




TOWN OF FAIRFAX

STAFF REPORT

December 7, 2016

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager 
Linda Neal, Principal Planner

SUBJECT: Appeal of Planning Commission conditions of approval for a Use Permit to allow live music performances outdoors on a covered patio and in the rear yard area of an existing commercial establishment, Peri's Bar, 29 Broadway

RECOMMENDATION

1. Conduct public hearing
2. The options available to the Council are:
 - a. Adopt a resolution denying the appeal and uphold the decision of the Planning Commission (Attachment 4);
 - b. Adopt a resolution granting the appeal with amendments, if any, for modifying the findings and/or conditions of approval for Use Permit # 83-UP-32 (Attachment 5); or
 - c. Continue the matter to the January 18, 2017 meeting and direct staff and/or the applicant to provide more information.

BACKGROUND

The original Use Permit 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 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 (Use Permit No. 83-UP-32) 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 18, 2016 to clarify the conditions of approval and again on October 20, 2016 to address the complaints the Town continued to receive. Resolution No. 16-16 (please see Attachment 1) was adopted on October 20, 2016, amending and clarifying Use Permit No. 83-UP-32 as follows for outdoor music:

- 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. (Note: the Appeal does not encompass the back yard area.)
- No more than three (3) entertainers or musicians are approved to play in the back yard at any one given time. (Note: the Appeal does not encompass the back yard area.)

CUP DISCUSSION

Live entertainment is not a principally permitted use in the Central Commercial Zone nor is outdoor live entertainment. Town Code § 17.100.050(I) indicates that a Conditional Use Permit (CUP) is required for any establishment which provides entertainment for customers by musicians, and Town Code § 17.100.050(H) allows the Commission to grant CUP's for other uses determined by the Commission to be equivalent to those listed in 17.100.050(A) through (G) but requires regulation of location, extent and/or operation because of some unique characteristic, such as being located outside.

When reviewing a request for a CUP, Town Code § 17.032.010(A) indicates, "The purpose of the conditional use permit is to allow the proper integration into Fairfax of uses which may be suitable only in certain locations in the Town or in a zone or only if the uses are designed or laid out on the site in particular manner".

Town Code § 17.032.010(B) sets forth that, "In consideration of an application for a conditional use, the Planning Commission shall give due regard to the nature and condition of all adjacent uses and structures, to the physical environs of the proposed use and to all pertinent aspects of the public health, safety and general welfare".

Town Code section 17.032.020(C) gives the Commission the authority to deny a request for a use permit and section 17.032.020(D) gives the Commission the authority to impose any requirements or conditions they see fit on a use permit including on how a use operates for the protection of adjacent property and the public interest.

After holding the public hearings on the requested use permit, and taking into consideration the proximity of the surrounding businesses and residential properties, the Commission approved the Use Permit with the conditions as described contained in the attached Resolution No. 16-16.

APPEAL

The applicant states "*...the focus of this appeal is exclusively on the live music performed on the side patio.*" Attached is the applicant's letter of appeal for reference (Attachment 3). In essence, the applicant would like the Council to modify the Use Permit conditions to allow amplified musical performances on the side patio only subject to the existing day (Thurs through Sunday) and time (4:00pm to 8:00pm) restrictions.

The options available to the Council are stated above under the recommendation section of this staff report. Should the Council decide to modify the conditions of the Use Permit, such action would constitute the granting of the appeal. The resolution granting the appeal (Attachment 5) would need to be amended at the meeting to reflect the Council's findings and/or revised conditions.

CEQA

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

FISCAL IMPACT

Not applicable

ATTACHMENTS

1. Planning Commission Resolution No. 16-16
2. Planning Commission staff reports and excerpts from the minutes of the June 16, 2016, August 18, 2016 and October 20, 2016 meetings
3. Applicant's appeal form and supplemental information
4. TC Reso 16-__ Denying Appeal
5. TC Reso 16-__ Granting Appeal

RESOLUTION NO. 16-16

A Resolution of the Fairfax Planning Commission Approving A Modification of Conditional Use Permit 83-UP-32, to Allow Outdoor Acoustic Music On the Side Patio and In The Rear Yard, With Only One Vocalist and One Electric Keyboard Being Amplified and Only Twelve Special Events Per Year in in the Rear Yard of the Commercial Bar Establishment at 29 Broadway Avenue

WHEREAS, the Town of Fairfax has received an application to modify the existing Conditional Use Permit No. 83-UP-32 for 29 Broadway to legalize business operations, music and special events, that have been occurring for many years in outdoor areas; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on June 16, 2016, August 18, 2016 and October 20, 2016 at which time all interested parties were given a full opportunity to be heard and to present evidence, and at which time the Planning Commission approved the Use Permit Modification; and

WHEREAS, based on the documentary evidence in the record, as well as testimony at the public hearing, the Planning Commission has determined that the applicant has met the burden of proof required to support the findings necessary for the Project's requested discretionary permit with the conditions listed below.

WHEREAS, the Commission has made the following findings:

1. The limited hours proposed for acoustic outdoor music and special events, from 4:00 PM through 8:00 PM, Thursday through Sunday, will not conflict with or create any significant hardship for other businesses or residential uses in the immediate neighborhood as long as; 1) the noise ordinance is complied with; 2) the music is restricted to acoustic instruments only except for one (1) amplified vocalist and one (1) amplified electric keyboard for both the side patio and rear yard areas; and, 3) as long as special events are limited to twelve events per year with disc jockey entertainment being prohibited. Therefore, the approval of the use permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.
2. The limited hours and the fact that the covered patio is enclosed on two (2) sides and has a roof help to mitigate the impacts of the live music on adjacent uses. Therefore, the approval of the Use Permit and use of property as approved under the use permit shall not 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 thereof, or any or all of which effects are substantially beyond that which might occur without approval or issuance of the use permit.

3. Approval of the use permit is consistent with those objectives, goals or standards pertinent to the particular case and contained or set forth in any Master Plan, or other plan or policy, officially adopted by the City.
4. Approval of the use permit will result in equal or better development of the premises than would otherwise be the case.

WHEREAS, the Commission has approved the project subject to the applicant's compliance with the following conditions:

1. Entertainment by disc jockeys is prohibited on both the patio and in the rear yard
2. Music is restricted to unamplified acoustic instruments only except that one amplified vocalist and one electric keyboard are allowed for musical performances in both the patio and rear yard areas.
3. All the exterior doors and windows shall remain closed at all times during musical performances including both rear doors to the outside and the side door between the bar and the patio.
4. There shall be a six (6) month review of the Conditional Use Permit on April 20, 2017.
5. The applicants shall maintain the premises in a neat and attractive manner at all times. Such maintenance shall include, but not be limited to, exterior building materials, signage, windows, the planters, the ground and the pavement surfaces.
6. The applicant shall comply with all applicable local, county, state and federal laws and regulations. Local ordinances which must be complied with include, but are not limited to: the Noise Ordinance, Chapter 8.20, Polystyrene Foam, Degradable and Recyclable Food Packaging, Chapter 8.16, Garbage and Rubbish Disposal, Chapter 8.08, Urban Runoff Pollution Prevention, Chapter 8.32 and the Americans with Disabilities Act.
7. Any changes made to the exterior of the building, including but not limited to new lighting, new signs, planters, etc. shall comply with the design review regulations of the Town Code, Chapter 17.020, and be approved by the Fairfax Design Review Board (when required).
8. The applicant and its heirs, successors, and assigns shall, at its sole cost and expense, defend with counsel selected by the Town, indemnify, protect, release, and hold harmless the Town of Fairfax and any agency or instrumentality thereof, including its agents, officers, commissions, and employees (the "Indemnitees") from any and all claims, actions, or proceedings arising out of or in any way relating to the processing and/or approval of the project as described herein, the purpose of which is to attack, set aside, void, or annul the approval of the project, and/or any environmental determination that accompanies it, by the

Planning Commission, Town Council, Planning Director, Design Review Board or any other department or agency of the Town. This indemnification shall include, but not be limited to, suits, damages, judgments, costs, expenses, liens, levies, attorney fees or expert witness fees that may be asserted or incurred by any person or entity, including the applicant, third parties and the Indemnitees, arising out of or in connection with the approval of this project, whether or not there is concurrent, passive, or active negligence on the part of the Indemnitees. Nothing herein shall prohibit the Town from participating in the defense of any claim, action, or proceeding. The parties shall use best efforts, acting in good faith, to select mutually agreeable defense counsel. If the parties cannot reach agreement, the Town may select its own legal counsel and the applicant agrees to pay directly, or timely reimburse on a monthly basis, the Town for all such court costs, attorney fees, and time referenced herein, provided, however, that the applicant's duty in this regard shall be subject to the Town's promptly notifying the applicant of any said claim, action, or proceeding.

9. The indoor music shall occur seven days a week between the hours of 1:00 PM and 1:00 AM and the outdoor music shall only occur Thursday through Sunday between the hours of 4:00 PM and 8:00 PM. Outdoor music occurring outside these approved hours constitute a violation of the use permit.

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

Because of the limited hours of the outdoor uses/music, restricted amplification and other conditions listed above, the approval of the Use Permit can occur without causing significant impacts on neighboring businesses or residences.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 20th day of October, by the following vote:

AYES: Fragoso, Gonzales-Parber, Green, Newton, Chair Kehrlein

NOES: Ackerman, Swift


Chair, Laura Kehrlein

Attest:


Jim Moore, Director of Planning and Building Services

M/s, Fragoso/Newton, Motion to approve Hill Area Residential Development Permit, Design Review and Excavation Permit, Application #16-24 with the additional conditions of approval outlined by the Commission and staff.

AYES: Ackerman, Fragoso, Gonzalez-Parber, Green, Newton, Chair Kehrlein

ABSENT: Hamilton

Chair Kehrlein stated there was a 10-day appeal period.

The Commission took a 5-minute break at 10:00 p.m.

7. 29 Broadway; Application #83-UP-32

Request for a modification to an existing Use Permit to allow live music performances outdoors on a covered patio and a rear yard area; Assessor's Parcel No's. 002-121-03 and 04; Central Commercial (CC) Zone; Charles Peri, applicant/owner; CEQA categorically exempt per Section 15301.

Principal Planner Neal presented the staff report.

Commissioner Newton asked if there was a distinction between acoustic and amplified music with respect to this application. Principal Planner Neal stated the applicant had provided the statement that it was acoustic music but it was amplified- there would not be any electric guitars.

Chair Kehrlein opened the Public Hearing.

Mr. Josh Burkes, night manager, made the following comment:

- They have been providing this type of music for as long as he has worked at the bar and there has never been a complaint.

Chair Kehrlein asked if they currently have music out on the patio from 4:00 p.m. to 8:00 p.m. Mr. Burkes stated "yes". Chair Kehrlein asked if they plan to play music Thursday through Sunday. Mr. Burkes stated "yes, on the patio".

Commissioner Newton asked if it would be a hardship to limit the outdoor music to acoustic as opposed to amplified. Mr. Burke stated "yes, to a degree".

Commissioner Gonzalez-Parber asked about the decibel level of an acoustic guitar that was amplified. Mr. Burkes stated it would depend on the volume. Principal Planner Neal stated the Police Department has done decibel level checks and they have not exceeded the limits.

Commissioner Newton asked if the doors could be closed when music was being played inside the bar. Mr. Burkes stated "yes" but they like to see everyone that comes in and out of the bar.

Mr. Ruffin Bailey, Mono Avenue made the following comments:

- He lives right behind the bar. He would take the brunt of the noise which is negligible.
- The decibel readings have consistently been fine. They are never a problem.
- He supports live music and Peri's bar.

Mr. Oscar Salavara, Dominga Avenue, made the following comments:

- He loves the diversity of Fairfax and the nightlife.
- He is concerned about the gentrification of Fairfax.

Mr. Brad Schwan, owner of 31 Bolinas Road, made the following comments:

- He is applying for an outdoor music permit for his property.
- The bar can get extremely noisy. The surrounding businesses are affected by the noise.
- He cannot imagine that the noise levels were legal.
- The community is diverse and it is not just about music.
- People should be able to enjoy their property without being disturbed.

Mr. Tommy Odetto, Fairfax, made the following comments:

- The local musicians are community minded and hold fundraisers.
- Fairfax is a music town.
- Amplifying acoustic music simply brings it to the "same level".

Ms. Diane Zellers, Fairfax, made the following comments:

- She is a local business owner that looks at data.
- Business increases when there is music outside on Peri's patio- more people buy food and alcohol.
- People should not come into an environment and try to change the vibe.

Mr. Gavin Donagell made the following comment:

- He came to Fairfax for the amazing culture- the music scene is a big part of it.

Mr. Michael Bennett, Mono Avenue, made the following comments:

- It is a treat to come home and listen to live music.
- Removing the music from Peri's would remove the culture.
- The music is never harsh.

Mr. Larry Newman made the following comments:

- He plays once a month on the patio with a trio.
- They are careful to keep the music acoustically balanced.

Mr. Kevin Meade made the following comments:

- He has lived above three different businesses in Fairfax.
- Music is an essential part of the downtown and the culture of Fairfax.

Mr. George Osner made the following comments:

- He comes to Fairfax to listen to music and spend his money.
- A Use Permit allows the Town to ensure that the operation maintains compatibility with its surroundings.
- The limited hours and the covered patio make for a good operation.
- He urged the Commission to approve the application.

Ms. Linshen Bell, Dominga Avenue, made the following comments:

- She did an informal survey and found that six of her neighbors were opposed to outside music and five were in favor of acoustic (but not amplified).
- She can hear the music where she lives and it is quite loud. It is very disturbing.
- She discussed how the Noise Ordinance should be interpreted.

Mr. Mark Bell, Dominga Avenue, made the following comments:

- None of the bands that played at The Sleeping Lady used amplification.
- He read a letter from a neighbor who thought that loud music was sensory overload.
- Any increase in hours for outside music should include un-amplified music only.

Denile made the following comments:

- She moved to Fairfax because of the live music and the culture- is it inspiring.
- Music must be amplified to meet all the same sounds.
- The outdoor music at Peri's is not loud or obnoxious. Shutting it down would be tragic.

A resident made the following comments:

- She loves live music and Peri's.
- She stated there should be some enforcement of the Use Permit.

Mr. Todd Greenberg, Bolinas Road, made the following comments:

- Everyone has a different understanding and sensitivity to noise.
- The current use and what they are applying for is a formalization of what has been a historical use over time.

Ms. Mallory Geidham, Fairfax, made the following comments:

- The soul of Fairfax is music and art and she would like to keep it that way.
- The music can be loud.

Mr. Chris Peck, Fairfax, made the following comments:

- The staff at Peri's bar is very intense about enforcing the code.
- They will follow the new permit to the letter.

Commissioner Gonzales-Parber asked Mr. Burke if they have ever considering hiring an acoustic engineer who specializes in buffering out noise. Noise from a special event can emanate from more than just the music. Mr. Burke stated they could look at that but it might be difficult given the glass wall. The inside of the building has acoustic pads- they do their best to try to contain the noise.

Chair Kehrlein closed the Public Hearing.

Commissioner Green provided the following comments:

- They are not trying to shut down music in Fairfax. They are discussing a permitting process.
- Music has a history in Fairfax at least going back as far as Irving Berlin.
- The idea of reviewing the permit in January, 2017 is a good idea.
- He asked if there was any Police data. Principal Planer Neal stated the Police Chief told her the department could keep staff apprised of any complaints and decibel readings during the six-month review.

Commissioner Ackerman provided the following comments:

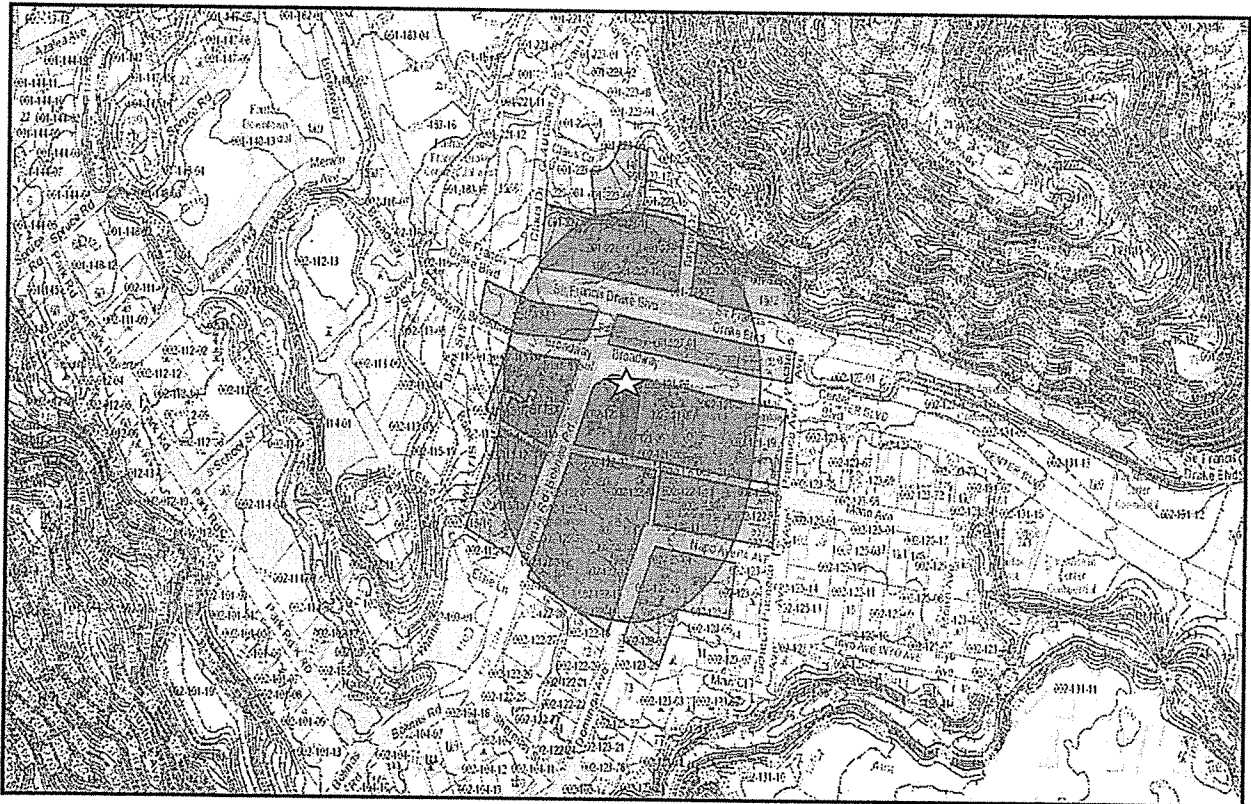
- They should approve the permit- they have been doing this for a while.
- Music is a big part of Fairfax.
- Noises can cause conflicts- sound can echo through the canyons.
- He liked the idea of a January, 2017 review.

Commissioner Newton provided the following comments:

- The decibel levels in residential areas should be measured even if the noise is coming from a commercial area. Planning Director Moore stated the measurement is taken from the edge of the property and must meet the residential decibel limit at the edge of that zone.
- She asked about the assertion that the decibel level should be 5 decibel less for music. Planning Director Moore stated the Police Department did not want to use the 5-decibel discretion because it was hard to articulate when it happens. They could look at that again in January.

STAFF REPORT
Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: June 16, 2016
FROM: Jim Moore, Director of Planning and Building Services
Linda Neal, Principal Planner
LOCATION: 29 Broadway; Assessor's Parcel Numbers 002-121-03 and 04
ZONING: Central Commercial CC Zone
PROJECT: Live music and special events outside of the building
ACTION: Modification of Use Permit; Application # 83-UP-32
APPLICANT: Charles Peri
OWNER: Same
CEQA STATUS: Categorically exempt, § 15301



29 BROADWAY

BACKGROUND

The building at 29 Broadway has been used as a bar, in conjunction with the outdoor rear yard, since 1946. The use of the outdoor rear yard by bar patrons predated the adoption of the current Zoning Ordinance (Ordinance No. 352) in 1973. Ordinance No. 352 prohibited the operation of any portion of a business in the Central Commercial Zone outside of a building unless approved by the granting of a Use Permit by the Planning Commission. The casual use of the rear yard by patrons is considered a legal non-conforming use of the outdoor rear yard.

The property is developed with Peri's Bar and the bar parking lot that provides 16 standard (9 foot by 19 foot) parking spaces and 1 accessible space (17 spaces total). On December 12, 1983, the Town Council approved a Use Permit to allow live entertainment inside the bar 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.
3. These conditions and any other appropriate conditions will be reviewed when this use permit and all other use permits for live entertainment in the downtown 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 bar building.

DISCUSSION

In April of 2016, the Department of Planning and Building Services was advised by the Police Department that the business was in violation of their Use Permit which only allowed live music within the building as live music was being performed out of doors in the covered patio area. The Department advised the business owner that if they wanted to continue having outdoor entertainment, the 1983 Conditional Use Permit (CUP) would require modification. The Department of Planning and Building Services along with the Town Manager, agreed to allow the business to continue having the outdoor music until their CUP request was acted upon so existing contracts with musicians could be honored.

The applicant is requesting a modification of Conditional Use Permit 83-UP-32, to include outdoor entertainment on the patio and occasional special events in the 1,920-square-foot rear yard. The outdoor music events would run from 4:00 PM through 8:00 PM, Thursdays through Sundays. Examples of the types of one-time special events that might occur in the outdoor rear yard include wedding receptions, wakes, fashion shows, birthday parties, etc. If approved by the Commission, any outdoor music or

special events would be required to conclude by 8:00 PM. Special events in the rear yard may occur any day of the week from 10:00AM to 8:00 PM.

Town Code § 17.100.050(A) requires that a CUP be obtained for any principal use not conducted entirely within a building, § 17.100.050(C) requires a Conditional Use Permit for theaters, nightclubs and entertainment establishments and § 17.100.050(I) requires a CUP for businesses that entertain customers by musicians. Therefore, having live entertainment outside the building requires a modification of the original use permit which limits entertainment to inside the building.

The purpose of the CUP process is to allow the proper integration into Fairfax of uses which may be suitable only in certain locations in the Town, or in a zone or only if the uses are designed or laid out on the site in a particular manner. In reviewing an application for a use permit, the Planning Commission must take into consideration the nature and condition of all adjacent uses and structures.

To the north of the site is Broadway and the Pakade parking lot, to the east is the Peri's parking lot and a restaurant, and to the south is a residence and a commercial property developed with a mix of commercial uses and 1 residential unit on the second floor (29 and 31 Bolinas Road). The closest residential unit at 50 Dominga Avenue is over 95 feet from the covered patio where the music would be played regularly and 30 feet from the rear yard area where occasional events would be scheduled.

Noise pollution is a growing concern in downtown Fairfax although the police chief has indicated that most of the noise complaints seem to come from the same group of people. Typically, the noise complaints are not about noise that has reached a level that violates the Noise Ordinance maximum limits [Town Code Chapter 8.20, section 8.20.050(B)(1) "Exterior Noise Limits" table for Zone C, Commercial]. This type of conflict is typical in a community where the Commercial zones are either directly adjacent to residential zoned neighborhoods and/or where the Commercial Zones also have residential units.

Allowing outdoor music would certainly increase the noise levels in the Town Center and depending on the number of Conditional Use Permits granted by the Commission for outdoor music in the future, these levels could violate the decibel noise limits set forth by the Town Code for the downtown commercial District which restrict noise levels to 60 decibels for the hours between 10:00 PM and 7:00 AM and 55 decibels for the hours between 7:00 AM and 10:00 PM

However, the businesses that have available outdoor areas large enough to accommodate outdoor music are limited. The following locations have rear or side yards, or patio areas where live music could be staged that have not applied for outdoor music use permits— 19 Broadway, 23 Broadway (previously the Sleeping Lady), 33 Broadway (Fairfix Café) and 31 Bolinas Road (previously Lydia's Lovin Foods).

Note: Later tonight you will be reviewing another request for a Conditional Use Permit for outdoor music at 31 Bolinas Road.

It is difficult to determine the number of permits for outdoor music and the resultant noise levels it would take to exceed the outdoor noise levels beyond those permitted in the Noise Ordinance. The Commission can approve the proposed CUP application and subsequent Conditional Use Permits with the knowledge that Conditional Use Permits are revocable. Therefore if noise levels for outdoor music exceed the Noise Ordinance limits, the CUP can be revoked and/or modified to only allow indoor music.

The Commission could also determine that outdoor music should not be permitted in the Central Commercial Zone District due to the close proximity of residential uses.

Recently when the Town Council reviewed the outdoor music at Deer Park Villa, it discussed the fact that due to increased traffic and other noise sources, there are areas of Town, including the Commercial districts, where ambient noise levels at certain times throughout the day and evening, already exceed the permitted levels set forth in the Town Code (note see the noise level reading tables contained in the 2010-2030 Fairfax General Plan Noise Element). Certain residents asked the Council to amend the noise ordinance to lower the permitted noise levels. After much consideration and testimony at public hearings, the Council made the decision to not amend the Noise Ordinance at that time.

The CUP process gives the Commission the right to deny the request if they receive evidence from the public showing that the use would have a significant negative impact on their lives and/or property. The Commission may also decide to amend the recommended conditions in the attached Resolution (Attachment A) to further address the concerns of the public. Additional conditions to consider include further limitations on the hours and/or days outdoor music/events can occur and/or limiting the outdoor music to non-amplified music only.

Any action taken by the Planning Commission can be appealed to the Town Council, the body that ultimately makes the laws and sets policy for the Town of Fairfax. Whether or not to start allowing outdoor music on a regular basis by businesses may be an issue that needs to be elevated to the Council for a determination on how the Town wants to proceed with this matter going forward. Any decision made by the Planning Commission can be appealed to the Town Council by filing an appeal, with the required \$500.00 appeal fee. The appeal must be made with the Town Clerk within 10 calendar days of this meeting.

The proposed Conditional Use Permit application does not include any changes to the exterior of the building therefore the application does not require the approval of a Design Review permit.

The days and hours that the applicant is proposing to allow outdoor music are limited and both the music and the occasional special events in the rear yard will end by 8:00

PM. Therefore, the requested use permit modification shall not have a significant impact on neighboring uses.

RECOMMENDATION

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to approve the requested modification to Conditional Use Permit # 83-UP-32 by adopting Resolution No. 16-16 setting forth the findings and conditions of approval for the permit which include scheduling the Use Permit for a public hearing to review the use permit on January 19, 2017. The review would include information from the Police Department on the number and outcome of the noise complaints received and responded to at 29 Broadway during that time period.

ATTACHMENTS

Attachment A-Resolution No. 16-16
Attachment B- Applicant's Supplemental Information
Attachment C – e-mail from Ling Shein Bell

RESOLUTION NO. 16-16

A Resolution of the Fairfax Planning Commission Approving A Modification of Conditional Use Permit 83-UP-32, to Allow Outdoor Musical and Special Events on the Covered Patio and Rear Yard of the Commercial Bar Establishment at 29 Broadway Avenue

WHEREAS, the Town of Fairfax has received an application to modify the existing Conditional Use Permit No. 83-UP-32 for 29 Broadway to legalize business operations, music and special events, that have been occurring for many years in outdoor areas; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on June 16, 2016, at which time all interested parties were given a full opportunity to be heard and to present evidence, and at which time the Planning Commission approved the Use Permit Modification; and

WHEREAS, based on the documentary evidence in the record, as well as testimony at the public hearing, the Planning Commission has determined that the applicant has met the burden of proof required to support the findings necessary for the Project's requested discretionary permit.

WHEREAS, the Commission has made the following findings:

1. The limited hours proposed for outdoor music and events, from 4:00 PM through 8:00 PM Thursday through Sunday, will not conflict with or create any significant hardship for other businesses or residential uses in the immediate neighborhood as long as the noise ordinance is complied with. Therefore, the approval of the use permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.
2. The limited hours and the fact that the covered patio is enclosed on 2 sides and has a roof helps to mitigate the impacts of the live music on adjacent uses. Therefore, the approval of the Use Permit and use of property as approved under the use permit shall not 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 thereof, or any or all of which effects are substantially beyond that which might occur without approval or issuance of the use permit.
3. Approval of the use permit is consistent with those objectives, goals or standards pertinent to the particular case and contained or set forth in any Master Plan, or other plan or policy, officially adopted by the City.
4. Approval of the use permit will result in equal or better development of the premises than would otherwise be the case.

WHEREAS, the Commission has approved the project subject to the applicant's compliance with the following conditions:

ATTACHMENT A

1. The applicants shall maintain the premises in a neat and attractive manner at all times. Such maintenance shall include, but not be limited to, exterior building materials, signage, windows, the planters, the ground and the pavement surfaces.
2. The applicant shall comply with all applicable local, county, state and federal laws and regulations. Local ordinances which must be complied with include, but are not limited to: the Noise Ordinance, Chapter 8.20, Polystyrene Foam, Degradable and Recyclable Food Packaging, Chapter 8.16, Garbage and Rubbish Disposal, Chapter 8.08, Urban Runoff Pollution Prevention, Chapter 8.32 and the Americans with Disabilities Act.
3. Any changes made to the exterior of the building, including but not limited to new lighting, new signs, planters, etc. shall comply with the design review regulations of the Town Code, Chapter 17.020, and be approved by the Fairfax Design Review Board (when required).
4. The applicant or permit holder shall defend, indemnify, and hold harmless the Town of Fairfax or its agents, officers and employees from any claim, action, or proceeding against the Town of Fairfax or its agents, officers, or employees to attach, set aside, void, or annul an approval of the Town Council, Planning Commission, Planning Director, Design Review Board or any other department, committee, or agency of the Town concerning a development, variance permit or other land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permit holders duty to so defend, indemnify, and hold harmless shall be subject to the Town promptly notifying the applicant or permit holder.
5. The Use Permit shall be reviewed at the regular public hearing of the Planning Commission on January 19, 2017. If the Commission determines at that time that the outdoor music is having a significant impact on neighboring uses, they will either revoke the Use Permit or place further conditions on the Use Permit.
6. The indoor music shall occur seven days a week between the hours of 1:00 PM and 1:00 AM and the outdoor music shall only occur Thursday through Sunday between the hours of 4:00 PM and 8:00 AM.
7. The exterior doors and windows of the business shall remain closed at all times when music is being played inside.

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

1. Because of the limited hours of the outdoor uses/music the approval of the Use Permit can occur without causing significant impacts on neighboring businesses or residences.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 16th day of June, 2016, by the following vote:

AYES:

NOES:
ABSENT:

Attest:

Chair, Laura Kehrlein

Jim Moore, Director of Planning and Building Services

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APPLICANT'S SUPPLEMENTAL INFORMATION

Applicant requests a use permit allowing the playing of live music on Thursday through Sunday from 4:00 PM to 8:00 PM on the patio attached to Peri's Tavern, located at 29 Broadway, in the Town of Fairfax, and occasionally in an adjacent backyard area. The primary business of Peri's is that of a tavern engaging in the sale of alcoholic beverages. It is duly licensed by all interested agencies, including the State of CA and the Town of Fairfax. Peri's operates seven days each week. Typical hours of operation are from noon to 2:00 A.M. Monday, Tuesday and Wednesday and 10:00 A.M. to 2:00 A.M. the remainder of the week. The busiest shifts, in order, are typically Friday, Saturday and Sunday at which times there are either two or three employees on duty.

Approval of the use permit will neither act as a special privilege or contravene equity and equal treatment, in that music and free enterprise is part of the fabric of our community. Many other businesses exist within the immediate vicinity of Peri's and continue to share a like commitment to the betterment of business and the community at large. At no time have any of these businesses been a detriment to the community, rather they serve to enhance goals of quality of life in the area.

Music is a characteristic factor in quality of life considerations. It is the continuing goal of Peri's to offer a business in the community that includes a modicum of entertainment for patrons. Patrons regularly report their pleasure and desire that music continue to be a part of the operation, not only to management but to others as well. Only rarely have there been reports of dissatisfaction to management about music at Peri's, and it would be unreasonable to suggest there may be none in the future, however few they may be.

Likewise, it is reasonable to suggest that in granting a use permit, there would be no adverse physical or economic effects or other burdens to the use and enjoyment of the property or businesses in the immediate vicinity of Peri's.

Peri's Tavern is not aware of, and has no reason to believe, that approval of the requested use permit would be in contravention of any adopted master plan, development plan, or any other plan or policy of the Town of Fairfax. Rather, the use contemplated is a fit with the community. Peri's Tavern has successfully been in the described business and location for several decades and is a well-known asset to the community. Live music has been an integral part of the business for many years, and in order to fully comply with applicable regulations, Peri's seeks a Town of Fairfax Use Permit allowing music to be played on its attached patio from 4:00 PM to 8:00 PM, Thursday through Sunday, and on infrequent occasions, in its adjacent backyard. At 8:00 PM the musicians, primarily one to four persons, typically using acoustic instruments, move entirely indoors, where live music is permitted by vis-à-vis Peri's cabaret license. Upon learning of the requirement of a use permit, informal surveys in the vicinity indicated well spread support for the requested use of live music, and no opposition was heard from either businesses or residents in the locale. It is respectfully submitted that the requested use permit will facilitate business and is in keeping with both the character and spirit of the Town of Fairfax.

Chair Kehrlein closed the Public Hearing.

M/s, Newton/Fragoso, Motion to approve Resolution No. 16-26 to allow the enclosure of a 132square-foot porch at 20 Cypress Drive with the addition of the condition suggested by Commissioner Green.

AYES: Ackerman, Fragoso, Green, Newton, Chair Kehrlein

ABSENT: Gonzalez-Parber, Hamilton

Chair Kehrlein stated there was a 10-day appeal period.

5. 29 Broadway; Application #83-UP-32

Clarification of what types of occasional private uses are permitted by Use Permit #83-UP-32, approved on June 16, 2016, in the outdoor back-yard area of the bar; Central Commercial (CC) Zone; Charles Peri, applicant/owner; CEQA Categorically exempt per Section 15301.

Principal Planner Neal presented the staff report. She noted that the Commission was not making any decisions tonight but rather clarifying its prior decision. The application with respect to the usage of the side patio will be brought back to the Commission for further discussion sooner than the six-month review.

Commissioner Fragoso asked for clarification on whether or not the Commission approved acoustic music with vocal amplification. Principal Planner Neal stated that applied to the patio.

Commissioner Ackerman stated he had assumed that the back-yard area would be used infrequently- once a month on average. The usage could occur more frequently during the summer months than in the winter due to weather conditions.

Commissioner Fragoso stated she understood that there would be one event per month with a maximum of twelve per year and that the music would be acoustic and not amplified.

Chair Kehrlein opened the Public Hearing.

Mr. Adam Jefferson, manager, made the following comments:

- The backyard area is typically not used in the winter.
- In the spring and summer the area is used for parties, weddings, etc.
- The area is used about twelve times per year.
- He has made it clear to everyone that music must stop at 8:00 p.m.
- They need to come to an agreement about what "acoustic" means.
- They have not broken any laws with respect to the Noise Ordinance.

Chair Kehrlein asked if the backyard was only reserved for special events or open at other times. Mr. Jefferson stated he does not necessarily rent it out but rather lets people use it for special events.

Commissioner Fragoso stated the backyard was closer to the residences and the sound would carry more- the Commission did not want any amplified/electric instruments.

Chair Kehrlein asked if bar patrons were allowed to use the backyard. Principal Planner Neal stated the occasional bar patron going out to the backyard to have a drink, talk to someone, etc. was a legal, non-conforming use. It is part of the bar. Commissioner Ackerman asked if there were speakers in the backyard. Mr. Jefferson stated "no".

Commissioner Green asked if they have ever had pre-recorded, amplified music controlled by a disc jockey in the backyard. Mr. Jefferson stated "yes" – for weddings, parties, a fashion show, etc.

Mr. Mark Bell, Dominga Avenue, made the following comments:

- He read the definition of "acoustic".
- He has no problem with acoustic music and a vocalist that is enhanced.
- It can take the Police Department up to 45 minutes to get a decibel level reading that they can use.
- There are other residents in the neighborhood that would prefer no music or unamplified music.
- There was a violation on June 25th from a disc jockey who played music until 8:40 p.m. The decibel reading was at 55-60 db.

Ms. Linshen Bell, Dominga, made the following comments:

- She would like to see some plexiglass installed to block the sound.
- She is entitled to enjoy her backyard especially during the summer.

A resident made the following comments:

- People should have some way to relax in their own homes.
- Amplified music gets distorted and is too loud.
- Allowing music in the back yard once a month during the summer is understandable.

Mr. Jefferson made the following comments:

- Use of the backyard is a very small part of the business- he would be willing to shut it down.
- He would like to come to some type of agreement.

Chair Kehrlein closed the Public Hearing.

Planning Director Moore stated the Commission has conveyed that their prior discussion was to allow non-amplified music in the backyard and allowing 12 events during the year on average. Staff will bring this issue back to the Commission prior to the January (six-month) review for possible massaging of the conditions.

Commissioner Green provided the following comments:

- He would like to look into some soundproofing for the backyard area.
- No amplification should be allowed except for the singer.
- They need to hone in on the numbers at the next meeting and eliminate any loose language.
- He asked the applicant to come back with ideas on how to ameliorate the noise levels in the backyard.

Commissioner Ackerman provided the following comments:

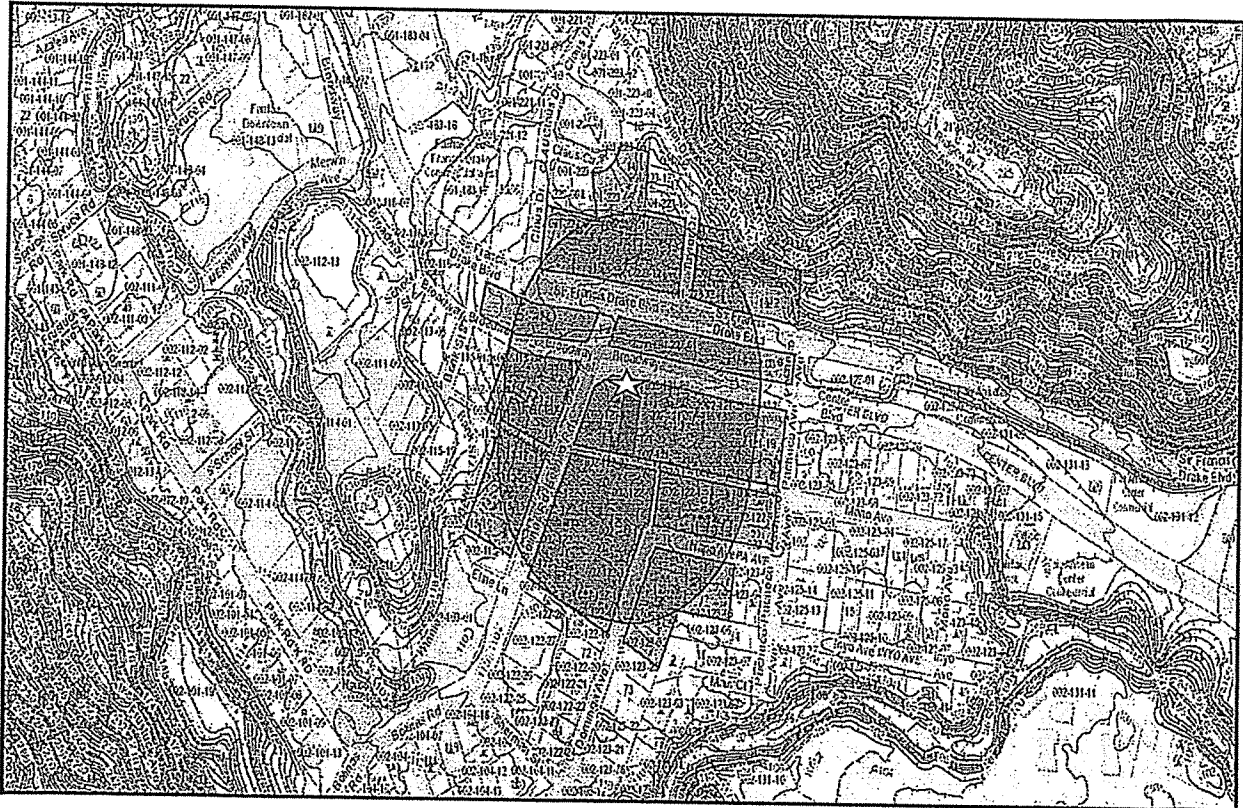
- He suggested turning the speakers around so they do not face the neighborhood.
- They could install some baffling on the inside of the backyard fences.

Commissioner Fragoso provided the following comments:

- She recalls supporting up to 12 events per year, typically one a month.

STAFF REPORT
Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: August 18th, 2016
FROM: Jim Moore, Director of Planning and Building Services
Linda Neal, Principal Planner
LOCATION: 29 Broadway; Assessor's Parcel Numbers 002-121-03 and 04
ZONING: Central Commercial CC Zone
PROJECT: Live music and special events outside of the building
ACTION: Clarification of Use Permit; Application # 83-UP-32
APPLICANT: Charles Peri
OWNER: Same
CEQA STATUS: Categorically exempt, § 15301



29 BROADWAY

BACKGROUND

The building at 29 Broadway has been used as a bar, in conjunction with the outdoor rear yard, since 1946. The use of the outdoor rear yard by bar patrons pre-dated the adoption of the current Zoning Ordinance (Ordinance No. 352) in 1973. Ordinance No. 352 prohibited the operation of any portion of a business in the Central Commercial Zone outside of a building unless approved by the granting of a Conditional Use Permit by the Planning Commission. The casual use of the rear yard by patrons is considered a legal non-conforming use of the outdoor rear yard.

On December 12, 1983, the Town Council approved a Conditional Use Permit to allow live entertainment inside the bar 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 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 rear patio addition to 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 in the rear yard of 29 Broadway, location of Peri's Bar (Exhibit A – Resolution No. 16-16).

DISCUSSION

After fielding questions from the Fairfax Police Department and the public since the June 16, 2016, Commission meeting, it has become clear to staff that the recommended, and adopted, wording in the approved resolution did not adequately describe the types of private events, and types of musical entertainment, allowed in the rear yard area. As a result we scheduled the matter for the August 18, 2016 meeting so the Commission can clarify what they believed would be occurring in the rear yard with the approval of the Conditional Use Permit modification.

The applicant has completed a questionnaire indicating the types of musical instrumentation and entertainment Peri's proposes for private events in the rear yard. We have also attached their original description of their proposed use (Exhibit C). Staff

is requesting that the Commission discuss the matter and clarify the types of entertainment/occasional uses they expected to occur in the rear yard when approving the Resolution in June 2016. The points of clarification approved by the Commission at this meeting may be incorporated into Resolution No. 16-16 when the Use Permit is formally reviewed on January 19, 2016.

Note: This meeting has not been noticed as, nor is it a review of Use Permit 83-UP-23. The 6 month review of the Conditional Use Permit will occur at the January 19th, 2017 Planning Commission meeting.

ATTACHMENTS

- Attachment A- Resolution No. 16-16
- Attachment B- Applicant's original Supplemental Information
- Attachment C- Questionnaire regarding types of music/entertainment expected at private events in the rear yard area.

RESOLUTION NO. 16-16

A Resolution of the Fairfax Planning Commission Approving A Modification of Conditional Use Permit 83-UP-32, to Allow Outdoor Acoustic Music and Special Events on the Covered Patio and Rear Yard of the Commercial Bar Establishment at 29 Broadway Avenue

WHEREAS, the Town of Fairfax has received an application to modify the existing Conditional Use Permit No. 83-UP-32 for 29 Broadway to legalize business operations, music and special events, that have been occurring for many years in outdoor areas; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on June 16, 2016, at which time all interested parties were given a full opportunity to be heard and to present evidence, and at which time the Planning Commission approved the Use Permit Modification; and

WHEREAS, based on the documentary evidence in the record, as well as testimony at the public hearing, the Planning Commission has determined that the applicant has met the burden of proof required to support the findings necessary for the Project's requested discretionary permit.

WHEREAS, the Commission has made the following findings:

1. The limited hours proposed for acoustic outdoor music and special events, from 4:00 PM through 8:00 PM Thursday through Sunday, will not conflict with or create any significant hardship for other businesses or residential uses in the immediate neighborhood as long as the noise ordinance is complied with. Therefore, the approval of the use permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.
2. The limited hours and the fact that the covered patio is enclosed on 2 sides and has a roof helps to mitigate the impacts of the live music on adjacent uses. Therefore, the approval of the Use Permit and use of property as approved under the use permit shall not 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 thereof, or any or all of which effects are substantially beyond that which might occur without approval or issuance of the use permit.
3. Approval of the use permit is consistent with those objectives, goals or standards pertinent to the particular case and contained or set forth in any Master Plan, or other plan or policy, officially adopted by the City.
4. Approval of the use permit will result in equal or better development of the premises than would otherwise be the case.

WHEREAS, the Commission has approved the project subject to the applicant's compliance with the following conditions:

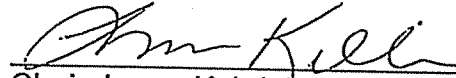
1. The applicants shall maintain the premises in a neat and attractive manner at all times. Such maintenance shall include, but not be limited to, exterior building materials, signage, windows, the planters, the ground and the pavement surfaces.
2. The applicant shall comply with all applicable local, county, state and federal laws and regulations. Local ordinances which must be complied with include, but are not limited to: the Noise Ordinance, Chapter 8.20, Polystyrene Foam, Degradable and Recyclable Food Packaging, Chapter 8.16, Garbage and Rubbish Disposal, Chapter 8.08, Urban Runoff Pollution Prevention, Chapter 8.32 and the Americans with Disabilities Act.
3. Any changes made to the exterior of the building, including but not limited to new lighting, new signs, planters, etc. shall comply with the design review regulations of the Town Code, Chapter 17.020, and be approved by the Fairfax Design Review Board (when required).
4. The applicant or permit holder shall defend, indemnify, and hold harmless the Town of Fairfax or its agents, officers and employees from any claim, action, or proceeding against the Town of Fairfax or its agents, officers, or employees to attach, set aside, void, or annul an approval of the Town Council, Planning Commission, Planning Director, Design Review Board or any other department, committee, or agency of the Town concerning a development, variance permit or other land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permit holders duty to so defend, indemnify, and hold harmless shall be subject to the Town promptly notifying the applicant or permit holder.
5. The Use Permit shall be reviewed at the regular public hearing of the Planning Commission on January 19, 2017. If the Commission determines at that time that the outdoor music is having a significant impact on neighboring uses, they will either revoke the Use Permit or place further conditions on the Use Permit.
6. The indoor music shall occur seven days a week between the hours of 1:00 PM and 1:00 AM and the outdoor music shall only occur Thursday through Sunday between the hours of 4:00 PM and 8:00 PM.
7. The exterior doors and windows of the business shall remain closed at all times when music is being played inside.

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


1. Because of the limited hours of the outdoor uses/music the approval of the Use Permit can occur without causing significant impacts on neighboring businesses or residences.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 16th day of June, 2016, by the following vote:

AYES: Ackerman, Fragoso, Gonzalez-Parber, Green, Newton, Chair Kehrlein
NOES:


Chair, Laura Kehrlein

Attest:


Jim Moore, Director of Planning and Building Services

APPLICANT'S SUPPLEMENTAL INFORMATION

Applicant requests a use permit allowing the playing of live music on Thursday through Sunday from 4:00 PM to 8:00 PM on the patio attached to Peri's Tavern, located at 29 Broadway, in the Town of Fairfax, and occasionally in an adjacent backyard area. The primary business of Peri's is that of a tavern engaging in the sale of alcoholic beverages. It is duly licensed by all interested agencies, including the State of CA and the Town of Fairfax. Peri's operates seven days each week. Typical hours of operation are from noon to 2:00 A.M. Monday, Tuesday and Wednesday and 10:00 A.M. to 2:00 A.M. the remainder of the week. The busiest shifts, in order, are typically Friday, Saturday and Sunday at which times there are either two or three employees on duty.

Approval of the use permit will neither act as a special privilege or contravene equity and equal treatment, in that music and free enterprise is part of the fabric of our community. Many other businesses exist within the immediate vicinity of Peri's and continue to share a like commitment to the betterment of business and the community at large. At no time have any of these businesses been a detriment to the community, rather they serve to enhance goals of quality of life in the area.

Music is a characteristic factor in quality of life considerations. It is the continuing goal of Peri's to offer a business in the community that includes a modicum of entertainment for patrons. Patrons regularly report their pleasure and desire that music continue to be a part of the operation, not only to management but to others as well. Only rarely have there been reports of dissatisfaction to management about music at Peri's, and it would be unreasonable to suggest there may be none in the future, however few they may be.

Likewise, it is reasonable to suggest that in granting a use permit, there would be no adverse physical or economic effects or other burdens to the use and enjoyment of the property or businesses in the immediate vicinity of Peri's.

Peri's Tavern is not aware of, and has no reason to believe, that approval of the requested use permit would be in contravention of any adopted master plan, development plan, or any other plan or policy of the Town of Fairfax. Rather, the use contemplated is a fit with the community. Peri's Tavern has successfully been in the described business and location for several decades and is a well-known asset to the community. Live music has been an integral part of the business for many years, and in order to fully comply with applicable regulations, Peri's seeks a Town of Fairfax Use Permit allowing music to be played on its attached patio from 4:00 PM to 8:00 PM, Thursday through Sunday, and on infrequent occasions, in its adjacent backyard. At 8:00 PM the musicians, primarily one to four persons, typically using acoustic instruments, move entirely indoors, where live music is permitted by vis-à-vis Peri's cabaret license. Upon learning of the requirement of a use permit, informal surveys in the vicinity indicated well spread support for the requested use of live music, and no opposition was heard from either businesses or residents in the locale. It is respectfully submitted that the requested use permit will facilitate business and is in keeping with both the character and spirit of the Town of Fairfax.

**Types of Entertainment/Uses That Might Occur in Conjunction with Private Events in the Backyard of
29 Broadway**

YES	NO	TYPE OF ENTERTAINMENT/EVENT
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Amplified electric instruments (live band)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bands with acoustic instruments and amplified mikes for any singers
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Pre-recorded music, amplified and controlled by a Disc Jockey
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Amplified mikes for speakers
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Amplified movies or other entertainment pre-recorded and viewed on a screen
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Amplified mikes for actors performing skits
<input type="checkbox"/>	<input type="checkbox"/>	Any electrified sounds not included in this list (please specify) -
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	

Please indicate the maximum number of entertainers that might be performing at any one event in the rear yard of the bar below.

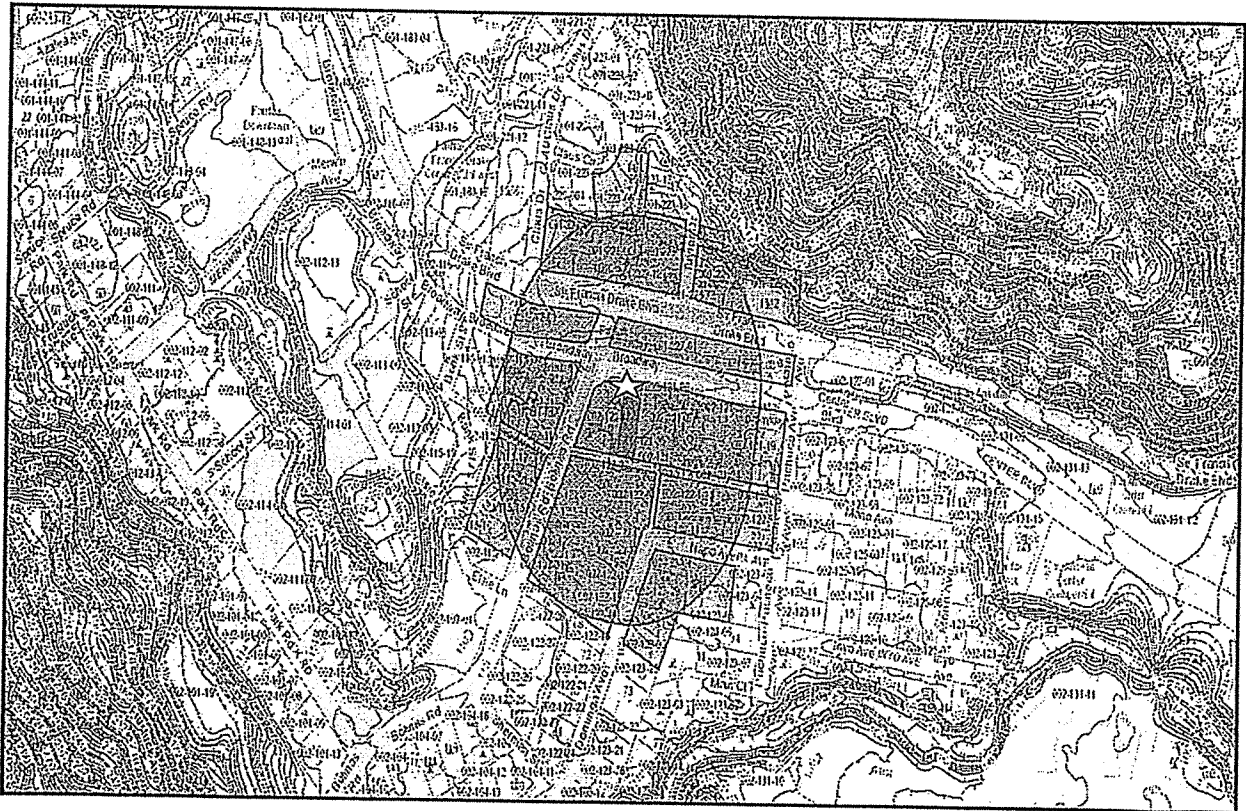
4-5

Please clarify the number of special private events per year that will occur in the rear yard.

12-15

STAFF REPORT
Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: June 16, 2016
FROM: Jim Moore, Director of Planning and Building Services
Linda Neal, Principal Planner
LOCATION: 29 Broadway; Assessor's Parcel Numbers 002-121-03 and 04
ZONING: Central Commercial CC Zone
PROJECT: Live music and special events outside of the building
ACTION: Modification of Use Permit; Application # 83-UP-32
APPLICANT: Charles Peri
OWNER: Same
CEQA STATUS: Categorically exempt, § 15301



29 BROADWAY

BACKGROUND

The building at 29 Broadway has been used as a bar, in conjunction with the outdoor rear yard, since 1946. The use of the outdoor rear yard by bar patrons predated the adoption of the current Zoning Ordinance (Ordinance No. 352) in 1973. Ordinance No. 352 prohibited the operation of any portion of a business in the Central Commercial Zone outside of a building unless approved by the granting of a Use Permit by the Planning Commission. The casual use of the rear yard by patrons is considered a legal non-conforming use of the outdoor rear yard.

The property is developed with Peri's Bar and the bar parking lot that provides 16 standard (9 foot by 19 foot) parking spaces and 1 accessible space (17 spaces total). On December 12, 1983, the Town Council approved a Use Permit to allow live entertainment inside the bar 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.
3. These conditions and any other appropriate conditions will be reviewed when this use permit and all other use permits for live entertainment in the downtown 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 bar building.

DISCUSSION

In April of 2016, the Department of Planning and Building Services was advised by the Police Department that the business was in violation of their Use Permit which only allowed live music within the building as live music was being performed out of doors in the covered patio area. The Department advised the business owner that if they wanted to continue having outdoor entertainment, the 1983 Conditional Use Permit (CUP) would require modification. The Department of Planning and Building Services along with the Town Manager, agreed to allow the business to continue having the outdoor music until their CUP request was acted upon so existing contracts with musicians could be honored.

The applicant is requesting a modification of Conditional Use Permit 83-UP-32, to include outdoor entertainment on the patio and occasional special events in the 1,920-square-foot rear yard. The outdoor music events would run from 4:00 PM through 8:00 PM, Thursdays through Sundays. Examples of the types of one-time special events that might occur in the outdoor rear yard include wedding receptions, wakes, fashion shows, birthday parties, etc. If approved by the Commission, any outdoor music or

special events would be required to conclude by 8:00 PM. Special events in the rear yard may occur any day of the week from 10:00AM to 8:00 PM.

Town Code § 17.100.050(A) requires that a CUP be obtained for any principal use not conducted entirely within a building, § 17.100.050(C) requires a Conditional Use Permit for theaters, nightclubs and entertainment establishments and § 17.100.050(I) requires a CUP for businesses that entertain customers by musicians. Therefore, having live entertainment outside the building requires a modification of the original use permit which limits entertainment to inside the building.

The purpose of the CUP process is to allow the proper integration into Fairfax of uses which may be suitable only in certain locations in the Town, or in a zone or only if the uses are designed or laid out on the site in a particular manner. In reviewing an application for a use permit, the Planning Commission must take into consideration the nature and condition of all adjacent uses and structures.

To the north of the site is Broadway and the Pakade parking lot, to the east is the Peri's parking lot and a restaurant, and to the south is a residence and a commercial property developed with a mix of commercial uses and 1 residential unit on the second floor (29 and 31 Bolinas Road). The closest residential unit at 50 Dominga Avenue is over 95 feet from the covered patio where the music would be played regularly and 30 feet from the rear yard area where occasional events would be scheduled.

Noise pollution is a growing concern in downtown Fairfax although the police chief has indicated that most of the noise complaints seem to come from the same group of people. Typically, the noise complaints are not about noise that has reached a level that violates the Noise Ordinance maximum limits [Town Code Chapter 8.20, section 8.20.050(B)(1) "Exterior Noise Limits" table for Zone C, Commercial]. This type of conflict is typical in a community where the Commercial zones are either directly adjacent to residential zoned neighborhoods and/or where the Commercial Zones also have residential units.

Allowing outdoor music would certainly increase the noise levels in the Town Center and depending on the number of Conditional Use Permits granted by the Commission for outdoor music in the future, these levels could violate the decibel noise limits set forth by the Town Code for the downtown commercial District which restrict noise levels to 60 decibels for the hours between 10:00 PM and 7:00 AM and 55 decibels for the hours between 7:00 AM and 10:00 PM

However, the businesses that have available outdoor areas large enough to accommodate outdoor music are limited. The following locations have rear or side yards, or patio areas where live music could be staged that have not applied for outdoor music use permits— 19 Broadway, 23 Broadway (previously the Sleeping Lady), 33 Broadway (Fairfix Café) and 31 Bolinas Road (previously Lydia's Lovin Foods).

Note: Later tonight you will be reviewing another request for a Conditional Use Permit for outdoor music at 31 Bolinas Road.

It is difficult to determine the number of permits for outdoor music and the resultant noise levels it would take to exceed the outdoor noise levels beyond those permitted in the Noise Ordinance. The Commission can approve the proposed CUP application and subsequent Conditional Use Permits with the knowledge that Conditional Use Permits are revocable. Therefore if noise levels for outdoor music exceed the Noise Ordinance limits, the CUP can be revoked and/or modified to only allow indoor music.

The Commission could also determine that outdoor music should not be permitted in the Central Commercial Zone District due to the close proximity of residential uses.

Recently when the Town Council reviewed the outdoor music at Deer Park Villa, it discussed the fact that due to increased traffic and other noise sources, there are areas of Town, including the Commercial districts, where ambient noise levels at certain times throughout the day and evening, already exceed the permitted levels set forth in the Town Code (note see the noise level reading tables contained in the 2010-2030 Fairfax General Plan Noise Element). Certain residents asked the Council to amend the noise ordinance to lower the permitted noise levels. After much consideration and testimony at public hearings, the Council made the decision to not amend the Noise Ordinance at that time.

The CUP process gives the Commission the right to deny the request if they receive evidence from the public showing that the use would have a significant negative impact on their lives and/or property. The Commission may also decide to amend the recommended conditions in the attached Resolution (Attachment A) to further address the concerns of the public. Additional conditions to consider include further limitations on the hours and/or days outdoor music/events can occur and/or limiting the outdoor music to non-amplified music only.

Any action taken by the Planning Commission can be appealed to the Town Council, the body that ultimately makes the laws and sets policy for the Town of Fairfax. Whether or not to start allowing outdoor music on a regular basis by businesses may be an issue that needs to be elevated to the Council for a determination on how the Town wants to proceed with this matter going forward. Any decision made by the Planning Commission can be appealed to the Town Council by filing an appeal, with the required \$500.00 appeal fee. The appeal must be made with the Town Clerk within 10 calendar days of this meeting.

The proposed Conditional Use Permit application does not include any changes to the exterior of the building therefore the application does not require the approval of a Design Review permit.

The days and hours that the applicant is proposing to allow outdoor music are limited and both the music and the occasional special events in the rear yard will end by 8:00

PM. Therefore, the requested use permit modification shall not have a significant impact on neighboring uses.

RECOMMENDATION

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to approve the requested modification to Conditional Use Permit # 83-UP-32 by adopting Resolution No. 16-16 setting forth the findings and conditions of approval for the permit which include scheduling the Use Permit for a public hearing to review the use permit on January 19, 2017. The review would include information from the Police Department on the number and outcome of the noise complaints received and responded to at 29 Broadway during that time period.

ATTACHMENTS

Attachment A-Resolution No. 16-16

Attachment B- Applicant's Supplemental Information

Attachment C – e-mail from Ling Shein Bell

RESOLUTION NO. 16-16

A Resolution of the Fairfax Planning Commission Approving A Modification of Conditional Use Permit 83-UP-32, to Allow Outdoor Musical and Special Events on the Covered Patio and Rear Yard of the Commercial Bar Establishment at 29 Broadway Avenue

WHEREAS, the Town of Fairfax has received an application to modify the existing Conditional Use Permit No. 83-UP-32 for 29 Broadway to legalize business operations, music and special events, that have been occurring for many years in outdoor areas; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on June 16, 2016, at which time all interested parties were given a full opportunity to be heard and to present evidence, and at which time the Planning Commission approved the Use Permit Modification; and

WHEREAS, based on the documentary evidence in the record, as well as testimony at the public hearing, the Planning Commission has determined that the applicant has met the burden of proof required to support the findings necessary for the Project's requested discretionary permit.

WHEREAS, the Commission has made the following findings:

1. The limited hours proposed for outdoor music and events, from 4:00 PM through 8:00 PM Thursday through Sunday, will not conflict with or create any significant hardship for other businesses or residential uses in the immediate neighborhood as long as the noise ordinance is complied with. Therefore, the approval of the use permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.
2. The limited hours and the fact that the covered patio is enclosed on 2 sides and has a roof helps to mitigate the impacts of the live music on adjacent uses. Therefore, the approval of the Use Permit and use of property as approved under the use permit shall not 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 thereof, or any or all of which effects are substantially beyond that which might occur without approval or issuance of the use permit.
3. Approval of the use permit is consistent with those objectives, goals or standards pertinent to the particular case and contained or set forth in any Master Plan, or other plan or policy, officially adopted by the City.
4. Approval of the use permit will result in equal or better development of the premises than would otherwise be the case.

WHEREAS, the Commission has approved the project subject to the applicant's compliance with the following conditions:

ATTACHMENT A

1. The applicants shall maintain the premises in a neat and attractive manner at all times. Such maintenance shall include, but not be limited to, exterior building materials, signage, windows, the planters, the ground and the pavement surfaces.
2. The applicant shall comply with all applicable local, county, state and federal laws and regulations. Local ordinances which must be complied with include, but are not limited to: the Noise Ordinance, Chapter 8.20, Polystyrene Foam, Degradable and Recyclable Food Packaging, Chapter 8.16, Garbage and Rubbish Disposal, Chapter 8.08, Urban Runoff Pollution Prevention, Chapter 8.32 and the Americans with Disabilities Act.
3. Any changes made to the exterior of the building, including but not limited to new lighting, new signs, planters, etc. shall comply with the design review regulations of the Town Code, Chapter 17.020, and be approved by the Fairfax Design Review Board (when required).
4. The applicant or permit holder shall defend, indemnify, and hold harmless the Town of Fairfax or its agents, officers and employees from any claim, action, or proceeding against the Town of Fairfax or its agents, officers, or employees to attach, set aside, void, or annul an approval of the Town Council, Planning Commission, Planning Director, Design Review Board or any other department, committee, or agency of the Town concerning a development, variance permit or other land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permit holders duty to so defend, indemnify, and hold harmless shall be subject to the Town promptly notifying the applicant or permit holder.
5. The Use Permit shall be reviewed at the regular public hearing of the Planning Commission on January 19, 2017. If the Commission determines at that time that the outdoor music is having a significant impact on neighboring uses, they will either revoke the Use Permit or place further conditions on the Use Permit.
6. The indoor music shall occur seven days a week between the hours of 1:00 PM and 1:00 AM and the outdoor music shall only occur Thursday through Sunday between the hours of 4:00 PM and 8:00 AM.
7. The exterior doors and windows of the business shall remain closed at all times when music is being played inside.

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

1. Because of the limited hours of the outdoor uses/music the approval of the Use Permit can occur without causing significant impacts on neighboring businesses or residences.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 16th day of June, 2016, by the following vote:

AYES:

NOES:
ABSENT:

Attest:

Chair, Laura Kehrlein

Jim Moore, Director of Planning and Building Services

APPLICANT'S SUPPLEMENTAL INFORMATION

Applicant requests a use permit allowing the playing of live music on Thursday through Sunday from 4:00 PM to 8:00 PM on the patio attached to Peri's Tavern, located at 29 Broadway, in the Town of Fairfax, and occasionally in an adjacent backyard area. The primary business of Peri's is that of a tavern engaging in the sale of alcoholic beverages. It is duly licensed by all interested agencies, including the State of CA and the Town of Fairfax. Peri's operates seven days each week. Typical hours of operation are from noon to 2:00 A.M. Monday, Tuesday and Wednesday and 10:00 A.M. to 2:00 A.M. the remainder of the week. The busiest shifts, in order, are typically Friday, Saturday and Sunday at which times there are either two or three employees on duty.

Approval of the use permit will neither act as a special privilege or contravene equity and equal treatment, in that music and free enterprise is part of the fabric of our community. Many other businesses exist within the immediate vicinity of Peri's and continue to share a like commitment to the betterment of business and the community at large. At no time have any of these businesses been a detriment to the community, rather they serve to enhance goals of quality of life in the area.

Music is a characteristic factor in quality of life considerations. It is the continuing goal of Peri's to offer a business in the community that includes a modicum of entertainment for patrons. Patrons regularly report their pleasure and desire that music continue to be a part of the operation, not only to management but to others as well. Only rarely have there been reports of dissatisfaction to management about music at Peri's, and it would be unreasonable to suggest there may be none in the future, however few they may be.

Likewise, it is reasonable to suggest that in granting a use permit, there would be no adverse physical or economic effects or other burdens to the use and enjoyment of the property or businesses in the immediate vicinity of Peri's.

Peri's Tavern is not aware of, and has no reason to believe, that approval of the requested use permit would be in contravention of any adopted master plan, development plan, or any other plan or policy of the Town of Fairfax. Rather, the use contemplated is a fit with the community. Peri's Tavern has successfully been in the described business and location for several decades and is a well-known asset to the community. Live music has been an integral part of the business for many years, and in order to fully comply with applicable regulations, Peri's seeks a Town of Fairfax Use Permit allowing music to be played on its attached patio from 4:00 PM to 8:00 PM, Thursday through Sunday, and on infrequent occasions, in its adjacent backyard. At 8:00 PM the musicians, primarily one to four persons, typically using acoustic instruments, move entirely indoors, where live music is permitted by vis-à-vis Peri's cabaret license. Upon learning of the requirement of a use permit, informal surveys in the vicinity indicated well spread support for the requested use of live music, and no opposition was heard from either businesses or residents in the locale. It is respectfully submitted that the requested use permit will facilitate business and is in keeping with both the character and spirit of the Town of Fairfax.

M/s, Fragoso/Newton, Motion to approve Hill Area Residential Development Permit, Design Review and Excavation Permit, Application #16-24 with the additional conditions of approval outlined by the Commission and staff.

AYES: Ackerman, Fragoso, Gonzalez-Parber, Green, Newton, Chair Kehrlein
ABSENT: Hamilton

Chair Kehrlein stated there was a 10-day appeal period.

The Commission took a 5-minute break at 10:00 p.m.

7. 29 Broadway; Application #83-UP-32

Request for a modification to an existing Use Permit to allow live music performances outdoors on a covered patio and a rear yard area; Assessor's Parcel No's. 002-121-03 and 04; Central Commercial (CC) Zone; Charles Peri, applicant/owner; CEQA categorically exempt per Section 15301.

Principal Planner Neal presented the staff report.

Commissioner Newton asked if there was a distinction between acoustic and amplified music with respect to this application. Principal Planner Neal stated the applicant had provided the statement that it was acoustic music but it was amplified- there would not be any electric guitars.

Chair Kehrlein opened the Public Hearing.

Mr. Josh Burkes, night manager, made the following comment:

- They have been providing this type of music for as long as he has worked at the bar and there has never been a complaint.

Chair Kehrlein asked if they currently have music out on the patio from 4:00 p.m. to 8:00 p.m. Mr. Burkes stated "yes". Chair Kehrlein asked if they plan to play music Thursday through Sunday. Mr. Burkes stated "yes, on the patio".

Commissioner Newton asked if it would be a hardship to limit the outdoor music to acoustic as opposed to amplified. Mr. Burke stated "yes, to a degree".

Commissioner Gonzalez-Parber asked about the decibel level of an acoustic guitar that was amplified. Mr. Burkes stated it would depend on the volume. Principal Planner Neal stated the Police Department has done decibel level checks and they have not exceeded the limits.

Commissioner Newton asked if the doors could be closed when music was being played inside the bar. Mr. Burkes stated "yes" but they like to see everyone that comes in and out of the bar.

Mr. Ruffin Bailey, Mono Avenue made the following comments:

- He lives right behind the bar. He would take the brunt of the noise which is negligible.
- The decibel readings have consistently been fine. They are never a problem.
- He supports live music and Peri's bar.

Mr. Oscar Salavara, Dominga Avenue, made the following comments:

- He loves the diversity of Fairfax and the nightlife.
- He is concerned about the gentrification of Fairfax.

Mr. Brad Schwan, owner of 31 Bolinas Road, made the following comments:

- He is applying for an outdoor music permit for his property.
- The bar can get extremely noisy. The surrounding businesses are affected by the noise.
- He cannot imagine that the noise levels were legal.
- The community is diverse and it is not just about music.
- People should be able to enjoy their property without being disturbed.

Mr. Tommy Odetto, Fairfax, made the following comments:

- The local musicians are community minded and hold fundraisers.
- Fairfax is a music town.
- Amplifying acoustic music simply brings it to the "same level".

Ms. Diane Zellers, Fairfax, made the following comments:

- She is a local business owner that looks at data.
- Business increases when there is music outside on Peri's patio- more people buy food and alcohol.
- People should not come into an environment and try to change the vibe.

Mr. Gavin Donagell made the following comment:

- He came to Fairfax for the amazing culture- the music scene is a big part of it.

Mr. Michael Bennett, Mono Avenue, made the following comments:

- It is a treat to come home and listen to live music.
- Removing the music from Peri's would remove the culture.
- The music is never harsh.

Mr. Larry Newman made the following comments:

- He plays once a month on the patio with a trio.
- They are careful to keep the music acoustically balanced.

Mr. Kevin Meade made the following comments:

- He has lived above three different businesses in Fairfax.
- Music is an essential part of the downtown and the culture of Fairfax.

Mr. George Osner made the following comments:

- He comes to Fairfax to listen to music and spend his money.
- A Use Permit allows the Town to ensure that the operation maintains compatibility with its surroundings.
- The limited hours and the covered patio make for a good operation.
- He urged the Commission to approve the application.

Ms. Linshen Bell, Dominga Avenue, made the following comments:

- She did an informal survey and found that six of her neighbors were opposed to outside music and five were in favor of acoustic (but not amplified).
- She can hear the music where she lives and it is quite loud. It is very disturbing.
- She discussed how the Noise Ordinance should be interpreted.

Mr. Mark Bell, Dominga Avenue, made the following comments:

- None of the bands that played at The Sleeping Lady used amplification.
- He read a letter from a neighbor who thought that loud music was sensory overload.
- Any increase in hours for outside music should include un-amplified music only.

Denile made the following comments:

- She moved to Fairfax because of the live music and the culture- is it inspiring.
- Music must be amplified to meet all the same sounds.
- The outdoor music at Peri's is not loud or obnoxious. Shutting it down would be tragic.

A resident made the following comments:

- She loves live music and Peri's.
- She stated there should be some enforcement of the Use Permit.

Mr. Todd Greenberg, Bolinas Road, made the following comments:

- Everyone has a different understanding and sensitivity to noise.
- The current use and what they are applying for is a formalization of what has been a historical use over time.

Ms. Mallory Geidham, Fairfax, made the following comments:

- The soul of Fairfax is music and art and she would like to keep it that way.
- The music can be loud.

Mr. Chris Peck, Fairfax, made the following comments:

- The staff at Peri's bar is very intense about enforcing the code.
- They will follow the new permit to the letter.

Commissioner Gonzales-Parber asked Mr. Burke if they have ever considering hiring an acoustic engineer who specializes in buffering out noise. Noise from a special event can emanate from more than just the music. Mr. Burke stated they could look at that but it might be difficult given the glass wall. The inside of the building has acoustic pads- they do their best to try to contain the noise.

Chair Kehrlein closed the Public Hearing.

Commissioner Green provided the following comments:

- They are not trying to shut down music in Fairfax. They are discussing a permitting process.
- Music has a history in Fairfax at least going back as far as Irving Berlin.
- The idea of reviewing the permit in January, 2017 is a good idea.
- He asked if there was any Police data. Principal Planer Neal stated the Police Chief told her the department could keep staff apprised of any complaints and decibel readings during the six-month review.

Commissioner Ackerman provided the following comments:

- They should approve the permit- they have been doing this for a while.
- Music is a big part of Fairfax.
- Noises can cause conflicts- sound can echo through the canyons.
- He liked the idea of a January, 2017 review.

Commissioner Newton provided the following comments:

- The decibel levels in residential areas should be measured even if the noise is coming from a commercial area. Planning Director Moore stated the measurement is taken from the edge of the property and must meet the residential decibel limit at the edge of that zone.
- She asked about the assertion that the decibel level should be 5 decibel less for music. Planning Director Moore stated the Police Department did not want to use the 5-decibel discretion because it was hard to articulate when it happens. They could look at that again in January.

- The “community of Fairfax” needs to think about the quality of life in the neighborhoods.
- She would like to come up with a solution that respects everybody involved.

Chair Kehrlein asked if there was a limitation on the hours for the rear yard area. Principal Planner Neal stated they were limited to 4:00 p.m. to 8:00 p.m., Thursday through Sunday. She noted the use of the rear yard was occasional. This daily use by patrons is legal, non-conforming and has been happening since 1946.

Chair Kehrlein asked if the Noise Ordinance was referenced anywhere in the resolution. Principal Planner Neal stated “yes”.

Commissioner Fragoso provided the following comments:

- She is supportive of the music with the limited days and times in the outdoor patio that fronts Broadway. The structure helps to mitigate the noise levels.
- She is not supportive of special events and music in the rear patio. It is a “slippery slope”.

Chair Kehrlein re-opened the Public Hearing.

Mr. Burkes made the following comment:

- There would be an absolute maximum of 12 special events per year in the rear yard.

Chair Kehrlein closed the Public Hearing.

Commissioner Newton provided the following comments:

- She agreed with Commissioner Fragoso's concerns about use of the rear patio. It is closer to the residences on Mono.
- However, they could allow use of this area and hear from the neighbors in January.

Chair Kehrlein provided the following comment:

- She asked staff if they could allow special events in the rear patio on a trial basis. Principal Planner Neal stated “yes”.

Commissioner Green provided the following comment:

- They should get data about the use of the rear patio.

M/s, Ackerman/Green, Motion to approve modification of Use Permit, application #83-UP-32, and adopt Resolution No. 16-16 subject to the January 2017 review.

AYES: Ackerman, Fragoso, Gonzalez-Parber, Green, Newton, Chair Kehrlein

ABSENT: Hamilton

Chair Kehrlein stated there was a 10-day appeal period.

8. 31 Bolinas Road; Application #02-39

Request for a modification to the existing Use Permit to allow live music performances outdoors on a patio underneath an arbor structure; Assessor's Parcel No's. 002-122-34 and 37; Central Commercial CC Zone; Brad Schwan, applicant/owner; CEQA categorically exempt per Section 15301.

Chair Kehrlein stated she would recuse herself from this item.

Principal Planner Neal presented the staff report. She noted she placed two items of late mail on the dais.

Commissioner Newton stated a neighbor wrote a letter regarding noise-abating fences that were supposed to be constructed at this location. Principal Planner Neal stated this was a condition related to an approval for outdoor movies in the parking lot.

Acting Chair Fragoso asked if there had been a requirement for a fence in the outdoor awning deck related to a prior approval for a restaurant with outdoor seating. Planning Director Moore stated "no"- it specifically had to be open.

Acting Chair Fragoso opened the Public Hearing.

Mr. Brad Schwan, owner, made the following comments:

- There has been a lot of misinformation going around.
- He spent \$15,000 putting in soundproof windows.
- He plans to put in a restaurant called California Cuisine.
- The music on the patio would be a single guitar or violin. Any amplification would be used to bring the music into balance.

Acting Chair Fragoso asked Mr. Schwan why he would propose to have music on his property when he expresses concern about the noise from the music at other businesses. Mr. Schwan stated it was not about the music- it was about how loud the music was being played.

Acting Chair Fragoso referred to the seating plan and noted there were about 50 chairs indicated for the outside but none for the inside and two stage areas- one inside and one outside. Mr. Schwan stated they were still working on the inside design. Acting Chair Fragoso asked about the location of the access doors. Mr. Schwan pointed them out on the plans.

Commissioner Newton stated she was leaning towards limiting the hours similar to the previous application. Mr. Schwan stated that would be reasonable.

Commissioner Green asked about the type of music that would be played. Mr. Schwan stated it would be more in line with what the Sleeping Lady had- very low key.

Acting Chair Fragoso asked Mr. Schwan if he would be amendable to indoor music only. Mr. Schwan stated he would accept that decision but it would be a shame not to have the liveliness of music outside. He certainly did not want to disturb the neighbors. Commissioner Green asked if it would be possible to "pipe" the inside music to the outside. Mr. Schwan stated that was possible.

Mr. Josh Burkes made the following comment:

- He supports a little bit of music on that street side.

Mr. Mark Bell, Dominga Avenue, made the following comments:

- He was upset that the 2-minute time limit was imposed on the last two items but not the others.
- He read a letter from a resident on Dominga Avenue who opposed live music in the downtown.

Mr. Kevin Meade made the following comments:

- The impacts from the outdoor music at this location has been understated.
- Sound pollution has become a problem.
- This outdoor usage should be denied.

Ms. Kathleen Merryfield, Dominga Avenue, made the following comment:

- She lives immediately behind the subject property.
- Outdoor music affects the entire neighborhood- they become a "captive audience".

- This is a quality of life issue. Noise is stressful.
- She asked the Commission not to add more outdoor music in the downtown.

Deborah made the following comments:

- She lives downtown and knows there will be a lot of noise.
- Noise in the downtown varies- it is not just music.
- She liked the idea of piping the indoor music to the outdoor patio.

Ms. Bell made the following comments:

- There is a huge difference between acoustic noise and amplified noise.
- It was not a good idea to allow music outside at 8:00 p.m. even if it is quiet.

Ms. Mallory Geidham, Fairfax, made the following comments:

- The music is too loud in this town. Music should not be reaching people's homes.
- Acoustic music is fine.
- They need to get the Police Chief on board.

Mr. Todd Greenberg, Bolinas Road, made the following comments:

- This is a very divisive issue.
- He wants to see this business owner, and the downtown, be successful.
- He has not had enough time to form an opinion about the application.
- The hours are preposterous- he is asking for "the moon".

A resident made the following comments:

- It would be fun to have music at this location.
- He understood the neighbor's concerns.

Chris made the following comment:

- He supported the proposal for music outside.

Mr. Augie Garcia, Fairfax, made the following comments:

- He is glad there is a business going in at this location.
- He reminded everyone they are living in a huge "crack" surrounded by hills- noise floats everywhere- sound cannot be stopped.
- Decibel readers do not work in this environment.

Acting Chair Fragoso closed the Public Hearing.

Commissioner Gonzales-Parber provided the following comments:

- She supports music in Fairfax.
- Approving the resolution, as is, could be a slippery slope. They could be setting a precedent.
- The Commission needs to look at issues on a site-specific basis.
- The physical characteristics of Broadway vs. Bolinas are very different- they cannot be compared.
- She asked the applicant to hire an acoustic engineer to review the noise issue.
- She supported approving music indoors and non-amplified music in the outdoor area.

Commissioner Green provided the following comments:

- He agreed with the comments made by Commissioner Gonzalez-Parber.
- Indoor music could be amplified but it would be detrimental to have amplified music outdoors.
- The hours should be limited similar to what was approved for the previous application.

Principle Planner Neal asked the applicant to sign an agreement for a 90-day extension of time due to the Permit Streamlining Act. The applicant signed the agreement.

M/s, Newton/Fragoso, Motion to continue application #16-29, 17-19 Broadway, for up to 90 days. Staff shall work with the applicant to bring the application back to the Commission as soon as possible.

AYES: Ackerman, Fragoso, Green, Newton, Chair Kehrlein

ABSENT: Gonzalez-Parber, Hamilton

4. 20 Cypress Drive; Application #16-31

Request for a Use Permit to enclose the front porch of a single-family residence to create a dining room; APN #003-202-04; Residential Single-family RS 6 Zone; Wendy Kirk-Scalise, applicant/owner; CEQA categorically exempt per Section 15031(a).

Principal Planner Neal presented the staff report.

Commissioner Green referred to page 2 of the resolution, item #2, and suggested adding some limitations on the hours and days for construction vehicles since the neighborhood is pretty tight and the street space is limited. Principal Planner Neal stated the Commission could add that as a condition.

Chair Kehrlein opened the Public Hearing.

Ms. Wendy Kirk-Scalise, owner, made the following comments:

- She has an open front porch that she would like to enclose with windows and an entryway so she can have a dining room.
- Parking has never been a problem and should not be an issue.

Commissioner Ackerman agreed that parking is not an issue in this area. He would advise the owner to think about insulating that room.

Commissioner Green stated this is a brilliant design. He asked the owner if she has considered solar. Ms. Kirk-Scalise stated "yes" but her finances are limited at this time.

Commissioner Green referred to the resolution, "Miscellaneous Conditions", and stated the following condition should be added as a boilerplate, permanent condition: "The applicant is encouraged to install or seek to install solar power when feasible per the Fairfax Town Code".

Chair Kehrlein closed the Public Hearing.

M/s, Newton/Fragoso, Motion to approve Resolution No. 16-26 to allow the enclosure of a 132-square-foot porch at 20 Cypress Drive with the addition of the condition suggested by Commissioner Green.

AYES: Ackerman, Fragoso, Green, Newton, Chair Kehrlein

ABSENT: Gonzalez-Parber, Hamilton

Chair Kehrlein stated there was a 10-day appeal period.

5. 29 Broadway; Application #83-UP-32

Clarification of what types of occasional private uses are permitted by Use Permit #83-UP-32, approved on June 16, 2016, in the outdoor back-yard area of the bar; Central Commercial (CC) Zone; Charles Peri, applicant/owner; CEQA Categorically exempt per Section 15301.

Principal Planner Neal presented the staff report. She noted that the Commission was not making any decisions tonight but rather clarifying its prior decision. The application with respect to the usage of the side patio will be brought back to the Commission for further discussion sooner than the six-month review.

Commissioner Fragoso asked for clarification on whether or not the Commission approved acoustic music with vocal amplification. Principal Planner Neal stated that applied to the patio.

Commissioner Ackerman stated he had assumed that the back-yard area would be used infrequently- once a month on average. The usage could occur more frequently during the summer months than in the winter due to weather conditions.

Commissioner Fragoso stated she understood that there would be one event per month with a maximum of twelve per year and that the music would be acoustic and not amplified.

Chair Kehrlein opened the Public Hearing.

Mr. Adam Jefferson, manager, made the following comments:

- The backyard area is typically not used in the winter.
- In the spring and summer the area is used for parties, weddings, etc.
- The area is used about twelve times per year.
- He has made it clear to everyone that music must stop at 8:00 p.m.
- They need to come to an agreement about what "acoustic" means.
- They have not broken any laws with respect to the Noise Ordinance.

Chair Kehrlein asked if the backyard was only reserved for special events or open at other times. Mr. Jefferson stated he does not necessarily rent it out but rather lets people use it for special events.

Commissioner Fragoso stated the backyard was closer to the residences and the sound would carry more- the Commission did not want any amplified/electric instruments.

Chair Kehrlein asked if bar patrons were allowed to use the backyard. Principal Planner Neal stated the occasional bar patron going out to the backyard to have a drink, talk to someone, etc. was a legal, non-conforming use. It is part of the bar. Commissioner Ackerman asked if there were speakers in the backyard. Mr. Jefferson stated "no".

Commissioner Green asked if they have ever had pre-recorded, amplified music controlled by a disc jockey in the backyard. Mr. Jefferson stated "yes" – for weddings, parties, a fashion show, etc.

Mr. Mark Bell, Dominga Avenue, made the following comments:

- He read the definition of "acoustic".
- He has no problem with acoustic music and a vocalist that is enhanced.
- It can take the Police Department up to 45 minutes to get a decibel level reading that they can use.
- There are other residents in the neighborhood that would prefer no music or unamplified music.
- There was a violation on June 25th from a disc jockey who played music until 8:40 p.m. The decibel reading was at 55-60 db.

Ms. Linshen Bell, Dominga, made the following comments:

- She would like to see some plexiglass installed to block the sound.

- She is entitled to enjoy her backyard especially during the summer.

A resident made the following comments:

- People should have some way to relax in their own homes.
- Amplified music gets distorted and is too loud.
- Allowing music in the back yard once a month during the summer is understandable.

Mr. Jefferson made the following comments:

- Use of the backyard is a very small part of the business- he would be willing to shut it down.
- He would like to come to some type of agreement.

Chair Kehrlein closed the Public Hearing.

Planning Director Moore stated the Commission has conveyed that their prior discussion was to allow non-amplified music in the backyard and allowing 12 events during the year on average. Staff will bring this issue back to the Commission prior to the January (six-month) review for possible massaging of the conditions.

Commissioner Green provided the following comments:

- He would like to look into some soundproofing for the backyard area.
- No amplification should be allowed except for the singer.
- They need to hone in on the numbers at the next meeting and eliminate any loose language.
- He asked the applicant to come back with ideas on how to ameliorate the noise levels in the backyard.

Commissioner Ackerman provided the following comments:

- He suggested turning the speakers around so they do not face the neighborhood.
- They could install some baffling on the inside of the backyard fences.

Commissioner Fragoso provided the following comments:

- She recalls supporting up to 12 events per year, typically one a month.
- Twelve events in six months (summer) would be two a month- this should be the maximum.
- No amplified music should be allowed in the backyard.

Commissioner Newton provided the following comments:

- She is concerned about the decibel levels.
- She would like a report from the Police Department regarding the decibel level readings and the typical response times. Commissioner Green noted perhaps a department other than Police should do the decibel level readings such as Building or Fire.
- She would like to get a better handle on the frequency of events in the backyard. There should be a monthly cap.

Chair Kehrlein provided the following comments:

- She is concerned about the maximum number of entertainers (4 to 5)- it should be a smaller group (2 to 3).

Planning Director Moore thanked the Commission for the direction and stated this item would be reviewed by the Commission before the January six-month deadline.

DISCUSSION ITEMS

There are no discussion items.

Chair Kehrlein asked the Commission asked for comments regarding issue #7, medical laboratories as an accessory use to medical office use.

Commissioner Green provided the following comment:

- That was the Commissions intent.

Commissioner Gonzales-Parber provided the following comments:

- There is a lot of confusion and misinformation because people are coming into the process at the "11th hour".
- It is not realistic to ask the public to review to every meeting in the archives.
- It would be more practical to summarize, in basic language, the intent- to protect and preserve the small town character of Fairfax.
- They are not trying to change or shut down businesses- quite the opposite.

PUBLIC HEARING ITEMS

4. 29 Broadway; Applicant #83-UP-32

Review of an existing Use Permit to allow live music performances outdoors on a covered patio and a rear yard area for possible further action; Assessor's Parcel No's. 002-121-03 and 04; Central Commercial (CC) Zone; Charles Peri, applicant/owner categorically exempt from CEQA per Section 15301.

Principal Planner Neal presented a staff report.

Commissioner Fragoso stated she thought amplification on the side patio could only be used by the vocalist. Principal Planner Neal stated the original submittal talked about acoustic music only but that did not accurately reflect what was occurring- the applicant is now trying to clear that up. The applicant is requesting amplified, acoustic, and electric music on the side patio. Commissioner Newton stated the Commission approved a Use Permit that limited the amplification to vocals on the side patio and back yard. There have been numerous violations.

Commissioner Green expressed concern that the business fails to comply with the Use Permit conditions and they need to make it tougher and not easier.

Commissioner Gonzalez-Parber asked where the decibel level measurements were taking place. Principal Planner Neal stated it is taken from the property line of the person who made the complaint. Commissioner Gonzalez-Parber asked when citations become a monetary penalty. Principal Planner Neal stated the Police Department does not enforce Use Permit conditions- they only issue citations. Commissioner Green stated this was such a pervasive issue he would like a demonstration of how the decibel meter works.

Commissioner Swift asked where DJ's fit in and if there was a limit to the number of performers in the back yard area. Principal Planner Neal stated the applicant could address this question.

Chair Kehrlein opened the Public Hearing.

Mr. Adam Jefferson, manager, made the following comments:

- They are trying to be respectful of the community.
- The original application was not worded correctly. They want acoustic and electric music done at a reasonable level.
- They have had music in the side patio for many years.
- The complaints are coming from a couple of people.

- He submitted a petition in support of music on the patio with over 200 signatures.
- He has hired someone to keep the back door closed during events. He will police the patio door to the parking lot.
- Since the last Commission meeting he has stopped all music in the back yard to try to calm the problem.
- It is vital to the business to keep the patio music going.
- He has a guy who “spins records” on the patio once a month-and the volume is fairly low.
- The only amplification that occurs is for the vocalist.
- There are no speakers in the poolroom.
- He has not hired an acoustic consultant since he has not violated the Noise Ordinance.
- The side patio is about 20’ X 40’.

The head night manager made the following comments:

- He has been diligent about keeping the patio door closed.
- He keeps the back door from the poolroom open for security reasons.

Mr. Tom O’Neal, Dominga Avenue, made the following comments:

- Music is important to Fairfax.
- The Town should not make it too hard for them to have a successful business.

Mr. John Humphrey, Cascades, made the following comments:

- He has noticed a trend- people move to Fairfax and try to move out the elements they do not like.
- The music in this bar is a part of the character of Fairfax.

Peggy, Bridge Court, made the following comments:

- She gets disturbed by the music on the side patio.
- She asked what the current Use Permit allows and whether there been any violations.

Tommy made the following comments:

- The patio music is not that loud.
- The reason for amplification is to provide a “mixed level”.

Nicco made the following comment:

- Fairfax is the last community in Marin that nourishes creativity in art.

Jamie, San Rafael, made the following comments:

- She invites people to Peris to listen to music.
- The bartenders control the business.

Mr. Monroe Grisman, Fairfax, made the following comments:

- Music is a big part of the Fairfax culture.
- He asked the Commission to preserve the culture of Fairfax.

A gentleman from San Geronimo made the following comments:

- He is a sound engineer.
- Amplification is not intended to make the music loud- it balances volume levels.
- The speakers are down facing and are not overpowering.

Annie, Dominga Avenue, made the following comments:

- The nighttime music is not the problem.

- The music from 4:00 p.m. to 8:00 p.m., Thursday through Sunday, is very intrusive.
- There have been numerous violations.

Mr. Stan Arcelari made the following comments:

- He moved to Fairfax for the music.
- He lives a few blocks from Peris and can barely hear the music.

The resident at 50 Bolinas Road made the following comments:

- He is in the crossfire of most of the events that happen in Fairfax.
- Resolution No.1631, with some minor revisions, is ready to go.

A resident made the following comments:

- Something could be done to the patio to help alleviate the noise.
- Sound from music carries.

A resident made the following comments:

- The music in Fairfax is incredible- it is not played all day long.
- She brings people to Fairfax to listen to the music.

Mr. Dan Petrazela, San Rafael, made the following comments:

- The needs of the many should outweigh the needs of the few.
- Amplified instruments can play quieter than non-amplified ones.

Chair Kehrlein closed the Public Hearing.

Commissioner Green provided the following comments:

- Music is not going to end in Fairfax.
- He recommended some specific changes to the language in Resolution No. 16-31.

Commissioner Gonzalez-Parber provided the following comments:

- There has to be a balance and they need to listen to both sides.
- The music is loud.
- There is technology to monitor the doors.
- She would like the business to try to work with the neighbors and not be dismissive.
- She would like the business to work with an acoustic engineer.
- She could not support the resolution as written.
- The prior resolution should be observed and respected.

Commissioner Newton provided the following comments:

- The neighbors are asking the Town to enforce the permit that was issued.
- The statements that the music is not loud are false.
- There have been numerous violations of the conditions of the Use Permit.
- She recommended no amplification beyond the vocals and no DJ's.
- She asked the Commission to comment on amplification for keyboards.
- Music in the backyard for special events should be limited.
- She does not care about the number of musicians (three or five)- the issue is the loudness.

Commissioner Ackerman provided the following comment:

- Some instruments need to be played electrically.

Chair Kehrlein provided the following comments:

- The bar has an inside location for those particular types of acts or entertainers and for those who do not care for acoustic music and need their music to be amplified in order to find it enjoyable.
- She wants to respect the neighborhood.

Commissioner Green provided the following comments:

- The difficulty is not knowing what can be done to help the neighbors- keeping the door closed, no amplification on the patio, etc.
- A six-month review might be appropriate.

Commissioner Newton provided the following comments:

- The Commission originally called for a six-month review in January to review the conditions that were imposed.
- The applicant failed to abide by the conditions.
- She recommends allowing the music without amplification on the side patio with the exception for vocals and possibly a keyboard.
- The door to the back area should be shut when there is music inside the venue.
- The other restrictions should remain the same.

Commissioner Gonzalez-Parber provided the following comments:

- She supported Commissioner Newton's suggestion.
- She asked staff about enforcement. Principal Planner Neal stated it was problematic since the Building Official does not work on the weekends.

Commissioner Ackerman provided the following comments:

- He understood the concern that the Commission's directions were not followed. It puts the Commission in a difficult position.
- They seem to be going "sideways" because of the enforcement issue. This is the fundamental problem.
- What they are trying to get at is the noise level and not where the noise is coming from and what type of instrument is making it.

Commissioner Swift provided the following comments:

- The original resolution was not followed. This is a problem since it would have given them some helpful data.
- She would be willing to do a short-term resolution and revisit this in six-months.

Commissioner Fragoso provided the following comments:

- She is concerned about the residents that complained about the noise.
- She would be willing to modify the resolution so that the patio could have an amplified vocalist and keyboard, 12 events per year, and a full indemnity clause. The back yard could have an amplified singer but no amplified instruments.
- All exterior doors should be closed when music is being played indoors.
- They could reassess in six-months.

M/s, Newton/Green, Motion to adopt Resolution No. 16-31 with the following recommendations: 1) The patio could have an amplified vocalist and one amplified electric keyboard; 2) There shall be a full indemnity clause; 3) The back yard could have an amplified singer but no amplified instruments with a maximum of 12-events per year; 4) All windows and exterior doors shall be closed when music is being played indoors; 5) There shall be a review in six-months; 6) No DJ's allowed.

AYES: Gonzalez-Parber, Fragoso, Green, Newton, Chair Kehrlein

NOES: Ackerman, Swift

Chair Kehrlein stated there was a 10-day appeal period.

The Commission took a 10-minute break at 11:55 p.m.

Chair Kehrlein noted the late hour and asked the applicant for 68 Cypress if he would agree to a continuance. Mr. Hall agreed to a continuance.

M/s, Newton/Swift, Motion to continue application #16-37, 96 San Gabriel Drive, and application #16-38, 68 Cypress Drive, to the November Commission meeting.

AYES: Ackerman, Gonzalez-Parber, Fragoso, Green, Newton, Swift, Chair Kehrlein

5. 17-19 Broadway; Application #16-29

Continued consideration of a request for a Use Permit and a Parking Variance to prepare meals for an existing commercial business in a food trailer stored in the business parking lot; Assessor's Parcel Number 002-121-23 and 24; Central Commercial CC Zone; Tony DeFrance, applicant; Gary and Amory Graham, owners; CEQA categorically Exempt, 15301(a)

Principal Planner Neal presented a staff report.

Commissioner Swift asked how the installation of the grease trap affected the mobility of the food trailer. Principal Planner Neal stated the trap attaches into the ground but can be disconnected. The trailer will not be on a foundation.

Commissioner Ackerman asked if the fruit trees would be removed in order to install the trailer. Principal Planner Neal stated "no" and explained that the mature fruit trees would have to be removed if the owner constructed a kitchen addition into the east side of the building. Commissioner Ackerman asked if the staff recommendation was to operate for up to three years and then figure out something more permanent. Principal Planner Neal stated "yes". The Commission would review the Use Permit at that time.

Commissioner Fragoso stated she liked that the owner was trying to do something more upscale, low-key, and quiet. She referred to page 2 of the "Answers to Town of Fairfax Planning Department Notice of Action" and asked for a clarification on the "take-out order" service. She asked about the venting inside the trailer for the grease separator. She had questions about the outside grease separator in terms of the size, location, etc. Planning Director Moore stated the applicant could address these questions.

Commissioner Green noted there has been food service without a grease separator for a while and he asked if the Town could require its clean up. Principal Planner Neal stated it has gone down the drain.

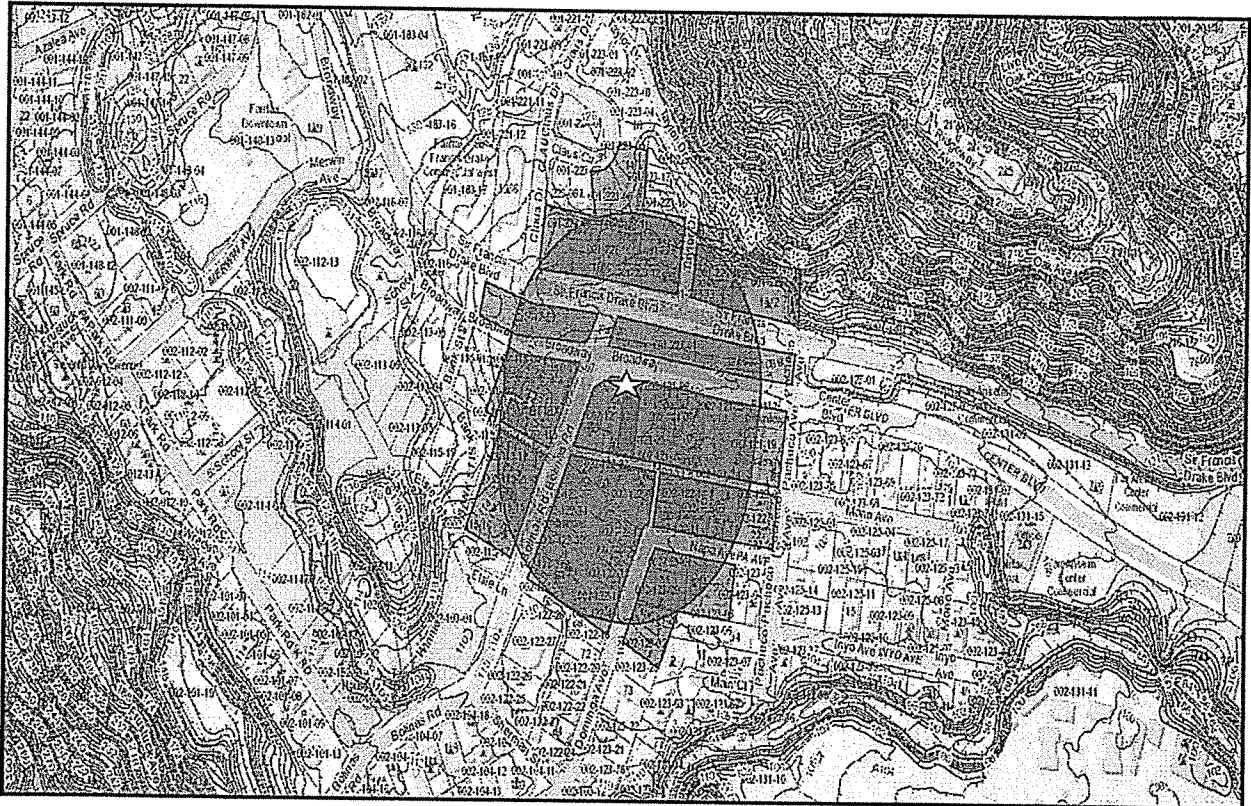
Chair Kehrlein opened the Public Hearing.

Mr. Tony DeFrance, Managing Partner for 19 Broadway, made the following comments:

- They had a grease separator that was external to the truck but it was not up to code. No grease was dumped.
- The new grease separator will be built into the trailer and if the truck needs to move then it can be disconnected. There is a hose that runs to the sewer line inside the building. It
- The grease separator is not very large.
- The San Rafael Casa Manana restaurant would be used as the commissary kitchen.
- They are happy to comply with the second revised site plan for parking.

STAFF REPORT
Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: October 20, 2016
FROM: Jim Moore, Director of Planning and Building Services
Linda Neal, Principal Planner
LOCATION: 29 Broadway; Assessor's Parcel Numbers 002-121-03 and 04
ZONING: Central Commercial CC Zone
PROJECT: Live music and special events outside of the building
ACTION: Review of Conditional Use Permit; Application # 83-UP-32
APPLICANT: Charles Peri Trust
OWNER: Same
CEQA STATUS: Categorically exempt, § 15301



29 BROADWAY

BACKGROUND

The building at 29 Broadway has been used as a bar, in conjunction with the outdoor rear yard, since 1946. The use of the outdoor rear yard by bar patrons pre-dated the adoption of the current Zoning Ordinance (Ordinance No. 352) in 1973. Ordinance No. 352 prohibits the operation of any portion of a business in the Central Commercial Zone outside of a building unless approved by the granting of a Conditional Use Permit by the Planning Commission. The casual use of the rear yard by patrons is considered a legal non-conforming use of the outdoor rear yard.

On December 12, 1983, the Town Council approved a Conditional Use Permit to allow live entertainment inside the bar 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 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 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 in the rear yard of 29 Broadway, location of Peri's Bar (Exhibit A – Resolution No. 16-16). At that time, the Commission indicated they would review the Conditional Use Permit after six (6) months.

On August 18th, 2016, the Commission held a public hearing to clarify the uses that were allowed in the fenced, back-yard of the building and they moved to review the Conditional Use Permit at the October 20th, 2016 Planning Commission meeting.

At the August 18th meeting, the Commission clarified the uses permitted in the fenced back-yard area as follows:

- Only non-amplified music is allowed in the backyard area with the exception that a single singer can be amplified. Amplified Disc Jockey music is not approved.
- 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 back yard at any one given time.

DISCUSSION

At the October 20, 2016 meeting, the Planning Commission will be reviewing the Conditional Use Permit granted on June 16th, 2016 in its entirety.

The applicant has clarified that the bands Peri's bar has scheduled in the past and would like to continue scheduling for the patio area on the east side of the building would include varied combinations of amplified acoustic and amplified electric instruments and vocals. Some bands they book include non-amplified brass and woodwind instruments such as trumpets, saxophones, etc. Each group is unique and composed of different groups of instruments. Sometimes the groups have only amplified acoustic instruments with amplified vocals, sometimes a combination of amplified acoustic and amplified electric instruments and amplified vocals and sometimes, just acoustic instruments with amplified vocals.

The applicant has also indicated that he is prepared to station someone near the back door of the patio during the outdoor performances to ensure that the door remains closed.

The Police Chief has provided a log of calls the Police Department has received related to noise at 29 Broadway (Attachment A).

The calls received from 2/11/16 through 6/7/16, prior to the red highlighted call line, predate the issuance of the Conditional Use Permit for outdoor music.

Calls highlighted in green identify complaints where the officer responding to the call took a decibel reading from the complainant's property line. Please note that none of these readings indicated the noise was at a level that violated the noise ordinance decibel limits.

Calls highlighted in yellow indicate complaints, after issuance of the use permit, where the officers verified that amplified instruments were being played in the covered patio area. Again, no noise violations were logged.

The Police Chief also explained that when the call has the notation, "required to shut the doors", in the "notes" column, the complaint was about noise occurring inside the building. Calls with the notation "outside amplification/amp instruments" means there was amplified music occurring outside on the patio. If the noise was coming from the backyard area, that is also indicated in the "notes" section.

A total of 67 calls have been received since the outdoor music was brought to the Town's attention in February of 2016. Fifty-six of the total calls were from the same person, with the majority of the calls coming from the same 5 people and 4 calls being received from callers who wanted to remain anonymous.

RECOMMENDATION

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to adopt Resolution No. 16-31 superseding Resolution No. 16-16 and approving a modification of Conditional Use Permit Application # 83-UP-2.

ATTACHMENTS

Attachment A1- Resolution No. 16-31 superseding Resolution No. 16-16

Attachment B1 - Report on complaint calls from the Fairfax Police Department

Attachment C1 - Applicant's revised supplemental information and a petition and letters of support for the use permit

Attachment D1- Letters/e-mails objecting to outdoor live entertainment

Attachment E1- Notes from Mark Bell given at the 9/20/16 Town Council meeting

Attachment F1 – Previous staff reports from June 16 and August 18, 2016

Attachment G1 – Minutes from the June 16 and August 18, 2016 Commission meetings

RESOLUTION NO. 16-31

A Resolution of the Fairfax Planning Commission Superseding Previously Adopted Resolution No. 16-16 and Approving A Modification of Conditional Use Permit 83-UP-32, to Allow Outdoor Amplified Acoustic and Electric Music on the Patio and Special Events Within the Back Yard of the Commercial Bar Establishment at 29 Broadway Avenue

WHEREAS, the Town of Fairfax has received an application to modify the existing Conditional Use Permit No. 83-UP-32 for 29 Broadway to legalize business operations, music and special events, that have been occurring for many years in outdoor areas; and

WHEREAS, the Planning Commission held a duly noticed Public Hearings on June 16, 2016, August 1st 2016 and October 20, 2016, at which time all interested parties were given a full opportunity to be heard and to present evidence, and at which time the Planning Commission approved the Use Permit Modification; and

WHEREAS, based on the documentary evidence in the record, as well as testimony at the public hearing, the Planning Commission has determined that the applicant has met the burden of proof required to support the findings necessary for the Project's requested discretionary permit.

WHEREAS, the Commission has made the following findings:

1. The limited hours proposed for amplified acoustic and electric outdoor music on the patio from 4:00 PM through 8:00 PM Thursday through Sunday will not conflict with or create any significant or substantial hardship for other businesses or residential uses in the immediate area as long as the Noise Ordinance is complied with and the back door is monitored and kept closed during performances.
2. The limited twelve (12) special events held in the back-yard area, from 4:00 PM through 8:00 PM Thursday through Sunday, limited to non-amplified instruments only, with only 1 singer whose voice can be amplified, will not conflict with or create any significant hardship for other businesses or residential uses in the immediate neighborhood as long as the noise ordinance is complied with. Therefore, the approval of the use permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.
3. The limited hours and the fact that the covered patio is enclosed on 2 sides and has a roof, and a door monitor at the back door of the patio, helps to mitigate the impacts of the live music on adjacent uses. Therefore, the approval of the Use Permit and use of property as approved under the use permit shall not 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 thereof, or any or all of which

ATTACHMENT A1

effects are substantially beyond that which might occur without approval or issuance of the use permit.

4. Approval of the use permit is consistent with those objectives, goals or standards pertinent to the particular case and contained or set forth in any Master Plan, or other plan or policy, officially adopted by the City.
5. Approval of the use permit will result in equal or better development of the premises than would otherwise be the case.

WHEREAS, the Commission has approved the project subject to the applicant's compliance with the following conditions:

1. The applicants shall maintain the premises in a neat and attractive manner at all times. Such maintenance shall include, but not be limited to, exterior building materials, signage, windows, the planters, the ground and the pavement surfaces.
2. The applicant shall comply with all applicable local, county, state and federal laws and regulations. Local ordinances which must be complied with include, but are not limited to: the Noise Ordinance, Chapter 8.20, Polystyrene Foam, Degradable and Recyclable Food Packaging, Chapter 8.16, Garbage and Rubbish Disposal, Chapter 8.08, Urban Runoff Pollution Prevention, Chapter 8.32 and the Americans with Disabilities Act.
3. Any changes made to the exterior of the building, including but not limited to new lighting, new signs, planters, etc. shall comply with the design review regulations of the Town Code, Chapter 17.020, and be approved by the Fairfax Design Review Board (when required).
4. The applicant or permit holder shall defend, indemnify, and hold harmless the Town of Fairfax or its agents, officers and employees from any claim, action, or proceeding against the Town of Fairfax or its agents, officers, or employees to attach, set aside, void, or annul an approval of the Town Council, Planning Commission, Planning Director, Design Review Board or any other department, committee, or agency of the Town concerning a development, variance permit or other land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permit holders duty to so defend, indemnify, and hold harmless shall be subject to the Town promptly notifying the applicant or permit holder.
5. The indoor music shall occur seven days a week between the hours of 1:00 PM and 1:00 AM and the outdoor music shall only occur Thursday through Sunday between the hours of 4:00 PM and 8:00 PM.
6. Music in the back yard shall be acoustic, non-amplified, instruments only with only

1 singer whose voice can be amplified.

7. Music on the patio shall be limited to 5 performers only, using any combination of non-amplified instruments, amplified acoustic instruments and amplified electric instruments as well as amplified vocals as long as the music being played does not violate the Fairfax Noise Ordinance, Town Code Chapter 8.20.
8. The exterior doors and windows of the business shall remain closed at all times when music is being played inside.

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

1. Because of the limited hours of the outdoor uses/music, and the inclusion of the condition that the rear doors and windows remain closed during performances, the approval of the Use Permit can occur without causing significant impacts on neighboring businesses or residences.

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 20th day of October, 2016, by the following vote:

AYES:

NOES:

Chair, Laura Kehrlein

Attest:

Jim Moore, Director of Planning and Building Services

Inc #	Type	Date	Location	Reading	NOTES
1602110082	NOISE	02/11/2016	29 BROADWAY	N	Bar turned it down
1602270033	NOISE	02/27/2016	29 BROADWAY	N	Req to close doors
1603090070	NOISE	03/09/2016	29 BROADWAY	N	Request to shut door
1603200035	NOISE	03/20/2016	29 BROADWAY	N	outside patio band
1603200037	NOISE	03/20/2016	29 BROADWAY	N	Bar turned it down
1603200039	NOISE	03/20/2016	29 BROADWAY	N	GOA
1603250001	NOISE	03/25/2016	29 BROADWAY	N	Req to shut doors
1603260045	NOISE	03/26/2016	29 BROADWAY	N	Req to shut doors
1603290069	NOISE	03/29/2016	29 BROADWAY	N	Req to shut doors
1604060056	NOISE	04/06/2016	29 BROADWAY	N	Req to shut doors
1604080056	NOISE	04/08/2016	29 BROADWAY	N	Req to shut doors
1604130065	NOISE	04/13/2016	29 BROADWAY	N	Req to shut doors
1604230046	NOISE	04/23/2016	29 BROADWAY	N	Req to shut doors
1604280056	NOISE	04/28/2016	29 BROADWAY	N	Req to shut doors
1605010053	NOISE	05/01/2016	29 BROADWAY	N	Req to shut doors
1605030076	NOISE	05/03/2016	29 BROADWAY	N	Req to shut doors
1605050063	NOISE	05/05/2016	29 BROADWAY	N	Req to shut doors
1605070051	NOISE	05/07/2016	29 BROADWAY	N	Req to shut doors
1605130067	NOISE	05/13/2016	29 BROADWAY	N	Req to shut doors
1606050048	NOISE	06/05/2016	29 BROADWAY	N	Req to shut doors
1606070056	NOISE	06/07/2016	29 BROADWAY	N	Req to shut doors
1606070058	NOISE	06/07/2016	29 BROADWAY	N	Req to shut doors
1606250055	NOISE	06/25/2016	29 BROADWAY	N	GOA
1606250070	NOISE	06/25/2016	29 BROADWAY	N	Req to shut doors
1607010059	NOISE	07/01/2016	29 BROADWAY	N	Outside amplification past 8pm but on rear patio
1607020043	NOISE	07/02/2016	29 BROADWAY	N	Outside amplification past 8pm but on rear patio
1607040041	NOISE	07/04/2016	29 BROADWAY	N	Quiet on arrival
1607130001	NOISE	07/13/2016	29 BROADWAY	N	Req to shut doors
1607130001	NOISE	07/13/2016	29 BROADWAY	N	Req to close doors
1607220032	NOISE	07/22/2016	29 BROADWAY	N	r/p wanted pre-emptive response. Band setting up b/patio
1607220035	NOISE	07/22/2016	29 BROADWAY	N	amplified music from front/rear patios. Off says no vio observed
1607220040	NOISE	07/22/2016	29 BROADWAY	N	comp music after 2000 but it was on rear patio
1607230046	NOISE	07/23/2016	29 BROADWAY	N	loud music comp. it was DJ REAR PATIO
1607230051	NOISE	07/23/2016	29 BROADWAY	N	Request to shut door

ATTACHMENT

B

ATTACHMENT

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1607230036	NOISE	07/23/2016	29 BROADWAY	N	R/P says band set up patio. It was DJ and music back/patio
1607060037	NOISE	08/06/2016	29 BROADWAY	N	Req to check on permit vio. Patio appeared set up for live amplified music
1608070030	NOISE	08/07/2016	29 BROADWAY	N	Req to check permit vio Officer confirmed amp instruments
1608070036	NOISE	08/07/2016	29 BROADWAY	N	Complaint of loud music, r/p said it would be a vio declined reading
1608070038	NOISE	08/07/2016	29 BROADWAY	N	Req to check permit vio Officer confirmed amp instruments
1608090044	NOISE	08/09/2016	29 BROADWAY	N	Request to shut door
1608110053	NOISE	08/11/2016	29 BROADWAY	N	Request to shut door
1608120042	NOISE	08/12/2016	29 BROADWAY	N	Req to check permit vio Officer confirmed amp instruments
1608120052	NOISE	08/12/2016	29 BROADWAY	N	Request to shut doors
1608130050	NOISE	08/13/2016	29 BROADWAY	N	comp of amp music. Quiet on Arrival
1608180065	NOISE	08/18/2016	29 BROADWAY	N	Request to shut doors
1608200043	NOISE	08/20/2016	29 BROADWAY	N	comp that amp equipm is set up. Nothing occurring now
1608240081	NOISE	08/24/2016	29 BROADWAY	N	Req to close door
1608250072	NOISE	08/25/2016	29 BROADWAY	SI R	Req to close door - Took unofficial read. 40 db amp was 36db
1608260069	NOISE	08/26/2016	29 BROADWAY	SI R	Req to close door - Took unofficial read. 40 db amp was 36db
1608260052	NOISE	08/26/2016	29 BROADWAY	N	Req to check permit vio Officer confirmed amp instruments
1608300063	NOISE	08/30/2016	29 BROADWAY	N	No music being played.
1608310001	NOISE	08/31/2016	29 BROADWAY	N	Req to close door
1609020043	NOISE	09/02/2016	29 BROADWAY	N	Req to chk permit vio. No band/nothing on front patio
1609030004	NOISE	09/03/2016	29 BROADWAY	N	Request to shut doors
1609040033	NOISE	09/04/2016	29 BROADWAY	N	Req to check permit vio Officer confirmed amp instruments
1609090031	NOISE	09/09/2016	29 BROADWAY	N	Req to check permit vio. No instruments were connected to amp
1609100052	NOISE	09/10/2016	29 BROADWAY	N	Req to check permit vio Officer confirmed amp instruments
1609110033	NOISE	09/11/2016	29 BROADWAY	N	Req to check permit vio Officer confirmed amp instruments
1609140076	NOISE	09/14/2016	29 BROADWAY	N	Request to shut doors
1609160069	NOISE	09/16/2016	29 BROADWAY	N	Req to close door. Took unofficial reading 38db.
1609160046	NOISE	09/16/2016	29 BROADWAY	N	Req to check permit vio Officer confirmed amp instruments
1609160051	NOISE	09/16/2016	29 BROADWAY	N	Req to check permit vio Officer confirmed amp instruments
					caller also stated they were playing past 8pm. Call came in at 8:03pm. Officer on scene at 8:08 no music playing.
1609180037	NOISE	09/18/2016	29 Broadway	N	Req to check permit vio Officer confirmed amp instruments
1609180049	NOISE	09/18/2016	29 BROADWAY	N	Req to close door. Took unofficial read. Music 44db ambient 43
1609230047	NOISE	09/23/2016	29 BROADWAY	N	Req to check permit vio Officer confirmed amp instruments
1609300036	NOISE	09/23/2016	29 BROADWAY	N	Req to check permit vio Officer confirmed amp instruments
1610010042	NOISE	10/01/2016	29 BROADWAY	N	comp of amp music on patio, it was inside. DB at r/p was 54 (1825hrs)
1610020027	NOISE	10/02/2016	29 BROADWAY	N	Req to check permit vio Officer confirmed amp instruments

# OF CALLS PER CALLER									
Named caller 1	56								
Named Caller 2	8								
Named caller 3	2								
named caller 4	1								
Named caller 5	1								
Anonymous	4								

# OF INCIDENTS	23
Permit to conditional use permit.	
44 incidents afterwards	

APPLICANT'S SUPPLEMENTAL INFORMATION

Applicant requests a use permit allowing the playing of live music on Thursday through Sunday from 4:00 PM to 8:00 PM on the patio attached to Peri's Tavern, located at 29 Broadway, in the Town of Fairfax, and occasionally in an adjacent backyard area. The primary business of Peri's is that of a tavern engaging in the sale of alcoholic beverages. It is duly licensed by all interested agencies, including the State of CA and the Town of Fairfax. Peri's operates seven days each week. Typical hours of operation are from noon to 2:00 A.M. Monday, Tuesday and Wednesday and 10:00 A.M. to 2:00 A.M. the remainder of the week. The busiest shifts, in order, are typically Friday, Saturday and Sunday at which times there are either two or three employees on duty.

Approval of the use permit will neither act as a special privilege or contravene equity and equal treatment, in that music and free enterprise is part of the fabric of our community. Many other businesses exist within the immediate vicinity of Peri's and continue to share a like commitment to the betterment of business and the community at large. At no time have any of these businesses been a detriment to the community, rather they serve to enhance goals of quality of life in the area.

Music is a characteristic factor in quality of life considerations. It is the continuing goal of Peri's to offer a business in the community that includes a modicum of entertainment for patrons. Patrons regularly report their pleasure and desire that music continue to be a part of the operation, not only to management but to others as well. Only rarely have there been reports of dissatisfaction to management about music at Peri's, and it would be unreasonable to suggest there may be none in the future, however few they may be.

Likewise, it is reasonable to suggest that in granting a use permit, there would be no adverse physical or economic effects or other burdens to the use and enjoyment of the property or businesses in the immediate vicinity of Peri's.

Peri's Tavern is not aware of, and has no reason to believe, that approval of the requested use permit would be in contravention of any adopted master plan, development plan, or any other plan or policy of the Town of Fairfax. Rather, the use contemplated is a fit with the community. Peri's Tavern has successfully been in the described business and location for several decades and is a well-known asset to the community. Live music has been an integral part of the business for many years, and in order to fully comply with applicable regulations, Peri's seeks a Town of Fairfax Use Permit allowing music to be played on its attached patio from 4:00 PM to 8:00 PM, Thursday through Sunday, and on infrequent occasions, in its adjacent backyard. At 8:00 PM the musicians, primarily one to four persons, typically using acoustic instruments, move entirely indoors, where live music is permitted by vis-à-vis Peri's cabaret license. Upon learning of the requirement of a use permit, informal surveys in the vicinity indicated well spread support for the requested use of live music, and no opposition was heard from either businesses or residents in the locale. It is respectfully submitted that the requested use permit will facilitate business and is in keeping with both the character and spirit of the Town of Fairfax.

** electric*
ACOUSTIC ~~AMPLIFIED~~ INSTRUMENTS at a
sound volume that complies with the noise ordinance.
patio door will remain closed during performance
* will be monitored by Peri's.

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@ The Women's Club, 46 Park Rd, Fairfax

Or

Email the Town at Ineil@townoffairfax.org to express support.

Name	Address	Business/Occupation	Signature
John Sandfort	1380 Sir Francis Drake	Construction	[Signature]
ARON SAUL	433 OAK HAVEN DR.	MUSICIAN	[Signature]
Justin Cook	Justin Cook	Barber	[Signature]
Cliff Schaeffer	1007 Green oak DE Novato, CA 94949	Barber Owner	[Signature]
BRAUN	3209 Mate Restara	BAR WORKER	[Signature]
Jan Peron	3209 Mate Restara	Homeless	[Signature]
Alma Marie P	Wherever I want.	EARTH and other frontiers	[Signature]
Ed Beal	EARTH	Clown	[Signature]
[Signature]	EARTH	SALVO	[Signature]
[Signature]	P.O. 469 waco	Red neck	[Signature]
Michael Weiss	43 Park Ave	Const.	[Signature]
Josie Baste	55 park rd	Host, marmitas	[Signature]
Sarah J. Smith	171 Canyon Rd	Barista	[Signature]
Whitney Heller	60 Pastori Ave	Sales, MK	[Signature]
David Nickerson	60 Pastori	Real Estate	[Signature]
Ed Cass	52 Dan Rd	TECH	[Signature]

[Signature]

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Name	Address	Business/Occupation	Signature
Sam Bernhardt	3400 1st St, Fairfax	Fairfax Sloop	[Signature]
John Tompkins			
Anna Lindgren	119 Willow Ave	Executive Assistant	[Signature]
Arim Daneshpajouh	119 Willow Ave	PVP	[Signature]
Eugene LaChance	20228 SFD	Mechanic	[Signature]
Kathy Cone	6 Charro Way	Retired	[Signature]
Billy FRANKS	90 Florence Ave	MUSICIAN	[Signature]
Polly Knox	40 Pastor	Fairfax Variety	[Signature]
PAUL FOLEY	2 MORRIS AVE FAIRFAX	CONSTRUCTION	[Signature]
Keri Kostu	27 ROCK TERRACE	case manager / social worker	[Signature]
[Signature]	84 Madrone	Attorney	[Signature]
Meredith Moran	84 Madrone	Professor	[Signature]
RON LISON	13 GARDEN WAY WOODACRE	LOCATION SCOUT 3 MANAGER	[Signature]
Steve De Rose	10 RALLY CT	RETIRED	[Signature]
Rich Cerick	200 Bolinas Rd, NO. 63	Maker of fin	[Signature]
Kadi Newkirk	2380 S. Francis Drake	Bar tender	[Signature]

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Name	Address	Business/Occupation	Signature
Michael Kegan	65 Ballman Rd	Musician	Michael Kegan
Scott C. Jones	175 Ridge	Acupressor	Scott C. Jones
ELDON CONNER	2 MARA AVE	Plumber	Eldon Conner
Laura Martin	90 Oak Knoll Dr	Court Reporter	Laura Martin
Deborah (H) Jones	370 Cascade Dr	Accountant	Deborah Jones
BARRY PRICE	77 Maple Ave	Contractor	Barry Price
Graham T. ...	95 Live Oak	Architect	Graham T. ...
Phillip Mills	2 Bupperry Way Ave	Barber at the Forge	Phillip Mills
Josh D. Zee	100 Bay Vista Way #42 S.R. Ct	Carpenter	Josh D. Zee
Sarah Patrick	28 Deuce Ct, Fairfax	Daria	Sarah Patrick
John Daniels	10 Piper Lane	Teacher	John Daniels
Amanda Lantz	75 Busque	Potter	Amanda Lantz
TOMMY OMAHONY	75 BOSQUE	MUSICIAN	Tommy O'Mahony
Ronny Leikovsky	161 Butterfield	Producer	Ronny Leikovsky
Kyle Burkis	100 Bay Vista	HVAC	Kyle Burkis
MANCELO DA ...	26 ELM AVE	TATTOOER	Mancelo Da ...

ME TOO !!!

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Name	Address	Business/Occupation	Signature
MILTON CONTRATI	17 NAPA AVE FA	DOG GROOMER	MILTON CONTRATI
Steve Power	P.O. Box 1152 ^{FA}	Lumber sales	Steve Power
MARK HEAPHY	5 PARK STREET	FATHER/ARTIST	Mark Heaphy
Ron SantaCruz	22 Spruce Rd	NAVES/Bartender	Ron SantaCruz
Jeray Sayle	127 Broadway	Film maker	Jeray Sayle
Cathryn M Cloy	37 Humboldt	Self	Cathryn M Cloy
Tom O'Neil	60 Dominga Ave ^{FA}	School X-ing guard	Tom O'Neil
Corwa Trujillo	57 Tamara Ave	EV HAUS	Corwa Trujillo
Lyke O'Neal	280 School Rd	Bartender, door dude	Lyke O'Neal
PAT MARTINEZ	90 OAK KNOLL AVE	FIREMAN/PETER	PAT MARTINEZ
MARIS RIVERA	89 TAYLOR DR	ELTY WORKER	MARIS RIVERA
Amy Weiss	66 Taylor DR	Occupational Therapist	Amy Weiss
Keistin Bakowski	39 Wreden Ave	Real Estate	Keistin Bakowski
Nico Astetis	145 ASCADE DR	contractor	Nico Astetis
Cricket Lera	340 Scenic Rd	writer	Cricket Lera
Joanne Godard	40 Canyon Rd ^{SA}	bookkeeper	Joanne Godard

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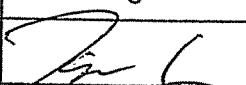

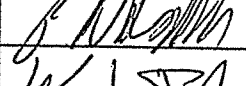

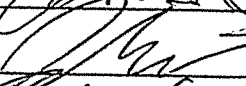
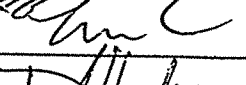
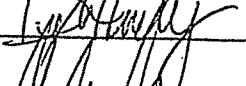
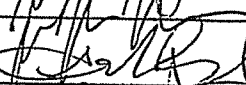

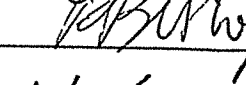

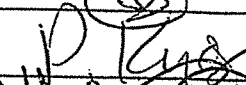



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Name	Address	Business/Occupation	Signature
Taylor Cutcomb	1340 S.F.D. #1 SAN ANGELO	MUSICIAN	
Michael Brown	24 Willow FAIRFAX	GOLF PROFESSIONAL	
PATRICK Bell	64 DOTHIN RD FAIRFAX, CA	NAVY, RET	
W. Jon Binkless	365 Caswell Dr FAIRFAX, CA	Teacher	
Clare S. Jacobson	20(A) Hill Ave. Fairfax, CA 94930	Floor Manager	
John Umphre	10 ES Fair-A Fairfax CA 94978	Computer tech Business owner	
RACHEL CRANNA	5 BURDETT LN FAIRFAX	ICE CREAM MAKER & SCOOP	
Dylan Hurley	100 Scenic Rd. Fairfax CA 94930	Filmmaker/actor	
Jojo Vasquez	50 Mono Ave	Barista Manager	
Josh Briers	100 Bayo Vista SR	tattoo artist	
Chelsea Decker	31 Broadway Ex	Hairstylist	
Phoebe Bishop	19 sequoia, Fairfax	Lawyer	
Adam Blum	252 scenic	FAIRFAX 94960	
Jesse Skybrook	190 Isle Royale	Bartender	
Polly Knox	61 Broadway	Retail Owner	
Nicole Bellumini	41 Willow	PM/Admin/Payroll	

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STEVE MACK	29 ALHAMBRA CIR	OWNER/MAN IN METALCRAFT	Steve Mack
CHELSEA GRENADE	15 ELAINE WAY	BARTENDER	Chelsea Grenade
ROBIN SIEDBACH	48 HICKORY FAIRFAX	BARTENDER	Robin Siedbach
LOTTIE R. PAKE	39 TAYLOR	ROOPER	Lottie R. Pake
Danushka Sang-Maisel	536 Scenic rd. Fairfax	chef Bel Campo	Danushka Sang-Maisel
LIZ DAVIS	74 Alexander Circle	Selfemployed	Liz Davis
Alisha Ortega	1340 S. FRESNO AVE	BARISTA	Alisha Ortega
Jos L. RANONITI	2587 FREITAS WAY FAIRFIELD, CA	TEACHER	Jos L. Ranoniti
Alison Walker	161 Butterfield San Angelito	Gardener	Alison Walker
Aidan Haberstroh	480 Cascelle Drive	Maintenance Manager	Aidan Haberstroh
Ruffin Bailey	50 MONO AVE. (RIGHT BEHIND PERI'S)	PROPERTY MANAGEMENT & LANDSCAPE MAINTENANCE	Ruffin Bailey
ANDREW STARELL	137 GLENN DR	CLERK	Andrew Starell
Sean McNeill	2500 Deer Valley	Life Coach	Sean McNeill
Jarret Standard	445 Pinewood Dr	Server	Jarret Standard
Danielle Moreno	55B FRUSTOCK AVE	teacher	Danielle Moreno
Kira Shihazi	1551 Center road	server	Kira Shihazi

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Name	Address	Business/Occupation	Signature
Rooney McAlone	2382 S.F.D.B	CAJINS TIRES	[Signature]
P.S. Dillon	45 Igou Ln. N. 94549	Self employed	[Signature]
Diana Gibson	169 Cascade	Social work	[Signature]
Michael Slater	74 Oakland Ave	Server	[Signature]
Mandy Thomassen	19 Sequoia rd	Mother	[Signature]
NATHAN GONZALEZ	145 FRANCES AVE.	THE FORGE TATTOO	[Signature]
Tony De Luca	61A. Galloway Ave	DECO manager	[Signature]
Elaine Jewell	321 OAK MANOR	Teacher	[Signature]
IAN SEXTON	107 Live Oak	H2O SOFTWARE	[Signature]
MARK O'Reilly	39 CASCADE	carpenter	[Signature]
Chlor Brown	19 Sierra Ave	Union	[Signature]
Tracy Sullivan	2501/8A SFD. Fairfax	Chef	[Signature]
Thomas Hanf	210 Hillside ^{Driveway} Fairfax	chef / Good Earth	[Signature]
Roy Stockton	P.O. Box G	Bar tender	[Signature]
LORING JONES	P.O BOX 713	WOODACRE	[Signature]
DIEGO BOFFI	LOWRANS	SAN RAFAEL	[Signature]

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Name	Address	Business/Occupation	Signature
Doug	200 Frustuck	N/A	Doug
Gavin Gunnigle	54 Willow	Director Technical Art Mgt	Gavin Gunnigle
Mathew Green	117 Mono		Mathew Green
Christy McDaniel	Bolinas Rd.	Escrow Office	Christy McDaniel
Tom O'Callahan	3 Kraus	Paint Contractor	Tom O'Callahan
JAKE HUMPHREY	1537 4th	SOUND	Jake Humphrey
Kamha Navila	8 Francis Ave.	Product Manager	Kamha Navila
Josh Powers	45 Broadmoor Ave	Tour Guide	Josh Powers
Cydney Roe	Broadway	Hospitality ind.	Cydney Roe
JOE RANDON	2587 PRETAS WAY, FAIRFIELD	TEACHER	Joe Randon
Michael G.	25 Wood Lane	Fabricator	Michael G.
GREGOR	64 Bothin Rd.	GOOD VIBES	Gregor
Veronica Frucht	1740 SIR FRASER DR	PROFESSOR	Veronica Frucht
KRISTINA SUTUBECK	43 LIVE OAK FAIRFAX CA	WAITER FRADELIZIOS	Kristina Sutubeck
Anthony	33 42nd Rd	Handyman	Anthony
Paul	2700 L	Fairfax	Paul

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Name	Address	Business/Occupation	Signature
Jason Bauder	256 Baypoint Dr	Writer	[Signature]
Mike Miller	71 Park Dr.		[Signature]
Michelle Cummings	Turner Court	Attorney	[Signature]
Simon Roy	145 Sturdevant	Librarian	[Signature]
Robin Goodrich	277 Tamarack	Farmen	[Signature]
John Beattie	59 Cypress Dr	Fairfax	[Signature]
Pat McAlonan	1700 CC Drive	Nurse	[Signature]
RYAN SCOTT	8 STETSON AVE #2	MUSICIAN	[Signature]
DAVE BURNES	65 RAYLOR	MUSICIAN	[Signature]
Jedie Kortum	75 Bosque	Author	[Signature]
Mike Mahony	75 Bosque	Builder	[Signature]
DAVID BELL	16 FERNWOOD	DESIGNER	[Signature]
Tom Hargren	Cranbury, NJ	Sales	[Signature]
Chris Ingegneri	14 Bolinas Rd	Director Bus Dev	[Signature]
SIMON COSTA	BOX 625 FAIRFAX	MUSICIAN/DRIVER	[Signature]
Tomás A. Galvez	P.O. 1358	Rest.	[Signature]

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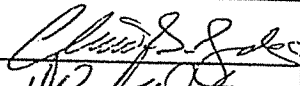

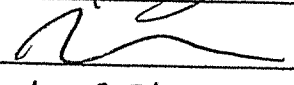
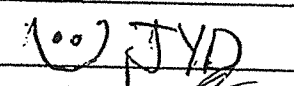
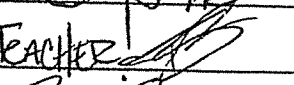
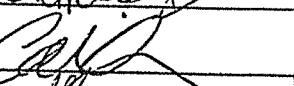
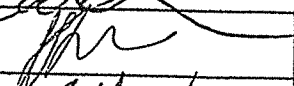
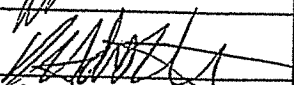
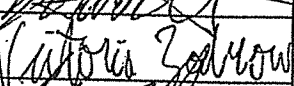
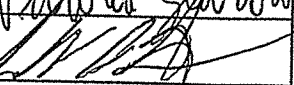

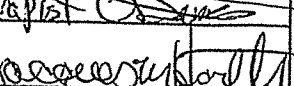
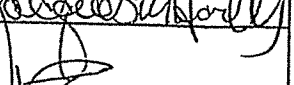
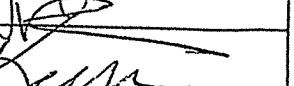
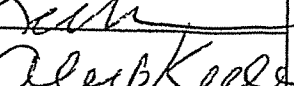
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Chloe S. Jodorn	20(A) Hill Ave, Fairfax	Floor Manager	
Michael Washington	701 Drake Ave, Manassas	Tattooer	
Jon Cerman	37 Oak Springs Dr	BD	
Josh Young	761 Las Colindas Rd	Brain Surgeon	
LARA RUZDY	1212 Woods Lane	Fairfax CA	Teacher
Caitlin Ryan	84 Pine Drive	Fairfax CA	
Sarah Hostetter	279 Bolinas Rd	Property Manager	
David Hostetter	279 Bolinas Rd	Attorney	
Victoria Zedrow	6 Geary Ave	Conformist	
L'Kness D. Aday	155 Anderson Dr	E-like Entertainment	
Christine Boser	155 Anderson Dr	Elite Entertainment & Cosmetologist/Massage Therapist	
Jacques Hartley	336 Laurel S.A. CA	Stagehand	
Patricia Bayenbleu	351 Olene	Therapist	
Kelly Thompson	245 Johnstone Dr	Sales	
Alex Kuski	1821 5th Ave	Therapist	
MARINT WASHNICK	30 Over Rd.	Yoga Teacher	

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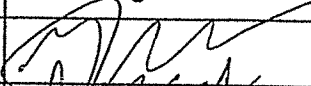

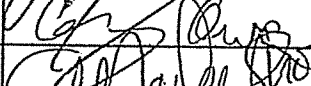
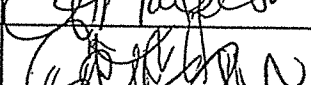
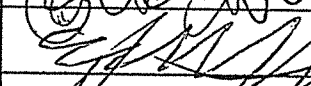
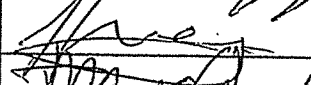

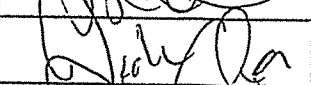
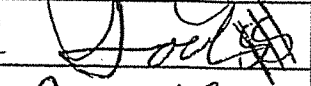
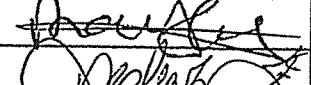
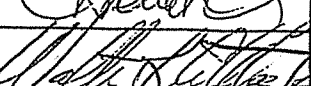
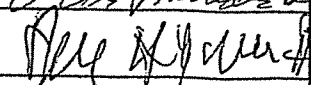
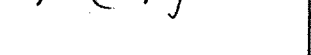


The sound of the music coming from the patio at Peri's Bar, serves as a reminder of how lucky we are, to live in a town steeped so deeply in a tradition of live music and social engagement.

Please show support at the Planning commission meeting on October, 20th at 7pm.

@ The Women's Club, 46 Park Rd , Fairfax

Or

Email the Town at Ineil@townoffairfax.org to express support.

Name	Address	Business/Occupation	Signature
GREEN ROSE	30 CREEK RD.	COACH	
Jason Galamba	86 Spring Ln.	Entrepreneur	
Cory Over	56 Rhinestone	VP at Earthwire	
Marlee Rose	314 Melrose	GRAD STUDENT	
Nash Schae	1200 LEGGERS ST New Orleans 70112	Teacher/Writer	
Elliott Montgomery	409 Miller Creek Rd	musician	
Jack Key	15 Taylor Street	Software	
Max Druehl	100 Scenic Rd	Father	
Sage Buckley	67 Taylor Ave	Author	
John Cha	5 Scenic Dr	Auto Repair	
Jael Epstein	60 Manor Rd	CARWELER	
May Gerardo	65 Ballinas Rd	waiter waiter	
Deborah Unger	93 Scenic	Baker	
Walt Cartbush	2160 P.S.A.	teacher/contractor	
Fred Wright	251 C St., San Mateo	Computer Engineer	

We Support Live Music on the patio at Peri's Bar

We, the undersigned residents of the Fairfax community, support the continued provision of music on the Peri's Bar Patio, from Thursday, thru Sunday, 4-8pm.

Local musical legends such as Honey Dust, Kingsborough, The Happys and Beso Negro, regularly showcase their talents to people passing by on the street. The scene is vibrant and families and people of all ages stop by to enjoy the festivities.

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Name	Address	Business/Occupation	Signature
James L. Cain	P.O. Box 183	Consultant	[Signature]
Pat McMahon	Cairo Tives	1531 4th St SE	[Signature]
Sabbath Goddard	23 Woodland Fairfax, CA 94430	Server/Bartender	[Signature]
Jessica Ote	6 Keel Ct San Rafael 94903	Landscaping	[Signature]
Andy Lin	46 Bellevue 94430	SELF Employed	[Signature]
Scott Lafranchi	124 Mona Ave	Lawyer	[Signature]
Tim Halikas	48 Geary Ave Fairfax	- Self -	[Signature]
Karina Ramirez	69 bolinas Ave	Self employed	[Signature]
Joey Davis	100 Sycamore Ave Apt 21	San Anselmo	[Signature]
Robert P. Hegen	115 Morinda Dr.	Fairfax/Brown	[Signature]
Anthony W. Galt	18 ME CO	FAIRFAX	[Signature]
WBA PAGE	18 Ave CO	FAIRFAX	[Signature]
Harriet Galt	18 ME CO	FAIRFAX	[Signature]
Andrea Aherm	115 Marinda Dr	Preschool teacher	[Signature]
M. O'Quinn	33 Merwin	Fairfax	[Signature]
Sally Gregory	P.O. Box 841 Fairfax	Man of Leisure	[Signature]

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The sound of the music coming from the patio at Peri's Bar, serves as a reminder of how lucky we are, to live in a town steeped so deeply in a tradition of live music and social engagement.

Email the Town at Ineil@townoffairfax.org to express support.

[illegible]

Picture a warm summer afternoon. You're sitting outside on your porch in your house on the hill, soaking up the sunshine with your partner and tapping your foot along to a groove that is drifting up to you from below. You feel a part of everything, like the whole town is contained in this one song that is flowing into your ears. Twenty-five years ago, that couple was my boyfriend's parents. They spent many years in Fairfax and they had their first and only child here. He took his first steps in that very house on the hill. Some of their fondest memories are sitting outside or opening up their windows to hear a new talent or an old friend playing their hearts out at Peri's down below.

Although they moved away when my boyfriend was only two, he grew up hearing stories of these golden summers and the music in them. He began playing music himself and it took him to Florida and South Dakota and Southern California and eventually, it brought him back here. We moved here together in February and the first place we went once we settled in was Peri's. I had heard so much about it from him and he from his parents that we went to see what the fuss was about. We chatted with the bartender, who quickly became our first real friend in the area. We listened to a surprisingly good band for a Thursday night. We chatted with the band afterward, and they invited my boyfriend to play next time. We had just moved to the area, didn't know anyone, had never been in before, but we were welcomed like family. We came back many more nights as players and as patrons, made many more friends, and heard many, many more great bands.

We quickly realized that it wasn't a fluke: Peri's was the real thing. It's not just a bar, it's a meeting place, for the meeting of friends and the meeting of minds. Every person who plays there is a great musician who loves what they do. They want to jam with anyone willing and able, to cultivate this spirit of inclusivity and connection that emanates from Peri's. They want to spread it out into the world, every night of the week, from inside or outside the establishment. The more people who hear, the more people can be included in this beautiful thing that took twenty-five years and a very big circle for us to find. How wonderful it is that so many people only need to walk down the block, be driving down the street, or just be sitting out on their porch to be a part of it. We may have only moved here a few months ago but because of the spirit we found at Peri's, we plan to stay for as long as his parents did.

Kelsey Ruggaard

Carol Isaac
Fairfax, CA 94930

OCT 18 2016

RECEIVED

Fairfax Planning Commission
142 Bolinas Road, Fairfax, CA 94930

Oct 15, 2016

Dear Planning Commission,

I am writing in advance of the Oct. 20 meeting to ask for continued support of patio music at Peri's Bar.

I am a Fairfax resident who regularly enjoys the opportunity to hear music on Peri's patio in the company of friends at a time of day that doesn't require staying out late. It has become a lovely tradition to meet friends and look out to the trees and the Fairfax hills and the smiles and nods of people walking through town in the background.

Time and again I've observed that the open air setting invites a cross section of the community, from youth, to adults, to seniors to enjoy the music. I include "youth" because often families with children and teens stop to listen from the sidewalk. It is priceless to see the joy of a child lifted up on their parents shoulders smiling as they move to the music and sing along. Fairfax doesn't have regular street performers the way larger cities do, cities I've lived in or traveled to, like New York, London, Vienna, or Paris, but the open air patio provides the opportunity for passers by to enjoy a song or two in the course of their day, bringing a little bit of a centuries old cultural tradition to our town.

Peri's patio music is also especially senior-friendly, giving folks who don't like to go out late the opportunity to enjoy live music and socialize across generations. Seniors in their 60s, 70s, 80s, and beyond, attend Peri's patio music. I've seen people arrive in mobility scooters, walkers, or using canes, maybe taking advantage of the handicapped parking space in Peri's parking lot. It's a joy to see older members of our community listening to live music, smiling, and meeting with friends in this cross-generational, scenic setting.

It would really be a tremendous loss to the people of Fairfax if this afternoon musical/social event was to no longer exist.

I plead with the planning commission to continue to support Peri's patio music, which in turn supports local musical talent and gives the community a place to listen and socialize in a wonderful setting at a reasonable hour.

Sincerely,



Carol Isaac

Linda Neal

From: Mimi Newton ~~XXXXXXXXXXXX@XXXXXX~~
Sent: Wednesday, June 08, 2016 9:48 PM
To: Jim Moore; Linda Neal
Subject: Fwd: Thoughts on acoustic and amplified music

Jim & Linda

If you are planning any Planning items pertaining to amplified music in the downtown area, please include this message I received from Ling Shien Bell in the materials. Thank you -
Mimi

----- Forwarded message -----

From: Helmmusic <~~XXXXXXXXXXXX@XXXXXX~~>
Date: Wednesday, May 18, 2016
Subject: Thoughts on acoustic and amplified music
To: ~~XXXXXXXXXXXX@XXXXXX~~

With the amplified music getting louder and louder, I am enjoying more and more the sound of acoustic music, it is to me the most organic, natural sound, that agrees completely with me at the core level. Granted, being able to project is not as easy as turning the volume knob, you have to learn how to use your voice, work on the sound quality of your instrument, figure out where the best place will be so you can project more... all things that are part of being a musician. Furthermore, when amplified sound travels, it gets distorted and becomes flat out ugly, be it speech or music. I have never heard acoustic sound getting distorted as it travels. Some instruments that are naturally loud and could be used to play outdoors without amplification: piano, accordion, the whole brass family, percussion instruments, oboes and bagpipes, then you wouldn't get the annoying distortion factor. All this brings me to believe that amplified sound belongs indoors, where it can be controlled with appropriate sound proofing so that the surrounding residential areas don't have to hear it. Even indoors, I'm not sure it needs to be so loud that you have to scream at the person seating next to you, it's got to do some damage to your auditive nerves, and it greatly limits the contents of your conversation. Of course when there is a festival, you expect to have your sound space occupied by loud music, but it shouldn't be the norm, recurring every time anything happens, like a farmers market, or a baseball game, I feel we need to be able to relax outdoors too, and not have to lock ourselves indoors in order to have some peace. *I thought I might use the topic of the baseball games to illustrate my point about the difference of sound quality: I live on Dominga, and the sound travels very well from the field; I've experienced that the sound of the crowd cheering, being acoustic and therefore not distorted, is a lot more pleasant than the amplified announcements.* Luckily there seems to be a little resurgence of acoustic music, I really hope it grows, so we can enjoy the sound of the human voice and musical instruments in their natural state.

Helm
Ling Shien Bell
Co-director, Composer, Musician
~~XXXXXXXXXXXX@XXXXXX~~
~~XXXXXXXXXXXX@XXXXXX~~

16 June 2016
ATTN: Planning Commission Members
FROM: Brenda Lein
52 Dominga Ave.
Fairfax, CA

TOWN OF FAIRFAX

JUN 16 2016

RECEIVED

RE: 29 Broadway; Application #83-UP-32
31 Bolinas Road, Application #02-39

To the Fairfax Planning Commission:

Firstly, apologies that I am not able to attend tonight's meeting in person to address this issue that has a profound affect on my neighborhood. That is the applications (referred to above in the "RE" line of this letter) for modifications of use permits to allow for outdoor music in two downtown venues. *I strongly oppose the allowance to allow outdoor live (or pre-recorded) music at 31 Bolinas or additional modifications to the 29 Broadway venue.*

I own the residence at 52 Dominga Ave., where I live with my husband and elementary school age daughter. 52 Dominga Ave shares a property line with 31 Bolinas. The back of the 31 Bolinas property abuts the 52 Dominga property.

In the past, commercial venues occupying 31 Bolinas have put up outdoor tented employee "break areas" which were ordered to be taken down as they were not allowed and unpermitted. During that time, employees of Lydia's Loving Foods played radio/precorded music within feet of our home, essentially filling our home with loud music and leaving our living space unusable. Amplified music was played on ad hoc stages during commercial revenue building events in the 31 Bolinas parking lot – usually unpermitted, occasionally permitted, always without consulting residential neighbors. Lydia had people living, in vans, in the parking lot (and building open fires in the lot.) In all of these situations our home became unlivable for the noise and other impact on our lives. In not a single instance did efforts to negotiate with commercial business owner OR efforts to appeal to the building owner, Brad Schwan (who was often completely unavailable and unreachable) yield any result, whatsoever.

When the planning commission has gotten involved, the unpermitted break room was removed (thankfully) and the noise abated. The police, however, act impotent in the face of permit violations and complaints of disturbing the peace and noise ordinance violations. I have never once seen a citation issued for neighbors who consistently disturb the peace (you'll find numerous documented complaints on the 50 Dominga flop house, but I doubt a single citation has been issued) or commercial interests who violate noise ordinances and/or prove to be bad neighbors.

The police are not enforcing reasonable standards, building owners are not responding to residential concerns as it is. Adding MORE problems to the

Mark Bell's notes
for his public comment
to Town Council 9/9/16

Does the sound have meaning?

Sound with high information content (speech, music) is more likely to be unacceptable than sound that has no meaning (broadband noise). Loud parties, loud music, even bells and chimes, are examples of sounds that create more negative response than a neighbor's lawn mower (at the same level).

So when Peri's has an outdoor amplified group with an electric keyboard that means being inundated for over 2 hours in the afternoon with that high pitched whine. Not a pleasant experience.

dB and pitch - not the same, dB's is measurement of sound pressure, higher pitched noises, similar to insects, can penetrate very small openings, in essence "carrying further" than a dB reading would indicate

Use permit approved by Planning Commission in June for Peri's both backyard and side patio for un-amplified music except vocal "enhancement" between 4-8 pm. *NO MENTION of DJ's*

Decibels not arith-matic but logarithmic; 10 dBs higher is twice as loud, 40 dB is 2X 30dB

We've been living in same house since 1987, rented for 5 years before buying, wouldn't have if noise was an issue. Also the house is over 100 yards away from Peri's which is a considerable distance

night time noise increase started about 3 years or so ago

*July 12 - called police 12:20 am (July 13), over 40 dBs at house

*Police logs should show the amount of visits made by officers, usually with requests to close the back door and/or to turn the band down. This works for maybe 5 minutes, usually with the band getting even louder afterwards and the door reopened.

Daytime violations before the use permit- YEARS!

Day time violations from Peri's since the "use permit":

*29 violations -amplified music when only vocal amping allowed (Aug 19 acoustic)

*June 25th, DJ, dBs over 50, bass distorted vibrating our house, noise continued to 8:40 pm

*Jul 1 - neighbor called 2x, we called once requesting reading, too late to get valid reading (7:45pm)

*Jul 2 - DJ backyard, didn't stop until 8:20 pm even with officer on Peri's premises at 8:10 pm (per officer who was doing a sound reading), dBs at our house over 50dBs

Jul 22 - still playing amplified music after 8 PM, called police

DJ IS NOT MUSIC

ATTACHMENT E1

*the side patio door is usually open so that the sound travels to the Dominga neighborhood even more than it would otherwise. What is funny is I don't ever recall seeing droves of Dominga residents running down to Peri's to get any closer.

This has all been done willfully. The only "concession" made has been to stop the afternoon noise by 8 pm (after instances in July) . No attempt to communicate to bands the conditions of the use permit and, as you can see by September's calendar, they plan to operate "business as usual" with 11 dates listed. How many of these will be acoustic? None have been so far. As for the night, the back door is propped open with an orange traffic cone supposedly so they can see what is going on in the back yard. This is a totally bogus assertion. Over 99% can not be seen. If they really wanted to monitor the back they would have to install cameras.

Action requests:

1. Adopt night time dB limit to be 35 dB;
2. Adopt day time dB limit to be 45 dBs;
3. Cite Peri's for violations of use permit or I will be forced to do it;
4. Clarification of 19 Broadway's day time use permit for music;
5. Clarification of Farmers Markets use permit for music;
6. Clarification of Peri's night time use permit regarding back door

New ordinance-

much better to measure from property line of the source - see Sebastopol ordinance.

Another absurd argument -

it attracts people who are downtown. First they are already downtown, anyone not deaf could hear the music if it was acoustic.

Families stop by to listen. Really? With cigarette smoke from the patio? Families can't enter with children under 21.

Lastly, amusing is we have been 86'd from Peri's for trying to have them abide by the law;

noise control two

RECEIVED

SEP 22 2016

Fairfax Town Code

TOWN OF FAIRFAX

PUBLIC NUISANCE. Anything injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by a neighborhood or by a considerable number of persons in the town. In addition, any condition caused or permitted to exist in violation of any provision of this Code shall be deemed a public nuisance, and each day such condition continues shall constitute a new and separate offense.

Bookmark§ 1.12.030 DISTURBING THE PEACE.

No person shall willfully disturb the peace and quiet of any neighborhood or person in the town by emitting or causing to be emitted any loud or unusual noises , or by offensive conduct, or by threatening or challenging to fight or by fighting.

(Ord. 734, passed 6-18-2008)

FROM
MARY BELL

For the
Planning Commission



TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
(415) 453-1584 / FAX (415) 453-1818

TOWN OF FAIRFAX

NOTICE OF APPEAL

NOV 03 2016

FOR STAFF USE

RECEIVED

Date: 11-3-16 Fee: \$500.00
Appl.# _____
Receipt# 1-49456
Recvd. By: S. Wain
Action: _____

The purpose of the appeal procedure is to provide recourse in case it is alleged that there is an error in any order, requirement, permit, decision or determination by any administrative official, advisory body or commission in the administration or enforcement of the City Ordinances. Any person aggrieved by the action of any administrative official, advisory board or commission in the administration or enforcement of any ordinance in the Town Code may make verified application to the Town Clerk in the manner prescribed by the Town Council within ten (10) days of action that is appealed.

FEE: Fees are set by resolution of the Town Council. See fee schedule for current application fees.

PLEASE PRINT

Appellant's name PERIS BAR

Mailing address 29 BROADWAY Zip: 94930 Day phone (415) 488-7655

Property Address: SAME

I appeal the decision of: (list board, commission, or department and decision; for example: Planning Commission denial of variance) application # 03-UP-32

The following are my reasons for appeal:

NO CONVINCING EVIDENCE EXISTS TO SUPPORT OR
WARRANT PLANNING COMMISSION'S DECISION TO NOT ALLOW
AMPLIFIED INSTRUMENTS. TO THE CONTRARY DECIDE

hereby declare that I have read the foregoing Notice of Appeal and know the contents thereof. I further declare under penalty of perjury that the information supplied by me is true and correct. →

Executed this 3 day of NOV 2016

SIGNATURE OF APPELLANT: _____

(4/94)

ATTACHMENT 3

EVIDENCE OBTAINED DURING NOISE COMPLAINT
INVESTIGATIONS INDICATES FULL COMPLIANCE
WITH EXISTING NOISE ORDINANCE

Letter of Appeal from Peri's Bar to the Fairfax Town Council

November 28th, 2016

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Letter of Appeal

11/28/2016

Dear Fairfax Town Council members:

This is a formal written appeal to the most recent ruling by the Fairfax Planning Commission regarding the modification request of Conditional Use Permit # 83-UP-32 for Peri's Silver Dollar Saloon, filed in May of 2016. The request of said modification was to allow Peri's to continue to optionally host musical performances on the side patio Thursdays through Sundays during the hours of 4:00pm through 8:00pm, and to have similar types of performances in the backyard up to 12 times per year. Although the backyard was part of the discussion at all three meetings, the focus of this appeal is exclusively on the live music performed on the side patio.

Background

Peri's began having amplified musical acts outdoors shortly after the construction of the patio in 1999, unknowingly operating outside of what is covered by our existing CUP (Conditional Use Permit) to have musical performances in the building. In April of 2016, upon learning that this practice was not covered by our CUP, we promptly filed to modify the CUP so that we could continue providing our patrons and community with musical entertainment on the patio while operating within compliance of the CUP.

To date, the topic of outdoor music at Peri's was discussed at three separate Planning Commission meetings:

- June 16th, 2016 Initial assessment of modification request of CUP
- August 18th, 2016 Clarification of the backyard music request
- October 20th, 2016 Review of the approval granted in June

We initially made our case for the CUP modification at the Planning Commission meeting in June. To be fair, the language in our application did not sufficiently convey our intent to amplify all performances, but the discussion in the June meeting should have been enough to clarify our intent. After much deliberation, our request had passed unanimously, with the only stipulation being that it would be reviewed on January 19th, 2017 to determine whether modifications would be needed upon gauging the impact after six months.

Despite the clarifications made in June, the Planning Commission incorrectly recalled the agreement as having been modified to limit the performances to only amplified vocals with

acoustic, unamplified instruments. Due to comments made during the August meeting, along with the Planning Commission's erroneous recollection of what they approved, they opted to move the January review up to the October 20th meeting. In that October meeting, we were sternly criticized by the Planning Commission for repeatedly violating their errant version of the agreement. They finally ended the discussion by changing the terms of what could be played on the patio to that of amplified vocals, unamplified acoustic instruments, and an amplified keyboard.

Our contention is that the Planning Commission had an inaccurate account of what was agreed upon: the entire purpose of the approval of our request in June was that we would keep doing what we've been doing, so that the impact of the outdoor performances could be measured for future review. We were wrongfully penalized for continuing to do what had been approved.

Supporting argument overview

In this appeal, we will address several key points that are important to consider while assessing the fairness, legitimacy and consequences of the eventual reversal of the June 16th vote to approve our modification request:

- Peri's modification request
- Primary complainant's own outdoor, amplified performances
- Basis of the Planning Commission's reversal of position
- Punishing "non-compliance" by relaxing the restrictions
- Impact of the Planning Commission's October 20th decision

Peri's modification request

Within the original application, the key wording speaking to the type of music Peri's intended to have on the patio was "typically acoustic instruments,"¹ yet the bulk of the arguments made against our case revolved around claiming that we asked to have exclusively "acoustic music."

Acoustic instruments vs. acoustic music

There is a vital distinction between acoustic *music* and acoustic *instruments*: acoustic *music* implies a narrow set of musical genres, usually limited to folk music. However, it is quite common to amplify acoustic *instruments*, regardless of musical genre or setting. For example, if you were to visit The Roastery on a weekend morning then you would likely see a single

¹ Attachment A: Peri's Modification of Use Permit Application

performer singing and playing an acoustic guitar. Not only would they have a microphone for their vocals, but their acoustic guitar would consistently be amplified, as well. Even in that small, confined space, the amplification of the acoustic guitar is necessary to ensure it has a volume and tone that is compatible with that of the vocals.

What Peri's failed to make clear in our application is that while most of our patio acts do include acoustic instruments, they were indeed always amplified. This omission was due to an error of interpretation of the manager's words by our lawyer, who then wrote up the application that was submitted to the town. Our lawyer is not a musician, and so this distinction was unfortunately lost on him.

The intent behind mentioning acoustic instruments in the application at all was to convey, concisely, that the variety of music on the patio wouldn't be as loud, distorted or "heavy" as the bands on the indoors stage at night can sometimes be. The acts we've hosted on the patio, both before and after the June 16th meeting, have always been consistent with this assertion.

The written request was thoroughly clarified in the June meeting

We regret that what was submitted in writing had allowed for so much confusion. However, the dialog at the Planning Commission meeting on June 16th – in which it was repeatedly stated (13 times, to be exact) that what was being discussed was the amplification of vocals *and* instruments – made our intentions abundantly clear:

"I was provided a written description by someone from the office and... it seemed to indicate that it was acoustic music, but that it was amplified... he [Adam Jepson] said something about... he encourages bass playing" – Principal Planner Neal

Commissioner Newton asked *"would it be a hardship, do you think, for Peri's to limit the outdoor music to acoustic as opposed to amplified,"* to which Josh Burks (representing Peri's) replied *"to a degree, it would be a bit of a hardship..."*

Commissioner Gonzalez-Parber asked *"I'm trying to understand or compare the decibels to... somebody playing an acoustic guitar that's amplified. Do you have any idea what the decibels would be for that?"* Mr. Burks responded by saying *"it depends on the volume knob. But, as far as an acoustic guitar being amplified, if you've ever heard... Tom Finch, Danny Click, all acoustic players for the most part - the entire Sleeping Lady crew - was basically an acoustic amplified guitar setting. So, if you'd ever heard a noise complaint or dealt with anything that they've dealt with, that's basically what we play on our patio. There's never heavy distortion, there's nothing that gets cranked up as far as 12, no Spinal Tap or anything like that. It definitely doesn't get as loud as [the live music] on the inside [of Peri's bar]."*

"The reason why people amplify just even acoustic [instruments] or vocals, it's just so it's on the same level [as one another]." – Member of the public, Tommy Odetto

"In order for a vocalist like myself, who plays music at Peri's ... you need to be amplified, and [a] guitar needs to be amplified in order to meet all the same sound." – Member of the public, Denielle Basom

Additional context to the above quotes (and exact times they were stated) can be found in Attachment A: Excerpts from Fairfax Planning Commission meeting on June 16th, 2016.

Our contention is that these exchanges should have clarified the intent of our original written application. Whatever confusion that could have remained about what types of performances we've held on the patio (and how they are amplified) would have certainly been clarified by listening to the music played on the patio. Our interpretation of comments made by some members of the Commission led us to believe they were aware of the fact that music on the patio was, in fact, amplified. For example:

"... when I get off the bus downtown and I can hear the music at Peri's, it just always perks me up. 'I'm back in Fairfax, the music is playing,' and I really love it. The other thing, I live on Mono, so I walk up Mono with the dogs, and just to hear the music as I'm coming up the alley is one of my most favorite parts about living in Fairfax."² – Commissioner Newton

"I just want to go on record saying that... I love Peri's. I have benefited many-a-times from the live music on the patio from the sidewalk. I like to walk down there on [a] Friday, stand on the sidewalk and listen to the music inside..."³ – Commissioner Gonzalez-Parber [although this was stated in the October meeting, the use of "many-a-times" suggests that she has likely heard the patio performances prior to the June meeting.]

While it could be argued that what we were perhaps requesting approval for was a different brand of music on the patio than we have had in the past, the following statement by Commissioner Green, in our minds, addressed that point directly: *"All we're doing here is seeing whether or not we can approve a permit to allow Peri's to continue what they've been doing for several years, apparently having music in the outdoor patio. It's really limited to that."⁴*

Considering all of the above, our impression was that the Commissioners were aware that all acts would be amplified following the June approval, as the performances had been prior to

² Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_6_16_2016.mp3 | Comm. Newtown @ 3:48:31

³ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_10_20_2016.mp3 | Comm. Gonzalez-Parber @ 4:11:08

⁴ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_6_16_2016.mp3 | Comm. Green @ 3:42:24

that meeting. To support this assertion, we've included the entire 2016 schedule of performances on the patio. Except for the Jon Korty Blues Band and the Soul Saturdays DJ, all the acts who performed after June 16th had been part of our regular rotation before it was discussed by the Planning Commission. Please see Attachment C: 2016 Schedule of Acts on the Patio for further details.

Primary complainant's own outdoor, amplified performances

Between February, 2016 and the Planning Commission meeting on October 20th, the Fairfax police received a total of 67 complaints related to the music performed at Peri's. Of those complaints, 56 of them – nearly 85% – came from a single household.⁵ Members of this household have claimed that not only is the outdoor music an imposition on their right to silence, but that any form of amplified music at Peri's beleaguers all their neighbors.

It should be noted that one of the complainants from this household is a musician who had played at Peri's on occasion, both on the patio and the backyard. When the band the complainant played in performed in the backyard, *all* of the instruments were amplified.

The primary complainant stated in the June 16th Planning Commission meeting *"this ordinance isn't about shutting down the music. What we're talking about is volume, and when the volume is happening and where it's happening."*⁶ However, during the August 18th meeting, the complainant said (during the non-agenda public comments): *"Because if any of you did due diligence regarding the new Use Permit for Peri's..."* Planning Director Moore interjected to point out *"this item is on the agenda tonight."* The complainant then responded with *"but that's about clarification of the backyard. This is about revoking the permit totally."*⁷

Basis of the Planning Commission's reversal of position

It appeared to us that some of the members of the Planning Commission had a dramatic shift in their stance on the issue of our request between the June meeting and subsequent meetings. After reviewing the entirety of the recordings between the three meetings, this change in position appears to have come from a flawed recollection of the discussion in June on the part of the Planning Commission.

⁵ "The Police Chief has provided a log of calls that the police department has received related to noise at 29 Broadway... **none of the noise violations [complaints] that were logged exceeded the noise ordinance decibel levels... a total of 67 calls have been received since the outdoor music was brought to the Town's attention in February 2016. 56 of the total calls were from the same person...**" | Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_10_20_2016.mp3 | Principal Planner Neal @ 2:52:06

⁶ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_6_16_2016.mp3 | Member of the public @ 3:28:38

⁷ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_8_18_2016.mp3 | Member of the public @ 0:16:46

Accusations of Peri's having a dismissive attitude

During the October meeting, Peri's staff and patrons were repeatedly accused of being both irreverent towards the community, as well as outright ignoring the Planning Commission's June decision. We feel that our actions have proven otherwise. We must point out that as soon as this matter was brought to our attention we then began the process of applying for a modification to the CUP and paying the corresponding fees.

Because of the discussion of music in the backyard during the August meeting, we made a concession and immediately ceased all music in the backyard (despite being allowed to continue under the temporary CUP). We did this as a show of good faith, and as an effort to ease the tension between our neighbors and ourselves. We were trying to find a middle ground that would make both sides happy.

Despite our actions, statements were made by the Planning Commission in October which appeared to dismiss our attempts to defuse the situation. For example, Commissioner Gonzalez-Parber said "*what I've heard here makes me feel that, I don't know, I feel like he [Adam Jepson] is dismissing the neighbors who've had issues.*"⁸ Similar sentiments were expressed three other times that evening, which almost certainly had an impact on the final decision of the Planning Commission.

If Peri's were to be allowed to continue having amplified musicians on the side patio, we will make every effort to be reasonable about the types of music and overall volume of the performances. We would be happy to work with the Planning Commission and/or Town Council to find compromises that work for our business, our neighbors and the culture of Fairfax. For example, there are two acts we've had on the patio several times each in 2016: *Honeydust* and *The Jon Korty Blues Band*. Even if the language of the modified CUP were to allow for these two bands to continue to play on the patio, we acknowledge that bands of this variety play at a volume that is indeed inappropriate for the patio and our neighbors. As such, we would discontinue having them play there. Our interest is not in getting away with as much as we can, but rather in continuing to provide entertainment for our patrons and the community while being reasonable and responsible with this privilege.

"Amplified vocals only" – the pivotal argument against Peri's

Early in the discussion in the October meeting, Commissioner Newton made multiple statements about her recollection of the agreement established in June, including: "*Not only was there a written application, but there was a whole Planning Commission hearing in which the applicant, or his representative, spoke to us, and at no point during that did they say 'oh no,*

⁸ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_10_20_2016.mp3 | Comm. Gonzalez-Parber @ 4:11:39

that's not right.' We actually talked about the amplification issues, we actually talked about it being limited to the vocals... it was also discussed during a hearing - a public hearing - where we had public comment."⁹

We have repeatedly reviewed the audio recordings of the June meeting, meticulously transcribing every statement related to our request. Having gone through that process, we can say with 100% confidence that the core argument in Commissioner Newton's statement above is patently false. While the matter of outdoor music was of course discussed in a public hearing, with public comments, the limiting of amplification to just that of vocals was neither discussed nor mentioned *once* during the June meeting.

Commissioner Newton had gone down this path several other times, including remarks such as: *"...what we adopted in terms of the Use Permit did limit the amplification to vocal amplification..."*¹⁰

*"... we approved a Use Permit that limited the amplification to vocals in the side patio..."*¹¹

*"... let me just say it again, okay? We approved a Conditional Use Permit allowing acoustic music in the side and back yards – both of them – with the exception of amplified vocals only. And, after we approved that one, there were numerous violations of that condition, correct?"*¹²

Some other members of the Planning Commission followed suit, such as when Commissioner Fragoso said *"I understood that in the side patio, amplified music could only be for the vocalist, and yet the resolution says amplified acoustic and electric on the patio."*¹³

The reality is that the first time limiting the amplified portion of outdoor music to only vocals was publically discussed was in the *August* meeting. The first time it was mentioned during that meeting was not by a member of the Planning Commission, but by a member of the public – the individual who was responsible for the overwhelming majority of noise complaints about Peri's: *"... all side and back patio events have been amplified. When I spoke with the Police Chief, he said that what was approved was unamplified music except for the vocalist."*¹⁴ We are still unclear on why this was said then. Again, it was never part of any discussion or written agreement prior to this quoted statement.

Accusations of non-compliance

In the October meeting, there were ten instances of Peri's being accused of being non-

⁹ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_10_20_2016.mp3 | Comm. Newton @ 2:57:50

¹⁰ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_8_18_2016.mp3 | Comm. Newton @ 0:29:44

¹¹ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_10_20_2016.mp3 | Comm. Newton @ 2:55:14

¹² Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_10_20_2016.mp3 | Comm. Newton @ 2:55:56

¹³ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_10_20_2016.mp3 | Comm. Fragoso @ 2:54:01

¹⁴ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_8_18_2016.mp3 | Member of the public @ 0:18:48

compliant of what was approved, as well as accusations of us being hypocritical. We've included some of the more glaring examples below:

"We approved a Conditional Use Permit allowing acoustic music in the side and back yards – both of them – with the exception of amplified vocals only. And, after we approved that one, there were numerous violations of that condition, correct?"¹⁵ – Commissioner Newton

"... we're talking about people who have asked that the town enforce the permit that was issued, that was completely – in my mind – disregarded by the applicant."¹⁶ – Comm. Newton

*"I walked up to Peri's to see what the heck was going on, and... watched the amplified musicians playing in the patio, knowing full well that we had just clarified what the meaning of the, and discussed the non-amplification of instruments except for the vocals. So, for the charge that people are taking advantage by complaining, I feel like a lot of this stuff is really hypocritical, and that what we've been seeing is the applicant taking advantage of the town providing the applicant the permission to play the music on the side patio without amplification except for vocals, and that being completely disregarded. You know, **if you guys had complied with that, I would be so much more in your camp than I am.** But the fact that I, visually, myself, with my own two eyes, observed numerous, time after time again, the violation of the conditions that we put in the permit, has really soured me against your position, and made me hear all these comments with just like a magnifying glass on how hypocritical they are."¹⁷ – Commissioner Newton*

"We did review this at a hearing, at a public hearing, it was very well thought-out what we came up with. I think the new information [questionnaire completed by Peri's], yeah, we can consider it, but we really did discuss what could be allowed and what we were comfortable with and, based on the log, a lot of it was disregarded, that – I have real concerns with that. Why was it disregarded? It feels like an attitude, to me, that doesn't feel very neighborly."¹⁸ – Commissioner Gonzalez-Parber

The last statement above is especially concerning to us. The claim that the Planning Commission specified what could and could not be amplified in the June meeting is simply inaccurate. We did not disregard anything, because we continued to do only what was requested, which is what was approved.

The above claim can be substantiated by Commissioner Ackerman's statement reflecting how there were no restrictions to acoustic music: *"... it sounds like part of what's going on with the*

¹⁵ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_10_20_2016.mp3 | Comm. Newton @ 2:55:56

¹⁶ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_10_20_2016.mp3 | Comm. Newton @ 4:16:41

¹⁷ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_10_20_2016.mp3 | Comm. Newton @ 4:17:29

¹⁸ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_10_20_2016.mp3 | Comm. Gonzalez-Parber @ 4:14:07

side yard, with the side patio is that what was approved was, didn't restrict the music particularly to acoustic music..."¹⁹

Punishing "non-compliance" by relaxing the restrictions

After the October meeting's deliberation completed, Commissioner Newton proceeded to suggest a motion for a new set of limitations to what could be played on the patio:

"We had originally – when we had approved this – talked about bringing it back in January, so that we could have a sort of a baseline on which to judge how well it was working under the conditions that we imposed. The fact that the applicant failed to abide by the conditions we imposed blew that idea out of the water. My recommendation for us tonight, if you guys [fellow Commissioners] are on the same page as me, is to allow the music without amplification on the side patio, with the exception of vocal amplification and depending on how you guys [fellow Commissioners] feel, also allow a keyboard to be, you know, allow an electric keyboard to be used."²⁰ – Commissioner Newton

A few things are quite confusing when you deconstruct the above statement into its basic parts:

- There was an agreement about what was approved, with conditions imposed
- The imposed conditions were that Peri's could have amplified only vocals on the patio, and all other instruments must be unamplified
- Peri's failed to abide by the imposed conditions
- Consequently, the Commission moved to modify the agreement by making it the same as what they've been [incorrectly] saying had been agreed upon, except now we are also allowed to amplify a keyboard

Impact of the Planning Commission's October 20th decision

It is our opinion that the Commission's decision was misguided. Trying to address the concerns of *volume* by limiting the *types* of music that can be played, and not addressing the volume directly is missing the point entirely, and is crippling to the music acts that play the patio currently. It is essentially the death knell of live music of just about any variety on the side patio at Peri's, as none of the acts we've had would be able to effectively perform there unamplified.

For an act as simple as a lone singer/acoustic guitarist, they would have to strum with maximum force at all times to even attempt to compete with the level of amplified vocals. Even if that were sustainable, it would destroy the dynamics of any song. If both the guitar and

¹⁹ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_8_18_2016.mp3 | Comm. Ackerman @ 0:28:40

²⁰ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_10_20_2016.mp3 | Comm. Newton @ 4:29:14

vocals would be unamplified then they admittedly would be somewhat balanced with one another, but at the cost of being inaudible above the ambient noise from the street and sidewalk. For acts with multiple musicians, there is a need for amplification to compensate for the imbalance of the instruments' individual natural acoustic volumes, which varies widely in most cases.

The entertainment of our patrons and passersby is not the only thing that is at stake in this decision; we must also consider the livelihood of the employees at our establishment. For example, our Friday day-shift bartender reports that his earnings for that shift typically go up by 60 to 100% when there is live music on the patio, as opposed to that same shift without a band. Other parties who take an economic hit are the musicians themselves, as well as the surrounding business that see an increase in patronage as a direct result of people coming to Peri's just to see the band on the patio.

The ruling also sets a dangerous precedent that could negatively impact the future of live music of any variety at different establishments in Fairfax. If the October 20th decision remains, what is there to protect The Roastery, for example, from being forced to keep their doors shut while the lone singer/guitarist mentioned before is doing a performance?

Summary

In closing, we hope that we have effectively demonstrated the discrepancies between what the Planning Commission approved in June and their recollection thereof, and how Peri's (and the culture of music in Fairfax) have unfairly paid the price for this misunderstanding.

We will also reiterate that we have had far more of a "team player" mentality than some members of the Planning Commission believe, and that we are willing to police ourselves with respect to the volume levels of the amplified musicians on the side patio.

It is our hope that, with all of this in mind, the appeal to have our clarified request to have amplified instruments will be approved.

Sincerely,

The staff at Peri's

Attachment A: Peri's Modification of Use Permit Application

The attachment below is from the original application from Peri's back in June 2016, and was itself Attachment B to Modification of Use Permit; Application # 83-UP-32. The original attachment can be found in its entirety at [http://www.town-of-fairfax.org/pdfs/planning_comm/packet/2016/061616/29 Broadway.pdf](http://www.town-of-fairfax.org/pdfs/planning_comm/packet/2016/061616/29%20Broadway.pdf)

APPLICANT'S SUPPLEMENTAL INFORMATION

Applicant requests a use permit allowing the playing of live music on Thursday through Sunday from 4:00 PM to 8:00 PM on the patio attached to Peri's Tavern, located at 29 Broadway, in the Town of Fairfax, and occasionally in an adjacent backyard area. The primary business of Peri's is that of a tavern engaging in the sale of alcoholic beverages. It is duly licensed by all interested agencies, including the State of CA and the Town of Fairfax. Peri's operates seven days each week. Typical hours of operation are from noon to 2:00 A.M. Monday, Tuesday and Wednesday and 10:00 A.M. to 2:00 A.M. the remainder of the week. The busiest shifts, in order, are typically Friday, Saturday and Sunday at which times there are either two or three employees on duty.

Approval of the use permit will neither act as a special privilege or contravene equity and equal treatment, in that music and free enterprise is part of the fabric of our community. Many other businesses exist within the immediate vicinity of Peri's and continue to share a like commitment to the betterment of business and the community at large. At no time have any of these businesses been a detriment to the community, rather they serve to enhance goals of quality of life in the area.

Music is a characteristic factor in quality of life considerations. It is the continuing goal of Peri's to offer a business in the community that includes a modicum of entertainment for patrons. Patrons regularly report their pleasure and desire that music continue to be a part of the operation, not only to management but to others as well. Only rarely have there been reports of dissatisfaction to management about music at Peri's, and it would be unreasonable to suggest there may be none in the future, however few they may be.

Likewise, it is reasonable to suggest that in granting a use permit, there would be no adverse physical or economic effects or other burdens to the use and enjoyment of the property or businesses in the immediate vicinity of Peri's.

Peri's Tavern is not aware of, and has no reason to believe, that approval of the requested use permit would be in contravention of any adopted master plan, development plan, or any other plan or policy of the Town of Fairfax. Rather, the use contemplated is a fit with the community. Peri's Tavern has successfully been in the described business and location for several decades and is a well-known asset to the community. Live music has been an integral part of the business for many years, and in order to fully comply with applicable regulations, Peri's seeks a Town of Fairfax Use Permit allowing music to be played on its attached patio from 4:00 PM to 8:00 PM, Thursday through Sunday, and on infrequent occasions, in its adjacent backyard. At 8:00 PM the musicians, primarily one to four persons, typically using acoustic instruments, move entirely indoors, where live music is permitted by vis-à-vis Peri's cabaret license. Upon learning of the requirement of a use permit, informal surveys in the vicinity indicated well spread support for the requested use of live music, and no opposition was heard from either businesses or residents in the locale. It is respectfully submitted that the requested use permit will facilitate business and is in keeping with both the character and spirit of the Town of Fairfax.

Attachment B:

Excerpts from Fairfax Planning Commission meeting on June 16th, 2016

Shortly after the discussion began regarding Peri's application for the modification of CUP # 83-UP-32, Commissioner Newtown asked "is there a distinction between acoustic and amplified music here with respect to this item before us?"²¹ Principal Planner Neal responded with "I was provided a written description by someone from the office and... it seemed to indicate that it was acoustic music, but that it was amplified, but not that there were electric basses and electric guitars, but then when I spoke with the manager on the phone... he said something about... he encourages bass playing, so I think you're gonna have to ask the manager to clarify that..."²²

Josh Burks, Head Bartender and Assistant Manager at Peri's, addressed this by stating "we've been doing this [having amplified instruments on the patio] since I've been here [for the past] 6 years, [and for] 12 years before I got there..."²³ Commissioner Newton then asked "would it be a hardship, do you think, for Peri's to limit the outdoor music to acoustic as opposed to amplified..."²⁴ to which Mr. Burks replied "to a degree, it would be a bit of a hardship..."²⁵

Commissioner Gonzalez-Parber then asked "I'm trying to understand or compare the decibels to... somebody playing an acoustic guitar that's amplified. Do you have any idea what the decibels would be for that?"²⁶ Mr. Burks responded by saying "it depends on the volume knob. But, as far as an acoustic guitar being amplified, if you've ever heard... Tom Finch, Danny Click, all acoustic players for the most part - the entire Sleeping Lady crew - was basically an acoustic amplified guitar setting. So, if you'd ever heard a noise complaint or dealt with anything that they've dealt with, that's basically what we play on our patio. There's never heavy distortion, there's nothing that gets cranked up as far as 12, no Spinal Tap or anything like that. It definitely doesn't get as loud as [the live music] on the inside [of Peri's bar]."²⁷ Principal Planner Neal then added "the police have been called and have checked, and they [Peri's] haven't exceeded the noise ordinance level limits..."²⁸

Once the discussion was opened to the public, several members of the community made statements that further underscored Peri's intent. Professional guitarist and 5th-generation

²¹ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_6_16_2016.mp3 | Comm. Newtown @ 2:59:39

²² Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_6_16_2016.mp3 | Principal Planner Neal @ 2:59:54

²³ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_6_16_2016.mp3 | Josh Burks @ 3:01:36

²⁴ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_6_16_2016.mp3 | Comm. Newtown @ 3:03:07

²⁵ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_6_16_2016.mp3 | Josh Burks @ 3:03:23

²⁶ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_6_16_2016.mp3 | Comm. Gonzalez-Parber @ 3:04:04

²⁷ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_6_16_2016.mp3 | Josh Burks @ 3:04:28

²⁸ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_6_16_2016.mp3 | Principal Planner Neal @ 3:05:32

Fairfax resident Tommy Odetto said *"you guys are worried about amplified music - this [podium for the public to comment] is amplified, [yet] it's not very loud. The reason why people amplify just even acoustic [instruments] or vocals, it's just so it's on the same level [as one another]."*²⁹

Musician Larry Newman stated (on establishing balance through amplifying all instruments) *"I play once a month on the patio with a trio. We're very careful when we set up about balancing [the amplification of the various instruments] and keeping the sound acoustically balanced [overall]..."*³⁰

Vocalist Denile added *"in order for a vocalist like myself, who plays music at Peri's ... you need to be amplified, and [a] guitar needs to be amplified in order to meet all the same sound."*³¹

²⁹ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_6_16_2016.mp3 | Tommy Odetto (citizen) @ 3:15:31

³⁰ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_6_16_2016.mp3 | Larry Newman (citizen) @ 3:20:14

³¹ Planning Commission Meeting Archive | http://cmcm.tv/files/fairfax/Fairfax_PC_6_16_2016.mp3 | Denile (citizen) @ 3:29:43

Attachment C: 2016 Schedule of Acts on the Patio

Date	Act		
01/01/16 (Fri)	No DM	04/01/16 (Fri)	Kingsborough
01/02/16 (Sat)		04/02/16 (Sat)	
01/03/16 (Sun)		04/03/16 (Sun)	
01/08/16 (Fri)	Chris Brown	04/08/16 (Fri)	Chris Brown and Simon Costa
01/09/16 (Sat)	Neck 'n Neck	04/09/16 (Sat)	Neck 'n Neck
01/10/16 (Sun)	Todos Santos	04/10/16 (Sun)	
01/15/16 (Fri)	Kelly Peterson Band	04/15/16 (Fri)	Kelly Peterson Band
01/16/16 (Sat)		04/16/16 (Sat)	
01/17/16 (Sun)		04/17/16 (Sun)	
01/22/16 (Fri)		04/22/16 (Fri)	Otis Scarecrow
01/23/16 (Sat)		04/23/16 (Sat)	
01/24/16 (Sun)		04/24/16 (Sun)	
01/29/16 (Fri)	Todos Santos	04/29/16 (Fri)	Damir & Derek
01/30/16 (Sat)		04/30/16 (Sat)	
01/31/16 (Sun)		05/01/16 (Sun)	
02/05/16 (Fri)		05/06/16 (Fri)	Honeydust*
02/06/16 (Sat)		05/07/16 (Sat)	
02/07/16 (Sun)		05/08/16 (Sun)	
02/12/16 (Fri)	Chris Brown and Simon Costa	05/13/16 (Fri)	Otis Scarecrow
02/13/16 (Sat)	Neck 'n Neck	05/14/16 (Sat)	
02/14/16 (Sun)	Todos Santos	05/15/16 (Sun)	
02/19/16 (Fri)	Kelly Peterson Band	05/20/16 (Fri)	Kelly Peterson Band
02/20/16 (Sat)		05/21/16 (Sat)	
02/21/16 (Sun)		05/22/16 (Sun)	
02/26/16 (Fri)		05/27/16 (Fri)	Todos Santos
02/27/16 (Sat)		05/28/16 (Sat)	
02/28/16 (Sun)		05/29/16 (Sun)	
03/04/16 (Fri)		06/03/16 (Fri)	Kingsborough
03/05/16 (Sat)		06/04/16 (Sat)	Mark & Sierra 5 year anniversary
03/06/16 (Sun)		06/05/16 (Sun)	Todos Santos
03/11/16 (Fri)	Chris Brown and Simon Costa	06/10/16 (Fri)	Chris Brown and Simon Costa
03/12/16 (Sat)	Neck 'n Neck	06/11/16 (Sat)	
03/13/16 (Sun)	Todos Santos	06/12/16 (Sun)	
03/18/16 (Fri)	Kelly Peterson Band	06/17/16 (Fri)	Kelly Peterson Band
03/19/16 (Sat)		06/18/16 (Sat)	Soul Saturdays
03/20/16 (Sun)	Waylon / Arizona and the Volunteers	06/19/16 (Sun)	Otis Scarecrow
03/25/16 (Fri)	Otis Scarecrow	06/24/16 (Fri)	Damir & Derek
03/26/16 (Sat)		06/25/16 (Sat)	
03/27/16 (Sun)	Todos Santos	06/26/16 (Sun)	Jump To It
		07/01/16 (Fri)	Honeydust*

07/02/16 (Sat)	Soul Saturdays	08/27/16 (Sat)	Soul Saturdays
07/03/16 (Sun)		08/28/16 (Sun)	Todos Santos
07/08/16 (Fri)	Chris Brown and Simon Costa	09/02/16 (Fri)	Honeydust*
07/09/16 (Sat)	The Babushka Brothers	09/03/16 (Sat)	Soul Saturdays
07/10/16 (Sun)	Todos Santos	09/04/16 (Sun)	Taylor Jazz Jam
07/15/16 (Fri)	Kelly Peterson Band	09/09/16 (Fri)	Chris Brown and Simon Costa
07/16/16 (Sat)	Tom Finch	09/10/16 (Sat)	Neck 'n Neck
07/17/16 (Sun)	Otis Scarecrow	09/11/16 (Sun)	Phil Hardgrave
07/22/16 (Fri)	Jon Korty Blues Band	09/16/16 (Fri)	Kelly Peterson Band
07/23/16 (Sat)	Soul Saturdays	09/17/16 (Sat)	Soul Saturdays
07/24/16 (Sun)	The Unnamed	09/18/16 (Sun)	Tribulation
07/29/16 (Fri)	Todos Santos	09/23/16 (Fri)	Damir & Derek
07/30/16 (Sat)	Jump To It	09/24/16 (Sat)	
07/31/16 (Sun)		09/25/16 (Sun)	Todos Santos
08/05/16 (Fri)	Honeydust*	09/30/16 (Fri)	Jon Korty Blues Band*
08/06/16 (Sat)	Tom Finch	10/01/16 (Sat)	Soul Saturdays
08/07/16 (Sun)	Taylor Jazz Jam	10/02/16 (Sun)	Taylor Jazz Jam
08/12/16 (Fri)	Chris Brown and Simon Costa	10/07/16 (Fri)	Honeydust*
08/13/16 (Sat)	Neck 'n Neck	10/08/16 (Sat)	Neck 'n Neck
08/14/16 (Sun)		10/09/16 (Sun)	
08/19/16 (Fri)	Kelly Peterson Band	10/14/16 (Fri)	Chris Brown and Simon Costa
08/20/16 (Sat)	Soul Saturdays	10/15/16 (Sat)	Soul Saturdays
08/21/16 (Sun)	Jump To It	10/16/16 (Sun)	Mango Bus
08/26/16 (Fri)	Jon Korty Blues Band*		

* If Peri's request is approved, this act will not be performing on the patio in the future due to the overall volume of their performance.

RESOLUTION 16 - __

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX DENYING THE APPEAL OF THE CONDITIONS OF APPROVAL AND UPHOLDING THE PLANNING COMMISSION ACTION ON CONDITIONAL USE PERMIT 83-UP-32, 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, the Town Council held a duly-noticed public hearing to consider anew the Applicant's request for a Conditional Use Permit to allow amplified music on the covered patio; and

WHEREAS, at the December 7, 2016, public hearing, 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, 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, including but not limited to the following:

- 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 back yard at any one given time.

WHEREAS, at the conclusion of the December 7, 2016, public hearing the Town Council found that:

1. The findings required by Section 17.032.060 of the Town Code to approve a conditional use permit for outdoor live entertainment had been made by the Planning Commission;
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;
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;

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 because the request to have all electric, amplified bands and/or other amplified live entertainment fails 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.

The foregoing resolution was adopted at a regular meeting of the Town Council of the Town of Fairfax held in said Town, on the 7th day of December, 2016, by the following vote, to wit:

AYES:

NOES:

ABSENT:

Mayor

Attest: _____
Michele Gardner, Town Clerk

RESOLUTION 16-__

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX GRANTING THE APPEAL OF CONDITIONAL USE PERMIT 83-UP-32 PLANNING COMMISSION CONDITIONS, TO ALLOW OUTDOOR AMPLIFIED MUSIC ON THE SIDE PATIO OF 29 BROADWAY AVENUE

WHEREAS, on May 2, 2016, Charles Peri ("Applicant") submitted an application to the Town of Fairfax, which was deemed complete on May 29, 2016, to modify Conditional Use Permit 83-UP-32 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, appealed by the Applicant to the Town Council on November 3, 2016; and

WHEREAS, on December 7, 2016, the Town Council held a duly-noticed public hearing to consider anew the Applicant's request for a Conditional Use Permit to allow amplified music on the covered patio; and

WHEREAS, at the December 7, 2016, public hearing, 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, based on the documentary evidence in the record, as well as testimony at the public hearing, the Town Council has determined that the applicant has met the burden of proof required to support the findings necessary for the Project's requested discretionary permit with the conditions listed below; and

WHEREAS, the Town Council has made the following findings:

1. Approving the appeal to allow amplified outdoor music on the patio, which the owner's representative has indicated is integral to the financial well-being of the business and its employees, conforms to the 2010-2030 Fairfax General Plan Town Center policy TC-3.2.8 to promote locally owned businesses, such as Peri's Bar; and
2. The limited hours proposed for amplified outdoor music on the covered patio, from 4:00 PM through 8:00 PM, Thursday through Sunday, will not conflict with or create any significant hardship for other businesses or residential uses in the immediate neighborhood as long as the noise ordinance is complied with and the patio rear door is kept closed during performances; therefore, the approval of the use permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment; and,

3. The limited hours and the fact that the covered patio is enclosed on two (2) sides and has a roof help to mitigate the impacts of the live music on adjacent uses; therefore, the approval of the Use Permit and use of property as approved under the Use Permit shall not 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 thereof, or any or all of which effects are substantially beyond that which might occur without approval or issuance of the Use Permit; and
4. Approval of the Use Permit subject to the conditions of approval which include limited hours and days of operation, is consistent with the Fairfax Town Code § 17.100.050(C) which allows the operation of theaters, nightclubs and entertainment establishments and (I) which allows establishments or businesses which entertain clientele by musicians, actors or singers or establishments which charge admission or entrance fees in the Central Commercial Zone District with a Conditional Use Permit; and
5. Approval of the Use Permit to allow live amplified music on the covered patio for a limited number of days each week, Thursday through Sunday, and for a limited number of hours, from 4:00 PM to 8:00 PM, will result in equal or better development of the premises than would otherwise be the case;

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

Because of the limited days and hours of the outdoor covered patio live music and the partially enclosed screened location on the patio, the granting of the appeal to allow amplified music can occur without causing significant impacts on neighboring businesses or residences.

The foregoing resolution was adopted at a regular meeting of the Town Council of the Town of Fairfax held in said Town, on the 7th day of December, 2016, by the following vote, to wit:

AYES:

NOES:

ABSENT:

Mayor

Attest: _____
Michele Gardner, Town Clerk