

TOWN OF FAIRFAX

STAFF REPORT

December 6, 2017

TO: Mayor and Town Council

FROM: Ben Berto, Planning and Building Services Director
Linda Neal, Principal Planner
Garrett Toy, Town Manager

SUBJECT: Discuss/consider review of a Use Permit to allow live music performances outdoors on a covered patio of an existing commercial establishment, Peri's Bar, 29 Broadway

RECOMMENDATION

Discuss and consider review of the Use Permit for Peri's Bar and take no further action unless the Council finds it is warranted to refer the review of the Conditional Use Permit to the Planning Commission for consideration.

BACKGROUND

The original Use Permit (#83-UP-32) for live music inside the building was granted by the Town Council on December 12, 1983, subject to the business complying with the following conditions: 1) The music must end by 1:00 AM; 2) The Town's Noise Ordinance, Town Code Chapter 8.20, must be complied with; and 3) These conditions and any other appropriate conditions shall be reviewed by the Planning Commission when the Conditional Use Permit and all other use permits for live entertainment in the downtown area are brought up for review.

In 1998, both the Design Review Board and the Planning Commission granted discretionary permits to allow a 703-square-foot, covered patio addition to the east side of the bar building.

At the regular Planning Commission meeting on June 16, 2016, the Commission approved a modification of the original live entertainment Conditional Use Permit to allow outdoor, acoustic music with vocal amplification in the covered-patio area and occasional private events, some including acoustic music and vocal amplification, in the rear yard of 29 Broadway. The Use Permit was reviewed again on August 18th, 2016 and October 20, 2016.

After review, the Planning Commission adopted Resolution No. 16-16 on October 20, 2016, amending and clarifying the existing Use Permit as follows:

- One (1) amplified keyboard in addition to the one (1) amplified singer is allowed in both the covered patio area and the rear yard when live music occurs on the covered patio and when special events occur in the rear yard.

- Music played by a disc jockey is not allowed in either space.
- The music and entertainment is approved in the backyard from 4:00 PM to 8:00 PM only. Music or entertainment prior to 4:00 PM and after 8:00 PM is a violation of the Use Permit and can result in the Use Permit being reviewed for modification or revocation.
- Only two (2) to three (3) entertainers or musicians are approved to play in the backyard at any one given time.

The Town Council at their December 7, 2016 meeting considered an appeal by Peri's Bar of the conditions placed on the Use Permit by the Planning Commission. At that meeting the Council directed staff and the appellant to explore what it would take to set up a system that would establish an acceptable decibel level for the outdoor music and allow installation of a self-monitoring computer program for the outdoor music sound system. The Town Council continued this matter from their December 7, 2016 meeting.

On April 5, 2017, the Town Council upheld the approval of the Use Permit with amendments to the conditions of approval as follows:

1. Amplified music is permitted on the site patio;
2. Music of any kind is prohibited in the back-yard area;
3. The business shall have a decibel reader with a visual monitor displaying decibel levels in real time visible to the performers to monitor their sound levels in real time. The decibel reader shall be in operation at all times during performances to ensure the decibel levels do not exceed the established limit of 94-98 dBA;
4. The conditions will be reconsidered at the December 2017 Town Council meeting to evaluate the effectiveness of the dBA limit in addressing the neighborhood's concerns;
5. If deemed effective, require the installation of a permanent monitoring system.

DISCUSSION

The appellant has cited at previous hearings on this matter that no compelling evidence was presented during the public hearing to warrant the prohibition of exterior amplified instruments and that the outdoor music never violated the Noise Ordinance (Town Code Chapter 8.20). However, the Noise Ordinance is not the only factor the Commission (or Council) takes into consideration when reviewing a Conditional Use Permit.

A sound meter test performed on Friday, March 17, 2017 revealed that the sound generated by the outdoor music did not register decibel levels above the ambient (already occurring background) noise levels already occurring throughout the adjacent neighborhoods.

The purpose of the sound reading exercise was to determine if a noise level limits could be established that would minimize the impact of the music to the adjacent neighborhoods, while allowing the bands to play at a comfortable volume level. Based on our data, staff recommended a limit of 94-98 dba on the side patio for music.

At their April 5, 2017 hearing, the Town Council indicated that at the conclusion of the trial period, should the Town determine the dba limit was effective in addressing the neighborhood's concerns, the appellant would invest in a permanent monitoring system. He estimated the cost to provide and install the monitors, electrical wiring, and new circuits for a decibel reading system that can be monitored from the bar ranges from \$3,000 to \$4,000.

At their December 2016 meeting, the Council also requested the appellant explore the installation of a double door in the rear of the building as an added measure to control sound emanating from the interior of the building. The appellant has obtained two verbal cost estimates in the \$15,000 range for installing double doors at the rear of the bar from local contractors (Steve Vanni and Michael Weiss).

Since April 2017, the bar manager has attempted to keep the exterior doors closed when the bands are playing both on the side patio and inside the building, with initially mixed results. The Police logged 41 calls, from the same six callers, with 33 of the calls being received from one residence. Of the calls, three were about the outside patio music, and 35 were about the inside music. When investigated by the police, the door(s) were found open 19 times and closed 14 times. The other three times the status of the door(s) was not logged (see Attachment B for the Fairfax Police Department report on the logged calls and responses).

Recognizing that a less than 50% compliance rate was not satisfactory, staff contacted the manager to discuss how this could better be resolved. Out of those conversations, the manager voluntarily agreed to and subsequently installed an audible alarm on the rear door. The alarm, which has been in operation for a few weeks, emits a loud sound when the rear door is opened during indoor music performances, which in turn alerts the bartender, who closes the door. Anecdotally, the alarm is loud enough that patrons in the rear pool room from which the rear door opens usually close the door before the bartender has to do so.

The number of complaints logged has dropped off significantly, to one, since the rear audible door alarm was installed 3 weeks ago. With regard to the one complaint, the police did not log whether the door was open or closed.

RECOMMENDATION

Noise complaints emanating from bands playing on the side outdoor patio have been almost non-existent. The installation of the decibel monitoring system has effectively regulated the noise. Therefore staff considers the conditions attached to that aspect of the Use Permit as having adequately controlled the noise.

Regarding the open rear door-attributable noise complaints, while some of the recent decrease in complaints might be attributed to cooler weather making the rear yard area

less desirable, staff believes that the audible alarm has been effective in keeping the door closed and minimizing noise problems and complaints.

If the Council agrees that no further review or action on the Use Permit is necessary at this time, the bar manager has voluntarily agreed to install a permanent version of the noise alarm system on the door. Further, the manager is aware that the Town considers the number and percentage of (prior to the door alarm) noise complaints where the door was found open by police to be unacceptable, and that other potential options for addressing noise complaints involve considerably more effort and expense.

The Police Department will continue to respond to noise complaints and staff will monitor logs of those complaints. If it is determined that the incidence of noise complaints wherein PD documents that the rear door was open more than 15 times in a 6-month period, staff intends to call up the Use Permit for Planning Commission review.

CEQA

Categorically exempt § 15301: modified use of an existing developed property.

FISCAL IMPACT

Not applicable.

ATTACHMENTS

- A. Town Council Resolution 17-07 modifying the Use Permit conditions
- B. Police report on Peri's Noise Complaints from April 1, 2017 through November 26, 2017

RESOLUTION 17-07

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
DENYING THE APPEAL AND MODIFYING
THE PLANNING COMMISSION CONDITIONS OF APPROVAL TO ALLOW
OUTDOOR ACOUSTIC MUSIC ON THE SIDE PATIO OF THE
COMMERCIAL BAR ESTABLISHMENT AT 29 BROADWAY AVENUE**

WHEREAS, on May 2, 2016, Charles Peri ("Applicant") submitted an application which was deemed complete on May 29, 2016, to modify Conditional Use Permit 83-UP-32 to the Town of Fairfax for the proposed use of a covered patio for live music performances and for special events in the rear yard of 29 Broadway; and

WHEREAS, on June 16, 2016, August 18, 2016 and October 20, 2016, the Planning Commission held duly noticed Public Hearings to consider and clarify the conditions placed upon the Conditional Use Permit with their final action on October 20, 2016, being appealed by the Applicant to the Town Council November 3, 2016; and

WHEREAS, on December 7, 2016 and April 5, 2017 the Town Council held public hearings to consider anew the Applicant's request for a Conditional Use Permit to allow amplified music on the covered patio; and

WHEREAS, at both the December 7, 2016, and the April 5, 2017, public hearings, the Town Council considered a staff report and its attached supporting documents, and heard from the Applicant's representative, Adam Jepson, interested members of the public, and staff; and

WHEREAS, as set forth in the staff report prepared for the Town Council, the site bears a zoning designation of 'Central Commercial' (per Figure LU-2 of the Fairfax 2010-2030 General Plan); and

WHEREAS, live outdoor entertainment is a conditionally permitted use within the 'Central Commercial' zoning district, per Town Code §§ 17.100.050(A) and (I); and

WHEREAS, the Town Council at its December 7, 2016 meeting directed staff and the appellant to explore what it would take to set up a system that would establish an acceptable decibel level for the outdoor music and allow installation of a self-monitoring computer program for the outdoor music sound system and continued this matter from their December 7, 2016 meeting; and

WHEREAS, the Town Council at its April 5, 2017 meeting reopened the public hearing; and

WHEREAS, based on the documentary evidence in the record, as well as testimony at the public hearing, the Town Council has determined that the Planning Commission was within the rights bestowed upon them by Fairfax Town Code Chapter 17.032, Use Permits, when they approved a modification of Conditional Use Permit 83-UP-32 with

certain conditions, which after taking testimony on December 7, 2017 and April 5, 2017, the Town Council has chosen to modify to include as follows:

- Amplified music is permitted in the side patio;
- Music of any kind is prohibited in the back-yard area;
- The business shall have a decibel reader with a visual monitor displaying decibel levels in real time visible to the performers to monitor their sound levels in real time in operation at all times during performances to ensure the decibel levels do not exceed the established limit of 94-98 dBA;
- Reconsider these conditions in December 2017 to evaluate the effectiveness of the dBA limit in addressing the neighborhood's concerns;
- If deemed effective, require the installation of a permanent monitoring system; and

WHEREAS, at the conclusion of the April 5, 2017 public hearing the Town Council found that:

1. The outdoor amplified music did not noticeably raise the ambient noise levels already existing in the surrounding neighborhoods; and therefore, allowing the outdoor music to continue for a 6-month trial period and limiting the decibel levels to that of the ambient levels already being experienced throughout Town will not have significant impact on the surrounding properties; and
2. The approval conditions conform to the Fairfax Noise Element of the 2010-2030 Fairfax General Plan, Goal N-3, and maintain the current quality of the acoustical environment; and
3. The approval conditions support the General Plan Land Use Element, Objective LU-7.2; Preserve, maintain, and enhance in a sustainable manner, the existing character, scale, and quality of life in Fairfax's residential neighborhoods; and
4. The appellant is willing and able to establish a sound monitoring system to the satisfaction of the Town Council if, after a review hearing in December of 2017, the Use Permit is approved subject to the continued compliance with the conditions listed above;

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Fairfax hereby finds and determines as follows:

Section 1. The recitals set forth above are incorporated herein.

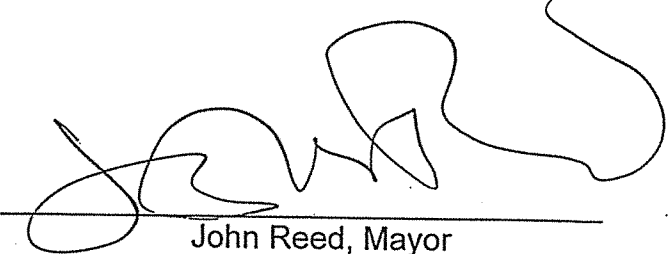
Section 2. Town Code § 17.032.060 sets forth the findings that must be made in order

to grant a requested Use Permit. The Town Council has determined that the proposed use will not meet the second of these findings without the conditions placed upon the requested Use Permit modification by the Planning Commission. The second finding, Town Code § 17.032.060(B) states that "The development and use of the property, as approved under the Use Permit, shall not create a public nuisance, cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects thereto, or create undue or excessive burdens in the use and enjoyment there, any of all of which effects are substantially beyond that which might occur without approval of issuance of the Use Permit".

Section 3. The Town Council likewise determined that it could not grant the appeal without additional conditions and without a trial period because the request to have all electric, amplified bands and/or other amplified live entertainment had previously resulted in the outdoor performances failing to conform to the General Plan, Noise Element Goal N-3 to maintain the current quality of the acoustical environment and the Zoning Ordinance which does not allow, by right, exterior or interior live entertainment but requires Conditional Use Permit approval by the Planning Commission. In addition, Land Use Objective LU-7.2 also applies and requires that the quality of life in Fairfax's residential neighborhoods be preserved, maintained and enhanced in a sustainable manner, which includes minimizing new exterior noise sources that might threaten the quality of life in residential neighborhoods. However, on March 17, 2017 staff determined during field testing of dBA levels with and without a live band playing that at dBA levels between 94 dBA to 98 dBA, noise levels throughout the surrounding neighborhood will not be significantly changed.


The foregoing resolution was adopted at a regular meeting of the Town Council of the Town of Fairfax held in said Town, on the 5th day of April, 2017, by the following vote, to wit:

AYES: GODDARD, LACQUES, REED
NOES: WEINSOFF
ABSENT: COLER



John Reed, Mayor

Attest:



Michele Gardner, Town Clerk

PERI'S NOISE COMPLAINTS April 1st 2017 thru 11/26/2017

ATTACHMENT B

							Complaints 4/1/17 - 11/26/17	
Inc #	Type	Date	Time	Location	INSIDE/OUT	NOTES	TALLY OF REPORTING PARTIES	
1704020035	NOISE	04/02/2017	21:53:45	29 BROADWAY	INSIDE	Request to close back door. Bar complied	ANONYMOUS: 3 calls	
1704220002	NOISE	04/22/2017	01:05:30	29 BROADWAY	INSIDE	Request to close Front door, Bar complied	R/P #1:	2 call
1706040049	NOISE	06/04/2017	22:58:28	29 BROADWAY	INSIDE	Request to close back door. Bar complied	R/P #2:	3 calls
1706230065	NOISE	06/23/2017	23:33:03	29 BROADWAY	INSIDE	Request to close back door. Bar complied	R/P #3:	33 calls
1706240076	NOISE	06/24/2017	23:39:29	29 BROADWAY	INSIDE	Request to close back door. Door was closed on arrival		
1706300058	NOISE	06/30/2017	18:59:37	29 BROADWAY	OUTSIDE	Noise reading requested on Domiga. Not in violation		
1707010046	NOISE	07/01/2017	23:15:32	29 BROADWAY	INSIDE	Request to close back door. Bar complied		
1707020001	NOISE	07/02/2017	00:09:33	29 BROADWAY	INSIDE	Request to close back door. No notation if door was open or closed on arrival.		
1707040035	NOISE	07/04/2017	22:12:49	29 BROADWAY	INSIDE	Request to close back door. Bar advised, no notation if it was open or closed		
1707110057	NOISE	07/11/2017	23:23:07	29 BROADWAY	INSIDE	Request to close back door. Officer arrived and saw door was	TALLY OF TYPES OF	
1707120066	NOISE	07/12/2017	23:30:59	29 BROADWAY	INSIDE	Request to close back door. Bar complied	FOUND DOOR OPEN:	19
1707150075	NOISE	07/15/2017	23:32:07	29 BROADWAY	INSIDE	Request to close back door. Officer arrived and saw door was	FOUND DOOR CLOSED	14
1707260063	NOISE	07/26/2017	23:54:57	29 BROADWAY	INSIDE	Request to close back door. Bar complied	UNKNOWN DOOR STATUS:	3
1707290002	NOISE	07/29/2017	00:49:20	29 BROADWAY	INSIDE	Request to close all doors. Officer arrived and saw both front and rear were closed	OUTSIDE COMPLAINT:	3
1708050049	NOISE	08/05/2017	22:03:36	29 BROADWAY	INSIDE	Request to close back door. Bar complied	INSIDE COMPLAINT:	35
1708080050	NOISE	08/08/2017	23:39:37	29 BROADWAY	INSIDE	Request to close back door. Bar complied	NOISE READING TAKEN	2
1708230002	NOISE	08/23/2017	0:45	29 BROADWAY	INSIDE	Request to close back door. Bar complied	NOISE VIOLATIONS:	0
1708250048	NOISE	08/25/2017	19:43	29 BROADWAY	OUTSIDE	R/p advised they are allowed to play music outside this date. r/p declined decible reading. Several non amplified instruments observed		
1708310063	NOISE	08/31/2017	23:00	29 BROADWAY	INSIDE	Request to close back door. Bar complied		
1709020001	NOISE	09/02/2017	0:47	29 BROADWAY	INSIDE	Request to close back door. R/p took their own reading which was 43 db. Bar advised of complaint		
1709020004	NOISE	09/02/2017	0:47	29 BROADWAY	INSIDE	request to close back door. Bar complied		
1709020051	NOISE	09/02/2017	23:06	29 BROADWAY	INSIDE	request to close back door. Bar advised		
1709020055	NOISE	09/02/2017	23:06	29 BROADWAY	INSIDE	2nd request to close back door. Doors were closed		
1709030031	NOISE	09/03/2017	22:08	29 BROADWAY	INSIDE	Request to close door. Bar complied		
1709030031	NOISE	09/03/2017	22:41	29 BROADWAY	INSIDE	2ND Request to close back door. Door is closed		
1709030001	NOISE	09/03/2017	0:17	29 BROADWAY	INSIDE	Request to close door. Bar complied		
1709030002	NOISE	09/03/2017	0:31	29 BROADWAY	INSIDE	2nd complaint. Decibal reading requested. Results were 38.5 38 36.9 37.3 39.7 during 15 minute reading		
1709030036	NOISE	09/03/2017	23:24	29 BROADWAY	INSIDE	Request to close back door. Door was closed on arrival		

