



Town of Vienna

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

Meeting Minutes Board of Zoning Appeals

Wednesday, October 20, 2021

7:30 PM

COUNCIL CHAMBERS-VIENNA TOWN
HALL

Continuity of Government - Electronic Participation

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 October 20, 2021, beginning at 7:30 PM with Jonathan Rak presiding as Chair. The following members were present in Council Chambers: Jonathan Rak with the following members participating via Zoom: Manpreet Dhanjal, Daniel Nash, Robert Petersen, George Creed, Michael Gadell, and Robert Dowler. Also attending in person and representing staff were Andrea West, acting CZA, and Sharmaine Abaied, Board Clerk in town hall and Kelly O'Brien, Principal Planner, was present via Zoom.

Mr. Rak called the meeting to order and asked for the clerk to call the roll with all members being present

Public Hearing

Continuity of Government - October 20, 2021

Board of Zoning Appeals October 20, 2021, Resolution for Continuity of Government

Mr. Rak read the Resolution for Continuity of Government with Mr. Petersen making the motion to approve and Mr. Gadell seconding the motion.

Motion: Petersen

Second: Gadell

Ayes: Mr. Dhanjal, Mr. Nash, Mr. Petersen, Mr. Rak, Mr. Creed, Mr. Gadell, and Mr. Dowler.

7 Ayes, 0 Nays – motion passed.

124 Park St NE - Conditional Use Permit: Hypothermia Shelter

Request for approval of a conditional use permit from Section §18-22, §18-13.A, and §18-210 of the Vienna Town Code for a hypothermia shelter, as part of operations of a church located at 124 Park St NE, in the C-1B Pedestrian Commercial, C-1A Special Commercial, and RS-12.5, Single-Family Residential zones. Application filed by Sue Hamblen of Vienna Presbyterian Church on behalf of the Trustees of Vienna Presbyterian Church.

Ms. Sue Hamblen of 15256 Fog Mountain Circle Haymarket was sworn in to speak.

Before giving testimony, Mr. Creed asked if the applicant could state who she was representing. Ms. Hamblen stated she represented Vienna Presbyterian Church and is the Director of Missions there.

Ms. Hamblen stated for 7 years they had been hosting a hypothermia shelter. The first application she had requested a one-year permit, then the following year she requested the permit in perpetuity to which the church received a five-year permit. Ms. Hamblen stated hosting the hypothermia shelter was a rewarding experience for the church as they have 400 volunteers over the two weeks. She continued by listing what the church offers during the two-week time frame for the hypothermia shelter visitors. Ms. Hamblen stated that due to COVID, in 2020, they were unable to host the hypothermia shelter traditionally, but were able to deliver food. Ms. Hamblen stated they would be scaling back their operations, but they still want to host the 50 visitors they have been allowed to host in the past. Ms. Hamblen asked if the conditional use permit could be approved in perpetuity as they have proven they can successfully host the hypothermia shelter. She then expressed their model for staffing and how they would be handling operations during the two-week hosting of the hypothermia shelter. The visitors of the hypothermia shelter will leave prior to the opening of pre-school opens in the morning and they will not occupy the same space as the school. They will be doing additional cleaning and sanitizing after the visitors leave each day.

Mr. Petersen asked for information regarding the training / vetting process of the volunteers. He also asked the importance of the conditional use permit (CUP) in perpetuity and if it would be onerous if the CUP was limited to a certain number of years. Ms. Hamblen stated there was not a vetting process for the non-Vienna Presbyterian Church members as most volunteers are church members. There is an orientation packet provided to volunteers as well as cultural and sensitivity training. Ms. Hamblen stated it would not be terribly onerous to have to go through the CUP process, but the fee of \$1500 on a \$4000 hypothermia budget is a huge dent in their budget.

Mr. Creed thanked Ms. Hamblen for the work they do with the shelter. He then spoke on the history of the CUP and stated he would be inclined to no longer have a time-limit on the hypothermia shelter, allowing them to host every year. Mr. Creed expressed his disappointment with Town Council for charging Vienna Presbyterian Church for the CUP.

Mr. Dowler asked Ms. Hamblen if they were requesting two-weeks, between November 1st and February 28th and if the time was 4:30pm to 7:00am. Ms. Hamblen stated that was correct. Mr. Dowler asked if they currently host 50 people, Ms. Hamblen stated that was correct. Mr. Dowler then asked if they were looking at increasing their numbers. Ms. Hamblen stated 50 was a manageable number and could be accommodated in their facility well. 50 people would be the maximum they would be able to host. Mr. Dowler asked how many staff and volunteers are required. Ms. Hamblen stated there would be two from New Hope Housing and rotating volunteers from 4:00pm to 9:00pm with a strict check in and out policy so they know how many volunteers they have. At 9:00pm the Vienna Presbyterian Church volunteers leave. Mr. Dowler asked how many church volunteers are present. Ms. Hamblen stated it varies from night to night. Some nights they have as many as twenty volunteers with a small group of eight people who come at 4:30 in the morning to be able to serve a warm breakfast in the mornings.

Mr. Rak asked if Ms. O'Brien, Principal Planner, would like to give a staff presentation for the application. Ms. O'Brien stated that during the Planning Commission meeting the Commissioners did not have issue with the granting of the CUP in perpetuity. They did not state it in the recommendations, but they also did not give a time limit for the CUP. Mr. Rak stated he volunteered at the hypothermia shelter at The Church of the Holy Comforter

expressing the similarity in the operation of both hypothermia shelters and how they are run well. Mr. Rak stated, in reference to the duration of the CUP, the town code does not have an expiration for a permit for lack of use. The Board could consider an expiration of the permit if not used over a certain time period.

Mr. Dowler asked if The Church of the Holy Comforter still hosted a hypothermia shelter. Mr. Rak stated they have been hosting every year except last year as it was in a remote location. Mr. Dowler asked if they had a CUP and Mr. Rak stated he believed they did, but he was not sure. Mr. Dowler stated he remembered granting the original CUP but did not recall a limitation or perpetuity on the use. Mr. Rak asked Ms. West if she could research the CUP to use as a comparison.

Mr. Petersen spoke about the questions of “in perpetuity”. The Board had been approached by an organization about establishing a hypothermia shelter with supporting materials that included support from local political leadership. They stated the importance of a hypothermia shelter and the efforts made to alleviate the need for hypothermia shelters. Mr. Petersen asked if she knew of efforts being made to reduce the need for the hypothermia shelters in Fairfax County. Ms. Hamblen stated they work closely with the Office to End and Prevent Homelessness. There has been an impact as their numbers have declined but wasn’t sure of any additional efforts other than the 10-year plan by the Office to End and Prevent Homelessness.

Ms. West stated she was able to find the CUP for The Church of the Holy Comforter and that it was a 5-year CUP. Ms. West continued stating The Church of the Holy Comforter is only required a CUP when hosting a hypothermia shelter within the Town of Vienna. Mr. Rak stated the hypothermia shelter had been hosted offsite last year and confirmed that the CUP had been for 5-years. Mr. Dowler stated that in 2013 when The Church of the Holy Comforter had first gone before the BZA they were hosting onsite.

Mr. Rak asked for a motion to close the public hearing.

Mr. Creed made a motion to close the public hearing.

Mr. Petersen seconded the motion

Motion: Mr. Creed

Second: Mr. Petersen

Ayes: Mr. Dhanjal, Mr. Nash, Mr. Petersen, Mr. Rak, Mr. Creed, Mr. Gadell, and Mr. Dowler.

7 Ayes, 0 Nays – motion passed.

Mr. Rak asked for a motion on the conditional use permit.

Mr. Dowler made a motion that the application filed by Vienna Presbyterian Church for a Conditional Use Permit to operate a hypothermia prevention shelter, as part of its mission on church property located at 124 Park St NE be granted with the following conditions:

- o The shelter is allowed to operate up to two-weeks between November 1st and February 28th of each year.
- o Provide shelter services for no more than 50 people with necessary staff and volunteers
- o Hours of operation: 4:30pm-7:00am

Mr. Creed seconded the motion.

Mr. Nash asked if there would be a time limit on the motion or if it would be in perpetuity. Mr. Dowler stated he had said “each year” in his motion with the understanding that it would be in perpetuity. Mr. Dowler stated he was in favor of not having a time-limit as the applicant has a track record proving that the hypothermia shelter meets the criteria for the BZA. It has no adverse effect on the community and there are enough restrictions in the CUP limiting it and the BZA does have jurisdiction to hear any problems that may arise.

Mr. Petersen asked Mr. Dowler if he would consider amending his motion to state: if two-consecutive years were to pass in which the hypothermia shelter was not utilized, then the CUP would lapse, rather than it continuing in perpetuity unused. Mr. Petersen stated he was concerned about the CUP going on with no end date in sight. He continued stating he would still support the motion even if it was not amended.

Mr. Creed asked staff if they would have the ability to terminate a CUP if it was no longer applicable. Ms. West stated there was no code section that allowed staff to administratively revoke the permit. There is a code section stating that if use has not commenced within six-months it would no longer be valid. Since the code does not state that there would be a revocation of a permit due to non-use for two-years, the Board would have to put that condition on the permit if they so choose. Mr. Creed stated he felt it should be part of the code, but also felt that this motion before the Board should state “in perpetuity”

Mr. Dowler stated he would like to see it in perpetuity and that two-years would be too short, but he would be amenable to six-years or nothing at all. Mr. Dowler asked if there was an expectation of a problem or if it was a “neatness” that if not used, then it ends. Mr. Dowler mentioned the drive-through facilities CUP and their use in reference to the CUP in perpetuity.

Ms. O’Brien let the Board know that the state code allowed for the revocation of a CUP if the use is in violation of the permit’s conditions. Mr. Dowler said he knew they had that jurisdiction.

Mr. Petersen stated he felt it was irresponsible governance to have a permit on the books that may not be used. If in use year over year, that would be fine. A use that is no longer needed, then the permit should come to an end since there is no regulation for termination by the Town of Vienna. Setting a time-limit, such as 3-years of non-use, for a CUP to be terminated.

Mr. Creed stated there was no guarantee on any CUP that they would continue and due to that he said he would not reverse his second of the motion.

Mr. Petersen said he did support the motion as it was important, but that it would be improved with a limit.

Motion: Mr. Dowler

Second: Mr. Creed

Ayes: Mr. Dhanjal, Mr. Nash, Mr. Petersen, Mr. Rak, Mr. Creed, Mr. Gadell, and Mr. Dowler.

7 Ayes, 0 Nays – motion passed

Mr. Creed spoke on the orders for the previous CUPs for Vienna Presbyterian’s hypothermia shelter and stated he would like the language in those CUP’s to be as the language in the order. More specifically the formatting and language of the 2014 order.

Mr. Rak stated there were no other agenda items.

Mr. Creed stated he believed there was an item from the previous month that had been deferred and did not see it as an agenda item. Mr. Rak stated Chase Bank's drive through application was not ready and he asked staff for any additional comments. Ms. West stated they requested more time to update their site plan and had waived their 90-day approval requirement. They will be submitting a revised site plan based on the feedback from Planning Commission. Ms. West stated the Board would likely hear that application in December. Mr. Creed asked if it the application was withdrawn, Ms. West stated it wasn't on the agenda for that evening. Mr. Creed stated it had been mentioned specifically for this month. Mr. Rak stated Mr. Creed was correct and October was part of the record. He then asked Mr. Creed if he would be more comfortable making a motion pro-forma further deferring the application. Mr. Creed thought that should be done. He then stated applications come to the BZA at the 90-day required date due to Planning Commission have an abundance of agenda items not allowing them to get through them all. He stated his concern that if 90 days isn't adequate, the BZA should be given more time, or applicants need to extend their time. Ms. O'Brien stated in the winter months Planning Commission only meets once a month. She also stated that with this application, Chase needed to address comments to Planning Commission. Ms. West stated applicants are not denied Planning Commission agenda items, but the lead time for posting and advertising consumes a lot of the 90-days after initial staff review and deeming the application complete. Mr. Creed stated that when he served on Planning Commission, they were able to process the applications presented.

Mr. Petersen stated that, at the last meeting, he had made the motion to accept the request for deferral which was specific to the October meeting of the BZA.

Mr. Dowler stated he would make a motion to recommend to the Town Council the amendment of the 90-day provision with the phrase that the 90-day requirement can be extended in agreement between the applicant and the BZA. Mr. Dowler stated he didn't understand the purpose of the 90-days. Ms. West stated it pre-dated her time with the town, but that they are working on the code re-write and is something to consider when reviewing the administrative chapters. Mr. Dowler stated that if it was a problem, the BZA could make a recommendation to the Town Council.

Mr. Rak there should be a work session to go over the procedural sections that relate to the Board when going through that part of the code update. Ms. O'Brien stated that it would be in the schedule and staff will request a work session with the Board to review those sections with them.

Mr. Rak asked the Board if it would be necessary to have an additional deferral as the previous deferral stated October. Ms. West stated staff had not received any additional material from the applicant at that time and that they had waived the 90-day requirement for approval. Mr. Petersen suggested that the BZA did not need to be proactive on that application and the Board did not need to step in on behalf of the applicant.

Approval of the Minutes:

Mr. Rak stated he understood there were corrections from Mr. Creed and Mr. Rak stated he had corrections he was submitting. Mr. Dowler stated his corrections for the record.

Mr. Petersen submitted corrections to the clerk as well. Mr. Rak asked for a motion to approve the minutes as corrected.

Mr. Petersen made a motion to approve the minutes as corrected.

Mr. Nash seconded the motion.

Motion: Mr. Petersen

Second: Mr. Nash

Ayes: Mr. Dhanjal, Mr. Nash, Mr. Petersen, Mr. Rak, Mr. Creed, Mr. Gadell, and Mr. Dowler

7 Ayes, 0 Nays – motion passed

Meeting Adjournment

Mr. Rak asked for a motion to adjourn.

Mr. Petersen motioned to adjourn the meeting

Mr. Gadell seconded the motion

Motion: Mr. Petersen

Second: Mr. Gadell

Ayes: Mr. Dhanjal, Mr. Nash, Mr. Petersen, Mr. Rak, Mr. Creed, Mr. Gadell, and Mr. Dowler.

7 Ayes, 0 Nays – motion passed

The Board inquired about any upcoming CUP's.

The meeting was adjourned at 8:25 PM.

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:

- Hear and decide appeals from any order, requirement, decision or determination of the Zoning Administrator.
- 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
- Hear and decide applications for interpretation of the Zoning District Map when there is any uncertainty as to the location of the boundary line.
- 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. During the public hearing each agenda shall be closed a decision will be rendered.

The grant of a Conditional Use Permit, Variance, or appeal from a decision by the Town's Zoning Administrator requires an affirmative vote of no less than a majority of membership, of the Board. The Board consists of 7 members and a majority consists 4 members. If the applicant is unable to stay for the Board's decision portion, the applicant may learn the Board's decision by contacting staff.

The second portion of the meeting – the Regular Meeting – is for approval of meeting minutes and new business and will convene after the Public Hearing has been closed.

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.