



TOWN OF FAIRFAX

STAFF REPORT

July 15, 2015

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager *GT*

SUBJECT: Discuss/consider the residents' petitions regarding the noise ordinance and the status of Deer Park Villa's improvements to mitigate noise

RECOMMENDATION

Discuss/consider the residents' petitions regarding the noise ordinance and the status of Deer Park Villas improvements to mitigate noise and direct staff as appropriate.

BACKGROUND

In October 2013, a group of residents in the Deer Park neighborhood submitted a petition to the Council for consideration. Pursuant to Town Code 2.08.090 (C), if the Council is presented with a petition signed by 25 residents urging consideration of an issue, the issue shall be placed on the Council's agenda for discussion. The petition concerned the Town's noise ordinance and enforcement of the ordinance with regard to Deer Park Villa's outdoor events. Several neighbors spoke at the October 2, 2013 Town Council meeting about their concerns. Staff was directed to hold a neighborhood meeting, which took place in November 2013.

At its February 5, 2014 meeting, the Council discussed the status report on the neighborhood discussions, and directed staff to coordinate a second meeting, but ultimately the parties decided they did not wish or need to meet.

At its May 7, 2014 meeting, the Council discussed the noise issues regarding Deer Park Villa and considered proposed revisions to the noise ordinance. The Council did not take action on the proposed revisions to the noise ordinance and indicated that staff should schedule it for consideration at a future meeting.

In late May 2014, a group of residents in the Deer Park neighborhood submitted a second petition to the Council, concerning proposed revisions to the Town's noise ordinance and enforcement of the ordinance. It was agendaized for Council discussion on June 4, but the item was continued to July 16, and again to August 6 due to time constraints. While the petition did not specifically identify Deer Park Villa, the discussion with the Council regarding the petition has focused on the noise generated by Deer Park Villa's outdoor events.

At its August 6, 2014 meeting, the Council further discussed the matter and directed staff to meet with the owner of Deer Park Villa to evaluate the status of his proposed improvements and other actions he had undertaken to address the noise issue. The business owner indicated he had undertaken actions such as building sound walls, reducing the occurrence of nightly music on the deck, and requiring outdoor music to end by 9:30pm.

At its October 1, 2014 meeting, the Council further discussed this matter and requested staff follow-up on three items:

- 1) Meet with the business owner of Deer Park Villa again to see if the issue can be resolved (*staff did meet with owner, but did not reach a resolution*),
- 2) Research the Town minutes to determine the rationale for creating Noise Zones A, B, and C and for locating Deer Park Villa in Noise Zone B (*the minutes contain no details of the Council's discussion of the matter*); and
- 3) Research information on facilities in Sausalito and Mill Valley (*information was attached to the November 2014 and June 2015 staff reports*)

The Council then continued the matter to November to allow the owner an opportunity to attend the meeting. The owner had been unable to attend the October Council meeting due to illness. At the November meeting, the owner indicated that he believed there was a judgment against the Town in favor of Deer Park Villa in 1981 and that the judgment addressed the issue of outdoor amplified music at the business.

In light of this information, the Council continued the discussion to its January 2015 meeting to provide time to research this new information. This item was pulled from the January agenda to allow the business owner and residents to participate in a voluntary mediation process conducted by the Congress of Neutrals, an independent nonprofit organization with over a decade of experience in helping to resolve community disputes and other types of conflicts. Unfortunately, the parties were unable to reach agreement and requested this item be placed on the May 2015 agenda.

At its May 6, 2015 meeting, the Council directed staff to explore an option to amend the code for the Limited Commercial (CL) zone to restrict the uses for outdoor music. This was in response to the petition submitted at the meeting regarding the item. At the May meeting, Councilmember Reed also volunteered to meet with the Deer Park Villa owner to discuss possible solutions to address the noise problem.

At the June 3, 2015 Council meeting, staff reported that Deer Park Villa is one of three properties town-wide that has a CL designation. The other two properties are School Street Plaza and 10 Olema. It should be noted that the General Plan and Housing Element call for these two CL properties to be rezoned to Planned Development District (PDD), which would leave Deer Park Villa as the only CL zoned property in Town.

Staff indicated that while the Town can create standards to address outdoor music in the CL zone, *it would only apply to future use permits, and not to current use permits*. The best approach to address an existing use permit would be to request the Planning Commission to review the use permit and evaluate whether the conditions are being met or should be revised. However, if directed, staff would prepare a zoning amendment to address outdoor music in the CL zone for consideration by the Planning Commission who would then make a recommendation to the Council. The Council did not direct staff to take any zoning amendment action at this time.

In addition, the Council had a lengthy discussion regarding the owner's proposed improvements for mitigating noise. A majority of the Council voted to continue this item to the July 15th Council meeting at which time the Council would review the actions taken by Deer Park Villa to go forward with a new sound system and the other mitigation ideas discussed with Councilmember Reed and the sound technician. In the event that the Council is not provided with either completed actions or evidence that the improvements are going to be made by a date certain then the Council would take up the discussion of referring the matter to the Planning Commission and look at the Noise Ordinance in greater detail.

DISCUSSION

Based on the Council's action at their June meeting, this section is separated into two sections: (1) Deer Park Villa and (2) Noise Ordinance revisions.

1. Deer Park Villa

With regard to the business operator's contention that the Court issued a judgement against the Town regarding noise at Deer Park Villa, staff did obtain a copy of the judgment from the Marin County Courts. Unfortunately, any background materials on this matter have already been destroyed by the Court. The judgment concerned the Town's action to prohibit amplified outdoor music at Deer Park Villa in 1978. Staff could not find any Town records regarding the judgment or suit.

According to Town minutes, in 1976 the Town Council approved a use permit for Deer Park Villa (DPV) which limited outdoor amplified music to 8:30 pm for for-profit events and 10:00pm for charity events. In 1978, the Council reviewed the use permit and modified it to prohibit outdoor music at DPV. DPV filed suit against the Town and in 1979 the Court issued a judgment restraining the Town from prohibiting outdoor music at Deer Park and remanded the matter back to the Town for further hearings. In 1981, the Town adopted the current noise ordinance. It should also be noted that neither the owner nor the Town has a copy of the actual use permit document or letter.

Staff believes that the judgment does not restrict the Council's ability to revise the Town's noise ordinance. As well, there is no indication that the use permit has been modified from the conditions outlined in 1976. As a result, all options are available to the Council to address the noise concerns of the residents. The challenge for the Council is finding the right balance between the neighbors' quiet enjoyment of their properties and the ability of Deer Park Villa to operate its business.

At its June 3rd meeting, the Council continued this item to the July 15th Council meeting at which time the Council would review the actions taken by Deer Park Villa to go forward with a new sound system and the other mitigation ideas discussed with Councilmember Reed and the sound technician. In the event that the Council is not provided with either completed actions or evidence that the improvements are going to be made by a date certain then the Council would take up the discussion of referring the matter to the Planning Commission and look at the Noise

Ordinance in greater detail. At this evening's meeting, the Council will receive an oral report on the owner's efforts.

Based on the Council's action in June, the Council will need to determine if the owner has complied with the Council's direction. If the Council is not satisfied with the owner's progress and/or does not wish to grant additional time for compliance, the Council could then request the Planning Commission (PC) to conduct a public hearing to ratify the conditions of the use permit based on the Town minutes and/or modify the conditions as deemed appropriate. Modifications could include limiting outdoor amplified music to an earlier time or ratifying the condition of 8:30 pm for for-profit events and 10:00pm for charity events. Staff would recommend this approach in-lieu of modifying the Noise Ordinance to address the noise issue.

2. Noise Ordinance Revisions

In June, the Council also indicated it may consider revisions to the Town's Noise Ordinance in addition to referring Deer Park Villa's use permit to the Planning Commission for review. The options regarding the noise ordinance are as follows:

- 1) Maintain the status quo (no changes to Noise Ordinance).
- 2) Revise the Town Code ("Noise Control" Section 8.20.050 (B)(1) Table) to:
 - a. change the "Day" hours for Noise Zone B in which Deer Park Villa is located to end at an earlier time than 10:00pm such as 9:00pm; and/or
 - b. revise the decibel levels in Noise Zone B for day hours; and/or
 - c. add different time periods for different days in Zone B (e.g., Friday and Saturday day hours stay at 10:00pm, all other days end at 8:30pm).

Staff does not recommend eliminating or consolidating Noise Zone B into Noise Zone A. It appears one purpose of Noise B is to create transition/buffer zone between Zones A and C. Noise Zone C are the commercial areas of Town including the downtown. Deer Park Villa is the only commercially zoned property in Noise Zone B.

Under any scenario, staff is recommending that existing enforcement provision in the Noise Ordinance be replaced with the attached language to eliminate any confusion and disagreements reflecting our current enforcement practices. It should be noted that the most straightforward revision to the Town Code would be "2a" above as it would only change the time listed in the Table (refer to the attached redline of the relevant section of the Town Code).

Based on the Council's direction, staff would return with revisions to the Noise Ordinance at a future public hearing.

FISCAL IMPACT

N/A

ATTACHMENTS

Redline of a section of the Town Noise ordinance

FAIRFAX, CA MUNICIPAL CODE OF ORDINANCES

§ 8.20.050 EXTERIOR NOISE LIMITS.

(A) *Maximum permissible sound levels by receiving land use.*

(1) The noise standards for the various noise zones as presented in the following table shall, unless otherwise specifically indicated, apply to all such property within a designated zone.

(2) No person shall operate or cause to be operated any source of sound at any location within the incorporated town, or allow the creation of any noise on property owned, leased, occupied or otherwise controlled by the person, which causes the noise level when measured at the complainant's property line to exceed the limits in the table below for more than seven and one-half minutes in a 15- minute period. Those seven and one-half minutes need not be continuous.

(3) If the measured ambient level differs from that permissible, the allowable noise exposure standard shall be adjusted in five-decibel increments in each category as appropriate to encompass or reflect the ambient noise level.

(4) If the measurement location is on a boundary between two different zones, the noise level limit applicable to the lower noise zone shall apply.

(B) *Correction for character of sound.*

(1) In the event the alleged offensive noise, as judged by the Chief of Police or his or her designated representative, contains a steady, audible tone such as a whine, screech or hum, or is a repetitive noise such as hammering or riveting, or contains music or speech, the standard limits set forth in the table below shall be reduced by five decibels. If the Chief of Police determines that the noise is extremely offensive to a person of normal sensitivity because it contains a steady, audible or high-pitched whine, screech, or hum, is repetitive (such as hammering or riveting) or is music or speech that is distorted, contains emphatic beats or vulgar or profane language, the Chief of Police, or his or her designated representative, may reduce the exterior noise limit by 5 decibels

Exterior Noise Limits <i>(Levels not to be exceeded more than 7.5 minutes in any 15-minute period)</i>			
Noise Zone	Time Period		Noise Level (dBA)
A (Residential)	Night	10:00 p.m. - 7:00 a.m.	40
	Day	7:00 a.m. - 10:00 p.m.	50
B (Multiple Dwelling, Residential)	Night	10:00 p.m. - 7:00 a.m.	50
	Day	7:00 a.m. - 10:00 p.m.	55
C (Commercial)	Night	10:00 p.m. - 7:00 a.m.	55
	Day	7:00 a.m. - 10:00 p.m.	60

(2) These zones are illustrated on Exhibit A, "Noise Zones, Town of Fairfax," attached to the ordinance codified in this chapter. Areas that are not covered on the map are included in Zone A.