

**BOARD OF ZONING APPEALS  
PUBLIC HEARING  
MINUTES  
November 15, 2017**

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 November 15, 2017, beginning at 8:00 PM with Robert Petersen presiding as Chair. The following members were present: Gregory Haight, Bill Daly, Robert Dowler, Michael Gadell, Donald Chumley and George Creed. Also attending and representing staff were Patrick Mulhern, AICP, Director of Planning & Zoning, Frank Simeck, CZA, Senior Zoning Inspector and Sharmaine Abaied, Board Clerk.

**Item No. 1**

Request for approval of a **conditional use permit** for the operation of a drive-through ATM facility, located at 527 Maple Ave E, in the C-1, Local Commercial zone. The proposed ATM would be located on the southwestern side of the existing commercial/office building. Application filed by Billy Classen of KFW Engineers.

Mr. Shawn Johnson was sworn in to give his testimony.

Mr. Johnson is the project manager for ATM project with Security Vault Works. Mr. Johnson stated they propose to install a, through-the-wall, drive-up ATM in a location where one had previously existed. He also stated there would be signage in three locations: Maple Ave, the ATM surround, and the canopy face. He continued stating that traffic will be cued in at East St. from Maple Ave.

Mr. Daly asked what would prevent him from turning right into the parking lot heading when North on Maple Ave. Mr. Daly followed up asking if a right turn was made into the parking lot would there be a potential safety hazard with traffic backing up. Mr. Johnson stated that there shouldn't be a safety issue as they didn't expect a large volume at one time to cause a line on Maple Ave. Mr. Johnson pointed out that the peak time will be between 9am and 10 am.

Mr. Dowler asked if the ATM would be accessible 24 hours and Mr. Johnson confirmed it would be open 24 hours. Mr. Dowler then asked if there would be security lights or a camera installed along the wall for security for the ATM and those using it. Mr. Johnson stated they will use the buildings lights at first and a security camera will be installed on the face of the canopy. Mr. Johnson also stated that there will be a security light installed on the soffit of the canopy or the wall itself. Mr. Dowler asked if there would be any additional security lighting on the wall at the exit and Mr. Johnson stated there would not be. Mr. Johnson stated he was unsure if Karin's Florist had security lighting with which Mr. Dowler commented that they were relying on what was already there. Mr. Dowler then asked if it had been an ATM before and if Mr. Johnson was aware of the security the previous ATM had. Mr. Johnson said it had been an ATM before, but did not know what security they had at that time. Mr. Dowler asked for clarification as to who the applicant was for the ATM CUP. Mr. Johnson and Mr. Dowler discussed that USAA KFW / Billy Classen was the original applicant working on behalf of USAA and it had then switched to Security Vault Works as the general contractor applying on behalf of USAA.

Mr. Creed stated the side of the building where the proposed ATM would be located had no security lighting. He also stated his concern with the amount of traffic that will come in and out of that shopping center as well as believing that even though customers will be directed to East St. they will most likely

turn off of Maple to get to the ATM.

Mr. Gadell asked if there would be striping of the parking lot to make it a one-way only to ensure people follow a specific traffic pattern. Mr. Johnson stated they would be waiting until after the Board of Architectural Review meeting to sit with Karin's Florist to discuss some type of striping. Mr. Johnson also stated that in addition to the striping they wanted to install a 2'-3' one-way sign. Mr. Johnson continued stating that due to some traffic coming in off of Maple they wanted to direct it around the horseshoe, but were creating a plan to do so that would not interfere with Karin's Florist operation.

Mr. Dowler asked if it was a free standing ATM not associated with any tenant in the building. Mr. Johnson stated that was correct. Mr. Dowler then asked if there was an agreement between USAA and the owners of the building and Mr. Johnson stated that was correct. Mr. Dowler asked how they decided where to install the ATM. Mr. Johnson stated they went to what would be an obvious location as there had been an ATM located there previously. Mr. Dowler asked Mr. Mulhern if the prior ATM had any CUP's. Mr. Mulhern stated it may have been installed before that was made a requirement. Mr. Mulhern asked Mr. Simeck if he had any information on the prior ATM. Mr. Simeck stated that the prior ATM had been installed before the code required a CUP for drive thru facilities. Mr. Simeck also stated that the cueing concern coming off of East St., per code there must be a cue up to 10 cars. He then state that per the traffic study there would be no more than 5 cars cued at any time, so traffic on Maple shouldn't be an issue as there wouldn't be a large volume of cars. Mr. Dowler then commented on a person who may try to make a left turn off of Maple to the ATM. Mr. Simeck stated there was concern at the Planning Commission meeting as well concerning the area by Karin's Florist which is where they will install some signs to go around the horseshoe. He then stated that in reality most people will take the right and cut through the bank and go out onto Berry St.

Mr. Petersen asked, due to Mr. Creed stating there was no lighting on the side where the ATM would be located, if the overhead lights are currently operational. Mr. Johnson stated he was unaware if they were operational and thought perhaps they may be on a photo cell. He continued saying that it was a bit odd that the whole side of the building would be dark and then said they would need to investigate if there was no lighting. He followed up stating it was a security requirement by USAA that there be enough foot candles at that ATM. Mr. Petersen then mentioned to the board that if there was a motion made, that the board was allowed to add conditions which could include lighting.

Mr. Creed asked that on the peak period with 5 cars which is fine 360 days out of the year, but during Christmas Eve, night before Thanksgiving, 4<sup>th</sup> of July, or other times where people will be getting money what if the cue is higher than 5 cars and what if it does back up into Maple Ave. Mr. Creed felt there needs to be a solution to that potential issue. Mr. Johnson stated he didn't have an answer to those questions. Mr. Mulhern stated the ordinances were drafted for the norm and just as a parking lot and a half at Giant Food could be filled on a holiday, there would be occasions, even though the traffic study stated little chance of more than 5. He followed up stating it met the same standard of other drive-thru in town and it is the normal standard. He also stated there would be anomalies and special occasions that, just like backed up traffic, people will deal with it. Mr. Creed stated that what Mr. Mulhern said was reasonable, but people driving circles in a Giant parking lot are not creating traffic on Rte. 123. Mr. Creed continued stating that with current traffic heading North and South on Rte. 123 / Maple Ave. there needs to be a way to prevent cueing out onto Maple Ave. Mr. Creed went on stating that there are other properties in Vienna, with CUP's in which landlords are required to not allow left turns on Maple Ave. so traffic is not blocked. Mr. Creed then asked how to address this potential issue. Mr. Dowler suggested that customers enter from the other end. Mr. Johnson stated

that would not be possible as that would be the exit of the ATM. Mr. Dowler then said that the drive up window would need to be on the driver's side and it would not be entering the other direction. Mr. Johnson then stated to Mr. Creed that they had not thought of that potential anomaly and was not sure how they could address it. Mr. Daly commented that heading towards Tysons Corner, as he does every day, that if there was a sign directing another way to come in then he and others would see the option to come in off of East St. Mr. Creed stated again that his concern was traffic stating on Maple Ave. Mr. Daly followed up stating that if he would be the person blocking 123 he would then continue up to the corner and make the immediate right off of East St. and then wait in the line as shown on the diagram. He also stated that most drivers who will use the ATM are familiar enough with the property and East St. to do likewise.

Mr. Dowler asked if the USAA ATM is for USAA customers or can anyone use the ATM. Mr. Johnson stated anyone could use the ATM, but non-USAA customers will have typical surcharges for using the ATM. Mr. Dowler commented that due to fees that may discourage some from using that ATM.

Mr. Johnson stated that he didn't believe there was any way to get around the traffic on Maple Ave. as it is a very busy street regardless of where you stop along the way.

Mr. Gadell commented that the only other free standing ATM that he is aware of is across the street at the Bank of America. Mr. Gadell then asked Mr. Mulhern if there had been any issues at that particular ATM. Mr. Mulhern stated there were none that he was aware of. Mr. Mulhern followed up stating that there is a factor of convenience with an ATM. He continued saying that if there is a cue of 10 cars at an ATM he would do something else or go to another ATM.

Mr. Simeck commented that the cueing does not have to be directly down the center aisle width as it is approximately 25' wide which gives enough room for 2 cars to traverse either direction allowing cars coming off of Maple to turn left so as not to create a bottleneck.

Mr. Petersen asked if Mr. Johnson would like to speak further on this item, Mr. Johnson declined as he felt all had been presented and discussed. Mr. Petersen then asked if anyone in the public would like to speak on the matter. No one wanted to speak so Mr. Petersen closed item 1 on the agenda.

## Item No. 2

Request for approval of renewal and a request for **revocation/non-renewal of a conditional use permit** for the continuation of live entertainment for Lela, LLC DBA Bey Lounge, located at 303A Mill St NE, in the CM, Limited Industrial zone. Application for renewal filed by Rawad Hasrouni, owner. Request for revocation/nonrenewal filed by Department of Planning and Zoning.

Mr. Petersen stated that he felt it may be more useful to hear from the Department of Planning and Zoning in regards to their request for revocation first and which is in opposition to the CUP. Then hear Mr. Hasrouni in regards to renewal of the CUP for Lela, LLC DBA Bey Lounge.

Mr. Mulhern stated that he agreed with Mr. Petersen as to the order so the applicant had a chance to hear the presentation and have an opportunity to rebut in their effort to discuss how they have mitigated some of the issues as well as argue for the approval or extension of the CUP. Also a denial would be the same as a revocation. Mr. Mulhern stated he had a brief presentation as well as having

the Town Attorney present to speak a few words and some of the Vienna police officers to directly testify to some of the instances.

Mr. Mulhern's presentation is as follows:

The Town of Vienna is recommending approval to revoke a conditional use permit for live entertainment for Lela, LLC DBA Bey Lounge located at 303A Mill Street NE, in the CM Limited Industrial zone, based on hours of operation violations and noise nuisance laws in violation of CUP conditions.

**Bey Lounge first secured a CUP for Live Entertainment On November 18, 2015. The CUP for Bey Lounge was renewed on November 16, 2016. These approvals were subject to the applicant agreeing to and abiding by CUP conditions including but not limited to;**

- The applicant minimizes the sound from live entertainment and respond to complaints to keep sound levels at an appropriate level
- The applicant provides personnel in the parking lot at closing time to assist patrons leaving and keep noise to a minimum
- The hours of operation be limited to midnight Sunday- Thursday and to 2:00AM Friday and Saturday.

**Violation Summary:**

**Noise Violations- CUP Condition- The applicant minimizes the sound from live entertainment and respond to complaints to keep sound levels at an appropriate level**

Since November 18, 2015, when The Bey Lounge received its conditional use permit, the Vienna Police have been called to the location (44) forty-four times for noise complaints.

**Of these events:**

- Twenty-seven (27) of these events officers observed no violations. (62%)
- Five (5) of these events resulted in warnings being issued. (11%)
- Eight (8) of these events resulted in the management being cited. (18%)
- Twenty-three (23) of complaints came from the same address. (52%)

**Noise Violations**

- Bey Lounge has been issued noise violations eight (8) times, on the following dates:

•November 19, 2015	May 22, 2016	January 14, 2017
•February 20, 2016	July 31, 2016	January 21, 2017
•March 30, 2016	October 14,2016	

**Hours of Operation Violations**

**CUP Condition- The hours of operation be limited to midnight Sunday- Thursday and to 2:00AM Friday and Saturday.**

- On June 1, 2017, in violation of the terms and conditions of the CUP related to time of operation, Bey Lounge knowingly and blatantly conducted its operations on a weeknight past

midnight.(The operation resulted in general mayhem and a mob fight among patrons on the public street directly in front of Bey Lounge.)

- Bey Lounge knowingly and publically advertised hours of operations that were outside the hours of operation permitted under the CUP.

#### Additional Issues-

#### **CUP Condition- The applicant provides personnel in the parking lot at closing time to assist patrons leaving and keep noise to a minimum**

While the applicant has agreed to provide personnel in the parking lot at closing time to assist patrons leaving and keep noise to a minimum, there have been several calls for police response regarding fights and injuries sustained on or near Bey Lounge premises. These include:

- On December 3, 2016, officers responded to an assault complaint by a patron against a Bey Lounge bouncer. (No citation issued.)
- On February 26, 2017, officers were called in regard to people yelling outside the Bey Lounge. EMTs were called to treat an injured patron. (No citation issued.)
- On April 20, 2017, officers responded to Bey Lounge in regard to an assault. Two female patrons were involved in some physical contact. (Warrants were advised.)
- On June 1, 2017, officers responded to a fight (mob fight) in progress. Officers needed to get the crowd to disperse and leave the area. (See video)

#### Summary:

**Granting of a Conditional Use Permit includes conditions so the Town can reduce the impact of the use. Numerous violations of those conditions provides just cause to revoke the CUP as permitted under Section 18-209 of the Town Code. For all of these violations of CUP conditions, the Town respectfully requests the BZA to revoke the CUP for Bey Lounge immediately.**

#### Applicable Town Code Provision:

Sec. 18-209. - Use permit subject to certain conditions.

The board of zoning appeals may issue a use permit for any of the uses enumerated in section 18-210 in response to an application therefor, provided the use for which the permit is sought:

- (1)Will not affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use;
- (2)Will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood; and
- (3)Will be in accord with the purposes of the Town's master plan.

In granting any use permit, the board of zoning appeals may impose such conditions as it may deem in the public interest, including limiting the duration of a permit, and as will ensure that the use will conform to the foregoing requirements and that it will continue to do so, and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with.

**The board may revoke a use permit if the board determines that there has not been compliance with the terms and conditions of the permit.** No permit may be revoked except after notice and hearing as provided by Code of Virginia, § 15.2-2204.

Mr. Mulhern had Mr. Steve Briglia, the Town's Attorney, speak on behalf of the revocation request.

Mr. Briglia stated he couldn't recall a request for a revocation or non-renewal of the CUP to have ever happened in his 15 years with the Town. He also requested that the Dept. of Planning and Zoning's Power Point be made part of the record. Mr. Briglia pointed out the officers present who had responded to 2 of the events that had happened in the last year. Mr. Briglia then stated he would explain the Town's position on this CUP and the reasons for a careful review. Mr. Briglia gave the history of the Bey Lounge which is an expansion of the existing bakery owned by the family with a great reputation. He stated that there was a café which they received an ABC license and then it became a night club. They opened and operated as a night club with more than the 49 allowable seating requirements. The Fire Marshall and Dept. of Planning and Zoning issued violations stating they were not allowed to operate as is. There were safety issues regarding the use of hookah as there needed to be proper ventilation for smoking indoors, and the need for fire exits. Mr. Briglia continued stating that they did get the permits and fixed the safety issues in their time frame. He also stated that they opened and operated as quick as possible in the manner they chose. Mr. Briglia stated that part of the CUP was that they have a person in the parking lot to address the noise. Mr. Briglia felt they were abysmal in regards to that requirement the first year, they were better in the second year, but they have not eliminated the problems. They took a long time to take care of the sound remediation which was a condition of the renewal. There were continued complaints, but they had finally taken care of the sound remediation at the beginning of the year, but June 1, 2017 there was a complaint after 2:00am. Officer Tracy responded and is present as well as there being a video in regards to the complaint. Mr. Briglia stated the complaint happened on a Wednesday after the time they were to be closed, 12:00 pm. He continued stating the reasoning for the late time frame would be that there was a private event which he then said should not have mattered and they should have shut it down at midnight. Mr. Briglia continued stating that it was mayhem as there were multiple fights with several people who were all patrons of the Bey Lounge. Mr. Briglia then stated the last confirmed noise violation (confirmed noise violation: police arriving at scene after a complaint and are able to hear the noise across the residential line) was March of this year. He said things had been better after the sound remediation issues had been taken care of. October 1<sup>st</sup> there was a complaint of noise. Officer Brad Reedy heard the base and cheering across residential lines. Mr. Reedy went to the manager to issue a summons for a noise violation. Mr. Briglia continued stating at the Planning Commission hearing, earlier in the year, a new neighbor who was unaware of the existing issues testified stating he could hear the base in his home. This neighbor, Nathan Gessaman exchanged numbers with the applicant and had also sent a letter to the President of NEVCA to be forwarded to the Dept. of Planning and Zoning. Mr. Briglia wanted Mr. Gessaman's letter entered as part of the record for the meeting and it is as follows:

Bob,

Immediately following the last meeting, I texted with Rawad a few evenings while he tested and adjusted the sound to a level I could not hear. All was good for about 3 weeks (although we were out of town a couple weekend nights) but this Saturday night I texted him a little after midnight (I was awake, I don't think it would have woken me up if I had been asleep) that I could hear the sound. He responded within 5 mins and took care of it immediately. Within 10 mins, the sound was completely gone.

I won't be able to make it to the meeting tomorrow night, but please feel free to share this information. Rawad texts me almost every Sunday to ask how it was, so I expect he may use my texts as evidence of his efforts...so make sure he gets this last weekend in there when I could hear it and asked him to turn it down.

Let me know if you need anything else from me.

Thanks,  
Nathan

Mr. Briglia stated it was great that Bey Lounge has been responsive, but why is it that a resident still has to contact them to get the noise under control. Mr. Briglia also stated he understands the recommendation of the Planning Commission as well as the thought of the counsel for Bey Lounge that Vienna's noise ordinance is stricter than other jurisdictions and that they all have decibel levels. Mr. Briglia stated that wasn't true and that Fairfax County has a similar noise ordinance. Mr. Briglia followed up stating we are not bound by Fairfax County, but there is a theory that Vienna is being hard on a business. Mr. Briglia then read the Fairfax County Ordinance for noise

108.1-4-1.J: Unless otherwise excepted by this Chapter, any person, motor vehicle or instrument that permits, operates, or causes any source of sound or sound generation to create a sound that is plainly audible in any other person's residential dwelling with the doors and windows closed: (1) Between 10 p.m. and 7 a.m. on Sunday through Thursday, or between 11 p.m. and 7 a.m. on Fridays, Saturdays, and the day before a Federal holiday; or (2) Between 1 a.m. and 7 a.m. on Saturdays, Sundays and federal holidays when the residential dwelling is located in a mixed use area and the sound is emanating from a location that is not another residential dwelling.

He stated that Fairfax County has a similar ordinance for noise violation to which Bey Lounge has been charge with multiple times including the pending charge from October 1st. They are asking to be renewed and may ask to be renewed without further review from this board. Mr. Briglia stated their current CUP's limited hours of operation: The hours of operation are limited to midnight Sunday-Thursday and to 2:00AM Friday and Saturday. Mr. Briglia stated the need for the CUP is the live music which tends to be the cause of the problems. Mr. Briglia stated they are not insurmountable issues, but the volume is just not being turned down. Mr. Briglia stated he hoped it would give pause to the board to not just "rubber stamp" an approval and that if a renewal is considered that perhaps stricter conditions and a shorter renewal time should be considered. Mr. Briglia stated that noise is generating the most complaints so the live entertainment is not a good fit for that area. He also stated that live entertainment is not by-right which is why they have to come before the BZA for a Conditional Use Permit. Mr. Briglia re-iterated that the Town has tried to work with Bey Lounge. He also stated that unless the board had any questions or would like to speak with a police officer that his statement was the Town's position on the request for renewal /revocation of CUP for Bey Lounge.

Mr. Petersen asked why the Town feels it necessary to request a revocation of the CUP to the board if they feel Bey Lounge has not complied fully with the CUP and the conditions of the CUP. If the Town observes and confirms that the applicant did not comply with the CUP, why did the Town not notify the owner of the Bey Lounge that he must cease operations of the live music. Why does it need to go to the board for the revocation? Mr. Briglia stated the CUP comes from the board so a revocation must come from the board as well. Mr. Petersen stated the understanding is that Bey Lounge would comply with the stipulations of the CUP. The board does not follow up to ensure a business is complying the Town should. Mr. Petersen stated his interpretation is that if a business is no longer complying with a CUP, then that CUP is no longer in effect. Mr. Briglia stated that a cease and desist by the Town has never done in the past to his knowledge.

Mr. Dowler stated he felt that the way Mr. Briglia was doing this was the right way since the board issues the CUP; they should then be the ones to revoke the CUP. Mr. Briglia followed up stating he believed the in the state code it expresses that it can only be revoked at a hearing after notice to owner. Mr. Dowler then stated that even if there was a cease and desist he believed it would come before the board on an appeal. Mr. Briglia stated that for health and safety an occupancy permit may be revoked, but for planning and zoning it would need to go to a hearing after notice to the owner.

Mr. Haight asked Mr. Briglia to speak on the allegation that they knowingly and publicly advertised hours of operation outside of the hours allowed in the CUP which Mr. Haight stated was an active violation and not a negligent violation. Mr. Briglia stated after the June 1<sup>st</sup> incident someone had gone to their website that showed they were open after those hours during the week.

Mr. Daly stated he too was concerned about knowingly violating the conditions, but that he wanted to ask about the violations (9 times) and the fight at 1:30 and 2:30 and if those were live music nights. He continued stating they weren't looking to shut down a business, it's live music vs. DJ. Mr. Daly wanted to know the correlation between the violations and the live music vs. DJ. Mr. Daly continued stating that the issues could be night club related only and not live music and if that was the case what can the town do in the future. Mr. Briglia stated some of the dates and times of the violations as follows:

Jan 14, 2017 - weekend

Jan 21, 2017 - 12:37 weekend

Oct 1, 2017 - after 1:00 am weekend

June 1, 2017 - after 2:00 am, not on the weekend

Mr. Chumley stated he had concerns with the violation list. He stated his first concern with 23 of the violations coming from the same resident. He then stated he was curious if the Jan 14<sup>th</sup>, Jan 21<sup>st</sup>, and Oct 1<sup>st</sup> all came from the same resident and if it was the one who called in the 23 violations. Mr. Briglia stated he believed the 3 Mr. Chumley inquired about were by that same resident, but that there have been other complaints including the resident whose email had been read earlier that evening. Mr. Chumley asked Mr. Briglia that since there had only been one noise violation in the last 10 months, did he feel that would be grounds to go to the circuit court and justify noise violations. Mr. Briglia stated there had been 3 noise violations and other complaints. He stated it's expected that the neighbors directly behind would be the ones who complained. He also stated again that the new neighbor, Mr. Gessaman, testified at the Planning Commission meeting that he had heard the noise as well. Mr. Briglia said the question to the board is that is it sufficient with the long track record. He stated if there were only 1-2 violations over the past 2 years then it wouldn't be an issue. Mr. Chumley then inquired about the 4 issues. He stated the 1 that concerned him the most was Oct 15<sup>th</sup> and if it was known that the people were coming from the lounge. Mr. Briglia stated the lounge was allowed to be open until 2:00am. Mr. Briglia stated that one condition is that Bey Lounge have someone in the parking lot to ensure the noise level is down. He then stated that it wouldn't be unusual to have someone in the parking lot until 2:30am after the music is turned off at 2:00am. Mr. Chumley then asked about the Feb 26<sup>th</sup> issue and why no one was cited when there was shouting and an EMT was called to the scene. Mr. Briglia stated that this is the zoning board and there doesn't have to be a criminal violation to state a CUP is not appropriate. He continued stating the following from the ordinance:

(1)Will not affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use;

(2) Will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood; and

(3) Will be in accord with the purposes of the Town's master plan.

Mr. Briglia then stated there does not need to be a criminal conviction. Mr. Chumley then asked about the hours of operation. He asked if there was proof that they were advertising beyond the hours of operation. Mr. Briglia stated it was listed on the web page. Mr. Mulhern then testified that the Deputy Director of Planning and Zoning had seen the hours on their web page. Mr. Chumley then asked if there was physical proof. Mr. Simeck stated he had a copy and then said that the Deputy Director had sent a copy to the owners and the next day the website had been corrected.

Mr. Creed asked specifically what the website hours stated. Mr. Simeck stated he didn't have a copy of the email. Mr. Creed stated he was going by what Officer Taylor's memo to Chief Morris. Mr. Creed stated there were 10 noise violations cited, 4 from Nov. 16<sup>th</sup>, 2016, 6 fights/assaults, and 1 with hours of operation. Mr. Creed stated that at the hearing Nov. 18, 2015 there was a question raised about the closing. The applicant stated he was only aware of the one from Virginia ABC which states they have to stop serving alcohol at 2:00am and that they typically stop serving at 1:30am to ensure patrons are out at 2:00am. Mr. Creed then asked why people would still be lingering at 2:30am. Mr. Creed also spoke on the decibel discussion and quoted testimony from the minutes of Nov. 16, 2016 stating:

*Mr. Beam answered that they are probably talking at about 45 decibels right now. When the sound was up to 100 decibels inside the building he was measuring 43 decibels at the property line. Mr. Elhasrouni said they do not typically have the music that loud. One hundred decibels is really loud; it is enough to be painful to your ears. they typically do not have music that loud, 100 decibels are very loud, enough to be painful to your ears. Mr. Creed continued quoting the minutes stating: Chairman Creed said last year the Board asked if he could control the sound level and he said yes, however there still seems to be an issue. Mr. Elhasrouni said the answer is still yes. It has been difficult to balance the needs of his business with the needs of the neighbors. He had the system set at level seven and can go a whole month without a complaint and then someone complains but nothing has changed. He has dropped the sound even lower lately and heard no complaints.*

Mr. Creed asked why it is that neighbors are still calling the police across the property line when management is there and are aware of what the sound level should be. He also stated another factor was the bass. He said that in 2016 the board was told there was a system that would be installed to eliminate the bass and if that had been taken care of. Mr. Creed stated he would be asking the applicant that question. Mr. Creed continued stating a citizen had come to him because he was on the Board of Zoning Appeals and spoke on car noises in the neighborhood. Mr. Creed then stated that he inquired with the police in regards to the car noises. He had said that last year (2016) Bey Lounge was providing valet service, and parking cars on Ayr Hill. The resident who spoke with Mr. Creed lived on Center Street, which is close to Ayr Hill and where the racing car noises were coming from. Mr. Creed stated he would want some answers in regards to that as well.

Mr. Dowler asked if there was a closing time ordinance in the town for a lounge without live music, Mr. Briglia stated no. Mr. Dowler stated that without live music the lounge could stay open with a DJ until 2:00am. Mr. Briglia stated yes, but that their ABC license requires them to stop selling alcohol at 2:00am. Mr. Dowler stated that there was nothing in the towns ordinance that would close them at 12:00am. Mr. Briglia followed up stating he looked at this as a live music issue. Mr. Dowler stated the only thing they could do effects live music. He then said if they denied the CUP they could use a DJ and still stay open until 2:00am with potentially the same issues. Mr. Dowler stated that if they granted the CUP they could put more restrictions on the CUP. Mr. Briglia stated that was what the board had done before and that was a good comprise and to be reviewed in a year. Mr. Dowler stated the

impression he got in regards to the assaults/fights was that it may not be out of the ordinary as to other place in town. He then asked if that was incorrect. Mr. Mulhern stated that other places had similar instances. Mr. Dowler asked if Bey Lounge had more issues than other places. Mr. Briglia stated that there are other areas of town where there is police activity: Cedar Center, Wolftrappe Hotel, and McDonalds.

Mr. Petersen stated that in Mr. Briglia's introductory remarks he felt that 12 months is too long of a time to review this particular CUP. Mr. Petersen asked what time frame would he feel comfortable with as the town attorney. Mr. Briglia stated that 6 months would be fair to the residents to see that it would be reviewed by the board. It would also give the applicant time to comply with the CUP and show a good track record. Mr. Briglia stated the town isn't trying to put people out of business, but that maybe the use of a CUP may not be appropriate in that area.

Mr. Creed inquired about Jammin' Java and their live music. He stated that he has been able to hear their music leak out, but only in the parking lot and not in the next neighborhood meaning that they have good controls. He then asked if there were any calls of drunken disorderly's or noise violations at that location. Mr. Briglia stated during the same time frame there have not been noise complaints, just a parking lot disturbance. He followed up stating he wasn't sure they had ever been cited for a noise complaint and continued stating it could be the way the building had been outfitted since the stage is more towards the middle of the building. The classes are at the back of the building and are insulated for sound.

Mr. Petersen thanked Mr. Briglia for his presentation and asked to hear from Mr. Hasrouni or his representatives.

Mr. Jerry Phillips and Ms. Susan Earman were present to speak on the CUP. Mr. Phillips stated he and his partner Mr. David Hall became involved in July 2017 with 12 days to prepare. He then stated Mr. Briglia gave the same presentation to the Planning Commission. He then stated the Planning Commission allowed Ms. Earman and he to watch the discussion of the Planning Commission after the presentation. Mr. Phillips stated the Oct 1<sup>st</sup> incident came up during the Planning Commission meeting as well with the police officer present for them to question about the incident. He stated that in the open hearing Mr. Briglia gave the same presentation with the police officer testifying in the open session as well. Then he stated the Planning Commission gave their discretionary recommendation to renew. Mr. Phillips asked the board to give deference to that than the impassioned speech of Mr. Briglia. Mr. Phillips stated the Planning Commission heard from the sound expert as well as the neighbors during their meeting. Mr. Phillips referred back to the July BZA meeting when he asked for the deferral. Mr. Phillips spoke on the family again as he did in July 2017 BZA meeting. Mr. Phillips also explained that the owner of Bey Lounge is only open 2 nights a week with live music unlike Jammin' Java who is open 7 days a week with live music. Mr. Phillips explained that it's hard to control what happens with patrons where alcohol is involved. Mr. Phillips reminded the board that he requested, in July, that the board give him, Mr. Hall, and Ms. Earman enough time to meet with Mr. Mulhern and Mr. Briglia in hopes of a resolution. He stated to the board that when the renovation of the building, and the sound system happened in March there was no longer an issue with live music. Mr. Phillips spoke on the incident of the fight saying that Mr. Briglia stated "mayhem", but that it was a graduation party and there were no criminal citations issued that night. He stated there were insults thrown around during the party and people waited around and there was an altercation that ensued and the police were called. Mr. Phillips stated that Bey Lounge was closed on time the evening of the altercation. He also spoke on the mistake on their website that was corrected as soon as it was brought to their attention. Mr.

Phillips stated they were deferring in hopes of having an amicable outcome, but after the October 1<sup>st</sup> incident with the new neighbor it appeared that may not be the case. He also stated Mr. Hasrouni reached out to the new neighbor in efforts to rectify issues with noise. Mr. Phillips stated that Mr. Beam was unable to attend the meeting, but that he had a report to submit for the record showing the bass problem should no longer be an issue. Mr. Hasrouni has been in touch with the neighbor who had stated to Mr. Hasrouni that the bass problem is no longer an issue. Mr. Phillips spoke on the lounge and his experience on a Saturday night with the live music. He stated Mr. Hasrouni only wants the live music 2 nights a week and that the reason for opening this business was to help supplement the bakery business as it becomes costly renting the space. Mr. Phillips also stated that the DJ's draw a younger crowd with no cover charge so it's not as profitable whereas the live music nights there is a \$45 cover charge which draws a more mature crowd which cuts out younger patrons. Mr. Phillips spoke on the persons employed regardless of the amount of patrons. He stated he felt it could hurt the bakery business if live music was taken away. Mr. Phillips continued speaking on the economic issues and also the one neighbor who filed most of the complaints as well as the new neighbor who had complained. Mr. Phillips felt that perhaps the 6-month time frame for the CUP may seem reasonable, but he felt it should be reconsidered since Jammin' Java and Whole Foods have a 5-year CUP for live music. Mr. Phillips spoke on the clientele again as well as the 2 days a week for the live music.

Mr. Petersen spoke on the record of the Nov 15, 2017 one-page letter to Mr. Hasrouni from Martin J. Beam of Miller, Beam & Pagnaelli concerning acoustical issues at the Bey Lounge which was distributed to all BZA board members.

Mr. Phillips asked if Mr. Hasrouni would be able to speak on the October 1<sup>st</sup> incidents.

Mr. Chumley asked about the operating hours violation. Mr. Phillips stated it was a mistake on the website. Mr. Chumley interjected inquiring about the June 1<sup>st</sup> incident. Mr. Phillips stated again that there was a mistake on the website, but that they were closed at the proper time the night of June 1<sup>st</sup>. He stated it was documented, but there was no citation. Mr. Phillips continued stating there was a letter from the person who rented Bey Lounge that night apologizing for the incident and stated there were some "ruffians" who had been invited and the incident happened due to insults, but that they were closed at midnight and the incident happened after hours. Mr. Chumley asked if that was that happened on the one date. Then Mr. Phillips spoke on the website error that was corrected concerning operating hours. He continued stating that sort of incident could have happened anywhere due to an argument.

Mr. Dowler, asked if the incident was between Bey Lounge customers. Mr. Phillips stated one was a Bey Lounge customer who lingered in the parking lot long after they should have been gone, not during business hours. He thought that perhaps the police officer thought they were still open as there were employees still at the Bey Lounge to clean up.

Mr. Petersen asked about the date of the described "mayhem" and Mr. Phillips stated it was June 1<sup>st</sup>. Mr. Petersen then stated later in the night he will ask for a description of the event if a Vienna police officer who was on the scene is present.

Mr. Creed thanked Mr. Phillips for his presentation. Mr. Creed inquired about the letter dated Nov 15, 2017 from Mr. Beam regarding the noise. He said that it reads that in October 2017 the sound system has been lowered and Mr. Beam will be going back to do another evaluation. Mr. Creed stated that the first BZA hearing there were promises made in regards to acoustics, but nothing had been done for

months. He went on to state that in March (2016) things were done to make it through the assessments. Mr. Creed said last November (2016) the conversation was: we just got our permits so just started doing things last month. He stated that it appears they are always doing things at the end instead of being proactive and upfront. Mr. Phillips stated that acquiring permits, contractors, sub-contractors, doing roof remediation to change things. He also stated they needed double doors in the vestibule area, new windows, and all the organizing took time. Mr. Phillips stated from March 2017 to present there have not been any issues except for the Oct 1<sup>st</sup> matter. He also stated that Mr. Hasrouni could explain about monitors that have been taken out to mollify the neighbor and he was satisfied that he couldn't hear it. Mr. Creed stated he felt they could have been more pro-active. He also stated that if it were him he would have worked with the landlord, insulated, and used acoustical tiles. Mr. Creed asked why they hadn't exercised some of those things. Mr. Phillips stated that he didn't think they had the right personnel in place as well as not having access to the homes to try to rectify the issues which is why he has to piece meal it.

Mr. Petersen asked for any more comments or questions. He stated with there being no more comments or questions they would take a break and re-convene in 10 minutes.

Mr. Petersen asked if Mr. Phillips wanted to continue with his presentation. Mr. Phillips stated he wanted to make part of the record the letter from the neighbor. Mr. Petersen asked to read the letter into the record and then stated that there was video of the June 1<sup>st</sup> incident that would be presented.

Mr. Phillips read the letter as follows:

To Whom It May Concern:

My name is Tony Marealle. I live at 8421 Broad St. McLean, VA 22102. I'd previously reserved Bey Lounge on May 3<sup>rd</sup>, 2017, for a private graduation event for friends and family to attend. During the inquiry process the owner informed me prior to booking, that with trying to hold an event on a Wednesday night, the event could only run until midnight being that it's a weekday. After finalizing plans, I was then able to eventually book Bey Lounge to hold the graduation event.

All night throughout the party there were no incidents, altercations or any type of signs indicating anything leading to a mishap of events following the departure of the event. Right before midnight the event had started ending, and invitees were asked to close out their tabs as the restaurant had begun closing. Peoples began to leave and vehicles began filing out and leaving a short time after. A few invitees kept hanging around outside the restaurant, across the street on the opposite side of the parking lot.

A short time after everybody had exited and left the building, an altercation then pursued between some of the invitees, in which I've countlessly apologized to the owner of Bey Lounge for putting his business at risk. He mentioned to me that these invitees are not allowed back at the restaurant again, due to the events which had taken place. All of which is completely understandable and necessary!

My sincere apologies to the restaurant staff, as well as the neighboring community regarding the altercation that happened, turning a fun filled graduation event into an unneeded situation. Apologies.

Regards,

Tony Marealle

(Holder of reservation on the night of the graduation event)

Mr. Petersen then stated the video of the altercation would be presented. He asked Mr. Simeck how the video came to be. Mr. Simeck stated it was from a police cruiser with date and time stamp. Mr. Petersen asked how long the video would be and he stated it would be 3-5 minutes. Mr. Petersen asked if Officer Tracy could explain what was happening in the video. Officer Tracy was sworn in to give his testimony.

Mr. Petersen asked Officer Tracy to describe what was being watched in the video. Officer Tracy stated that there were multiple calls for an active fight in progress with multiple injuries. Officer Tracy stated you can see him turn down Mill St. and that his lights were on for a long time. He stated the reason his he had his lights and siren on was to attempt to get the fight to break a bit so it would not be an active fight when he got there since he was by himself. He stated there was an active fight in the view of the camera and one that was not in view of the camera. He stated one began to break up when they saw the lights, but the other continued. He stated that as he came down the road there are motorcycles and vehicles speeding past him as he approached. Officer Tracy stated the other fight in the right corner of the screen started to break up. He said as he began to approach he was yelling at them to stop fighting, but that they continued. Officer Tracy said he had to physically break up the one fight. He had one of the guys on the ground as another officer was approaching and more motorcycles were leaving the scene. Officer Tracy said the guy he had was passed out from being hit over the head by a beer bottle. He also stated there were multiple people injured who refused to be transported and would only allow clean up on the scene. Officer Tracy stated that as he was walking a person to his cruiser for medical attention another fight broke out. He stated that the entire time there were cars taking off that they couldn't stop as they were tending to the fight call. Mr. Dowler asked where Bey Lounge was in conjunction with video and Officer Tracy stated it was off to the right of the screen. Mr. Dowler asked if they were closed for the night. Officer Tracy stated he was told they were closed and that it wasn't a graduation party, but that it was an international DJ competition and he was told that by the DJ's who were on scene and that was why all the people were there. He stated that there was a DJ there from Babalu, a club in McLean, which is known for similar altercations which is why the club is closed now. Officer Tracy stated there were no citations issued because the people who had started the fight were no longer present and those who were present were friends and didn't want to press charges. Mr. Petersen thank Officer Tracy and asked if anyone had any questions.

Mr. Dowler asked why they were fighting. Officer Tracy stated he was told that there was a female exotic dancer that was in a fight with a few guys and girls from another club. The dancer's ex-boyfriend showed up and didn't like that she was talking to some people so he hit her in front of others and the fight ensued from there.

Mr. Creed said that at 2:21am according to the video, he asked what time the club closed and how long everyone had been there. Officer Tracy stated his understanding was that the club closed at 2:00am because of the DJ competition. He stated with the parking lot still full he didn't know, but would say

2:00am and not midnight. Mr. Creed asked where the bouncers and security were at. Officer Tracy stated one of the managers pulled his bouncers inside due to how large the altercation was in the parking lot.

Mr. Petersen asked if Mr. Hasrouni would like to speak. A patron of Bey Lounge came to speak first on Mr. Hasrouni & the Bey Lounge's behalf. Daniel Ruttenberg came forward and stated he was a member of the bar although he was not there in that capacity. Mr. Ruttenberg stated he lived at 3215 Holly Berry Ct. in Falls Church and that he works in Tysons Corner at a firm known as SmolenPlevy Attorneys and Counsellors at Law) in which he does estate planning. Mr. Ruttenberg knows Mr. Hasrouni through a mutual friend and stated he has been to Bey Lounge on multiple occasions, but not on the night on question and could not speak on that. Mr. Ruttenberg continued speaking about the environment there with a person singing, some dancing, and in the times he's been there, there were no incidents like June 1<sup>st</sup>. He continued stating he planned to get his Synagogue associated with Mr. Hasrouni and his establishment to create a joint multi-cultural event. Mr. Ruttenberg thought it would be a good place to show unity across cultures. Mr. Daly asked if he was there on Friday or Saturday nights or week nights as well. Mr. Ruttenberg stated he had only been there a handful of times, but that it was both weekends and weeknights.

Mr. Petersen swore in Mr. Hasrouni for his testimony.

Mr. Hasrouni stated he wanted to give the other side of the story from Mr. Briglia. He began thanking the board for their time. He then spoke on the success of the Town of Vienna and that he was able to contribute to the town. He continued stating he owns Bey Lounge and Wooden Bakery. Mr. Hasrouni gave spoke on where he came from, when he came to the U.S., his citizenship, and his time in Vienna. He continued speaking on his education, his family, his businesses, and his occupation. Mr. Hasrouni stated this is the 6<sup>th</sup> time he had to defend his business, and his employees. He also stated that he people fear what they don't understand. He stated his understandings of being a minority while appreciating the freedoms in the U.S. Mr. Hasrouni said they started the business because it is the same way they celebrate in his culture. He wanted to bring Lebanese cuisine, wine, and beer to Vienna. He stated his historical culture was a great fit with the town. He stated he chose art and culture to fight hate in the world in the way he knows with love and fun. Mr. Hasrouni stated the report from the Department of Planning and Zoning he disagrees with in regards to the revocation, the sound, and the operating hours. He stated he wanted to take the board through the time line to address Mr. Creed's concern about the sound. Mr. Hasrouni reiterated that the CUP is strictly for live entertainment. He continued stating, for clarification, the noise problem could be the same regardless of DJ or live entertainment. Mr. Hasrouni stated he is willing to do whatever it takes and addressing issues straight on. He continued stating the sound proofing is complete and it was done so in March and there have been no violations except for the one Oct 1<sup>st</sup>. He then stated they have done something that works because they went 7 straight months without a violation. Mr. Hasrouni pointed out that all the violations were prior to the completion of the sound proofing with the exception of October 1<sup>st</sup>. Mr. Hasrouni stated the sound proofing that was done consisted of fire marshal approvals and additional construction inside the facility. He then stated these and the approvals from the county are the reasons it took from October to March to complete the sound proofing. Mr. Hasrouni then stated that he has reached out to the neighbor who had complained 23 times, but he was unresponsive to requests to meet or speak. He then stated the new neighbor, Mr. Gessaman, has been interactive in efforts of Mr. Hasrouni to correct the noise issue. Mr. Hasrouni stated staff recommended installation of a 2<sup>nd</sup> door in the vestibule to prohibit the sound from leaving the building. He then stated they hired an engineering firm right away to design the vestibule as well as gaining approval from the town and the

county for the plans. Mr. Hasrouni stated they then hired a contractor to install the door wants they had received the approvals. He state they reached out to a neighbor to see if that eliminated the noise and the neighbor stated there was a bass issue that he could feel. Mr. Hasrouni stated that he felt the noise issue was resolved with the door and they are working on resolving the bass issue. Mr. Hasrouni stated Lt. Taylor and the Director of Planning and Zoning came to the lounge for a sound test in which the played the music loudly inside the facility and it was not heard outside the facility. He then stated for an extra measure he hired a 2<sup>nd</sup> sound consulting firm additional assurance to resolve the problem. The engineer found some leaks when he did a survey. He stated the leaks were below Fairfax County's decibel level. Mr. Hasrouni said there was a long list of recommendations to fix the issues. He stated they fixed the issues and had Mr. Beam come back out to survey the property and found no more issues. Mr. Hasrouni stated that since the completion of the sound proofing on Friday and Saturday nights during the live entertainment he goes outside to the back of the building to measure the sound level. He also stated that his digital sound system controls how high the sound goes so regardless of how loud the band may get the can control the levels. Mr. Hasrouni then entered into record the sound levels he has measured since March with the device he owns. He wanted the board to pass around the decibel reader and use it as a frame of reference with the measurements he entered into record.

Mr. Daly asked that the sound decibel levels are taken during the playing of the band with the levels set digitally. Mr. Hasrouni stated no, the sound level is set digitally inside the facility so the band can only go so high. Mr. Daly then asked that the readings were at the maximum sound level with the set digital system.

Mr. Petersen spoke on the document Mr. Daly was referencing, the 2 page document entered in to the record labeled sound level measurements from March 31, 2017 to October 7, 2017. Mr. Petersen then stated Mr. Hasrouni shared with the board a decibel reader to see the decibel level as the conversation was going on.

Mr. Dowler asked where Mr. Hasrouni was when took the measurements. Mr. Hasrouni stated directly behind the building close to the residence of Mr. Patel. Mr. Dowler asked that where it stated "I hear crickets" if he heard music. Mr. Hasrouni stated he didn't hear music. Mr. Hasrouni stated that the closer he gets to the HVAC unit the higher the read is on his decibel reader. He then said the HVAC unit is around 55. He then asked what the noise complaints had to do with live entertainment when he could play from his iPad and have the same sound levels and have the same complaints. He continued with examples of other noise issues that he stated can have an engineer solution. Mr. Hasrouni pointed out that only in 11% of the calls did they result in a citation. Mr. Hasrouni continued discussing soundproofing, noise levels, and bass. Mr. Hasrouni also discussed further his interactions with Mr. Gessaman to try to solve noise and bass issues. He stated that the monitors in the ceiling were a part of the problem so they took those out. Mr. Hasrouni said that once he's made aware of a problem he addresses right away. He said he is trying to balance between keeping the business surviving and keeping the neighbors happy. Mr. Hasrouni asked the board that with the lounge going 8-9 months without a complaint if that was an improvement.

Mr. Petersen stated that the struggle over the past two years that the board has had with him trying to mitigate the sound issues is trying to find something measurable that all can agree upon. He continued stating there was a lot of testimony about perceptions and feelings. Mr. Petersen continued stating he didn't know what the board would do when they close the public meeting and go to the regular meeting whether it would be to permit or deny the CUP. Mr. Petersen then asked that if the board made a motion to approve the permit for live music how would Mr. Hasrouni feel if the board attached

as one of the conditions a requirement that no sound generated by the live music rise above 43 decibel levels at your outer property perimeter. Mr. Petersen stated he would use 43 because of the letter from Mr. Beam Nov. 17, 2016 stating when the music levels were at 100 decibels on the dance floor at the property line was a 43 decibel level. Mr. Petersen stated if it were made part of the motion it would give the Director of Planning and Zoning the opportunity to have an official from the town at any time there is live music to actually measure. This would give something clear and measurable to determine whether you (Mr. Hasrouni) are complying with the CUP issued by the board. Mr. Hasrouni stated he would agree to that condition. Mr. Petersen continued discussing his point about having something measurable and if Mr. Hasrouni would be amendable to that. Mr. Hasrouni spoke on opening a business and the guidelines and standards set out for opening a business and equating it to trying to comply with the noise issues when there isn't a specific guideline.

Mr. Dowler asked about the 43 decibels if that would be music, HVAC, crickets, etc. Mr. Petersen stated that if it was a condition generated by the board he envisioned it would be any sound from the live music could not exceed 43 decibels and your (Mr. Hasrouni) property line and if it does then you would not be in compliance with the conditional use permit. Mr. Petersen stated he assumed the use of hearing crickets meant that Mr. Hasrouni didn't hear any noise. Mr. Dowler stated he understood the meaning, but he wanted clarification.

Mr. Creed identified that Mr. Hasrouni claimed that the renewal last year was due to noise and he then stated that if Mr. Hasrouni looked at the order it was more than just noise, it was all encompassing, but included noise. Mr. Creed then stated the minutes from last year he had asked Mr. Hasrouni if he could control the sound levels to which Mr. Hasrouni said yes, but the noise was still an issue and the management has to be told and get cited because of the sound. Mr. Creed continued stating that if the sound levels can be controlled it needs to be done and it needs to be consistent and continuous. Mr. Hasrouni stated the way to be consistent was to remove the human element which is why they count on their digital automated system. Mr. Creed asked if there was an opportunity for someone to turn the volume. Mr. Hasrouni stated that once the levels were set there is no way to change them without a password. Mr. Hasrouni continued stating he didn't know the conditions of that night (Oct 1), but disagreed with the ticket due to the fact that they had gone 7 months without an issue. Mr. Creed then asked about the exterior security. He asked if his staff could control issues in the parking lot and what he was doing to prevent and preclude that. Mr. Hasrouni stated he would speak on that specific night (June 1<sup>st</sup>) later, but that he wanted to speak on specifically live entertainment. He said on live entertainment nights, Friday and Saturday nights. On those nights they have 2-3 security guards and 2-3 valets depending on how busy they get. He then said between 1:45 and 2:15 when people are leaving there is a staff of almost 6 people in the parking lot making sure everyone leaves quietly.

Mr. Dowler asked about his security and if they are valet or security, Mr. Hasrouni stated they have both. Mr. Dowler asked how much security; Mr. Hasrouni stated 2-3. Mr. Dowler asked how those incidents happened if there were 2-3 security. Mr. Hasrouni stated the incident with the bouncer had happened due to a patron drinking too much and had to be escorted out by the bouncer. The patron then called the cops. The incident with the two women arguing the bouncer took them outside. He stated all they can do when similar situations arise is to escort them out of the building and see that they leave the premise. Mr. Dowler asked if it was possible to ensure the people didn't linger outside. Mr. Hasrouni stated security typically did that but they cannot force people to leave. Mr. Dowler stated that if there is enough security patrons may feel its time to go. Mr. Hasrouni started speaking on the minor incidents and Mr. Dowler interjected stating assaults and fighting aren't minor and that added more security might be helpful. Mr. Hasrouni stated he was open to hiring additional security. He

continued speaking on the live entertainment nights and the crowd that is attracted are the more mature older crowd, but it didn't mean someone 25 would not be allowed in, but anyone who gets out of control will be escorted out. Mr. Hasrouni continued speaking on behavior of their patrons, and their security. Mr. Dowler stated the rowdy person must get out of the facility and off the property. Mr. Hasrouni stated his understanding was that once they are no longer on his property there wasn't much he could do in regards to ensuring they leave. Mr. Dowler reminded him that he had parking lot agreements with various people which would allow for more control. There was continued discussion about parking and valet service.

Mr. Creed stated he heard that the valets were using street parking up to Ayr Hill. He asked if there was any street parking beyond their area. Mr. Hasrouni stated that wasn't the case, but that his patrons do street parking. Mr. Creed clarified Ayr Hill and Center and Mr. Hasrouni stated his valet do not park there. Mr. Creed reiterated his earlier comment about the citizen's complaint. There was continued valet parking. Mr. Hasrouni continued stating that when an issue is brought to his attention he will handle it right and way and talk with their customers. Mr. Hasrouni discussed businesses in the area opened late and his hopes that that area will become a destination street.

Mr. Hasrouni stated that live entertainment gives control over the type of crowd he will attract to his place. He continued stating the nights of the DJ's are when there have been issues. Mr. Hasrouni continued discussing his business, its finances, and the clientele. He continued stating that he is asking for the CUP because he wants it to be a cultural place. Mr. Hasrouni now began to speak on the night of June 1<sup>st</sup>. He stated he didn't agree that they stayed open past their business hours that night. He said the fight that started was off their property. He then spoke on the reason there was no security was that security had sent people home but they kept coming back. He said at 1:30am people were still hanging out there. He also stated he would have handled things differently had he been there. He also stated that he would not have wanted his staff involved as he would have wanted them to get injured. Mr. Hasrouni stated he had rented the space and that it wasn't the type of crowd he normally has at his place. He continued discussing the type of crowd they attract and that the live entertainment nights they do not attract the type of crowd from June 1<sup>st</sup>. Mr. Hasrouni spoke on the hours allowed to be open vs. the ABC hours allowed to serve alcohol and the condition requirements of the CUP for their hours. Mr. Hasrouni stated the approved hours were listed 3 years ago on the website, but not updated since then as they only use social media for advertisement. He stated that when they were told of the mistake he contacted the web company the next day and it was corrected. Mr. Hasrouni stated he wanted live entertainment because it attracts the older crowd and the less modern style of entertainment. Mr. Hasrouni then spoke on whether there were other businesses that receive complaints and that Caboose had received complaints. Mr. Hasrouni stated he wanted the board to look at the big picture and those who are scared of the changes happening on Mill St. Mr. Hasrouni continued discussing complaints and his desire for fairness for his business. He continued saying defying the CUP meant it could be revoked at any time.

Mr. Petersen interjected and corrected Mr. Hasrouni on the town's wish to revoke the CUP in June and it was Mr. Hasrouni and his representatives who requested a continuance. He then said it cannot be revoked at any time as it does fall on their responsibility that the board had to extend this. Mr. Hasrouni gave his apologies and stated that what he meant is that the town has the right to revoke.

Mr. Hasournig concluded giving the accomplishments of the bakery, and the lounge. He stated they had an increase in revenue and generated more jobs. He encouraged the board to look at their reviews on their Facebook page to see others experiences. He stated they are now a known destination in town.

Mr. Hasrouni stated the charities that they donate or sponsor. He continued discussing his interaction with patrons, residents, the town police officers. Mr. Hasrouni spoke again on his interactions with Mr. Nathan Gessaman and proactively testing the sound levels with the sound engineer. He also stated once the final soundproofing is completed Mr. Beam will be back out to survey the sound levels again. Mr. Hasrouni brought to the board a picture of his staff so the board could see just a portion of the staff that would be affected if the CUP was not renewed.

Mr. Daly asked if Mr. Hasrouni stated he would be willing to keep the decibel level at or below 43 decibels at the property line near the address with the 23 complaints. Mr. Hasrouni stated he was willing to find a comparable decibel level to stay at. Mr. Hasrouni discussed the fluctuation of the decibel levels. Mr. Daly stated he had been watching the reader for 15 minutes and that the lowest it went to was 38 and it got up to 76 but ranged between 55 and 60. Mr. Daly continued stating that if the levels were accurate then he assumed Mr. Hasrouni would agree to a level of 51 while standing at the neighbors place. He stated he understood it was difficult when there isn't an exact way to measure. He continued stating that neither he nor they the board wanted to see him back there unnecessarily. Mr. Daly continued stating that the uniformed officers should be called more often by him (Mr. Hasrouni) than by anyone else and that they may be able to help him. Mr. Hasrouni stated he feared calling the town cops because it would go on his record. There was brief discussion about June 1<sup>st</sup> again as well as the crowd that Mr. Hasrouni attracts on live entertainment nights.

Mr. Creed stated he was running the decibel meter app on his phone which showed a low of 35 and a high of 83 with an average of 50-60, and up to 65 with normal conversation. Mr. Creed stated he wasn't sure how realistic the 43 was and would like the board to come up with a more reasonable number. Mr. Hasrouni stated 55 is the residential number for Fairfax County. He then said he is between 45 and 50.

Mr. Daly asked if the 45 to 50 was for music outside his building and Mr. Hasrouni stated that was correct. Mr. Daly stated that music needs to be part of the equation to be able to find that standard amount. He then continued stating 43 was a reasonable measure and that would include music. He stated that the fact that they shouldn't hear any music meant that they should be able to have a lower reading or it would allow music up to 55.

Mr. Mulhern stated a decibel standard may be problematic because it is contrary to our current code. He also asked Mr. Briglia to speak on this issue in terms of the Fairfax County code although it is not our code. He also stated he would be concerned that the police having to enforce a standard different than what the town council had passed. Mr. Daly said they would only be enforcing for the CUP not for any ordinance.

Mr. Petersen thanked Mr. Hasrouni for his presentation.

Mr. Daly quickly asked how much the decibel reader cost, and Mr. Hasrouni stated around \$300.

Mr. Briglia stated there was a provision in the code for decibels which is the commercial industrial park zone. He stated it was not the standards they were speaking. It stated that after 9pm it would be a low of 26 decibel to a high of 65 decibel depending on the frequency. He stated he felt the board was picking an arbitrary number that may or may not be generated by the establishment and that it could pick up, in fairness to the business, the HVAC. Mr. Briglia continued stating it was complicated to read decibels and what sound is causing it. He stated in the industrial zone it's measured at the lot line. Mr. Briglia

stated the Fairfax County standard is that if it's audible it's a violation which is why he had read it. *Fairfax County Code Section 108.1-4-1.J: Unless otherwise excepted by this Chapter, any person, motor vehicle or instrument that permits, operates, or causes any source of sound or sound generation to create a sound that is plainly audible in any other person's residential dwelling with the doors and windows closed: (1) Between 10 p.m. and 7 a.m. on Sunday through Thursday, or between 11 p.m. and 7 a.m. on Fridays, Saturdays, and the day before a Federal holiday; or (2) Between 1 a.m. and 7 a.m. on Saturdays, Sundays and federal holidays when the residential dwelling is located in a mixed use area and the sound is emanating from a location that is not another residential dwelling.* Mr. Briglia stated it's not a decibel rating it's the sound violation. Mr. Briglia stated he wasn't sure how to decipher the decibel levels and enforcement.

Mr. Petersen asked if there was anyone else who would like to speak. There was no one else who wanted to speak so the public meeting was closed.

**BOARD OF ZONING APPEALS  
REGULAR MEETING  
MINUTES  
November 15, 2017**

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 November 15, 2017, beginning at 8:00 PM with Robert Petersen presiding as Chair. The following members were present: Gregory Haight, Bill Daly, Robert Dowler, Michael Gadell, Donald Chumley and George Creed. Also attending and representing staff were Patrick Mulhern, AICP, Director of Planning & Zoning, Frank Simeck, CZA, Senior Zoning Inspector and Sharmaine Abaied, Board Clerk.

**Item No. 1**

Request for approval of a **conditional use permit** for the operation of a drive-through ATM facility, located at 527 Maple Ave E, in the C-1, Local Commercial zone. The proposed ATM would be located on the southwestern side of the existing commercial/office building. Application filed by Billy Classen of KFW Engineers.

Mr. Daly disclosed that he has served on the board of directors for the Chamber of Commerce with Maris Angolia of Dukas Properties, the owner of the property where the ATM would be installed and have served as officers along with her, but do not consider it a conflict of interest.

Mr. Daly made a motion to approve the conditional use permit application for the installation of an ATM at the location where there was a former ATM

Mr. Haight seconded the motion.

Mr. Petersen stated the presentation was clear and well researched as to the amount of traffic expected. He stated he also appreciated Mr. Johnson's presentation in which he didn't try to answer questions for things he didn't have an answer. Mr. Petersen then stated he would be supporting the motion.

Mr. Dowler stated he would like to see a condition of security lights along the back wall for safety reasons.

Mr. Daly stated he would consider that a friendly amendment and that he believed lighting would be required.

Mr. Creed asked for another friendly amendment for the direction of the parking cue, some guidance, some lines, or arrows showing the way to go around the parking lot to increase the safety levels.

Mr. Daly stated he thought that would be something the town would recommend as well.

Mr. Simeck stated it was recommended at the Planning Commission that directional signs be installed at the back towards the florist to show the flow.

Mr. Daly stated it may be a different flow than what Mr. Creed was talking about. He then stated the sign Mr. Simeck mentioned would be necessary.

There was continued discussion in regards to the flow of traffic for the ATM.

Mr. Creed disclosed that he was chairman of the Vienna Business Association, the local Chamber of Commerce and that both Bey Lounge and Karin's Florist are members, but will have no impact. Mr. Creed continued stating he would support, but it needs security lighting and some striping for people to cue into lines from the front to the side. He also stated he was concerned about potential back up on Maple Ave so there would need to be something that would make customers come in off of East St. and follow a path.

Mr. Petersen asked Mr. Daly if he could restate his motion as there had been some friendly amendments that he may want to incorporate language to address the amendments.

Mr. Daly stated his concern to modify the motion beyond what town staff would recommend and that the applicant work with town in relation to safety issues of people coming in the wrong end or backing up of traffic off of Maple. He stated he wouldn't know how to address it, but felt the town would best know how to do so. He stated he would prefer to keep his motion simple and straight forward as requested by applicant to allow for the ATM subject to the friendly amendment of the lighting which will be taken care of anyway.

Mr. Mulhern stated the Planning Commission had similar dialogue and came to the same conclusion. The applicant was concerned about having prescriptive ways to do the striping that they would have to negotiate with the property owner. They felt very comfortable with directional signage where the drive-thru is and the lighting. The applicant also acknowledged the requirement of lighting and staff would support the notion to work it out with the applicant.

Mr. Petersen asked for further discussion and then called for the vote.

Motion:	Daly
Second:	Haight
Nay:	Creed
Passed:	6-1

## Item No. 2

Request for approval of renewal and a request for revocation/non-renewal of a conditional use permit for the continuation of live entertainment for Lela, LLC DBA Bey, located at 303A Mill St NE, in the CM, Limited Industrial zone. Application for renewal filed by Rawad Hasrouni, owner. Request for revocation/nonrenewal filed by Department of Planning and Zoning.

Mr. Petersen stated that a single motion could address the two requests for revocation or renewal.

Mr. Creed disagreed, he felt that the denial should go first and then go with the revised CUP if that's the direction to go.

Mr. Petersen stated he disagreed with Mr. Creed because if there is a motion to approve the CUP and it gets 4 votes and carries, then the denial would be moot.

Mr. Chumley asked what the motion was.

Mr. Petersen stated there was no motion as of yet, but that he was suggesting that there be a single motion.

Mr. Dowler stated that technically the lounge is for a renewal of the current one and the towns is for the existing one.

Mr. Creed stated he thought it was two separate items.

Mr. Daly stated he would like to make a motion and then disclosed that he has worked for 5 editions of the Fairfax Circuit Court manual as chief editor with Mr. Briglia and consider him a friend. He also stated he is friends with Daniel Ruttenberg who was a witness tonight and was a former president of the Fairfax BAR association as was he and they have served on many committees together. He also stated he knows Ms. Earman and felt there would not be any conflict.

Mr. Daly made a motion to approve the conditional use permit as previously conditioned, but with further conditions and with those further conditions would therefore deny the revocation of their CUP by virtue of the new conditions. The conditions would be as follows: all same conditions still exist and the new one is, from 11:00pm to 2:00am measuring decibels at the property line and the address that is responsible for 23 of the complaints. The decibel level including all noise, not just the music because of the difficulty in determining, must not exceed 51 decibels. This number was chosen based on the chart that was passed out and added to the record and at no point was there a level above 50.3 which is why he chose 51 decibels.

Mr. Petersen stated for clarification the 11:00pm-2:00am is for Friday and Saturday nights.

Mr. Daly stated yes, because the old conditions still exist in which they have to close at midnight except on Friday and Saturday nights when they are open until 2:00am. From 11:00pm-2:00am there will be a requirement as far as noise.

Mr. Creed asked if there would be a time frame put on the motion

Mr. Daly stated there would be a 6-month time frame.

Mr. Chumley seconded the motion.

Mr. Daly stated there were few things involved in this motion: noise, hours of operation, and fighting outside. These are 3 things that are problematic and are significant concerns. Mr. Daly stated that for

the hours of operation he understood what could have happened with the mistake with the midnight vs. 12:30am and that it's been taken care of. He also stated that from what he had heard this evening they do close at midnight including when the fight occurred at 2:30am and it is difficult to control people outside. Then he said for the noise it seemed as though it was not a product of the live entertainment and that noise is not likely to be corrected or in any way put the neighbors in a better position if there were DJ's. He then stated that patrons like Mr. Ruttenberg or himself, they wouldn't want the music real loud and they may not want to be around a crowd of 20 year olds. He continued stating from a noise and business perspective that a \$45 cover charge will affect the type of person who would go there and should go there. He said he wouldn't want to invited louder music or a younger crowd by requiring them to invite DJ's on weekends as opposed to the live music. He also stated that given the fact that from March to present there was only 1 noise complaints. Mr. Daly continued that he would like to see that there are no noise complaints in the next 6 months and if there is know what the decibel level was and in what location. He continued by speaking on what the decibel level was as he was speaking. He said it was problematic for him that a business cannot control a neighbor. Mr. Daly stated that as an attorney practicing for 30 years he knew of many instances that an adverse party in anyone's mind is unreasonable and not that the neighbors are unreasonable. He stated the decibel level motion gives the neighbors an opportunity to be reasonable.

Mr. Chumley stated that in seconding the motion he felt that it should be given to the requestor a very clear statement that if staff or the director come back in 6 months or a year from now stating that they have problems like before that he would go the opposite way in his decision. He stated that he was willing to give them time as they appear to be decent people who want to make the business grow and Vienna has a lot to gain by a successful business. He continued stating the if the director and town attorney state (in the future) that we are going down the same road again, he would then switch and state you had your last shot.

Mr. Dowler questioned that when it says "all noise" doesn't it need to be broken down to live entertainment plus ambient noise to distinguish from other things or is that being too technical.

Mr. Daly stated that his concern was that taking a meter out to the back, the meter cannot differentiate between the noise of an HVAC, music, or anything else. The owner of the property understands what the HVAC would generate and includes the people in the parking lot. Mr. Daly stated that the chart received showed that 51 decibels had not been hit and 51 was fair to him including all the other noise so the neighbors should not complain about the 51. Mr. Daly stated he agreed with Mr. Chumley stating that if there aren't the complaints or if the police officer shows up and they can go out with the owner of Bey Lounge and with a decibel reader to show that it's below 51 makes it easier for the police officer and everyone to address the situation.

Mr. Dowler asked what if it's 67, but it's not music.

Mr. Gadell and Mr. Daly said it would be over the number.

Mr. Daly stated that a police officer may still show up and not issue a violation. They are not requiring a police officer to issue a violation at 67 or 97, the police officer will know if there is a violation from the Bey Lounge. In addition, separately they have a condition for a CUP that the board is dictating now that is based on what is a reasonable noise level in a situation where noise is the primary issue with the neighbors.

Mr. Creed asked, 51 all ambient noise.

Mr. Gadell stated yes because all of Mr. Hasrouni's readings were less than that. Mr. Gadell stated we aren't talking frequency we are talking what that meter says. Then Mr. Gadell asked if the police staff had a meter or will they rely on the Bey Lounge owners meter.

Mr. Daly stated he would suspect the owner would keep the decibel reader in the lounge to address things right away.

Mr. Petersen stated they had a motion to approve the CUP for live music at Bey Lounge as presented by Mr. Hasrouni and as part of the motion the hours of operation are limited to midnight Sunday - Thursday and until 2:00am on Friday and Saturday nights at the back of Bey Lounge property line facing the residences is not to exceed 51 decibels for all sound. This CUP is for a period of 6 months after which Mr. Hasrouni would be required to return and seek a continuation of the CUP.

Mr. Dowler stated he had a thought, why are we limiting it to the one property, why not along the entire back border since there are several people there.

Mr. Daly stated the readings will be fairly consistent along the back edge. Also since 23 complaints are coming from 1 property in his mind he will be most interested in that person's reasonableness of noise level that's too high.

Mr. Dowler then stated there were other complaints from others along the property line.

Mr. Daly stated that Mr. Gessaman has been working with the owner of Bey Lounge. He then continued discussing decibel levels in and outside the restaurant as well as the decibel level condition and the neighbors who will most likely be made aware of the condition.

Mr. Daly stated that he was limiting where the meter is located to one place and just take the limitation off and the responsibility be put on the backyard.

Mr. Daly stated Mr. Dowler's point was taken and a friendly amendment should be made along the property line in any direction.

Mr. Petersen stated that Mr. Daly had incorporated that by stating at the property line facing the residences.

Mr. Creed stated that the further you go from the emission of the sound there will be a drop in the number. He stated the closest one that they would be concerned with would be the property that abuts. He then asked with the fighting and disturbances outside did the board want to make a recommendation to the Bey Lounge owner to call the police.

Mr. Daly stated that was his recommendation to the owner and he wouldn't put it in the motion, but that he should contact the police before the neighbors do so.

There was continued discussion about public disturbances.

Mr. Dowler asked if Mr. Daly's motion included the conditions on the previous 2 CUP's. Mr. Daly

stated yes as well as the new conditions.

Motion: Daly  
Second: Chumley  
Passed: 7-0

Mr. Chumley wanted the minutes to reflect that the board is hoping the gentleman (Mr. Hasrouni) is acting in good faith and if he isn't that the board may go the other direction with a (future) vote.

#### **Approval of the Minutes:**

Mr. Chumley stated he wouldn't vote on minutes as he wasn't at the last meeting.

Mr. Creed moved to table the minutes until they received the July minutes which the September meeting has an impact from the July meeting and they had not seen the minutes to discuss.

Motion: Creed  
Second: Gadell  
Passed: 7-0

#### **Adjournment**

The meeting was adjourned at 11:44.

Respectfully submitted,  
Sharmaine Abaied  
Board Clerk