

**PLANNING COMMISSION  
WORK SESSION ACTION MINUTES  
November 9, 2016**

The Planning Commission met for a work session on Wednesday, November 9, 2016, at 7:00 p.m. in the back Council Chambers of the Vienna Town Hall, 127 Center Street South, Vienna, Virginia, with Walter I. Basnight, Chairman, presiding with the following members present: David Miller, Michael Gelb, Stephen Kenney, Sarah Couchman, Andrew Meren, and Sharon Baum. Also in attendance and representing Town Staff were Patrick J. Mulhern, AICP Director of Planning & Zoning, Steve Briglia Town Attorney, Michael D’Orazio Town Planner, and Jennifer Murphy Commissioner Clerk. Mary McCullough is absent.

**ITEM NO. 1:**

Meet to discuss zoning ordinance amendment to Town Code section 18-248, *Protest against proposed change*.

Michael D’Orazio provided a brief presentation overview for section 18-248, *Protest against Proposed Change*. Under the current town code regulation 20 percent of neighbors of lots that abut or are within the proposed change area can protest a proposed petition requiring a Town Council super-majority vote of 6/7 for approval of a rezoning.

Mr. D’Orazio explained that protest language was first included in New York City’s 1916 zoning ordinance. It was later included in the Standard State Zoning Enabling Act of 1926, which was the model legislation that a lot of states copied from. Currently, there are 21 states that include protest language in their state codes. Virginia does not include this language in its state code; however, there are currently twelve jurisdictions that include it within their charter. The town does not have this language in their charter but it is within the zoning ordinance. If it were within the charter then the governing jurisdiction would have to go before the Virginia General Assembly to get it changed. Since it is only within the town’s zoning ordinance then the Town Council can make changes.

Town protest language first appeared in the town’s 1956 zoning ordinance. It was essentially copied from state legislation. It was amended in 1959, which is how it reads in today’s current zoning ordinance. Discussion followed.

**Proposed Ordinance Changes**

Sec. 18-248. - Protest against proposed change.

In case of a protest against any change of zone boundaries or rezoning of property signed by ~~20~~ **50** percent, or more, of ~~any one of~~ the following groups:

- (1) The owners of lots included within the area of the proposed change;
- (2) The owners of lots abutting the area included in such proposed change; ~~or~~ **and**
- (3) The owners of lots directly opposite the area included in such proposed change, where such area abuts upon a street;

such change shall not become effective except by a favorable **two-thirds** vote of ~~six-sevenths of~~ **all** the Town Council **quorum present**.

**For purposes of this section, a protest petition must be submitted in writing and received by the Town Clerk no later than 12 o'clock noon on the working day on which a public**

**hearing on the application or motion is first conducted by the town council. The owners of any lots submitting any such protest petition shall execute such protest petition under oath that they are the legal owner or authorized representative of any such lot owner. If the owner of any lot is a corporation or condominium, the petitioner shall submit the appropriate documentation demonstrating he/she is the authorized representative for the lot owner.**

(Code 1969, § 18-248)

The Town Attorney asked staff if they could locate any jurisdiction that does not require the effected property owners to be the petitioner. Mr. D’Orazio answered that he could not.

Chairman Basnight asked staff about next step review of the language. Mr. Mulhern asked if there is a preference between the 20 or 50 percent model language and whether they are looking at the whole list or separating it. Mr. Briglia explained that the Commissioners can make a recommendation of less than 50 percent after public advertisement. He noted as an example if the Commission chose for more than 50 percent then they would have to re-advertise again after the public hearing. Additional discussion followed and was determined that while the Commissioners were not in agreement between the 20 versus 50 percent language the item should move forward for public hearing to gain public comment. The meeting would be scheduled in December. Doing so would allow for two public hearings in time to send it to Town Council in January.

There being no further discussion the work session adjourned at 7:55 pm.

Respectfully submitted by,



Jennifer M. Murphy  
Commission Clerk