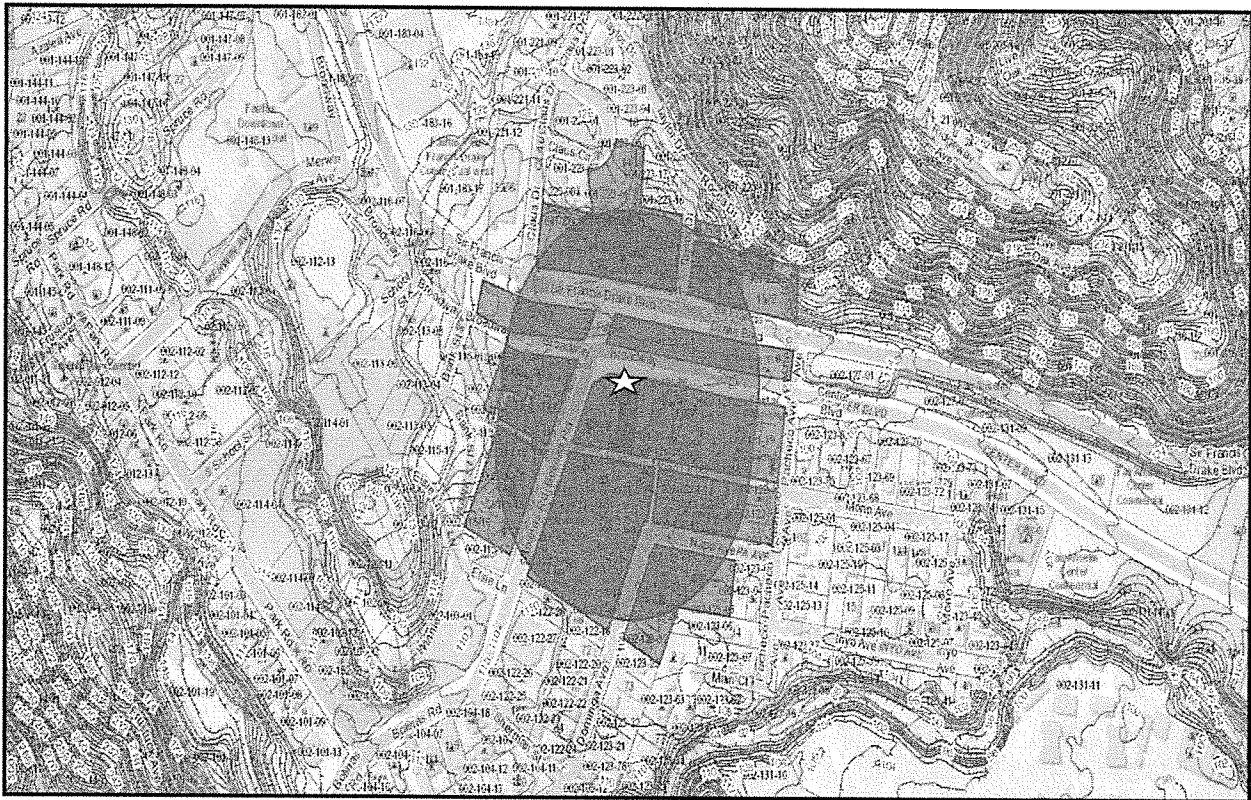


STAFF REPORT
Department of Planning and Building Services

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