FAIRFAX PLANNING COMMISSION MEETING MINUTES
FAIRFAX WOMENS CLUB
THURSDAY, JUNE 16, 2016

Call to Order/Roll Call:

Acting Chair Fragoso called the meeting to order at 7:00 p.m.

Commissioners Present:	Bruce Ackerman Norma Fragoso Esther Gonzalez-Parber Phillip Green Laura Kehrlein (Chair) Mimi Newton (arrived 7:15)
Commissioners Absent:	Shelley Hamilton
Staff Present:	Jim Moore, Planning Director Linda Neal, Principle Planner Michelle Levenson, Permit Technician

APPROVAL OF AGENDA

Planning Director Moore asked the Commission to place agenda item #4 on the Consent Calendar so it could be continued to the July 21st meeting. Principal Planner Neal asked the Commission to remove item #3 from the Consent Calendar for discussion.

M/s, Green/Gonzalez-Parber, Motion to approve the agenda with the suggestions made by staff.
AYES: Ackerman, Fragoso, Gonzalez-Parber, Green, Chair Kehrlein
ABSENT: Hamilton, Newton

PUBLIC COMMENTS ON NON-AGENDA ITEMS

Ms. Kim Turrell, Spruce Road, stated she filed a complaint in 2012 about a non-compliant second unit at 76 Spruce Road. In 2014 the neighbor was given the opportunity to acquire a permit but as of this date has not submitted the appropriate drawings, etc. She is asking the Town to give the property owner 30 days to comply or abate the unit. Planning Director Moore stated staff would look into this matter.

Ms. Marybeth Leland, Dominga Avenue, thanked several businesses for the recent fundraiser to help the refugees in Greece.

Commissioner Newton arrived at the meeting.

Mr. Todd Greenberg stated there were a lot of change going on and a lot of animosity among different groups in Town. He suggested people talk to each other.

Mr. Ruffan Bailey, Mono Avenue, stated there was sub-par construction going on in the curb from Bolinas and Mono. Cars are bottoming-out.

CONSENT CALENDAR

1. **303 Bolinas Road; Application #16-16**
   Continued Consideration of a request for a Use Permit and Compact Parking Space Variance to construct a new, 699-square-foot residential second unit behind an existing 2,659-square-foot, single-family residence; Assessor's Parcel No. 002-033-02; Residential RD 5.5-7 Zone District; Laura Kehrlein, Architect, William And Martha Lawlor, owners; CEQA categorically exempt, Section 15303(a) and 15305(a).

2. **252 Cascade Drive; Application #16-26**
   Request for a Use Permit to expand an existing, second-story 136-square-foot deck to 235 square feet that would remain attached to a 2,408-square-foot single-family residence, and use a 110-square-foot portion of the first-floor area underneath the proposed deck for storage; Assessor's Parcel No. 003-121-01; RS-6 Single-Family Residential Zone; Chrome Architecture; Jeff Paladini and Theresa Hall, owners; CEQA Categorically exempt per Section 15303(a).

3. **Ordinance Amending the Town of Fairfax Town Code Chapter 5.052 ('Business Taxes, Licenses, and Regulations'), Chapter 7.008 ('Definitions'), Chapter 17.012 ('Zone Districts Established'), Chapter 17.020 ('Design Review Regulations'), Chapter 17.092('CL Limited Commercial Zone'); Chapter 17.096 ('CH Highway Commercial Zone'), and 17.100 ('CC Central Commercial Zone') and Addendum to Mitigated Negative Declaration prepared for the 2010-2030 Fairfax General Plan. The proposed ordinance affects all properties within the Central Commercial (CC), Highway Commercial (CH) and the Limited Commercial (CL) Zoning Districts, as depicted on the Fairfax Zoning Map; categorically exempt from CEQA per 14 C.C.R. Section 15301, 15303, and 15332.**

M/s, Ackerman/Green, Motion to approve Consent Calendar item #1.
AYES: Ackerman, Fragoso, Gonzalez-Parber, Green, Newton
ABSENT: Hamilton
RECUSED: Chair Kehrlein

Acting Chair Fragoso stated there was a 10-day appeal period.

M/s, Newton/Green, Motion to approve Consent Calendar item #2.
AYES: Ackerman, Fragoso, Green, Newton, Chair Kehrlein
ABSENT: Hamilton
RECUSED: Gonzalez-Parber

Acting Chair Fragoso stated there was a 10-day appeal period.

M/s, Newton/Green, Motion to continue Consent Calendar item #3 to the July 21st meeting.
AYES: Ackerman, Fragoso, Gonzalez-Parber, Green, Newton, Chair Kehrlein
ABSENT: Hamilton

PUBLIC HEARING ITEMS

4. **2001 Sir Francis Drake Boulevard; Application #15-38**
   Request for a modification of a previously approved Use Permit to revise an approved flood plan to accommodate the sale of food and beverages from a food truck that would be parked within the existing building, eliminate the accessory bathroom building, relocate the bathrooms to the interior of the main building and relocate the kitchen, service counter, and other accessory rooms to the interior of the main structure;

Assessor's Parcel No. 002-116-04; Highway Commercial CH Zone; Brian Back, applicant/owner; CEQA categorically exempt per section 15301(a) and 15303(c)

Principal Planner Neal presented the staff report.

Commissioner Fragoso asked what would happen after the 3-year window of time if they were not ready to proceed with the previously approved improvements. Planning Director Moore stated it would be at the discretion of the Town to revisit the Use Permit.

Commissioner Green asked if the applicant gave any indication of the amount of revenue that would be generated from a food truck. He thought there was a thin margin. Planning Director Moore stated staff does not get involved with the financial end of the application. Commissioner Green asked if a condition could be added requiring a bond to ensure that the construction would occur. Planning Director Moore stated "yes".

Commissioner Ackerman had questions about the language regarding the sidewalk.

Commissioner Fragoso had a question about the elimination of the pedestrian easement and the proposed improvements. Planning Director Moore stated the Town controls the Bank Street easement and its use. Sidewalks, curbs, and gutters would have to go in according to Town standards and requirements. Commissioner Gonzalez-Parber asked what would happen should there be a change in ownership or proposed use. Principle Planner Neal stated the owner has recorded the easement giving the Town the public right-of-way across the property. The resolution could be recorded also.

Chair Kehrlein opened the Public Hearing.

Mr. Brian Back, owner, made the following comments:

- The original design for the station included a walkway through the site for pedestrians and cyclists. They offered the public easement to the Town so this could happen.
- They are willing to work with the Town with respect to plans for the downtown and that area.
- The landscaping strip was reduced (from 4 feet to 2 feet) because they were required to increase the size of the parking lot to allow for larger turning ratios.

Commissioner Fragoso asked Mr. Back if he would be willing to remove the pedestrian easement and shift the parking lot to increase the landscaping strip to four feet. Mr. Back stated that would cost several hundred thousand dollars. They would be willing to look at this suggestion. Principal Planner Neal reminded the Commission that the Town owns the landscaping and the parking lot further east and would have the ability to widen the right-of-way in that direction. Commissioner Newton asked if the Redwood trees were on Mr. Back's property or the Town easement. Principal Planner Neal stated they were on the easement.

Commissioner Newton asked if deliveries would occur from 10:00 p.m. and 6:00 a.m. Mr. Back stated "yes"- they would not happen during operational hours.

Commissioner Green asked how long it would take to get to complete build-out. Mr. Back stated three years is a reasonable amount of time to accomplish the full restoration of the structure as originally approved.

Chair Kehrlein closed the Public Hearing.

Commissioner Gonzalez-Parber provided the following comments:

- She loves the project.

- What they set out to do is very ambitious. She understood the need to phase the project.
- She is concerned about the language related to the easement, sidewalk, landscape strip. etc.

Commissioner Fragoso provided the following comments:
- She would like to leave out Section 23- this would leave that issue open.
- Those restrooms need to be improved.
- She loves food trucks and thinks this is a tremendous idea.

Chair Kehrlein provided the following comments:
- This is a very unique proposal.
- She looks forward to the business opening soon.

M/s, Ackerman/Green, Motion to adopt the resolution as amended by staff, with the deletion of item #23.
AYES: Ackerman, Fragoso, Gonzalez-Parber, Green, Newton, Chair Kehrlein
ABSENT: Hamilton

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

5. 15 Acacia Road; Application #16-23
Request for a Hill Area Residential Development Permit, Variances and Excavation, Encroachment and Design Review Permits to construct a 1,836-square-foot single-family residence; Assessor's Parcel No. 001-112-31; Residential Single-family RS-6 Zone; Ted Pugh, applicant; Ted Pugh and Ricki Kerner, owners; CEQA categorically exempt per Section 15303(a), 15305(a) and (b).

Planning Director Moore recused himself from this item.

Principal Planner Neal presented the staff report.

Commissioner Gonzalez-Parber referred to page 6 of the staff report, 3rd paragraph (Acacia Road Elevations) and asked for clarification. Principal Planner Neal stated the elevations do not accurately depict how the neighbor's property improvements encroach onto the site.

Commissioner Gonzalez-Parber asked staff to define a fire truck pullout. Principal Planner Neal stated the pullout was depicted on page 2 of the plans- the road is very narrow and there are limited areas where a fire truck can get off of the paved portion of the road. The driveway access is being developed to accommodate a fire truck.

Commissioner Newton asked if the applicants have gone to the Tree Committee for permission to remove any trees. Principal Planner Neal stated "not yet".

Commissioner Fragoso referred to page 2 of the plans and asked if the "future storage tank" was for collecting rainwater. Principal Planner Neal stated "yes".

Commissioner Green suggested a change in the resolution on page 6, 3(c) regarding construction vehicles. He also suggested adding a condition that prohibits idling of construction vehicles while not in use.

Chair Kehrlein opened the Public Hearing.

Mr. Ted Pugh, owner, made the following comments:

- He bought the property in 2007 and he discussed the timeline (acquisition, approvals, extensions, re-approvals, etc.).
- He discussed the goals of the project- the primary goal is to stabilize the hillside.
- There was a huge mudslide in 2005.
- The Bay trees in the front were topped and he would like to remove them.
- They plan to preserve the Redwoods.
- There is a fire hydrant about 15 feet up the road- it is the only one close by. This is the reason for the turnout.
- This is a balanced, aesthetically compatible, three-level home that would be an asset to the neighborhood.
- The neighbors are in support.

Mr. Steven Blackman, Acacia Road, made the following comments:

- He lives directly across from the proposed construction site.
- He asked staff if the frontage was 42 feet and the house was going to be 39 feet wide. Principal Planner Neal stated "no"- the actual width of the house would be 32 feet.
- This is a quiet, narrow "country lane" with houses that are architecturally diverse. They all fit into the landscape and with each other.
- This is a lovely looking house but it belongs in the Town of Ross. It is architecturally incongruent with the rest of the neighborhood.
- This is a small, steep lot. There would only be five feet of clearance on each side.
- This is a three-story home which includes an attic giving it the appearance of a four-story building. It would tower over the house to the west by 15 feet.
- The real issue has to do with the big spring that runs underneath this property. He discussed the landslide that occurred eight to ten years ago.
- He asked the commission not to rush their decision and to err on the side of caution.
- A hydrogeologist should be consulted to study the stream.

Mr. Hugh Crookshank, Acacia Road, made the following comments:

- He is concerned about the spring and stated if the catchment system fails the water would flow down to his property.
- This is really a four-story house. A three-story house would fit in.
- The fourth story was a cathedral ceiling and could be brought down.
- The story poles on the left might be short- the ones on the right are taller.
- He was concerned about parking during construction and asked if there would be a construction management plan.

Ms. Shelby LaMotte, Manor Road, made the following comments:

- She looks up at the hillside when standing in her backyard.
- She is in support of the project.
- The owner has responded to all of the Commission's comments.
- She agreed that there is a wide diversity of architecture on the street.
- There is no stream on the property- it is a seasonal seep. Engineers are used to make sure the construction is safe.
- The drainage on this property is challenging but this has been addressed.
- The design is very thoughtful.

A resident from Acacia Road made the following comments:

- He lives at the end of Acacia and he was concerned about getting up and down the road during construction.

- It is specious to talk about the fourth story as an attic.
- He did not want to see the lot overbuilt.
- He loves everything else about the project.

Chair Kehrlein asked Principal Planner Neal to explain how the height was measured. Principal Planner Neal stated height was measured from the natural grade to the top of the structure. This development complies with the height regulation.

Mr. Ted Pugh, owner, made the following comments:
- There is no stream under the house and this issue has never arisen in any geotechnical reports.
- There are issues of run-off throughout Fairfax.
- They have designed a retaining wall system (with proper drainage) designed into a foundation to stabilize the slope.
- The part that is being called an "attic" is on the right side and is not the entire upper floor.
- The house is burrowed into the hill and will have a "whole house" ventilation system.
- The Town required Construction Management Plan would allow the applicants to communicate with the neighbors.

Commissioner Gonzalez-Parber asked about the floor to ceiling height of the third floor. Mr. Pugh stated the roof slopes forward towards the road. The height will run from 10' to about 18'.

Mr. Jeff Kroot, architect, made the following comments:
- The height is limited to 28 ½ feet above the ground- they are considerably below that.
- The house appears modest as seen from the sides and the back.
- The site was studied by a soils engineer and the Town Engineer and there was no indication of a spring on the site.
- The site is weak in its current condition and much of the cost of the construction includes building a large, thick retaining wall that will support the hillside.

Chair Kehrlein closed the Public Hearing.

Commissioner Gonzalez-Parber provided the following comments:
- There is a lot of documentation in the packet and many experts have weighed in on the project.
- The project has been thoroughly vetted.
- They are within the height limit.
- They have done an incredible job considering the physical constraints of the site.
- This is a good project for the neighborhood.
- The topography will soften the height. The project is "nested" into the hillside.
- She is in favor of the project.

Commissioner Ackerman provided the following comments:
- This is a good plan.
- There is no need for a lot of detailed discussion since this has already been reviewed by the Commission.
- This is a modest sized house. A lot of the square footage is in the off-street parking.
- The project will fit nicely into this narrow hillside.
- He supports the project.

Commissioner Green provided the following comments:
- The packet contained a lot of information- hydrology reports from 2007 and 2008. It has been thoroughly investigated.

- He reiterated his suggestion that a condition is added prohibiting construction vehicles from idling and that construction vehicles are parked elsewhere.

Commissioner Fragoso provided the following comments:
- She urged the neighbors to read the hydrology report contained in the packet.
- She appreciated the two full garage parking spaces.

M/s, Green/Fragoso, Motion to approve Resolution No. 16-19 as amended by Commissioner Green.
AYES: Ackerman, Fragoso, Gonzalez-Parber, Green, Newton, Chair Kehrlein
ABSENT: Hamilton

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

6. 615 Oak Manor Drive; Application #16-24
Request for a Hill Area Residential Development Permit, Excavation Permit and a Design Review Permit to construct a 3,765-square-foot single-family residence, 456-square-foot carport and a 689-square-foot residential second unit; Assessor's Parcel No. 174-010-71; Residential Single-family RS 6 Zone; Shelley Brock, Architect/applicant; Robert Schwartz, owner; CEQA categorically exempt per Section 15303(a) and 15303(e).

Principal Planner Neal presented the staff report. Staff is asking that the following additional condition be added to the resolution: A maintenance document setting forth the required maintenance schedule for the corrugated metal pipe drainage system on the site be provided by the applicant for the Town Engineer's approval prior to issuance of the Building Permit and that that maintenance agreement be recorded at the County of Marin Recorder's Office.

Commissioner Newton asked if the 50 acres referenced in the staff report was the old Patrice Phillips property. Principal Planner Neal stated "yes". Commissioner Newton stated it was on the list of open space property. Principal Planner Neal stated she sent the plans to the Open Space Committee and has not yet received a response.

Commissioner Fragoso stated they did a great job integrating bioswales but she did not see any plans for a graywater/rainwater catchment system. Principal Planner Neal stated this would have to be addressed with the Building Permit application since it is required by State law. Commissioner Fragoso stated she would like to see what they come up with.

Commissioner Green asked if this property was part of the Fairfax Hills vs. Town of Fairfax settlement agreement. Principal Planner Neal stated "yes".

Chair Kehrlein opened the Public Hearing.

Mr. Rob Schwartz, owner, made the following comments:
- The neighbor most impacted by the previous landslide has voiced concerns. The building site will not impact the landslide. He continues to work with the neighbor regarding drainage issues.

Ms. Shelley Brock, architect, made the following comments:
- The overall 50 acres site stretches from north to south down to Sir Francis Drake Boulevard.
- The owner is very familiar with the property and has selected an area that has already been graded as a building site.
- The footprint of the house is long and thin because they are squeezed in by existing trees that they want to maintain.
- The guest cottage is tucked into the slope.

- The approach to both structures has been to work with the slope.
- She pointed to the plans and indicated the only two-story portion (master bedroom and bath).
- The main house would be about 180 feet off of a driveway that is at a 17% slope.

Ms. Shelby LaMotte, landscape architect, made the following comments:
- The landscape approach was simplified- they are doing everything possible to preserve the existing trees.
- The house is configured on one of the few flat spots.
- The area has been graded and there is a bench and bedrock.
- The bench is dictating the location of the footprint of the house and the longitudinal nature of the landscaping.
- They are proposing a 10-foot wide pool at the southwest end that nestles into the flat area.
- The remaining landscaping is addressing construction disturbance- native plants, permeable paving on pathways.
- The driveway is steep and they plan to use asphalt.
- She supported Commissioner Fragoso's suggestion for a catchment system but noted they need to be designed with care on steep slopes. They do not want to over-saturate the slope. Commissioner Fragoso asked what they plan to do with the rainwater going into the gutters. Ms. LaMotte stated the rainwater from both structures would go into the biofiltration area.
- They can use graywater to irrigate the small amount of landscaping that will be planted.
- They are removing two Oak trees-one that is already dead.

Mr. Scott Hochstrasser, land use planning consultant, made the following comments:
- He has been meeting with the owner since 2014 regarding this property.
- This is a great plan that uses disturbed areas and preserves and protects over 90% of the land in open space.
- The owner intends to preserve and protect the natural habitat and waterways.
- They support the staff recommendation and have no objection to the additional condition (#13).
- He referred to page 2 and 3 of the resolution and asked for two small changes (the addition of the April 20, 2016 date of the plans).

Commissioner Green noted the site was located in a very sunny location and he asked if the use of solar power was considered. Mr. Schwartz stated "yes".

Commissioner Newton stated there was a trail at the top of the ridge and an easement for public access along that part of the property. She asked Mr. Schwartz if he would continue to allow public use of the trails and if he planned to install any fencing. Mr. Schwartz stated he does not intend to change anything about the use of these trails. However, there has not been regular use of the fire road and he does not intend to make this a public right-of-way. He does not have a comprehensive plan for fencing but does plan to put in a small amount of fencing (less than 1% of the property). Commissioner Green noted the project is a 5-bedroom, 4-bath house and he asked about the plan for the cottage. Mr. Schwartz stated he would like to see the cottage used for the family.

Commissioner Fragoso referred to Sheet L01, Vegetation Management Plan, and asked about the issue regarding encroachment onto the neighbor's property. Ms. LaMotte stated the Vegetation Management Plan was a Fire Department requirement and the triangle that encroaches into the neighbor's property is in the required 100-foot zone. If an applicant is not able to trim vegetation on the neighbor's property then the Fire Department reserves the right to ask the applicant to do something with the building materials that makes structures less fire prone.

Ms. Christy Delman, Oak Manor Drive, made the following comments:

- She thanked the applicant for being mindful of a beautiful piece of property that had been abused.
- She has spoken to Mr. Schwartz about the concerns about the previous slide and how the properties downstream could be protected.

Mr. Luther Pahi made the following comment:
- He questioned the need for a five-bedroom, four-bath house and a cottage.

Mr. Schwartz made the following comment:
- This is a modest home given the size of the parcel.

Chair Kehrlein closed the Public Hearing.

Commissioner Green provided the following comments:
- He referred to page 4 of the Resolution, condition #4 and suggested the following additional condition: (C). Fire alarms shall be installed prior to occupancy.

Commissioner Newton provided the following comments:
- It was unfortunate that they did not have a report from the Open Space Committee or that the applicant did not have a dialogue with the committee. She has concerns about this process.
- She wanted to make sure the Commission gets feedback on these parcels that are on the Open Space list.
- She was glad the applicant has chosen to have a somewhat small footprint on this large property.

Commissioner Gonzalez-Parber provided the following comments:
- She agreed with the comments made by Commissioner Newton.
- She did not want to hold up the process but did want some feedback from the Open Space Committee.

Chair Kehrlein reopened the Public Hearing.

Ms. Shelby LaMotte, landscape architect, made the following comments:
- She was on the Planning Commission during the Town's review of the Open Space Element of the General Plan and the issue of a timeline was discussed. There is a 30-day review period.
- This applicant is very sensitive to restoring the property.
- There are legal, binding rules with respect to the development of this property.

Chair Kehrlein closed the Public Hearing.

Planning Director Moore suggested adding a condition that the applicant meet with the Open Space Committee prior to the issuance of a Building Permit and the committee provide staff with a written analysis of their position. If they were satisfied then the Building Permit would be issued. Any major wrinkles would require that the project come back to the Planning Commission.

Commissioner Fragoso provided the following comments:
- This is a reasonable suggestion.
- She had questions about the purview of the Open Space Committee.

Commissioner Gonzalez-Parber provided the following comments:
- She supports the project with the conditions discussed.

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 year.

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.

- It is a myth that unamplified music is quieter. It can be loud.

Commissioner Ackerman provided the following comments:
- He agreed with the comments made by Commissioner Green.
- There is noise, other than music, associated with an outdoor dining area.

Principal Planner Neal suggested the following hours for the outdoor area: 4:00 p.m. to 8:00 p.m.

Commissioner Green provided the following comment:
- The hours for the indoor music shall be from 1:00 p.m. to 8:00 p.m. seven days a week and the hours for the outdoor music shall be from 4:00 p.m. to 8:00 p.m., Thursday through Sunday, and shall be non-amplified This should be reflected in the resolution.

Acting Chair Fragoso provided the following comments:
- She referred to the staff report and did not want to use the fact that a business has "available outdoor areas large enough to accommodate music" as a criteria.
- She would be supportive of indoor, acoustical music.
- She did not support outdoor music at this location.
- She has concerns about the proposed layout. She asked staff to review this.

M/s, Green/Gonzalez-Parber, Motion to approve modification of Use Permit, application #02-39, and Resolution No. 16-17, as amended by Commissioner Green
AYES: Ackerman, Gonzalez-Parber, Green, Newton
NOES: Acting Chair Fragoso
RECUSED: Chair Kehrlein
ABSENT: Hamilton

Acting Chair Fragoso stated there was a 10-day appeal period.

DISCUSSION ITEMS

MINUTES

9. Minutes from May 19, 2016 regular meeting and the May 26, 2016 special meeting (Minutes from the April 28, 2016 special meeting will be reviewed at the next regular July 21, 2016 meeting.

Planning Director Moore asked the Commission to continue approval of the minutes and send any comments to staff.

PLANNING DIRECTOR'S REPOR

Planning Director Moore reported staff received the application for the Christ's Lutheran Church Senior Housing Project.

ADJOURNMENT

A motion was made, seconded and unanimously approved to adjourn the meeting at 12:28 a.m.
Respectfully submitted,

Toni DeFrancis,
Recording Secretary