderson. She offered that the content of the amendment did not pertain to the issue under discussion and suggested taking it up at a later date.

Attorney Briglia continued that should a dedication cause an issue with the development of the property, Town Code 18-203 addresses non-conformance caused by government action or dedication. This means that should a development or property owner be required to dedicate property resulting in nonconformance, then Planning and Zoning has the authority to deal with this issue.

Council Member Brill stated that with the current wording, he is unable to vote in favor of this amendment. Language states, in part, "Upon application to the Town, the Town Council designates...." Such wording implies that in every case Council will act in a specific way and he cannot agree to relinquishing Council's ability to make independent decisions. He further took exception with language stating "the Director of Public Works, in their sole discretion". He clarified that he could support wording which would include "Upon application to the Town, Council MAY designate....", and "Director of Public Works may in his or her discretion".

Council Member Anderson asked to return to a discussion of situations where property does not have a dedication, suggesting that Section 18-203 does not necessarily cover all these situations. As an example, should a developer purchase property for redevelopment that does not have dedicated land, the Town's

requirement for sidewalk land dedication changes the size of the lot. In reality “it’s not that it’s nonconforming, it changes the lot size and the setback, so then it reduces the buildability of the lot”. For the sake of fairness, if the Code requires developers/property owners to dedicate land for a sidewalk then, at a minimum, the preexisting dimensions of the lot should determine the buildability of that lot with respect to lot coverage and setbacks. With that said, he stressed that his ultimate objective is to see as many sidewalks installed as possible, and this recommendation was proposed to help to achieve that end.

Mayor Colbert again questioned whether this discussion was appropriate under the current amendment discussion. Attorney Briglia responded that if no action was taken on the amendment under consideration tonight and a home were torn down without sufficient frontage, land dedication would be required. It may be advisable to revisit Section 18-203 separately to assure that no one is adversely effected, however, as of 2015, if a residence is torn down, land must be dedicated for right-of-way whether there is a sidewalk built or not. Mayor Colbert questioned if an easement exists with no sidewalk, does the easement count toward lot coverage. Attorney Briglia explained that an easement differs from a dedicated right-of-way. The property owner owns an easement, so that land counts towards lot coverage and taxes must be paid by the property owner. If the land is designated right-of-way the property owner is not taxed and the right-of-way does not count toward lot coverage. Set back is calculated from the owner’s property line, not from the curb. Mayor Colbert suggested that Section 18-203 may need to be addressed with consideration of Council Member Anderson’s amendment, at another time. Director Petkac stated that all articles of Chapter 17 and 18, will be under review as part of the Code update.

Mayor Colbert turned Council’s attention to Council Member Brill’s concerns with the language of the amendments. Council Member Potter additionally requested clarification on the language “exceptional circumstances” present in Section B questioning if this was defined in greater detail somewhere in the Code. He also questioned the language of a waiver. Should a sidewalk waiver be granted and that money put in escrow, is there language that protects a timeframe for installation so that the money allotted will actually cover the costs of that sidewalk.

In response, Director of Public Works, Mike Gallagher, stated that there is no definition of exceptional circumstances. He would use his professional discretion in accessing the adverse impacts of curb and gutter installation where non exist, examples include drainage issues, current lack of Town funding, specimen trees. Additionally, he explained that the reason he suggested the Director of Public Works in the language to grant a waiver was that the alternative would require all waivers to be referred to Council, which would further delay the process.

In response to the question of escrow, Mayor Colbert noted that this would be a question of policy.

Council Member Somers questioned if it is the general preference of Council and Public Works to not install sidewalk without curb and gutter, and if so what is the logic behind performing patchwork sidewalk installation versus assuring collection of adequate monies to cover sidewalk, curb and gutter installation simultaneously. What is the logic behind having the builder install these patchwork sidewalks?

Director Gallagher indicated that it is preferable to install sidewalk, curb and gutter simultaneously. Those roads currently without curb and gutter will not have a sidewalk built now. However, if there is curb and gutter present and there are no drainage issues, then there is no reason not to build a sidewalk now. If a property

has no curb and gutter and adjacent properties have sidewalks, then the Town will put in the curb and gutter and the developer is required to physically put in the sidewalk. Mayor Colbert remarked that this explains the inclusion of Part B, as a means to provide clarity to a complex issue with many alternatives. The innumerable factors affecting this decision would make it necessary for the Director of Public Works to make the decision. Given that Council Has already approved sidewalks throughout Town, streamlining this decision will assure the process is not delayed.

Council Member Springsteen clarified that the Town does not have the legal authority to require curb and gutter.

Town Manager Payten suggested additional language modification to change "sole discretion" to include the Town Attorney in the decision-making process. He noted that future Town Councils will then have direction that requires a communal decision-making process. Council Member Anderson, while emphasizing that he has no problem delegating the decision to Public Works, agrees with Council Member Potter that the term "exceptional circumstances" should be defined. He suggested that the language include the Director of Public Works and the Town Attorney. Council Member Brill favored excluding the word "sole" for "in consultation with Town Attorney. Council Member Springsteen suggested the addition of the Town Manager in the decision making as well. Attorney Briglia explained that the Planning Commission was concerned that there must be a very good reason for a waiver, so they wanted more than one set of eyes on any application. The suggested language change will provide for that.

Council Member Patel requested additional explanation based on the following example: "a 10,000 sq. ft. lot has a 10 ft. easement (100 sq. ft.). The easement is taxed and cannot be built out. The current residence is to be torn down and rebuilt with a 2500 sq. ft. footprint. If this amendment is passed and should the Town choose to get rid of the easement, the owner must dedicate 5 ft. of frontage for a sidewalk. Would the owner then be asked to shrink the size of the house (already at 25% lot coverage) because of the required 5 ft. sidewalk dedication? Director D'Orazio responded that the dedication would be required no matter what the circumstances.

Council Member Anderson noted that the question addresses his earlier concern. It's not that the sidewalk itself reduces the lot coverage, it's that the reduction of the lot size reduces the lot coverage. His proposed amendment is designed to prevent that from happening. Should the Town ask a property owner to dedicate land, it is his contention that it is unfair to require a reduction in the home size to accommodate this. Section 18-203 does not address this scenario, rather it deals with conforming/nonconforming.

Attorney Briglia clarified by way of example: At this point in time if an existing 10,000 sq. ft. residence is torn down and there is no curb and gutter present, the property owner is required to dedicate for sidewalk. Will that effect the size of the new house given that the owners lot has now been reduced in size? While not applied in the past there exists probable ground under 18-203 for the Zoning Administration to interpret that the owner can use the pre-development lot size for calculation. The purpose of Section 18-203 was not intended to put the property owner, who is required to dedicate, in a worse position. The language may not be specific regarding this but Attorney Briglia believes that was the intent. He suggested that while this language should probably be clarified, ambiguity of this article still exists regardless of what is done at this meeting.

Director Petkac noted in response to Council Member Patel, that this issue has already been brought up to the Consultant for consideration in the rewrite. Mayor Colbert further suggested that this might be something to include in on-line participation.

At this juncture, Mayor Colbert requested participation from citizens. She recognized Scott Ward, 408 Adahi Rd., SE. Mr. Ward stated that his property falls in the category under discussion by Council Members Patel and Anderson. The property has, since the initial home was built in 1965, an 11 ft. easement for sidewalk, curb and gutter, but no curb, gutter or sidewalk has ever been completed. As a single property owner and taxpayer, he is now asked to dedicate land for a sidewalk, yet since 1965 when the property was first developed, no sidewalks have ever been built along the entire block. He believes the Code language is unclear and should not be universally applied throughout Town.

Brian Lamb, 504 Ridge Rd., SW. Mr. Lamb expressed support for the amendment and asked Council to vote in favor. He noted that the Town's Pedestrian Master Plan already calls for a complete walkway network with sidewalks on both sides of the street, and this amendment is a great way to advance this goal. Further, more sidewalks will benefit Vienna residents, increase pedestrian safety through the separation from vehicle traffic, and make it safer for students to walk to school or the bus stop. Finally, sidewalks will promote more neighbor interaction. Four homes were recently built around the corner from his home. If they had been built in numerical order, there would be sidewalk on that street. As it stands, because the homes were built out of order and Code language requires builders to install sidewalks only if adjacent homes have sidewalks, only half the homes have sidewalks. Implementing this proposed change would prevent such a scenario in the future. He also remarked that even if sidewalks are installed piecemeal, that would be better than no sidewalk at all. It is his observation that people tend to walk on a sidewalk wherever it is available and eventually, the Town plans to connect all the sidewalks.

Town Clerk Melanie Clark noted for the record, emails received from Todd Thompson and Desiree Di Mauro.

Council Member Potter expressed sympathy for Mr. Ward and questioned whether there is legal language that states square foot allocation for sidewalk should not be deducted when calculating lot coverage. Can anything be done now to fix this situation? Mayor Colbert stressed that 18-203 does need to be addressed, but at a later date. Attorney Briglia indicated that the Zoning Administration can make the determination now, but the Code does need to be clarified so that this additional step is not required. Council Member Potter reiterated his desire to assist Mr. Ward now, rather than later. Attorney Briglia noted a scheduled meeting with Mr. Ward on Wednesday. In the interim he will speak with Director Petkac regarding the permits.

Council Member Patel questioned whether, since Council Member Anderson's proposed amendment request was to be added to Section 17-67.1, it could be voted on now. Attorney Briglia stated that it must first be referred to the Planning Commission for review, and it must be advertised. It can then be considered by Council but either as a new amendment or as part of 18-203.

Council Member Anderson restated that what he is hearing from the Town Attorney is that administratively Section 18-203 as currently structured can be used to prevent a dedication, in those situations where reducing lot size, for purposes of lot

coverage, but that the language will be clarified at a later date. With that understanding, he withdrew his amendment for consideration tonight, but asked that Staff work on clarification and inform him if his interpretation of the intent and administrative authority was incorrect.

Mayor Colbert called for a motion to close the public hearing. Motion, Council Member Springsteen; second, Council Member Brill. Motion carried unanimously.

Following considerable discussion, Council agreed to the following Guidance from Council document for consideration when making a determination on "exceptional circumstances":

Exceptional Circumstances

- Situations where there is no curb and gutter, not any plans or funding for such;
- Situations where the installation of sidewalks would create substantial drainage issues not easily mitigated without substantial additional expense;
- Situations where the installation of sidewalks would endanger a tree other natural feature that is considered an especially important or valued Town asset;
- Situations where the installation of sidewalks would create an unavoidable major health or safety issue;
- Or other.

It was suggested that this list be made available on the website and through a handout.

Mayor Colbert called for a motion on the item.

It was moved to approve the Planning Commission-recommended proposed text amendments, as amended below, to Section 17-67.2 of the Vienna Town Code related to sidewalks for single-lot development with the following amendment:

Upon application of the developer to the Town the Town Council designates the Director of Public Works to waive in exceptional circumstances and in consultation with The Town Attorney/Town Manager, the construction of such new sidewalk and permit the deposit of designated funds for such construction in accordance with sections 17-65 and 17-65.1.

It was further moved to direct the Town Clerk to advertise a Notice of Intent to Adopt the ordinance changes.

Motion Council Member Patel; second Council Member Anderson. Motion carried unanimously.

A motion was made by Council Member Patel, seconded by Council Member Anderson, that the Action Item be approved. The motion carried by the following vote:

Aye: 7 - Council Member Anderson, Council Member Brill, Council Member Patel, Council Member Potter, Council Member Somers, Council Member Springsteen and Mayor Colbert

C. [21-2034](#)

Public hearing on proposed text amendments to Temporary Sign Regulations in Article 19 of Chapter 18 of the Town Code, Sections 18-175, 18-177, 18-178, and 18-185

Mayor Colbert called the third Public Hearing to order. Town Clerk Melanie Clark called roll. All Council were present.

Mayor Colbert recognized Director Petkac who provided an overview of the proposed amendments.

Mayor Colbert called the third Public Hearing to order. Town Clerk Melanie Clark called roll. All Council were present.

Mayor Colbert recognized Director Petkac who provided an overview of the proposed amendments.

Mayor Colbert requested presentations from the public. Mr. Matt DiFiore, 207 Owaissa Ct, SE, was present via ZOOM. He provided a series of corrections and suggestions to the language as follows:

- Strike the definition of political signs;*
- References to 18-185.F should be changed to 18-185.E;*
- Section 19 should be modified.*

With no further public comments, Mayor Colbert called for a motion to close the public hearing. Motion, Council Member Patel; second, Council Member Springsteen. Motion carried unanimously.

Mayor Colbert called for a motion on the Item.

It was moved to approve proposed text amendments to Article 19, Sections 18-175, 18-177, 18-178, and 18-185 of the Vienna Town Code with the corrections of renaming 185 F to 185 E and removing the definition of political signs. It was further moved to direct the Town Clerk to advertise a Notice of Intent to Adopt the ordinance changes. Motion, Council Member Patel; second, Council Member Springsteen. Motion carried unanimously.

A motion was made by Council Member Patel, seconded by Council Member Springsteen, that the Action Item be approved. The motion carried by the following vote:

Aye: 7 - Council Member Anderson, Council Member Brill, Council Member Patel, Council Member Potter, Council Member Somers, Council Member Springsteen and Mayor Colbert

9. Regular Business

With no objection from Attorney Briglia, Council Member Springsteen made a motion to combine the regular business items into a consent agenda.

It was moved to approve Regular Business Items 9A, 9B and 9C by consent.

Motion, Council Member Springsteen; second, Council Member Potter. Motion carried unanimously.

- A. [21-2046](#) Increase annual fee to auditors to meet federal audit requirements
- B. [21-2023](#) Approve Spending For Temporary Help with VAPFS, LLC-Hire Strategy
- C. [21-2029](#) Request to use Wood Environment & Infrastructure Solutions for environmental professional services.

10. Meeting Adjournment

Mayor Colbert called for a motion to adjourn. Motion, Council Member Patel; second, Council Member Springsteen. Meeting adjourned at 11:20 PM.

10. Meeting Adjournment

Aye: 7 - Council Member Anderson, Council Member Brill, Council Member Patel, Council Member Potter, Council Member Somers, Council Member Springsteen and Mayor Colbert

THE TOWN OF VIENNA IS COMMITTED TO FULL COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT STANDARDS. TRANSLATION SERVICES, ASSISTANCE OR ACCOMMODATION REQUESTS FROM PERSONS WITH DISABILITIES ARE TO BE REQUESTED NOT LESS THAN 3 WORKING DAYS BEFORE THE DAY OF THE EVENT. PLEASE CALL (703) 255-6304, OR 711 VIRGINIA RELAY SERVICE FOR THE HEARING IMPAIRED.