

226 Glen Ave SW  
Vienna, VA 22180  
May 31, 2018

Michael Gelb, Chair  
Town of Vienna Planning Commission  
127 Center Street South  
Vienna, Virginia 22180

CC: Vienna Planning Commission, interested citizens

Dear Mr. Gelb:

The Town Council has asked the Planning Commission to look at some modest amendments to the text of the Maple Avenue Commercial zoning regulation, and Town staff have made their recommendations to you. Public comment has been solicited for the July 30 Planning Commission meeting. Please accept this letter as my formal comment on the proposed changes. I plan to talk at the meeting as well.

I realize that these changes likely will not affect the current 444 Maple West proposal. That said, I will talk about what these changes would and would have not have done to that proposal to give some sense of whether these are meaningful changes. I realize that these proposed changes were drafted prior to the well-attended June 9 Town Council meeting, but my overarching comment is that the proposed changes and staff recommendation do essentially nothing to address the objections raised by Vienna residents at that meeting.

Throughout this document I give references to pages on my website [www.savemaple.org](http://www.savemaple.org) where I have a more complete analysis of the issues I want to raise.

## **1 Density limit**

**I urge you NOT to adopt staff recommendation of a cap of 50 dwelling units per acre for parcels under 5 acres, and 40 units per acre for larger parcels. Adopt a much lower limit or none at all.**

### **1.1 That density limit would have made 444 Maple West even worse.**

An apartment complex can simply shift the mix of small and large apartments to meet the density cap. Currently at 57 units/acre, 444 Maple West could have met this cap by removing 7 interior walls on each floor to combine smaller units into larger ones. This would have had no impact on the size of 444 Maple West, and would have actually *increased* the number of persons per acre living there (<http://savemaple.org/dwelling-units/>). In effect, that cap would have *increased* the traffic burden. Finally, if you equate expensive small apartments with “affordable housing”, this shift in mix of apartment sizes would also have reduced “affordable housing” at that site.

The simple “dwelling unit” density limit probably makes some sense for single-family homes. As I discuss on the web page referenced above, it really is not a sensible way to limit apartment buildings or condos with different apartment sizes. And it does not provide a level playing field across apartments, condos, and town houses, and (as discussed above) it distorts builders’ incentives toward dwelling unit size in ways that can increase population density even as dwelling unit density falls.

Consider setting the density target smarter, in a way that takes into account the size of the units involved. Surely Census data could be used as a benchmark for average expected residents by size and type of dwelling unit. Then use US Census averages to weight the different types of dwelling units (efficiency apartment, one-bedroom, .... , luxury townhouse) to account for the likely population they will bring into the Town. In effect, set a cap on expected persons per acre, not dwelling units per acre. The impact of these new buildings arises from the new population. Setting the limit this way would give builders a neutral incentive toward dwelling unit size.

**1.2 Having a density limit allows you to have an actual zoning-based affordable housing program as defined in Virginia statute. You should couple this new density limit to a zoning-based affordable housing program, and set the density cap low in that context. Setting a high density cap kills affordable housing under MAC forever.**

Commonwealth statute prescribes exactly how zoning may be used to create a true affordable housing program (<https://law.lis.virginia.gov/>). By statute, the only way you can actually implement a zoning-based affordable housing is “ ... by providing for increases in density to the applicant in exchange for the applicant providing such affordable housing.”

Current MAC zoning regulations *prevent* the Town from having any actual affordable housing program (<http://savemaple.org/affordable-housing/>). Without a maximum density written into MAC, you could not implement a zoning-based affordable housing program as prescribed by statute. Any discussion of affordable housing in the context of MAC was essentially wishful thinking. But if you add a density cap to MAC, you now have the opportunity to implement an actual affordable housing program as the law allows. Falls Church provides an example of how that may be done ([https://library.municode.com/va/falls\\_church](https://library.municode.com/va/falls_church)).

But if you add a very high cap to MAC, you have once again made it impossible to have an effective zoning-based affordable housing program. If you set it so high that builders will rarely want to exceed it, then a high cap kills affordable housing under MAC once-and-for-all. I can’t say it any plainer than that.

This is of-a-piece with comments in my earlier letter regarding the Town and its bargaining position vis-à-vis the builders. MAC was written and implemented in a way that gave the Town more-or-less the weakest possible bargaining position. Please do not repeat that here. Please set a low limit if for no other reason than to have something to bargain with when it comes to affordable housing.

### **1.3 Consider the legal ramifications – a high density cap only serves to tell the citizens to shut up.**

If the zoning law has no density limit, the citizens can then discuss the high density and resulting traffic as drawbacks that are against the best interests of the Town. We can speak out against excessive density. But if MAC has an explicit density limit, then that will be interpreted legally as giving permission to build up to that limit. And, by implication, as traffic is a byproduct of the number of new residents, that more-or-less takes traffic off the table as well. A very high density limit does not address citizen concerns about building size and traffic, it merely serves as a way to tell the citizenry to shut up. If you pass a high density limit, then from that point forward, large size, blocky nature, and high density, and the traffic that flows from that density are all codified in law, and we don't have any legal basis for complaining about it.

The Town changed the law to make protest petitions less effective. Consider whether a high density limit is just another change in that same vein.

### **1.4 The proposed density limit sets up a fight over the assisted living facility that the Mayor is rumored to have invited into town.**

I don't care about this but thought that I should give you fair warning about it. I understand the Mayor has invited an assisted living provider to build in Vienna, and that entity appears to have land under contract. The typical assisted living facility is constructed more or less like a hospital – many small space-efficient rooms. My best estimate, leveraging off the recently-built 5-floor assisted living facility in Falls Church, is that an economically viable assisted living facility at Maple and Center will have roughly 80 dwelling units per acre (see next-to-last paragraph here: (<http://savemaple.org/maple-and-center/>)). I would urge you to do your own estimate and see that this is roughly correct. If so, and you pass a lower limit on dwelling units per acre, the Town will be in the position of inviting someone in to build under MAC zoning, waiting for them to buy land, then changing MAC to bar them from building an economically viable facility unless they beg for an exception to MAC zoning.

**2 “Review of applications will take account of the welfare and needs of the Vienna community ...”.** So here is a brief discussion of things about MAC that are broken and need to be fixed, to address the welfare of the Vienna community. These are welfare-related items not addressed by the proposed changes to MAC zoning.

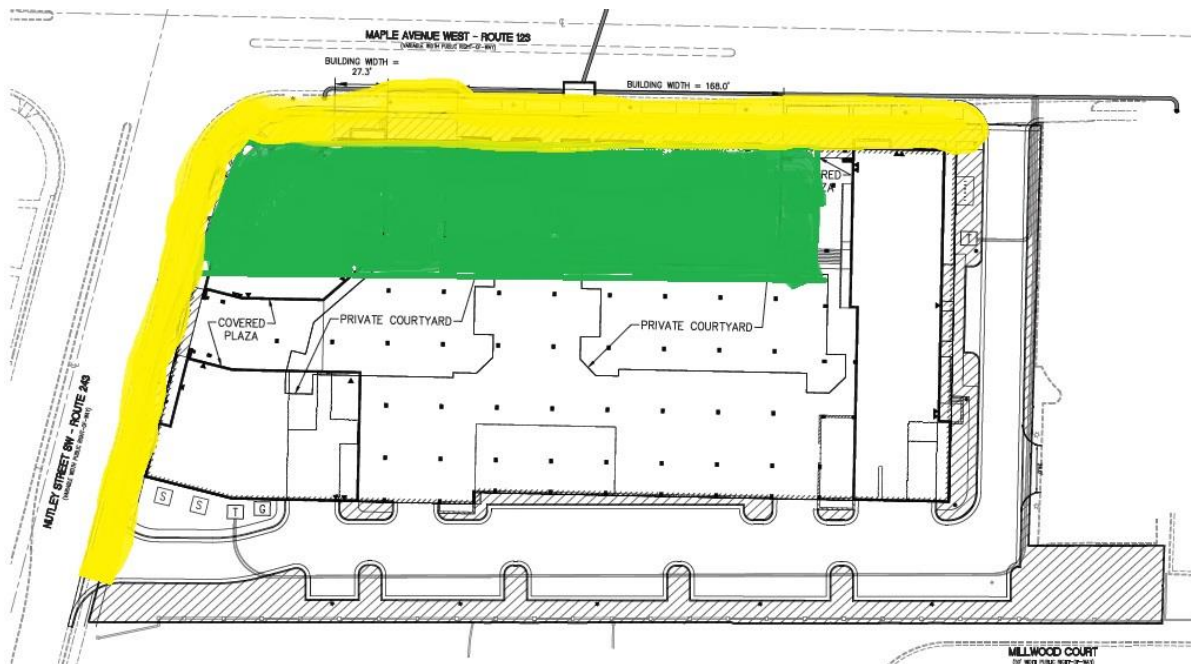
### **2.1 The requirement for open space did absolutely nothing at 444 Maple West. You either need to admit that it is just a fig-leaf, or fix it so that it actually does result in significant additional public open space.**

My analysis is here: <http://savemaple.org/sham-open-space/>. The upshot is that the open space requirement did absolutely nothing – the 444 Maple West proposal would look absolutely identical with it or without it. The key table is this. It shows that virtually all the “open space” at 444 Maple West was space either already required by law, such as setbacks, or space for a sidewalk literally required to get into the building. Read the full analysis to see why you didn't even actually get the 0.8% of the lot shown in red below.

## 444 West Maple -- "Open Space" requirement does virtually nothing

Location	Approx square feet	Percent of required "open space"	Percent of the lot area
Required open space -- 15% of the lot	18,014	100%	15.0%
Total, all of the already-necessary areas that count as open space	17,040	95%	14.2%
Front setback, not in right-of-way	5,286	29%	4.4%
Side setback, not in right-of-way	2,285	13%	1.9%
Rear required buffer (8' x entire back lot line)	4,374	24%	3.6%
Sidewalk to reach residential portion of the building	2,800	16%	2.3%
Landscaping	2,294	13%	1.9%
<b>Actual ADDITIONAL open space forced by the open-space requirement</b>	974	5%	<b>0.8%</b>

I can give you a picture if you would prefer. Here's what the existing setbacks (yellow) plus 15% actual *additional* open space (green) could have looked like. My contention is, this is exactly what the citizens had in mind in the Maple Avenue Vision. That's an actual large public plaza, as opposed to the open space that MAC actually got us for 444 Maple West.



Now that this has been pointed out, with calculations to back it up, the ball is in the Town's court. If they don't bother to fix it, then that reveals that it was, and continues to be, merely a fig-leaf. It's something you can tell the citizens is a benefit of MAC, while simultaneously requiring the builders to give up nothing of value.

**2.2 Open space directly adjacent to Maple is not much use to the community due to the traffic.**

In terms of benefit to the citizens, I have been trying to get the Town to understand what a dis-amenity Maple Avenue is, and how undesirable the space is directly adjacent to Maple. With this much at stake, it appears to me that Town Council members have failed to do even minimum due diligence. All it would take is a couple of lawn chairs and 15 minutes on a Saturday afternoon, to sit in what will be the “public open space” at 444 Maple West and try to hold a normal conversation. Just sit in the green space at the corner of Nutley and Maple on Saturday afternoon and experience the traffic.

Given that Town government will not do that simple due diligence, I bought a decibel meter and recorded the sound levels there. Think of it as the virtual traffic noise experience. The write up of that is here (<http://savemaple.org/traffic-noise/>). Here’s a table summarizing periods of time when it was NOT noisy. For (what will be) the benches in front of 444 Maple West, for the Saturday-afternoon hour that I recorded the noise level, there was not one five-minute period without some sound as loud as standing three feet from a garbage disposal. There was not a single one-minute period without a sound as loud as standing 10 feet from a vacuum cleaner. *This is the benefit that you are getting for the Town?*

<b>Sound Level, Saturday Afternoon, Maple and Nutley</b>		
Number of time periods when noise level did NOT exceed specified level		
I.e., the number of QUIET time periods is shown below		
Noise level	Using five minute time periods (out of 12 total)	Using one-minute time periods (out of 60 total)
<b>As measured, 40' from both roads</b>		
Hard to talk (65 db)	0	0
Vacuum cleaner (70 db)	0	25
Annoyingly loud (75 db)	0	43
Garbage disposal (80 db)	7	55
<b>Estimated for benches in front of 444 Maple West</b>		
Hard to talk (65 db)	0	0
Vacuum cleaner (70 db)	0	0
Annoyingly loud (75 db)	0	25
Garbage disposal (80 db)	0	43

**2.3 The changes do not address other citizen welfare issues raised at the June 9 Town Council meeting, including:**

**2.3.1 Excessive building height.** The only change is to allow builders to add solar panels and green roofs in excess of the current height limit.

**2.3.2 Large building size.** Not addressed.

**2.3.4 Affordable housing.** Not addressed, discussed above.

**2.3.3 Potential for traffic.** See my analysis of the ultimate impact of MAC on traffic here: <http://savemaple.org/traffic-ultimate-impact/>. The key table is this, which estimates what the ultimate impact on Town traffic will be if 70% of the 106 MAC-zonable acres get redeveloped at the current 444 Maple Avenue West density, or less. All this does is take the developer's own traffic numbers, from residential trips only, scales it up, and compares to current VDOT traffic counts. In the long run, this is the Maple Avenue you are creating for the Town of Vienna.

Sensitivity analysis -- estimated traffic increase under various scenarios			
Scenario	Projected Increase in Traffic		
	At 444 West Maple Density	At half 444 West Maple density	At half density, and one-third diverted to side streets
Baseline	78%	39%	26%
Ignore builder's discounts on estimated trips	89%	45%	29%
Modest retail success -- count 20% of retail trips as new	86%	43%	28%
Ignore discounts + modest retail success	97%	48%	32%

**3 Financial and other benefits to the Town – please have Town staff do this, not the developers.**

My only comment is, you are asking the developers to do this? With no guidance as to how it should be done? Not only is that an invitation for mischief, it does not allow projects to be compared on a level-playing-field basis. This is something that Town Staff ought to do, based on some uniform and reasonable set of assumptions. Ask the builder (or ask Fairfax county) what the tax valuation of the building is likely to be, and have Town staff work up the estimated tax and other receipts to the Town.

The only thing that I have found consistent about MAC is that it appears to be structured to maximize Town tax revenues. That's the only way I can rationalize the gulf between what the Maple Avenue Vision calls for and what MAC zoning delivers. My discussion of that is here:

<http://savemaple.org/occams-razor/>

**4 Minimum required commercial space.**

At this point, it appears that builders probably don't want to build much commercial space. In my prior letters, I pointed out that the much-more-favorable cap rate on residential space produces a strong financial disincentive against commercial space, if the builders can either directly (as in Marco Polo) or indirectly (as in 444 Maple West) substitute residential for commercial space. So the idea of MAC as the engine for expansion of Vienna retail space has given way to preventing MAC from reducing it.

In terms of Vienna retail space, we now have government fiat replace what was a market-driven decision. And that fiat is merely an ad-hoc rule-of-thumb: the existing *footprint* of commercial space must be preserved as commercial space.

That's odd for two reasons. First, it preserves an arbitrary fraction of existing commercial space (i.e., all of it, for a one-story building, half for a two-story building, and so on.) Second, because office vacancy rates are high all over Fairfax, and because Vienna already has substantial vacant office space, more-or-less the only thing builders can build is retail space. So this rule calls for some arbitrary-but-undefined amount of expansion of retail in Vienna.

Could the Town please try to quantify how much retail space this rule will add, due to development of sites that currently contain (e.g.) office space? And could the Town please do some type of study to estimate how much retail space Vienna can support? As it stands, this change puts us on an undefined path to an undefined increase in retail with no notion of what the likely outcome of that will be. It's a shot in the dark, brought about by a desire to fix an apparently broken aspect of MAC.

**5 Unenforceable feel-good language, particularly regarding retail space. If you are going to include these statements in MAC, then spell out how you plan to enforce them. And if you actually want to preserve locally-owned retail, then relax the uniform mandatory "upscale retail" standards built into MAC.**

There are a number of clauses added to MAC regarding retail space that amount to feel-good language, and nothing more. E.g.:

" development ... that includes ...neighborhood-serving retail".

" ... meet the needs of town residents ...".

" ... a variety of small, independent and locally-owned businesses ...".

Here's the problem: You aren't going to have the commercial tenant list when you approve or deny the application. So you won't know anything about what businesses will actually locate in the building, at the time you would need to respect these clauses. Putting aside the fact that there is no objective definition of these things – i.e., what, exactly, is and is not "neighborhood-serving retail" – you have absolutely no way to enforce any of this.

We all eat at restaurants sometimes, so all the builder needs to do is declare that they expect some restaurants, and they've checked off all these boxes.

Worse, while the Town added this verbiage, it didn't change any of the physical requirements for the retail space. Physically, it's all still all required to be "upscale retail" space with minimum 15' ceiling height, minimum 50 foot depth into the building, glass front wall and glass back wall ("transparency").

I don't think I've ever been in a barber shop or hair salon with 15' ceilings, and floor-to-ceiling glass in front and back. Perhaps that kind of garden variety retail can compete against upscale retail for that kind of space. Perhaps it can't. But either way, it will have to pay for the upgraded space or locate somewhere off Maple.

If you want to attract a variety of locally-owned retail, and not just the national chains that everyone expects to fill these spaces, then maybe you need to have some variety in the retail spaces. If you add this language, you've now got a mismatch between the desire for variety and a one-size-fits-all law.

It's nice to see that the Town has woken up to this issue of forcing small, independent locally-owned business out of town. It now needs to back that up with some tangible changes in the physical space requirements, not just some feel-good wording.

Sincerely,

A handwritten signature in blue ink that reads "Christopher Hogan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Christopher Hogan, Ph.D.  
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